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## WORKING DOCUMENT

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From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	10840/21 + ADD1 10841/21 + COR1
Subject:	Amended proposal for a Regulation of the European Parliament and the Council on the implementation of the Single European Sky (recast) Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) 2018/1139 as regards the capacity of the European Union Aviation Safety Agency to act as Performance Review Body of the Single European Sky – Non-paper by the Presidency

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In view of the Working Party on Aviation of 1 September 2022, delegations will find, in annex the latest compromise text on chapter IV “Network Management” proposed by the rapporteur for SES 2+ recast.

In order to steer the discussions, the Presidency would like delegations to answer the following questions:

1. Could you agree to refer to Member States' sovereignty over their airspace, including their responsibilities with respect to national routes and airspace structures, and Member States' responsibilities relating to public order, public security and defence matters only in article 1(2) (“Subject matter and scope”) of the Recast to avoid redundances?

2. Could you agree with a compromise setting out an exhaustive list for network functions and an open list for network manager tasks?
3. Do you have any comments on the list of the network functions and the tasks of the Network Manager? The particular outstanding issues are:
  - a) Could you agree with the definition proposed by the rapporteur for network function 2(a), namely defining the design, management and optimisation of European airspace structures as a network function?
  - b) Could you agree with specifying the elements of the Network Operational Plan that are to be implemented by operational stakeholders instead of referring to a binding Network Operational Plan? In your view, what would such a list include (e.g.: operational actions, remedial actions)? Could you agree with making a link between, on the one hand, the Network Operational Plan and, on the other hand, the network operational performance requirements and local reference values?
  - c) Do you think it would be more appropriate to connect the network function 2(e) with the achievement of the Union-wide performance targets as set out in the performance scheme rather than the NOP?
4. Could you agree with emphasising Eurocontrol's vital role in a recital and not referring to Eurocontrol in the articles? Otherwise, what benefits do you see in mentioning it in the articles?
5. Could the rules relating to Network Management Board be defined by an implementing act (e.g.: composition, role, functioning) as it is currently the case under existing legislation?
6. Do you consider appropriate to involve airspace users, the PRB and the Network Manager in the approval of investment plans of the ATSPs? Could you agree with consulting airspace users, the PRB and the Network Manager at an early stage of the investments planning?
7. Could the methodology to set the prices for access to operational data for general air traffic be defined by an implementing act?

CHAPTER IV  
NETWORK MANAGEMENT  
Article 26  
Network functions

1. The air traffic management network functions shall **ensure** the sustainable and efficient use of the airspace and of scarce resources. They shall also ensure that airspace users [...] operate **environmentally including climate, optimized flight trajectories and profiles**, while allowing [...] **fair and reasonable** access to airspace and air navigation services **and avoiding congestion**. Those network functions, enumerated in paragraphs 2 [...], shall support **seamless access to air navigation services by airspace users as well as** the achievement of the Union-wide performance targets, **including those regarding climate and environment** and shall be based on operational requirements.

**The implementation of the network functions shall respect the provisions of Article 1.**

2. The network functions referred to in paragraph 1 **include** the following

(a) design, **management and optimisation of European** airspace structures *with a view to* offering the required level of safety, **capacity, flexibility, responsiveness, environmental performance**, and **fulfilling EU-wide performance targets, with due regard to security and defence needs and without prejudice to the responsibilities of Member States with regard to national routes and airspace structures**;

(b) **ATFM**;

(c) the coordination of scarce resources within aviation frequency bands used by general air traffic, in particular radio frequencies as well as coordination of radar transponder codes.

(d) **facilitation of delegation of air traffic services provision through co-operation with the air traffic service providers and Member State authorities**;

(e) **management of the** delivery of air traffic control capacity in the network [...] **in accordance with commitments agreed through network operational performance requirements and local reference values as set out in the [binding] NOP**;

(f) [...] **management of network crisis**.

(g) **ATFM delay attribution**;

(h) the management of the planning, monitoring and coordination of implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, taking into account operational needs and associated operational procedures;

(i) the monitoring of the functioning of the European ATM network infrastructure.

