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## WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	ST 10841/20 + COR 1
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF 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

In preparation of the informal meeting of the members of the Aviation Working Party of 10 May 2021, delegates may find below the Presidency compromise that was tabled to COREPER of 5 May 2021 in document ST 8030/2021 ADD 2. The only difference is that the below text highlights the differences in comparison to the Presidency previous text (ST 6748/21) instead of the Commission's proposal. The differences are highlighted in **bold** for the additions and in ~~strikethrough~~ for the deletions.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF 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~~ as regards the requirements applicable to air traffic management and air navigation services**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) ~~In order to optimise the application of the rules regarding the Single European Sky, Regulation [amended SES2+] establishes the competence, for various tasks notably in respect of the performance and charging schemes~~
- (2) [...]
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- (20a) **In order to optimise the application of the rules regarding the Single European Sky,** Regulations 549/2004, 550/2004 and 551/2004 have been replaced and repealed by [SES II+]. It is therefore appropriate to update the references made in Regulation (EU) 2018/1139 <sup>1</sup> to those three Regulations.
- (20b) It is also appropriate to integrate in Regulation (EU) 2018/1139 the requirements linked to certification of air navigation service providers that were previously laid down in Regulation 550/2004 **to allow for a simplified regulatory framework for certification and a single certification process.** In particular, it is appropriate to provide that, in order to be certified, providers of ATM/ANS should demonstrate sufficient financial robustness and obtain appropriate liability and insurance cover, **comply with applicable requirements on ownership and organisational structure and manage security risks.** ~~and to lay down, in this Regulation, the conditions that may be applied to the certificates issued~~ **should also be specified.**

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<sup>1</sup> **Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1)**

(20c) Moreover, essential requirements applicable to ATM/ANS and air traffic controllers should be supplemented with respect to requirements applicable to air traffic data services.

(21) Regulation (EU) 2018/1139 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EU) 2018/1139 is amended as follows:

(a1) Article 2<sup>2</sup> is amended as follows:

(a) Subparagraph (h) of paragraph 1 is replaced by the following:

‘without prejudice to Regulation [Amended SES2+] of the European Parliament and of the Council and the responsibilities of Member States with regard to airspace under their jurisdiction, the design of airspace structures in the Single European airspace.’

(b) paragraph 5 is replaced by the following:

‘5. Without prejudice to national security and defence requirements, and Article [1(2)] of [amended SES2+], Member States shall ensure that:

(a) the facilities referred to in point (b) of the first subparagraph of paragraph 3 of this Article that are open to public use; and

(b) the ATM/ANS referred to in point (c) of the first subparagraph of paragraph 3 of this Article that are provided to air traffic to which Regulation [amended SES2+] applies,

offer a level of safety and interoperability with civil systems that is as effective as that resulting from the application of the essential requirements set out in Annexes VII and VIII to this Regulation.’

(1) Article 3 is amended as follows:

(a) in Article 3, point 5, 33 and 34 are replaced by the following:

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<sup>2</sup> **Changes to this Article are meant to update references contained in Regulation 2018/1139.**

‘(5) ‘ATM/ANS’ means air traffic management as defined in point (9) of Article 2 of [amended SES2+] and air navigation **services** as defined in point (4) of Article 2 of that Regulation including the ~~air-traffic~~ network ~~management~~ functions referred to in Article 26 of that Regulation;’

(33) ‘Single European Sky airspace’ means airspace above the territory to which the Treaties apply, as well as any other airspace where Member States apply Regulation [amended SES2+] in accordance with Article 1(4) of that Regulation<sup>3</sup>;

(34) ‘national competent authority’ means one or more entities designated by a Member State and having the necessary powers and allocated responsibilities for performing the tasks related to certification, oversight and enforcement in accordance with this Regulation and with the delegated and implementing acts adopted on the basis thereof, ~~and with Regulation [amended SES2+]~~<sup>4</sup>;

(1a) Article 40 is amended as follows:

(a) paragraph 1 is replaced by the following

‘1. The provision of ATM/ANS referred to in point (g) of Article 2(1) shall comply with the essential requirements set out in Annex VIII and, if applicable, Annex VII. Providers of ATM/ANS shall also:

- a) demonstrate sufficient financial robustness and shall have obtained appropriate liability and insurance cover, taking into account their legal status and the level of commercial insurance cover available;
- b) **Comply with applicable requirements on ownership and organisational structure, including the prevention of conflicts of interest; and**
- c) **Manage security risks.**’<sup>5</sup>

(1b) Article 41 is amended as follows:

(a) paragraph 2 is replaced by the following:

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<sup>3</sup> **Changes to this provision are meant to update references contained in Regulation 2018/1139.**

<sup>4</sup> ~~Changes to this provision are meant to update references contained in Regulation 2018/1139.~~

<sup>5</sup> ~~Insertion in this provision of the economic requirements previously contained in Article 6(1) of the draft amended SES 2+ Regulation.~~

‘2. The certificate referred to in paragraph 1 of this Article shall be issued upon application, when the applicant has demonstrated that it complies with the implementing acts referred to in Article 43 adopted to ensure compliance with the **essential** requirements referred to in Article 40(1), **first subparagraph as well as the requirements referred to in Article 40(1), second subparagraph, a), b) and c).**’

(b) The following paragraph 3a is added:

‘3a The certificate referred to in paragraph 1 of this Article may be subject to objectively justified, non-discriminatory, proportionate and transparent conditions. These conditions may, as appropriate, be related to:

- (a) ring-fencing or restriction of operations of services other than those related to the provision of air navigations services;
- (b) contracts, agreements of other arrangements between the service provider and a third party and which concern the service(s);
- (c) the provision of information reasonably required for the verification of the requirements of the certificate in Article 41, and
- (d) any other legal conditions which are not specific to air navigation services, such as conditions relating to the suspension or revocation of the certificate.’

