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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the implementation of the Single European Sky (recast) – Compromise text on Chapter IV - Network management

In view of the meeting of the members of the Aviation working party on 28 January 2021, delegates will find in annex the compromise text by the Presidency on Chapter IV of the above mentioned proposal.

The draft follows the principles related to a recast proposal. In particular, modifications to the Commission proposal are indicated by "➡ Council" in the text box preceding any changes. Furthermore, all modifications are enclosed between markers ➡ and ➡.

↓ 1070/2009 Art. 3.6 (adapted)

⇒ new

⇒ Council

CHAPTER IV

⊠ NETWORK MANAGEMENT ⊠

Article 266

Network ⊠ functions ⊠ ~~management and design~~

1. The air traffic management (~~ATM~~) network functions shall ~~aim to allow optimum~~ ⇒ ensure the sustainable and efficient ⇐ use of the airspace ⇒ and of scarce resources. ⇐ ~~and~~ ⊠ They shall also ⊠ ensure that airspace users can operate ~~preferred~~ ⇒ environmentally ⇒ ~~[...]~~ ⇒ ~~optimised~~ ⇐ ⇐ trajectories, while allowing maximum access to airspace and air navigation services ⇒ ~~and avoiding congestion~~ ⇐. Those network functions ⇒ , enumerated in paragraphs 2 and 3, ⇐ shall ⇒ support the achievement of the Union-wide performance targets and shall be based on operational requirements ⇒ , without prejudice to Member States' sovereignty over their airspace and to their responsibilities relating to public order, public security and defence matters ⇐ ⇐ ~~be aimed at supporting initiatives at national level and at the level of functional airspace blocks and shall be executed in a manner which respects the separation of regulatory and operational tasks.~~

2. ~~In order to achieve the objectives referred to in paragraph 1 and without prejudice to the responsibilities of the Member States with regard to national routes and airspace structures, the Commission shall ensure that~~ The following ⊠ network ⊠ functions ⊠ referred to in paragraph 1 ⊠ include the following ~~carried out~~:

(a) ⇒ ~~[...]~~ ⇐ ⇒ facilitation of the development of an airspace structure offering the required level of safety, capacity, flexibility, responsiveness, environmental performance and seamless provision of expeditious air navigation services, with due regard to security and defence needs ⇐;

⇒ (b) ⇒ coordination of ⇐ air traffic flow management; ⇐

(~~cb~~) 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.

↓ new

→ Council

3. The network functions referred to in paragraph 1 also include the following:

(a) →support to the→ optimisation of airspace design for the network →through co-operation with the air traffic service providers and Member State authorities→; →[...]

→(aa)→ facilitation of delegation of air traffic services provision_ →where decided by the Member State concerned→ →[...]

→taking into account the necessary agreements for the coordination of general and operational air traffic and the need to maintain adequate coordination in the relevant airspace structures; →

(b) →[...]

→coordination and support in→the delivery of air traffic control capacity in the network →in accordance with commitments by operational stakeholders→ as set out in the →[...]

Network Operations Plan (NOP) →adopted in accordance with the process referred to in Article 27(7)→;

(c) →[...]

coordination and support in →the management →[...]

of network crisis;

(d) →[...]

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

(e) →coordination and support in→→[...]

the planning →[...]

and →[...]

implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, →through active participation of operational stakeholders in management and governance, and → taking into account →military and→ operational needs and associated operational procedures;

(f) the monitoring of the functioning of the European ATM network infrastructure;

→ (g) the provision of Union-wide aeronautical information infrastructure in accordance with Article 32. →

↓ 1070/2009 Art. 3.6

→ Council

4. The functions listed in ~~the first this subparagraph~~ paragraphs 2 and 3 shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. →They shall take into account proposals established at local level. →They shall take into account proposals established at national level and at the level of functional airspace blocks. They shall be performed in coordination with →civil and → military authorities→, in particular → in accordance with agreed procedures concerning the flexible use of airspace.

↓ new

[5. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 to amend this Regulation in order to add functions to the ones listed in paragraphs 2 and 3, where necessary for the functioning and performance of the network.]

↓ 1070/2009 Art. 3.6 (adapted)

Article 27

⊠ The Network Manager ⊠

↓ new

→ Council

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 →executes☹☹[...]☹ the network functions set out in Article 26 →paragraphs 2 and 3, in accordance with☹☹[...]☹ paragraph 4.

↓ 1070/2009 Art. 3.6 (adapted)

⇒ new

⇒ Council

2. The Commission ~~shall~~ ~~after consultation of the Single Sky Committee and in conformity with the implementing rules referred to in paragraph 4, entrust to~~ ~~✕~~ appoint ~~✕~~ ~~Eurocontrol or another~~ ~~Eurocontrol, or~~ ~~other~~ impartial and competent body₂ ~~to carry out~~ ~~the tasks necessary for the execution of the functions listed in the first subparagraph~~ of the Network Manager. 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.

