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Subject: Single European Sky 2+
- Analysis of the final compromise text with a view to agreement.

I. INTRODUCTION

1. On 22 September 2020, the Commission submitted to the European Parliament and to the Council the amended¹ proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky ("SES 2 + recast"), as well as the 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 ("proposal amending EASA Basic Regulation").

¹ The Commission had adopted an initial recast proposal for the implementation of the Single European Sky in 2013. The European Parliament, during its 7th parliamentary term, designated the Committee on Transport and Tourism as the responsible committee on the proposal on the Single European Sky and appointed Mr Marian-Jean Marinescu (EPP, RO) as the Rapporteur. On 12 March 2014, the EP adopted its first reading position. The Council reached a general approach in December 2014. However, discussions on the file stalled afterwards. In December 2019, the Council invited the Commission to reconsider its legislative proposal.

2. Following the adoption of the SES 2 + recast proposal, Mr Marinescu (EPP, RO) was confirmed as Rapporteur for the file during the 9th parliamentary term. The European Parliament's Committee on Transport and Tourism (TRAN Committee) adopted on 17 June 2021 its mandate for the negotiations with the Council.
3. Mr Bogusław Liberadzki (SD, PL) was appointed as the Rapporteur for the proposal amending the EASA Basic Regulation during the European Parliament's 9th term. The European Parliament granted a mandate to negotiate the proposal amending the EASA Basic Regulation at the plenary on 7 July 2021.
4. The Council (TTE, Transport), on 3 June 2021, reached a general approach on both proposals under the Portuguese Presidency.²
5. The first and second trilogues were organised under the Slovenian Presidency, respectively in July and November 2021, and served to compare positions. The Swedish Presidency reached, during a third trilogue on 10 May 2023, a first provisional political agreement on Network Management (Chapter IV).
6. On 15 November and 15 December 2023, COREPER did not agree on a revised mandate under the Spanish Presidency. (
7. At the TTE Council of 4 December 2023, several ministers supported a rapid conclusion of the negotiations on the file.
8. On 28 February 2024, COREPER agreed on a revised mandate. At the trilogue held on 5 March 2024, a provisional agreement was reached between co-legislators, resulting in the final compromise text and the joint statement as set out in ST 7618/24 ADD1-2. In addition, given the limited amendments to the EASA Basic regulation, the co-legislators agreed that these amendments will be integrated in SES 2+ recast.
9. The endorsement of the provisional agreement by the TRAN Committee is expected to take place on 8-9 April 2024.

² Doc. 9490/21 + COR1-5 and 9616/21

II. MAIN ELEMENTS OF FINAL COMPROMISE TEXT

II.1. General provisions

10. In line with the Council General approach, the application of SES 2+ recast is without prejudice to Member States' sovereignty over their airspace, to the requirements of the Member States relating to public order, public security and defence matters and to the rights and duties of Member States under the 1944 Chicago Convention on International Civil Aviation.
11. Moreover, as requested by several Member States, an operative provision recalls that Member States may maintain the cooperation and coordination within the airspace of functional airspace blocks (FABs) already established under Article 9a of Regulation (EU) 550/2004. Costs related to FABs shall be reported separately under the charging scheme.

II.2. National Supervisory Authorities

12. The Parliament conceded to all requests from the Council regarding the National Supervisory Authority (NSA):
 - the NSA must be functionally separated from the Air Navigation Service Provider (ANSP) but both entities can be part of the same administration;
 - the role of the NSA in the certification is subsidiary to the one of the National Competent Authority (NCA) under the EASA Basic Regulation;
 - the NSA and the NCA may be part of the same organisation and a separate legal representation of the NSA is not required;
 - Member States can decide on the assignment of tasks relating to certification and to verification of security requirements or of technical specifications on service quality (included in the tender specifications in the case of procurement of air traffic services for approach and aerodrome control) to one or the other authority;
 - the role of the NSA in the assessment of the costs, the preparation of a single performance plan for all air navigation services, the monitoring of the performance and charging schemes and the adoption of corrective measures is maintained.

13. Moreover, provisions on staff requirements for the NSAs are limited, in line with the Council General Approach, to principles on clear and transparent recruitment processes as well as rules on conflict of interest and these provisions are to be managed entirely at national level, without interfering with national legislations regarding the recruitment of public servants.

