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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)
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
– General approach

1. INTRODUCTION

1. On 22 September 2020, the Commission submitted to the European Parliament and to the Council the amended proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky¹, using the recast technique (hereinafter the 'amended recast proposal'), 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 Sky² (hereinafter the 'EASA proposal').

¹ ST 10840/21 + ADD 1

² ST 10841/21 + COR 1

2. The Single European Sky initiative aims to improve the overall efficiency of the way in which European airspace is organised and managed through a reform of the industry providing air navigation services. The main reasons for the Commission to present the revision are to update, in light of experience, and recast the current legislation regarding the Single European Sky.
3. The Commission had adopted an initial recast proposal for the implementation of the Single European Sky in 2013³. While the original objectives and principles of that proposal remain the same, the amended recast proposal specifically focuses on accelerating the adaptation of the air navigation services in light of those principles and objectives.
4. One element of the amendments proposed in this context consisted in establishing a permanent Performance Review Body (PRB) function, to be exercised by the European Union Aviation Safety Agency (EASA). The arrangements necessary for these purposes required several amendments to be made to Regulation (EU) 2018/1139.

2. WORK AT OTHER INSTITUTIONS

5. The European Parliament, during its 7th parliamentary term, designated the Committee on Transport and Tourism (TRAN) as the responsible committee on the recast proposal on the implementation of the Single European Sky and appointed Mr Marian-Jean Marinescu (EPP, RO) as rapporteur. The European Parliament adopted its first reading position on that proposal. Following the amended recast proposal submitted by the Commission, the European Parliament is again discussing the proposal in TRAN as it prepares for negotiations with the Council. Mr Marian-Jean Marinescu was confirmed as rapporteur for the file again during the 9th parliamentary term. The European Parliament is expected to update its first reading position on 17 June 2021.
6. On the other hand, Mr Bogusław Liberadzki (SD, PL) was appointed as the rapporteur for the EASA proposal during the European Parliament's 9th term. The European Parliament is discussing that proposal in TRAN and is expected to adopt its first reading position in the coming months.

³ ST 11501/2013

7. The European Economic and Social Committee adopted its opinion on both files on 2 December 2020, while the European Committee of the Regions decided not to issue an opinion.
8. The Spanish Parliament, the Maltese Parliament and the Senate of the Republic of Italy have adopted opinions on the application of the principles of subsidiarity and proportionality as regards the amended recast proposal.
9. The Senate of the Republic of Italy and the Spanish Parliament have tabled an opinion on the application of the principle of subsidiarity as regards the EASA proposal.

3. **WORK WITHIN THE COUNCIL**

10. The Working Party on Aviation, through the informal videoconferences of its members, started its work on the two proposals in October 2020 with a general presentation of the proposals. These files have been consistently on the agenda since then and for a total of 23 times.
11. The members of the Council (TTE, Transport) held, at its videoconference of 8 December 2020, an early policy debate to give indications for the following discussions to be held in the preparatory bodies⁴.
12. The proposals are not accompanied by an impact assessment. The Commission's view is that the impact assessment made in 2013 for the initial recast proposal was still valid and it has complemented it with a Staff Working Document⁵. Delegates have raised concerns on the lack of justification and cost/benefit analysis for a number of new measures proposed by the Commission, in particular the establishment of the Performance Review Body (PRB), a common unit rate for charges and the mandatory modulation of charges at EU level.

⁴ ST 12611/20

⁵ ST 11020/20

13. With regard to the amended recast proposal, the members of the Working Party on Aviation are fully supportive of the SES overall objectives. However, delegates have questioned the proportionality and the effectiveness of some of the proposed amendments and their compliance with Member States' sovereign rights and responsibilities over their airspace. The members of the Working Party on Aviation have addressed a number of issues as regards the Commission proposal and have developed the following alternative solutions:
- National supervisory authorities are required to be independent from air navigation services providers while leaving the flexibility to Member States to organise economic oversight and safety oversight functions in the same administrative entity.
 - The provision of air navigation services within the EU is conditional on the holding of a unique certificate, including requirements on financial liability and insurance which have been included in the draft EASA Regulation.
 - Air traffic service providers may procure, under market conditions, air navigation services, such as communication, navigation and surveillance services, aeronautical flight information services, flight meteorological services as well as ATM data services, and airports may procure, under market conditions, terminal air traffic services.
 - Member States remain in charge of the performance planning process whereas the Commission verifies the consistency of the performance plans with EU wide performance targets.
 - Charges are established in consistence with EUROCONTROL principles and, in order to avoid impacts on national budgets, the costs of oversight remain eligible under the charging scheme. Member States set the unit rates after verification by the Commission.
 - The environmental benefit of a mandatory modulation of charges at European level has not been demonstrated and raises a number of fundamental legal, economic and technical issues, in particular with respect to the redistribution of revenues within the EU and the impact on competition vis-à-vis third countries' air navigation services providers. Whereas the modulation of charges by Member States is possible, a feasibility study is necessary to implement such a modulation at EU level.

