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REPORT

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 1)

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Subject: Amended proposal for a Regulation on the implementation of the Single European Sky
Proposal for a Regulation 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
– Preparation for the trilogue - Remaining issues of the SES2+ Regulation

In view of the COREPER 1 meeting on 15 December 2023, in annex are the essential elements of the remaining issues of the SES2+ Regulation, summarized here in order to engage a dialogue with the Parliament regarding the future work on the file.

Remaining issues of the SES2+ Regulation

- *Charging scheme*

1. Although the working party on aviation has already discussed thoroughly the charging scheme, the Presidency did not engage into technical discussions with the Parliament on Articles 19 to 25 of SES 2+ recast.
2. An EU-wide common unit rate is neither considered feasible nor enabling a level-playing field between ANSPs. However, flexibility could be provided to Member States to define a common charging zone and set a common unit rate for that charging zone, when those Member States decide to submit a joint performance plan.
3. The modulation of charges with the aim to improve the environmental performance is a concept which is not considered mature enough and therefore it is to be implemented on a voluntary basis. It could be considered that the Commission should perform comprehensive studies to assess the feasibility of the implementation of those modulations and, as a result, shall develop guidelines for those Member States wishing to implement them. The conclusions of those studies should be re-evaluated periodically. As a result of those feasibility studies, should the Commission ascertain that this modulation is viable in all EU Member States while fully ensuring level-playing field, the Commission may adopt an implementing act, in accordance with the examination procedure, to lay down the requirements and rules for the modulation of charges.

- *Flexible Use of Airspace*

4. In relation to the Flexible Use of Airspace concept (FUA), the Council General Approach acknowledges the need for Member States to ensure the continuity of the application of this concept within the EU airspace, while taking into account the characteristics and nature of military activity in each Member State, as well as the organisation of military aspects under their responsibility. However, in a context of geopolitical uncertainty, the Council General Approach reflects the need for a certain degree of flexibility to allow Member States to temporarily suspend such application under certain conditions. The Presidency notes that this flexibility is not provided for in the current regulation in force and proposes to specify that it

might be used in cases where unforeseeable and significant events (coming from e.g. changes in the geopolitical context) complicate the proper application of FUA, instead of referring to a less defined concept such as operational difficulties.

- ***SESAR and Common projects***

5. The Presidency acknowledges the need, reflected in the Council General Approach, to ensure the engagement of all relevant stakeholders in the SESAR coordination processes and the governance mechanisms for common projects, in particular by involving civil and military stakeholders to the maximum extent possible. Besides, the Presidency also acknowledges the need to improve the effectiveness of the SESAR coordination processes by paying particular attention to the industrialization phase, closing the bridge between R&D development and deployment. The effectiveness of those coordination processes should be properly monitored by the Commission.
6. Whereas the air navigation sector is fully committed to foster the implementation of operational changes defined in the European ATM Master Plan, the Presidency notes that, for many years, that sector has requested to ensure that those operational changes have reached sufficient maturity before their implementation becomes mandatory. This request has been specified in the Council General Approach in relation to common projects.

- ***Third countries***

7. As regards the extension of SES to regions or countries which are not members of the EU, the Presidency also acknowledges the possibility for Member States, reflected in the Council General Approach, to decide whether SES should be extended to their overseas countries and territories or autonomous territories in other ICAO regions.

- ***Penalties***

8. Finally, in relation to the penalties to be applied because of infringements of the SES2+ regulation, the Presidency acknowledges the preference expressed by Member States in the Council General Approach and proposes to circumscribe such penalties to the ones laid down in national rules by Member States. With this approach, neither the Commission nor the PRB would be able to impose or request penalties.