II.3. Service provision

14. In line with the Council General Approach, a single certificate, including both safety and economic essential requirements, is to be issued for air navigation service providers to provide air navigation services within the EU.
15. The conditions for military to provide services to civil airspace users and the possibility for Member States to include in the Performance and Charging Schemes military providing services primarily to other airspace users than civil ones reflect the existing legislation.³ In addition, military providing services primarily to civil airspace users must be included into the Performance and Charging schemes but only for the services provided to civil airspace users. Military which provide air navigation services primarily to aircraft movements other than general air traffic, including their financing, are not subject to the performance and charging schemes and the costs of their services should therefore not be regarded as determined costs under SES 2+ Regulation. This exclusion from the performance and charging schemes does not prejudice the financing of those air navigation services.
16. In line with the Council General approach, the designation of Air Traffic Service Providers (ATSPs) is at the discretion of Member States and not limited in time, and the possibility is maintained for Member States to impose conditions for the designation of ATSPs, insofar as those conditions do not entail a restriction to the freedom of establishment and the freedom to provide services which is not justified in the light of a legitimate objective of general interest, such as public policy, public security or safety, and proportionate to that objective, in line with Treaty rules. Moreover, there is no longer an obligation for Member States to define rights and obligations of ATSPs in all cases, in line with the revised mandate. In addition, the possibility for Member States to designate Meteorological services (MET) providers on an exclusive basis is maintained, in line with the Council General Approach.

³ Articles 2(3) and 2(5) of Regulation (EU) 2018/1139; Article 7(5) of Regulation (EC) 550/2004, as well as Article 1(5), point (b) and Article 27(7) of Commission Implementing Regulation (EU) 2019/317

17. In line with the Council General Approach, the possibility for airport operators to procure air traffic services for approach and aerodrome control under market conditions is subject to Member States' decision. Moreover, ATSPs may decide to procure, under market conditions or other forms of agreements, certain air navigations services.⁴
18. The requirements on common information services (CIS) providers are defined in line with the revised mandate. In addition, the price of those services, where provided by a single CIS provider designated by the Member State in respect of a specific U-space, shall be based on the fixed and variable costs of providing the service concerned to which may be added a mark-up reflecting an appropriate risk-return trade-off. To avoid any barrier to the development of U-Space Services, where CIS are not provided by a single CIS provider, the individual CIS shall be provided for free.

II.4. Performance Review Board

19. In line with the revised mandate, the co-legislators agreed to establish a Performance Review Board (PRB) in the form of a permanent group of experts, outside the EASA, with an advisory role to the Commission and to the NSAs. The role of the PRB will be to assist the Commission, and the NSAs on request, for the implementation of the performance and charging schemes.
20. In line with the revised mandate, an impartial and independent PRB is set up composed of 7 members, including its chair, with a non renewable 5-year term of office. In line with the revised mandate, a NSA Cooperation Board will provide recommendations to the PRB on the guidance material and reports to be issued by the PRB, allowing the representation of Member States and replacing the current NSA Coordination Platform. The PRB and the NSA Cooperation Board are supported by a secretariat provided by the Commission.
21. The independence of the PRB vis-à-vis the Commission is to the maximum ensured. The text provides that PRB members shall neither seek nor take instructions from any government, institution, person or body, that those members shall be impartial and act independently of any external influence and that the PRB shall be fully independent when adopting its opinions, recommendations, reports and guidance materials. Moreover, while the Commission may attend the meetings of the PRB without voting right, it cannot attend the PRB final

⁴ CNS, AIS, ADS, or MET services in cases where Member States have not designated a MET provider.

deliberations for the adoption of its opinions, recommendations, reports and guidance material. The independence of the secretariat of the PRB is also ensured, within the limits of legal and institutional constraints, stemming from the fact that this secretariat is provided by the Commission. While under Article 17(3) TEU and Article 11 of the EU Staff Regulation, the Commission members and staff shall neither seek nor take instructions from any Government or other institution, body, office or entity, the agreed text clarifies that the secretariat shall provide its support to the PRB without taking any directives except from the PRB for the purpose of preparing the content and orientations of the opinion, recommendations, reports and guidance material to be issued by the PRB. In addition, the PRB is autonomous in defining its work programme and rules of procedures, in the framework of Commission priorities and rules on experts' groups.

22. The members of the PRB, including its chair, are selected and appointed by the Commission, after consultation of the Member States, from a list established by the Commission following a public call for expression of interests. The designation of the PRB members cannot, for legal reasons stemming from Article 291 TFEU, take the form of an implementing act. However, in line with the revised mandate, the eligibility criteria and the procedure for the selection of the members of the PRB, including its Chair, as well as the rules to guarantee the independence, to prevent conflict of interests and to ensure professional secrecy of the members of the PRB are defined in an implementing act, so as to guarantee the independence and expertise of the PRB. In order to convince the Parliament to provide for the adoption of such an implementing act, the Presidency agreed that it is adopted through advisory procedure. In line with the revised mandate, the PRB set up and operational costs are to be financed from EU budget. Without prejudice to the assessment to be made by the budgetary authority, it should be financed under the CEF programme⁵, with full respect of the current Multiannual Financial Framework (2021-2027). In addition, permanent staff would be redeployed within the Commission under Heading 7 (Administrative expenditure of EU bodies), in full compliance with the principle of stable staffing under the current Multiannual Financial Framework (2021-2027) and in accordance with point 130 of the conclusions of the European Council of 14 December 2020. This solution is reflected in the draft joint declaration agreed at the

