



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
2013/0186 (COD)**

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**Brussels, 26 July 2023**

**WK 9940/2023 ADD 3**

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#### **WORKING DOCUMENT**

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From:	General Secretariat of the Council
To:	Working Party on Aviation

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N° prev. doc.:	WK 8753/23
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Subject:	Amended proposal for a Regulation of the European Parliament and the Council on the implementation of the Single European Sky (recast) – Chapter III - Comments from Finland
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Delegations will find, in Annex, joint comments from **FINLAND** on the above mentioned subject.

**Reflection of the Finnish delegation to the questionnaire -  
Non Paper by the Presidency on Chapter III (SES2+)**

WK 8753/2023 INIT

First, the Finnish delegation would like to congratulate Spain for the Presidency. Thank you for the opportunity to reflect on this questionnaire. We are delighted to hear the ambitious approach of the Spanish Presidency in Single European Sky. Finland is in favor of an ambitious approach to SES2+ and strongly support an agreement on this file that equips European ATM for the future.

We are looking forward to support Spanish Presidency in this file.

Finally, please find our reflection below.

**Question 1.a – Economic requirements**

Can you identify any barriers to shift the elements listed in Art 40(1) second paragraph (as per the GA) directly to Annex VIII, instead of mentioning them separately in Article 40?

The Finnish delegation is flexible with both options.

**Question 1.b – Conditions applicable to the certificate**

What positive and negative aspects do you foresee in empowering the Commission to amend the list of conditions applicable to the certificate, by contrast to the approach followed in art. 41(3) in the General Approach? Would you propose an Implementing Act or Delegated Act in this regard?

The Finnish delegation would propose Implementing Act as examination process, and would not propose a Delegated Act in this regard. Maintaining MS decisions is a priority to Finland and in general, we are critical to delegated acts. In addition, there should be a possibility to review the general conditions of the concession when there is a reason for it. However, it is necessary to evaluate the effects of the proposed changes on a wide scale, after consulting the parties involved.

**Question 2.a – Duration of designations**

In the Presidency's view, the continuously evolving context in the European air navigation system would make worth the revision of rights and obligations assigned to ATSPs in their designation. Considering the possibility to renew designations and that there are no restrictions on further extensions:

- i. What obstacles or challenges do you see in establishing a fixed long period (e.g. 10 years) as the maximum time for the revision of rights and obligations of ATSPs, as a general rule?

The designation period must be long enough for ATSP to take actions aimed at developing and improving operations (e.g. making the necessary investments). Therefore, the Finnish delegation supports minimum of 10 years as designation period. Designating an ATSP for 10 years is not a problem and there should be no obstacle to it.

- ii. In case of persistently not meeting the rights and obligations assigned to the ATSP, which potential action do you foresee by the MS in relation to the said designation (e.g. formal requirement, temporary suspension of the designation, etc.)?

The state appoints the service provider. Therefore, it is in the State's interest to monitor that the service provider's operations meet the set expectations. If the service provider's operation does not meet the set expectations, the matters are handled in accordance with the national administrative procedure.

- iii. Do you identify any cause of underperformance not attributable to the ATSP (e.g. due (in)actions by the airport operator) that may negatively impact the designation?

The Finnish delegation can identify such causes. As an example, renovation activities decided by the airport manager, of which ATSP is not informed early enough, may cause flight delays that are attributed to ATSP without ATSP having been able to influence the matter. In en-route services, sudden changes in traffic flows due to reasons independent of ATSP (e.g. war and conflict situations) appear either as degraded cost efficiency when traffic revenue decreases or as increased delays if traffic increases unpredictably. These can have a negative effect when considering the appointment of an ATSP, if the evaluator is not sufficiently well informed about the influencing factors when evaluating previous performance.

### **Question 2.b – Notion of a “service provision contract”**

It is understood that the “service provision contract” refers to the need to formalise the rights and obligations applicable to the designated ATSP:

- i. Do you see any benefits or positive outcomes if the designation is made subject to the existence of a contract in place? Always or in certain cases (e.g. between the ATSP and the airport manager when this service provision is open to market conditions)?

The Finnish delegation can see benefits in States where there are multiple airports.

- ii. If not, how would reciprocal rights and obligations be established and formalised?

The current performance system already sets formal service level obligations and limits the fees charged for the service.

### **Question 2.c – Designation of MET providers**

MS have expressed their view on how important MET services are for ATS, requiring weather forecasts to be as uniform as possible within their national airspaces. In that case, EP would propose those providers to be subject to the performance and charging schemes, as for designated ATSPs (which may imply a separate MET Performance Plan).

In your experience, what factors or considerations would you consider in order not to accept the deletion or amendment of article 7a (new)?

In Finland, the Finnish Meteorological Institute and MET costs are already part of the performance plan, so this does not cause any changes for our State.

### Question 3.a – Procurement

What potential benefits or positive outcomes do you envision when considering the procurement of CNS, AIS, ADS, or MET services under market conditions, and in what circumstances do you believe it would not be acceptable?