3. **The Network Manager shall support, by carrying out the tasks referred to in Article 27(4), the execution of the** network functions by **Member States and all relevant operational stakeholders**.

4. The functions listed in paragraphs 2 [...] shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. **They shall be of purely operational or technical nature and shall take into account of the specificities of the Member States**. They shall be performed in coordination with **civil and** military authorities, **in particular** in accordance with agreed procedures concerning the flexible use of airspace.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 to amend this Regulation in order to **specify the manner in which the implementation** of the functions listed in paragraphs 2 **may be adapted in the event of important changes in operational needs or significant technological developments. Such new functions shall not extend the existing scope of Union competence and shall be without prejudice to the prerogatives and responsibilities of the Member States**.

Article 27  
The Network Manager

1. In order to achieve the objectives referred to in Article 26 (1), the Commission, supported by the Agency [...] **in accordance with Regulation (EU) 2018/1139**, shall ensure that the Network Manager contributes to the execution of the network functions set out in Article 26 (2), by carrying out the tasks referred to in paragraph 4.

The Commission shall supervise the proper execution of the tasks of the Network Manager.

2. The Commission [...] **shall**, appoint an **independent**, impartial and competent body, to carry out the tasks of the Network Manager. [...]

[ **Recital**

(xx) 'Eurocontrol' is the European Organisation for the Safety of Air Navigation set up by the International Convention of 13 December 1960 relating to Cooperation for the Safety of Air Navigation; Commission appointed Eurocontrol, in 2019 as Network Manager; the mandate could be renewed in accordance with Article 27. ]

2a. To this end, the Commission shall adopt an implementing act in accordance with the examination procedure referred to in Article 37(3).

This appointment Decision shall include the terms and conditions of the appointment, including the financing of the Network Manager.

**2b.** In order to ensure the uniform implementation of and compliance with the provisions referred to in Paragraph 2a, the Commission shall, with a view to achieving the objectives set out in Article 1, adopt implementing acts laying down detailed provisions including:

a) Appointment requirements and procedure;

b) independence requirements;

c) in case of a body residing within another entity requirements for functional, hierarchical and financial separation from that entity;

d) requirements of expertise

e) financing

f) Commission supervision of execution by the Network Manager of its tasks;

g) Requirements for measuring the performance of the Network Manager.

3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

The Network Manager shall execute its tasks in an impartial and cost efficient manner and shall be subject to appropriate governance and independence. If the competent body appointed as the Network Manager has also regulatory functions, organisational separation with such functions shall be ensured. In the execution of its tasks, the Network Manager shall take into consideration the needs of the whole ATM network and **the need to safeguard defence capabilities and it shall fully involve the operational stakeholders.**

4. The Network Manager shall **contribute** to the execution of the network functions through tasks related to, among others, the Network Strategy Plan, the Network Operations Plans, the design, management and optimisation of the European airspace structures, facilitation of delegation of air traffic services provision, delivery of air traffic control capacity in the network, the management of network crises, coordination of scarce resources, coordination of ATFM, ATFM delay attribution, the coordination of deployment of ATM infrastructure, the monitoring of ATM infrastructure.

4 a. *In the execution of its tasks*, the Network Manager shall take support measures aimed at safe and efficient planning and operations of the stakeholders within the network under normal and network crisis conditions and measures aimed at the continuous improvement of network operations in the Single European Sky and the overall performance of the network, especially regarding the implementation of the performance scheme including in respect of climate and the environment. The action taken by the Network Manager shall take account of the need to fully integrate the airports in the network and aim to ensure compliance with the performance plans and performance targets of designated air traffic service providers.

5. The Network Manager shall cooperate closely with the [ ... ] PRB in order to ensure that the performance targets referred to in Article 10, *including those relating to climate and the environment*, are adequately reflected in the *overall capacity planning, as well as the* capacity to be delivered by individual air *traffic* service providers and agreed between the Network Manager and those air *traffic* service providers in the *NOP*.