⁵ From the transfer of operational funds (Budget line 02 03 01 CEF Transport) and the redeployment of support expenditure for the Secretariat for Performance Review which are currently planned for SES consultancy work for performance review (Budget line 02 01 21 02 Support expenditure for the Secretariat for Performance Review - Amounts redeployed from the CEF-T operational line).

trilogue (ST 7618/24 ADD2). In line with the revised mandate, this draft joint declaration clarifies that this solution shall not set a precedent and not prejudice in any way the financing arrangements to be agreed upon in the framework of the next Multiannual Financial Framework Regulation. The corresponding legislative financial statement prepared by the Commission is provided in ST 7618/24 ADD3 for information and should be examined by the Budgetary Committee in June 2024.

II.5. Performance Scheme

23. The Commission remains the regulator, in line with the Council General Approach. Member States are responsible for reviewing and ensuring compliance of ATSPs with SES 2+ and EASA Basic regulation, and there is no direct link or transmission of information between the Commission or the PRB, and the ANSPs, in line with the revised mandate. In particular, the Commission monitors, in line with the current legislation,⁶ the performance of the provision of air navigation services and network functions on the basis of the reports of NSAs.
24. In line with the Council General Approach, Member States submit one performance plan for both *en-route* and terminal air navigation services to the Commission. The NSAs assess the allocation of the costs of ANSPs to *en-route* and terminal air navigation services in accordance with general principles established by the Commission, in line with the revised mandate. Also in line with the revised mandate, the possibility for several Member States to submit a joint performance plan for all air navigation services is conditioned to the plan covering at least the duration of one reference period, including at least one joint performance target and involving cross-border cooperation. In addition, Member States may, but are not obliged to, include in those joint performance plans joint procurement and joint governance.
25. In line with the revised mandate, a joint key performance area for climate and environment, together with a recital clarifying that one objective is to address CO2 emissions and that it would concern solely what can be influenced by ANSPs, have been agreed. Moreover, in line with the Council General Approach, the Commission shall define binding Union wide targets for en-route air navigation services only. Furthermore, several other parameters of the performance scheme are defined in line with the Council General Approach. At the request of

⁶ Article 11(3)(e) of Regulation (EC) 549/2004, as well as recital (47), Article 3 point (k) and Article 37 of Commission Implementing Regulation (EU) 2019/317.

the Parliament, we accepted to re-introduce incentive schemes for terminal services as well in order to ensure the effectiveness of the national targets, in line with the *status quo*⁷.

26. In line with the *status quo*⁸ and the revised mandate, Member States shall define in their performance plan national targets for terminal services in Key Performance Areas where Key Performance Indicators are available. Importantly, in line with the revised mandate, the obligation to include in performance plans binding targets for terminal services in the key performance area of climate and environment starts applying only once the Commission has adopted suitable Key Performance Indicators in that area meeting specific conditions. Moreover, to prevent any interference with national and local airspace and environmental frameworks, those national targets shall be set taking into account local circumstances, in particular local environmental policy requirements. In addition, in line with the revised mandate, the Performance and Charging schemes do not apply to terminal air navigation services provided at airports, located in the territory of the Member States to which the Treaty applies, with less than 80 000 instrument flight rules ('IFR') air transport movements per year, unless Member States provide otherwise.
27. In line with the revised mandate, the impact of local circumstances is to be taken into account in the setting of Union-wide performance targets and of national targets and in the assessment and the monitoring of national performance targets. The impact of local circumstances that has already been taken into account at one stage of the performance scheme should not be taken into account at the subsequent stages of the performance scheme and when monitoring the achievement of the targets.
28. Interdependencies between key performance areas are considered at various steps of the performance review, in line with the Council General Approach. Moreover, in line with the revised mandate, corrective measures must be proportionate, considering interdependencies with safety and between performance areas, and the impact on the network. In addition, the Commission may allow a deviation from Union-wide performance targets in a Key Performance area to reach performance targets in another Key Performance area, in line with the revised mandate.

⁷ Article 11(1), point (d), of Commission Implementing Regulation (EU) 2019/317.

⁸ See in particular Article 8(2), Article 10(2), point (a) and section 2 of Annex I of Commission Implementing Regulation (EU) 2019/317.

