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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	ST 10840/20 + ADD1
Subject:	Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the implementation of the Single European Sky (recast) – Chapter V - Airspace interoperability

Delegations will find, in Annex I, Chapter V of the Commission proposal ST 10840/20 + ADD1 - Airspace interoperability - that will be discussed at the informal VTC of the members of the Aviation Working Party on 27 October 2020.

In addition, delegations will find, in Annex II, the relevant parts of the Commission Staff Working Document (ST 11020/2020).

Delegations are invited to provide **written comments** on Chapter V of the Commission proposal ST 10840/20 + ADD1 - Airspace interoperability. The written comments should be sent to the Presidency (verk-4-eu@brue.auswaertiges-amt.de) and to the General Secretariat of the Council (isabelle.besson@consilium.europa.eu, godfrey.galea@consilium.europa.eu and avia-mar@consilium.europa.eu) by **4 November 2020 18:00 pm CET**.

↓ 551/2004 (adapted)

CHAPTER ~~H~~ VAIRSPACE ~~ARCHITECTURE~~ ✕, INTEROPERABILITY AND
TECHNOLOGICAL INNOVATION ✕

↓ 1070/2009 Art. 3.2

~~Article 3~~~~European Upper Flight Information Region (EUIR)~~

~~1. The Community and its Member States shall aim at the establishment and recognition by the ICAO of a single EUIR. To that effect, for matters which fall within the competence of the Community, the Commission shall submit a recommendation to the Council in accordance with Article 300 of the Treaty at the latest by 4 December 2011.~~

~~2. The EUIR shall be designed to encompass the airspace falling under the responsibility of the Member States in accordance with Article 1(3) and may also include airspace of European third countries.~~

~~3. The establishment of the EUIR shall be without prejudice to the responsibility of Member States for the designation of air traffic service providers for the airspace under their responsibility in accordance with Article 8(1) of the service provision Regulation.~~

~~4. Member States shall retain their responsibilities towards the ICAO within the geographical limits of the upper flight information regions and flight information regions entrusted to them by the ICAO on the date of entry into force of this Regulation.~~

Article ~~323a~~

Electronic aeronautical information

Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with that publication, the Network Manager, in cooperation with ~~Eurocontrol~~ ⇒ the Commission ⇐, shall establish a Union-wide aeronautical information infrastructure to further the availability of electronic aeronautical information of high quality, presented in an easily accessible way and serving the requirements of all relevant users in terms of data quality and timeliness.

⇒ The aeronautical information thus made available shall only be the information that complies with the essential requirements set out in point 2.1 of Annex VIII of Regulation (EU) 2018/1139. ⇐

~~2. For the purpose of paragraph 1, the Commission shall~~

~~(a) ensure the development of a Community wide aeronautical information infrastructure in the form of an electronic integrated briefing portal with unrestricted access to interested stakeholders. That infrastructure shall integrate access to and provision of required data elements such as, but not limited to aeronautical information, air traffic services reporting office (ARO) information, meteorological information and flow management information;~~

~~(b) support the modernisation and harmonisation of the provision of aeronautical information in its broadest sense in close cooperation with Eurocontrol and the ICAO.³ The Commission shall adopt detailed implementing rules for this Article in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation.~~

↓ 1070/2009 Art. 3.4

~~Article 4~~

~~Rules of the air and airspace classification~~

~~The Commission shall, in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, adopt implementing rules in order to:~~

~~(a) adopt appropriate provisions on rules of the air based upon ICAO standards and recommended practices;~~

~~(b) harmonise the application of the ICAO airspace classification, with appropriate adaptation, in order to ensure the seamless provision of safe and efficient air traffic services within the single European sky.~~

↓ 551/2004 (adapted)

~~CHAPTER III~~

~~FLEXIBLE USE OF AIRSPACE IN THE SINGLE EUROPEAN SKY~~

↓ 551/2004 (adapted)

⇒ new

Article ~~33~~7

Flexible use of airspace

1. Taking into account the organisation of military aspects under their responsibility, Member States shall ensure the ~~uniform~~ application within the single European sky of the concept of the flexible use of airspace as described by ~~the~~ ICAO and as developed by Eurocontrol, in order to facilitate airspace management and air traffic management in the context of the common transport policy

⇒ and in consistency with the European ATM Master Plan ⇐ .

2. Member States shall report annually to the Commission on the application, in the context of the common transport policy, of the concept of the flexible use of airspace in respect of the airspace under their responsibility.