6. The Network Manager shall:

(a) *decide*, through cooperative decision making, *on* operational actions *and remedial measures* that operational stakeholders shall implement with a view to contributing to the achievement of the binding Union-wide performance targets and local performance targets and to implement *commitments* agreed through *network operational performance requirements and local reference values* as set out in the [binding] NOP *and advise on climate-optimized flight trajectories*;

(b) *in coordination with relevant parties*, advise the Commission [ and provide relevant information to the [.../ PRB ] on the deployment of the ATM network infrastructure in accordance with the European ATM Master Plan, in particular to identify investments necessary for the network.

6a. In order to ensure the uniform implementation of and compliance with the provisions referred to in Paragraph 4 to 6, the Commission shall, with a view to achieving the objectives set out in Article 1, adopt implementing acts *facilitating the implementation* of the tasks of the Network Manager, *regarding*:

(a) *establishing and keeping up-to-date* the Network Strategy Plan and the Network Operations Plan;

(b) *facilitation of delegation of air traffic services provision through co-operation with the air traffic service providers and Member State authorities*;

(c) *coordination and support in the delivery of air traffic control capacity in the network and in accordance with commitments agreed through network operational performance requirements and local reference values* as set out in the [binding] NOP;

(d) *developing, coordination and support to the design, management and optimisation of the European airspace structures*;

(e) *organising the management and operation of the network functions*;

(f) *coordinating and supporting* the management of network crises;

(g) *coordination of scarce resources within aviation frequency bands used by general air traffic, in particular radio frequencies as well as coordination of radar transponder codes*;

(h) *coordination of ATFM and execution of ATFM measures through central unit*;

(i) *ATFM delay attribution including the post operations adjustment process involving air navigation service providers, airports and national authorities to address issues that relate to ATFM delay measurement, classification and attribution*;

(j) *the management of* the planning, *monitoring and coordination* of implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, *taking into account operational needs and associated operational procedures* and military and operational needs and associated operational procedures, where appropriate;

(k) *monitoring of the functioning of the infrastructure in the European ATM network*;

(l) *any other measure necessary for the performance of the tasks of the Network Manager*.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

7. *In the execution of its tasks*, the Network Manager shall take **decisions** through a cooperative decision-making process. Parties to the cooperative decision-making process shall act to the maximum extent possible with a view to improving the functioning and performance of the network *including the achievement of the Union wide targets in the key performance area of climate and environment*. The cooperative decision-making process shall promote [...] the interest of the network *taking into account essential security and defence interests*.

***Member States shall be fully involved in decisions of strategic importance, in particular in the shaping of the Network Strategy Plan.***

7a. The cooperative decision-making process referred to in paragraph 7 shall be based, among others, on consultation process of operational stakeholders, airport slot coordinators, Member States and, where relevant, the Agency and the Commission, on working arrangements and processes for operations and on resolution mechanisms involving the Network Management Board where necessary. Where Member States' sovereignty over their airspace is concerned, the consent of the Member State(s) concerned is required.

7aa. In order to ensure the uniform implementation of and compliance with the provisions referred to in Paragraph 7 and 7a, the Commission shall, with a view to achieving the objectives set out in Article 1, adopt implementing acts laying down, detailed provisions regarding the cooperative decision-making process including:

- (a) consultation process of operational stakeholders, airport slot coordinators, Member States and, where relevant, the Agency and the Commission;
- (b) working arrangements and processes for operations;
- (c) involvement of Member States' authorities when required;
- (d) resolution mechanisms involving the Network Management Board where necessary;
- (e) any other measure necessary with regard to the decision-making processes.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

7b. A Network Management Board shall be established *by means of the implementing acts referred to in paragraph 7bb* in view of ensuring appropriate governance over the execution of the Network functions. [...] The Network Management Board shall be composed of representatives of the operational stakeholders, of slot coordinators, of representatives of the Commission, of representatives of the Network Manager and of representatives of Eurocontrol.