14. With regard to the EASA proposal, a vast majority of the delegations indicated very clearly from the outset that they preferred the Performance Review Body (PRB) to maintain an advisory role and not within the structures of EASA. This has resulted in considerable changes of that proposal. Moreover, the Presidency has also transformed the economic certificate proposed by the Commission in the amended recast proposal into a set of economic requirements included in the draft amended EASA Basic Regulation.
15. On 5 May 2021, the Permanent Representatives Committee provided further guidance on four outstanding issues regarding mainly the liberalisation of certain air navigation services and on the role of the Performance Review Body (PRB)⁶:
- The procurement, under market conditions, of certain air navigation services and of terminal air traffic services remains subject to the authorisation of the Member States.
 - Air navigation services providers which compete for, or engage in, the provision of air navigation services or terminal air traffic services under market conditions do not need to place the activities related to those services in a business entity operating independently. However, they must ensure the separation and the transparency of accounts.
 - The providers of air navigation services or terminal air traffic services under market conditions are required to have their principal place of business located in the territory of a Member State and must be 50% owned and effectively controlled by Member States or nationals of Member States. However, a derogation for certified providers of global satellite services already operating in the EU was supported.
 - The Performance Review Body (PRB) retains its advisory role and does not take on a regulatory role as suggested in the amended recast proposal. Moreover, the Member States did not express themselves definitively on the entity within which it should be established or whether it should be set up independently.
16. Following this debate, the Presidency returned to the preparatory body for two further discussions on the last remaining matters.

⁶ ST 8030/21 + ADD 1 and ADD 2

17. On 26 May 2021, the Presidency presented a compromise text to the Permanent Representatives Committee resolving the last outstanding issues:
- With respect to the designation of air traffic service providers, the possibility for Member States to impose conditions on ownership and control by their own nationals and establishment and use of facilities on their territory is limited to cases in which the application of such conditions would not entail an unjustified restriction of the freedom to provide services or the freedom of establishment.
 - With respect to the requirements for air navigation service providers selected or designated as a result of a procurement procedure to have their principal place of business located in the territory of a Member State and to be 50% owned and effectively controlled by Member States or nationals of Member States, a derogation is granted only to certified providers of global satellite services already certified to operate in the EU.
 - Safety and environmental considerations should take precedence in assessing the performance of air traffic service providers.
 - The roles and tasks of the Network Manager are clearly and exhaustively delineated. The Network Manager will take decisions through a cooperative decision-making process involving the relevant stakeholders. Member States are involved in the decision-making process with respect to decisions of strategic importance and/or sovereign matters. The role of the Network Management Board is also clarified.
18. A broad majority of delegations took the floor to praise the work of the Presidency and to underline the delicate balance of the proposed compromise which reflects the requests and positions of the majority of Member States. On the basis of comments by delegations, the Presidency proposed to make the following additional amendments to the compromise texts:
- A new recital will make clear that the amended recast regulation does not require the certification of signals provided by Global Navigation Satellite Systems (GNSS).
 - Recital 43 will be modified to emphasise in particular the need to consult professional staff organisations.

- A new paragraph 2a will be introduced under Article 17 to provide for the possibility to suspend the performance scheme in cases of a network crisis.
- The reference to the Network Manager and the Network Management Board for the implementation of the network functions will be removed from Article 26(4).
- The references to "designated MET providers" will be deleted in Articles 10(3)h), 10(4), 13(1), 13(3)c), 13b(2), (2a) and (2b) and in recitals 22 and 25a; Article 8(5) will be amended accordingly.

19. The Permanent Representatives Committee confirmed the compromise reached.

20. The Commission reserves its position on the compromise proposals, pending the negotiations with the European Parliament.

4. CONCLUSIONS

21. In light of the above, at its meeting on 3 June 2021, the Council is invited to examine the texts set out in documents 9162/21 ADD 1 and ADD 2 and to adopt a general approach on the proposals.