3. Where, in particular following the reports submitted by Member States, it becomes necessary to reinforce and harmonise the application of the concept of the flexible use of airspace within the single European sky, ~~the~~ the Commission shall adopt measures ~~implementing rules~~ within the context of the common transport policy. ~~Those implementing acts~~ shall be adopted in accordance with the ~~examination~~ procedure ~~under~~ referred to in ~~Article 37(3) of the framework Regulation.~~

↓ new

Article 34

SESAR coordination

The entities in charge of tasks established in Union law in the areas of coordination of the SESAR definition phase, the SESAR development phase and the SESAR deployment phase, as the case may be, shall cooperate to ensure effective coordination between those three phases so as to achieve a seamless and timely transition between them.

All relevant civil and military stakeholders shall be involved to the widest possible extent.

↓ 1070/2009 Art. 2.10

Article 15a

Common projects

~~1. Common projects may assist the successful implementation of the ATM Master Plan. Such projects shall support the objectives of this Regulation to improve the performance of the European aviation system in key areas such as capacity, flight and cost efficiency as well as environmental sustainability, within the overriding safety objectives.~~

~~2. The Commission may, in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, develop guidance material concerning the way in which such projects can support the implementation of the ATM Master Plan. Such guidance material shall not prejudice mechanisms for the deployment of such projects concerning functional airspace blocks as agreed upon by the parties of those blocks.~~

~~3. The Commission may also decide, in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, to set up common projects for network-related functions which are of particular importance for the improvement of the overall performance of air traffic management and air navigation services in Europe. Such common projects may be considered eligible for Community funding within the multiannual financial framework. To this end, and without prejudice to Member States' competence to decide on the use of their financial resources, the Commission shall carry out an independent cost-benefit analysis and appropriate consultations with Member States and with relevant stakeholders in accordance with Article 10 of the framework Regulation, exploring all appropriate means for financing the deployment thereof. The eligible costs of deployment of common projects shall be recovered in accordance with the principles of transparency and non-discrimination.~~

↴ new

Article 35

Common projects

1. The Commission may set up common projects for implementing the essential operational changes identified in the European ATM Master Plan having a network-wide impact.
2. The Commission may also establish governance mechanisms for common projects and their implementation.

3. Common projects may be eligible for Union funding. To this end, and without prejudice to Member States' competence to decide on the use of their financial resources, the Commission shall carry out an independent cost-benefit analysis and appropriate consultations with Member States and with relevant stakeholders in accordance with Article 10, exploring all appropriate means for financing the implementation thereof.

4. The Commission shall establish the common projects and governance mechanisms referred to in paragraphs 1 and 2 through implementing acts adopted in accordance with the examination procedure referred to in Article 37(3).

↓ 551/2004

~~Article 8~~

~~Temporary suspension~~

~~1. In cases where the application of Article 7 gives rise to significant operational difficulties, Member States may temporarily suspend such application on condition that they inform without delay the Commission and the other Member States thereof.~~

~~2. Following the introduction of a temporary suspension, adjustments to the rules adopted under Article 7(3) may be worked out for the airspace under the responsibility of the Member State(s) concerned, in accordance with the procedure under Article 8 of the framework Regulation~~

1.1. Airspace, Interoperability and technological innovation

1.1.1. Flexible Use of Airspace (FUA)

Flexible use of airspace was only mentioned in the recitals of the 2013 SES2+ proposal, and the existing Article 7 of Regulation (EC) 551/2004 should be re-inserted. It should, in addition, clearly allocate the responsibility of ensuring the uniform application of FUA to Member States, and ensure its consistency with the ATM Master Plan. This would be complementary to the EASA Basic Regulation, which establishes the essential requirement that airspace management needs to support the uniform application of FUA.

1.1.2. SESAR coordination

SESAR was set up in 2004 and has been evolving, driven by the objectives of the Single European Sky, from the definition phase to the development phase and ultimately to the deployment phase. A number of instruments and actors related to SESAR have been developed and put in place under Union law including implementing acts, such as the common project regulation¹, the European ATM Master Plan², the SESAR Joint Undertaking and the SESAR Deployment Manager. However, this reality should also be appropriately reflected in the legal framework. Definitions for SESAR should therefore be laid down, and provisions for the effective coordination between all phases of the SESAR project should be defined. This would allow for increased coherence with other legal instruments related to SES and for future changes to SESAR to address the challenges of ATM modernisation, while maintaining a strong and clear link to the Single European Sky framework.

¹ Commission Implementing Regulation (EU) No 716/2014 of 27 June 2014 on the establishment of the Pilot Common Project supporting the implementation of the European Air Traffic Management Master Plan

² <https://www.atmmasterplan.eu/>