7bb. In order to ensure the uniform implementation of and compliance with the provisions referred to in Paragraph 7b, the Commission shall, with a view to achieving the objectives set out in Article 1, adopt implementing acts laying down detailed provisions regarding the Network Management Board including:

- (a) composition of Network Management Board: representatives of the operational stakeholders, of slot coordinators, of representatives of the Commission, of representatives of the Network Manager and of representatives of Eurocontrol;
- (b) the functioning and responsibilities of Network Management Board including *in relation with crisis management*, [...] approving the NOP and endorsing the NSP *before it is approved by the Commission after consultation with Member States*, approving the specifications for the consultation and the detailed working arrangements;
- (c) monitoring the implementation of network functions;
- (d) providing opinions or recommendations on specific issues;
- (e) any other measure necessary for the performance of the tasks for the governance mechanisms.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

8. By way of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3), the Commission shall establish detailed rules for: *the execution of the network functions including crisis management and on the network governance mechanisms.*

9. [...] Member States shall remain responsible for the detailed development, approval and establishment of the airspace structures for the airspace under their responsibility.

In this regard, Member States shall take into account air traffic demands, seasonality and complexity of air traffic and of performance plans **including those regarding climate and the environment**. Before deciding on those aspects, they shall **take under due consideration needs of** airspace users concerned or groups representing such airspace users and military authorities as appropriate.

#### Article 28

##### Transparency of accounts of the Network Manager

1. **The financial accounts of** the Network Manager shall be drawn up, **and published annually**. Those accounts shall comply with the international accounting standards adopted by the Union. Where, due to the legal status of the Network Manager, full compliance with the international accounting standards is not possible, the Network Manager shall achieve such compliance to the maximum possible extent.

2. The Network Manager shall publish an annual report **on its activities** and regularly undergo an independent audit.

#### Article 29

##### Relations with stakeholders

The air traffic service providers shall establish consultation mechanisms to consult the relevant airspace users, aerodrome operators and military authorities on all major issues related to services provided, including relevant changes to airspace configurations, or major investments which have a relevant impact on air traffic management and air navigation service provision and/or charges; **in particular, their positions shall be taken into consideration in the process of approving strategic investment plans especially as regards aspects requiring synchronisation between air and ground equipment deployment**.

The Commission shall adopt measures detailing the modalities of the consultation and of the involvement of airspace users, **PRB and Network Manager in drafting and** approving investment plans **to ensuring in particular their consistency with the ATM Master Plan and common projects as referred to in Article 35**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37 (3).

#### Article 30

##### Relations with military authorities

Member States shall, within the context of the common transport policy ensure that written agreements between the competent civil and military authorities or equivalent legal arrangements are established or renewed in respect of the management of specific airspace blocks [...].

1. With regard to general air traffic, relevant operational data shall be made available in ***an interoperable format in*** real-time, on ***a transparent and*** non-discriminatory basis and without prejudice to ***national security, public order*** and defence policy interests, by all air navigation service providers, airspace users, airports and the Network Manager, including on a cross-border and a Union-wide basis. Such availability shall be to the benefit of certified or declared air ***navigation*** service providers, entities having a proven interest in considering the provision of air navigation services, ***military entities in charge of security and defence activities, military air navigation service providers,*** airspace users and airports as well as the Network Manager. The data shall be used only for operational purposes.

2. Prices for the service referred to in paragraph 1 shall be based on the marginal cost of making the data available.

3. Access to relevant operational data as referred to in paragraph 1 shall be granted ***free of charge*** to the authorities in charge of safety oversight, performance and network oversight, ***security, public order, and defence,*** including the Agency, ***in accordance with Regulation (EU) 2018/1139.***

4. The Commission [...] ***shall adopt implementing acts laying*** down the detailed requirements for the making available of and the access to data in accordance with paragraphs 1 and 3, ***including the specific operational data concerned,*** ***the methodology to set the prices as referred to in paragraph 2 and requirements for the identification of entities having a proven interest in considering the provision of air navigation services.*** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).