3. ~~⇒~~ The tasks of the Network Manager ~~These tasks~~ shall be executed in an ~~impartial and cost effective~~ ~~⇒ efficient~~ ~~manner and performed on behalf of Member States and stakeholders~~. They shall be subject to appropriate governance ~~and independence~~, which ~~recognises~~ ~~✕~~ shall ~~fully ensure the separation of~~ ~~✕~~ the ~~service provision and regulation~~ ~~⇒~~ ~~should~~ the competent body designated as the Network Manager also ~~have~~ regulatory functions. ~~⇒~~ In the execution of its tasks, the Network Manager shall take ~~taking~~ into consideration the needs of the whole ATM network ~~while safeguarding defence capabilities~~ and ~~with the full~~ ~~⇒~~ shall ~~take decisions through a cooperative decision-making process in accordance with paragraph 7 and, in particular,~~ ~~fully involve~~ ~~involvement of the airspace users, and air navigation service providers~~ ~~⇒~~, aerodrome operators and the military ~~where applicable~~.

↓ new

⇒ Council

4. The Network Manager shall ~~execute~~ ~~the~~ the network functions ~~set out in Article 26 paragraphs 2 and 3~~ through support measures aimed at safe and efficient planning and operations of the network under normal and ~~network~~ crisis conditions and through 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. The action taken by the Network Manager shall ~~through a collaborative decision-making process in accordance with paragraph 7,~~ ~~fully integrate the airports in the network.~~

5. The Network Manager shall [cooperate closely with the Agency acting as PRB in order to] ensure that the performance targets referred to in Article 10 are adequately reflected in 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 Network Operations Plan.

6. The Network Manager shall ~~☞~~in coordination with relevant parties, including, air navigation service providers, and in accordance with the process referred to in paragraph 7☞:

(a) decide on individual measures to ~~☞~~support the execution of☞☞[...]☞ the network functions and ~~☞~~[...]☞ the effective implementation of the ~~☞~~[...]☞ Network Operations Plan and the achievement of the binding performance targets;

(b) advise the Commission [and provide relevant information to the Agency acting as 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.

7. The Network Manager shall ~~☞~~[...]☞☞adopt measures☞ 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. The cooperative decision-making process shall promote the interest of the network ~~☞~~and shall, for the purposes of the adopting of strategic decisions as well as the handling of crisis management, ensure the suitable representation and the consensus of Member states and air navigation service providers☞.

↓ 1070/2009 Art. 3.6

~~3. The Commission may add to the list of the functions in paragraph 2 after proper consultation of industry stakeholders. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 5(4) of the framework Regulation.~~

↓ new

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, the tasks of the Network Manager, governance mechanisms including decision-making processes and crisis management.

~~4. Detailed rules for the implementation of the measures referred to in this Article, except for those referred to in paragraphs 6 to 9, shall be adopted in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation. Those implementing rules shall address in particular:~~

~~(a) the coordination and harmonisation of processes and procedures to enhance the efficiency of aeronautical frequency management including the development of principles and criteria;~~

~~(b) the central function to coordinate the early identification and resolution of frequency needs in the bands allocated to European general air traffic to support the design and operation of European aviation network;~~

~~(c) additional network functions as defined in the ATM Master Plan;~~

~~(d) detailed arrangements for cooperative decision-making between the Member States, the air navigation service providers and the network management function for the tasks referred to in paragraph 2;~~

~~(e) arrangements for consultation of the relevant stakeholders in the decision-making process both at national and European levels; and~~

~~(f) within the radio spectrum allocated to general air traffic by the International Telecommunication Union, a division of tasks and responsibilities between the network management function and national frequency managers, ensuring that the national frequency management functions continue to perform those frequency assignments that have no impact on the network. For those cases which do have an impact on the network, the national frequency managers shall cooperate with those responsible for the network management function to optimise the use of frequencies.~~

↓ new

↻ Council

9. ~~↻~~ Member States shall retain the complete and exclusive competence for the design and management of their airspace structures and of their route network. ~~↻~~ [...] ~~↻~~ In this regard, Member States ~~↻~~ should ~~↻~~ [...] ~~↻~~ take into account air traffic demands, seasonality and complexity of air traffic and of performance plans. Before deciding on those aspects, they shall consult airspace users concerned or groups representing such airspace users and military authorities as appropriate.