(c) paragraph 4 is amended as follows:

‘4. The certificate referred to in paragraph 1 of this Article may be limited, suspended or revoked when the holder no longer complies with the **essential** requirements referred to in Article 40(1), **first subparagraph or the requirements referred to in Article 40(1), second paragraph, a), b) and c)** and with the rules and procedures for issuing and maintaining such certificate, in accordance with implementing acts referred to in point (b) of the first subparagraph of Article 43(1).’ <sup>6</sup>

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<sup>6</sup> Changes to this provision are limited to adding "[in accordance with] this Article".

(d) paragraph 5 is amended as follows

‘5. By way of derogation from paragraph 1 of this Article, in accordance with the implementing acts referred to in Article 43, Member States may decide that providers of flight information services are to be allowed to declare their capability, and the availability to them of the means, to discharge the responsibilities associated with the services provided in compliance with the essential requirements referred to in Article 40(1), first subparagraph and the requirements referred to in Article 40(1), second paragraph, a), b) and c). In that case, the Member State concerned shall inform the Commission, the Agency and the other Member States of its decision.’

(1c) Article 43 is amended as follows:

1. In order to ensure the uniform implementation of and compliance with the **essential** requirements referred to in Article 40(1), **first subparagraph and the requirements referred to in Article 40(1), second subparagraph, a), b) and c)** for the provision of ATM/ANS referred to in point (g) of Article 2(1), the Commission shall, on the basis of the principles set out in Article 4 and with a view to achieving the objectives set out in Article 1, adopt implementing acts laying down detailed provisions concerning:
  - (a) the specific rules and procedures for the provision of ATM/ANS in compliance with the **essential** requirements referred to in Article 40(1), **first subparagraph and the requirements referred to in Article 40(1), second subparagraph, a), b) and c)**, including the establishment and implementation of the contingency plan in accordance with point 5.1(f) of Annex VIII;
  - (b) the rules and procedures for issuing, maintaining, amending, limiting, suspending or revoking the certificates referred to in Article 41(1);
  - (bb) the conditions referred to in Article 41(3a);
  - (c) the rules and procedures for the declaration by providers of flight information services referred to in Article 41(5), and for the situations in which such declarations are to be permitted;

- (d) the rules and procedures for issuing, maintaining, amending, limiting, suspending or revoking the certificates referred to in point (b) of Article 42(1), and for the situations in which such certificates are to be required;
- (e) the rules and procedures for the declaration by organisations referred to in point (a) of Article 42(1), and for the situations in which such declarations are to be required;
- (f) the privileges and responsibilities of the holders of certificates referred to in Article 41(1) and point (b) of 42(1) and of organisations making declarations in accordance with Article 41(5) and point (a) of Article 42(1).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 127(3).

2. The rules referred to in paragraph 1 shall take due account of the ATM Master Plan.
3. When adopting those implementing acts, the Commission shall ensure compliance with the **essential** requirements referred to in Article 40(1), **first subparagraph and the requirements referred to in Article 40(1), second subparagraph, a), b) and c)** of this Regulation and shall take due account of the international standards and recommended practices, in particular those set out in Annexes 2 to 4, 10, 11 and 15 to the Chicago Convention.

(2) Article 93 is replaced by the following<sup>7</sup>:

*‘Article 93*

#### **Implementation of Single European Sky**

The Agency shall, where it has the relevant expertise and upon request, provide technical assistance to the Commission, in the implementation of the Single European Sky,-in particular by:

- (a) conducting technical inspections, technical investigations, and studies;

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<sup>7</sup> Changes to this Article are meant to update references contained in Regulation 2018/1139.



(b) contributing in matters covered by this Regulation, in cooperation with the Performance Review Body (PRB) referred to in Article [9b] of [amended SES II+], to the implementation of a performance scheme for air navigation services and network functions;

(c) contributing to the implementation of the ATM Master Plan, including the development and deployment of the SESAR programme.’;

(3) [...]

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(21) Annex VIII is amended as follows,

(a) the following point 2.3a is inserted:

‘2.3a. Air traffic data services

- 2.3a.1. The air traffic data collected shall be of sufficient quality, complete, current, from a legitimate source and provided in a timely manner.
- 2.3a.2. The air traffic data services shall achieve and maintain sufficient performance with regard to their availability, integrity, continuity and timeliness to meet the user’s needs.
- 2.3a.3 The systems and tools providing air traffic data services shall be properly designed, produced and maintained to ensure that they are fit for their intended purpose.
- 2.3a.4. The dissemination of such data shall be timely and use sufficiently reliable and expeditious means of communication protected from intentional and unintentional interference and corruption.’

(b) point 2.8 is replaced by the following<sup>8</sup>:

‘2.8.    Airspace management

The designation of specific volumes of airspace for a certain use shall be monitored, coordinated and promulgated in a timely manner in order to reduce the risk of loss of separation between aircraft in all circumstances. Taking into account the organisation of military activities and related aspects under the responsibility of the Member States, airspace management shall also support the uniform application of the concept of the flexible use of airspace as described by the ICAO and as implemented under Regulation [Amended SES2+], in order to facilitate airspace management and air traffic management in the context of the common transport policy.’.

*Article 2*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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<sup>8</sup>       Changes to this point in the Annex are meant to update references contained in Regulation 2018/1139.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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