29. In line with the revised mandate, only elements attributable to an ANSP are considered in the incentive schemes in case of deviation of performance, insofar as the ANSP has no reasonable means to mitigate their impact. Moreover, an operative provision specifies that the financial disincentives shall not impair the ability of the ANSP to comply with its obligations under Regulation (EU) 2018/1139, including on financial robustness, in line with the revised mandate.
30. Moreover, the Performance scheme may be suspended in case of serious network crisis, such as geopolitical conflicts, health crises or natural disaster, and the conditions for the suspension of the Flexible use of airspace (FUA) are in line with the revised mandate.
31. Except for the approval of compliant performance plans in line with the revised mandate, and for the implementing acts concerning the PRB, where the advisory procedure applies, all other implementing acts are to be adopted in accordance with the examination procedure. For those latter acts, including for the implementing acts relating to the airspace classification (see below), the no-opinion clause (that is the Commission can adopt its decision if the Committee does not deliver its opinion) is maintained. Moreover, the Commission is not empowered to adopt any delegated act under the SES 2 + recast.

II.6 Charging scheme

32. In line with the revised mandate, the inclusion of the costs related to the oversight of air navigation services in relation to SES 2+ Regulation and Regulation 2018/1139 or of the costs stemming from Eurocontrol convention, is conditioned to a decision of the Member State. In addition, the costs stemming from Eurocontrol convention are considered as eligible under the charging scheme (so-called “determined costs”), in line with the *status quo*. In line with the revised mandate, unit rates shall be adjusted to take account of public funds, including financial support from Union assistance programmes, so that airspace users cannot be charged for services that are already covered by public funds.
33. In line with the revised mandate, the mandatory modulation of *en route* charges to encourage airspace users to support improvements in climate and environmental performance is conditioned to the Commission carrying out a cost-benefit analysis, in consultation with all stakeholders, that determines beforehand whether such a modulation is feasible and presents an added-value.

34. In line with the revised mandate, all information reported or made accessible under the performance and charging schemes is to be made public, subject to the protection of public security, defence and military matters or commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure. In line with the revised mandate, only revenues related to costs regulated under the charging scheme are to be reported. Moreover, access by the Commission to data related to performance and costs is limited to the purpose of enabling the Commission to carry out its tasks under SES 2 + recast and will be specified in an implementing act adopted through examination procedure. Access by the Commission to the accounts of ANSPs is also limited to cases where it is necessary to enable the Commission to carry out those tasks.

II.7 Network Manager

35. In line with the Council General approach, the text makes clear that network functions will be executed by Member States and all relevant operational stakeholders, while the Network Manager's role is limited to support the execution of the network functions. The text establishes a clear distinction between network functions, on the one hand, and, on the other hand, the exhaustive list of tasks of the Network Manager.
36. In line with the 2023 revised mandate for Chapter IV,⁹ the Network manager determines operational actions to be taken by operational stakeholders through cooperative decision making. Moreover, in line with the revised mandate and the *status quo*, the Network Manager may propose remedial measures through cooperative decision-making process, which operational stakeholders shall implement, or inform the Network Manager of the reasons for not implementing them. In addition, the cooperative decision making aims to reach consensus and shall take into consideration regional and local circumstances and other local or regional conditions, such as geographical, topographical and meteorological conditions.
37. In line with the revised mandate of 28 February 2024, the text acknowledges the competence of Member States for the development, approval and establishment of the routes and airspace structures for the airspace under their responsibility.

⁹ ST 8350/23.

II.8 Airspace classification

38. While most of the related work on airspace design and rules of the air is already carried out under Regulation (EU) 2018/1139 with the involvement of the EASA Committee, the Presidency succeeded in ultimately convincing the Parliament to keep the adoption of secondary legislation on rules for airspace classification in the SES II+, with the Single Sky Committee being the competent committee for the adoption of those rules through examination procedure with a no-opinion clause, in line with the revised mandate

III. CONCLUSION

39. The Permanent Representatives Committee is invited to analyse the final compromise text and confirm the provisional agreement on the compromise text as set out in ST 7618/24 ADD1 and on the draft joint statement set out in ST 7618/24 ADD2.
40. This confirmation would be conditional upon the receipt of a letter from the Chair of the European Parliament's Committee TRAN confirming that the European Parliament can accept the compromise text and the draft joint statement set out in the above-mentioned documents and that, should the Council adopt this text as its first-reading position after legal-linguistic revision and approve this draft statement, the European Parliament would not adopt any amendments to it in its second reading. This letter would be transmitted by the European Parliament to the Presidency after TRAN Committee vote on the provisional agreement, which is expected on 9 April 2024.
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