↓ 1070/2009 Art. 3.6

~~5. Aspects of airspace design other than those referred to in paragraph 2 shall be dealt with at national level or at the level of functional airspace blocks. This design process shall take into account traffic demands and complexity, national or functional airspace block performance plans and shall include full consultation of relevant airspace users or relevant groups representing airspace users and military authorities as appropriate.~~

~~6. Member States shall entrust Eurocontrol or another impartial and competent body with the performance of air traffic flow management, subject to appropriate oversight arrangements.~~

~~7. Implementing rules for air traffic flow management, including the necessary oversight arrangements, shall be developed in accordance with the advisory procedure referred to in Article 5(2) of the framework Regulation and adopted in accordance with the regulatory procedure referred to in Article 5(3) of the framework Regulation, with a view to optimising available capacity in the use of airspace and enhancing air traffic flow management processes. These rules shall be based on transparency and efficiency, ensuring that capacity is provided in a flexible and timely manner, consistent with the recommendations of the ICAO Regional Air Navigation Plan, European Region.~~

~~8. The implementing rules for air traffic flow management shall support operational decisions by air navigation service providers, airport operators and airspace users and shall cover the following areas:~~

~~(a) flight planning;~~

~~(b) use of available airspace capacity during all phases of flight, including slot assignment, and~~

~~(c) use of routings by general air traffic, including:~~

~~the creation of a single publication for route and traffic orientation;~~

~~options for diversion of general air traffic from congested areas; and~~

~~priority rules regarding access to airspace for general air traffic, particularly during periods of congestion and crisis.~~



~~9. When developing and adopting the implementing rules the Commission shall, as appropriate and without prejudice to safety, take into account consistency between flight plans and airport slots and the necessary coordination with adjacent regions.~~

↓ new

↻ Council

Article 28

Transparency of accounts of the Network Manager

1. The Network Manager shall draw up  [...]  and publish its financial accounts. 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 and regularly undergo an independent audit.

↓ 550/2004

Article 10

~~Relations between service providers~~

~~1. Air navigation service providers may avail themselves of the services of other service providers that have been certified in the Community.~~

~~2. Air navigation service providers shall formalise their working relationships by means of written agreements or equivalent legal arrangements, setting out the specific duties and functions assumed by each provider and allowing for the exchange of operational data between all service providers in so far as general air traffic is concerned. Those arrangements shall be notified to the national supervisory authority or authorities concerned.~~

~~3. In cases involving the provision of air traffic services, the approval of the Member States concerned shall be required. In cases involving the provision of meteorological services, the approval of the Member States concerned shall be required if they have designated a provider on an exclusive basis in accordance with Article 9(1).~~

↓ new

↻ Council

Article 29¹

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. ↻[...]↻

¹ Moved to Chapter VI

↓ 1070/2009 Art. 2.6 (adapted)

⇒ new

Article ~~3044~~

Relations with military authorities

Member States shall, within the context of the common transport policy, ~~take the necessary steps to~~ 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 ⇒ and notify the Commission thereof ⇐.

↓ 550/2004

~~Article 13~~

~~**Access to and protection of data**~~

~~1. In so far as general air traffic is concerned, relevant operational data shall be exchanged in real time between all air navigation service providers, airspace users and airports, to facilitate their operational needs. The data shall be used only for operational purposes.~~

~~2. Access to relevant operational data shall be granted to appropriate authorities, certified air navigation service providers, airspace users and airports on a non-discriminatory basis. 3. Certified service providers, airspace users and airports shall establish standard conditions of access to their relevant operational data other than those referred to in paragraph 1. National supervisory authorities shall approve such standard conditions. Detailed rules relating to such conditions shall be established, where appropriate, in accordance with the procedure referred to in Article 5(3) of the framework Regulation.~~

↓ new

→ Council

Article 31²

Availability of and access to operational data for general air traffic

1. With regard to general air traffic, relevant operational data shall be made available in real-time, on a non-discriminatory basis and without prejudice to national security or defence policy interests, by all air navigation service providers, airspace users, airports, and the Network Manager, including on cross-border basis and on a Union-wide basis. Such availability shall be to the benefit of certified or declared air navigation service providers, military air traffic service providers, entities having a proven interest in considering the provision of air navigation services, airspace users and airports as well as the Network Manager. The data shall be used only for operational purposes.
2. Without prejudice to paragraph 3, prices for making the operational data available shall be based on the marginal cost.
3. Without prejudice to Article 22, access to relevant operational data as referred to in paragraph 1 shall be granted free of charge to the authorities in charge of security, public order, defence, safety oversight, the Network Manager, performance oversight and the Agency in accordance with Regulation (EU) 2018/1139.
4. The Commission shall lay down common detailed requirements for the making available of and the access to data in accordance with paragraphs 1 and 3 and the methodology to set the prices as referred to in paragraph 2, and 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).

² Moved to Chapter III