Each ATSP must consider the most appropriate and efficient way to organize its ancillary services. Sometimes it is most appropriate to buy a service from the market and sometimes it is most appropriate to produce the service yourself. Ensuring the availability and continuity of services is an essential part of consideration, which can limit the use of market-based services. The State's interests must also be taken into account when considering the service provider.

In addition, acquiring MET services on market terms and tendering operators can lead to a situation that endangers the current integrated service model between civil aviation and the weather service of the Defense Forces. It is most advantageous from the point of view of Finland that the Meteorological Institute produces the aviation weather services needed by both civil and military aviation, because military aviation also uses the services of civil aviation.

### Question 3.b – Functional separation within the ANSP

Apart from the separation of accounts in art. 25(3):

- i. When services are provided on the market, what are in your view the potential positive outcomes of placing those services in a separate business entity (apart from ensuring compliance with treaty rules on competition)?

In an organization that produces several different ANSP services (e.g. ATSP, CNS, AIS, ADS), separate accounting of the service unit is a sufficient measure to guarantee transparency.

- ii. Which further requirements would you be ready to accept in order to separate functionally and organisationally the en route services from CNS, AIS, ADS or MET services?

The Finnish delegation does not consider organizational differentiation of en-route activities necessary. However, functional differentiation is a sufficient measure. Separating terminal and en-route functions could increase the administrative costs without bringing significant benefit.

### Question 3.c – Digitalization

Whenever the procurement of the air navigation services is done under market conditions, it may be possible that the cost-efficiency gains are prioritised over investments in technology and implementation of new projects (SESAR). In this regard, tender specifications for terminal air traffic services should include requirements on service quality, ideally considering investments to provide the required capacity.

How, in your opinion, should the regulation provide a balance between both objectives?

From the point of view of the airport, the level of service and the compensation paid for it correspond to what was agreed is a priority.

In Finland, the airport operator owns the equipment used in the airport's air navigation service operations. Therefore, the airport operator is also responsible if the equipment or systems in use cause restrictions on e.g. capacity.

The SESAR projects and the deployment of their results are defined separately in the Deployment Program. The program covers the implementation of projects deemed useful for the entire air traffic service network.

#### **Question 4.a – Voluntary opening to market conditions**

Assuming that the opening to market conditions remains on a voluntary basis (MS may allow airports operators on their request), a compromise proposal may be that the MS should justify their decision whenever the airport operator is refused to procure terminal ATS under market conditions, considering that competition might not always lead to efficiency improvements in all KPAs. In such an approach, in which cases could Member States be exempted from this justification? (e.g. when this procurement would result in a loss of cost efficiency or operational efficiency, a reduction in working conditions or negative environmental impact)?

From the Finnish point of view, acquiring the airport's ATSP service on market terms should be based on a voluntary basis. Market-based operation should be allowed if the airport manager requests it on acceptable grounds. However, the State must have the right not to appoint a service provider that it does not consider suitable for the task.

#### **Question 5.a – Key performance areas**

It is a general request from Member States and Airspace Users that well defined performance areas and targets are developed in a transparent and inclusive processes for service providers.

- i. How, in your experience, should the interrelation between KPAs be referred to in the performance scheme and to what extent (e.g. bandwidths used in target setting, priorities, etc)?

The Finnish delegation supports identifying the interdependencies of the performance topics to set performance goals. In addition, the use of flexible limits should be considered in order to adapt to a dynamic operating environment.

- ii. In your view, what could be the positive and negative aspects of defining the interrelation between the cost-efficiency target and the gains in capacity/environmental efficiency? (e.g., for traffic peaks, the need for unexpected further cost expansions for flexibility on ATCO deployment; for incentivising investments for digitalization, etc.).

The definitions of the capacity target and the environmental target should be reconsidered.

#### **Question 5.b – Climate targets**

Acknowledging that the definition of “climate” in relation to “environment” needs further clarification, during a transitional period, targets on climate might be set up for monitoring purposes, in order to foster innovation and deep analysis on the topic, including their interrelation with other KPAs, without being subject to the incentive mechanism.

- i. In your view, what are the limitations (e.g. interdependencies, technological, etc) to the definition of climate as a key performance area?

When evaluating the setting of the aviation climate impact performance goal, it is necessary to carefully consider how each party can influence the climate impact. Experimental monitoring of the proposed indicators ('monitoring') seems like a good way to proceed in the investigation of the matter

without these indicators being within the scope of the incentive system. In aviation, the biggest climate impact is the aircraft's fuel consumption.

- ii. As a compromise, would it be acceptable to refer to a joint KPA on “climate and environment” that may allow more flexibility on the definition of targets in the future?

The Finnish delegation can be flexible with the wording, if objectives are clear.

#### **Question 5.c – Target setting process**

- i. Targets for terminal services are generally not supported by Member States, especially for low traffic/regional/seasonal airports due to their local particularities that make them not comparable. On the other hand, the setting of targets for terminal services may be used as a benchmark tool to set performance objectives for those services provided in a monopoly situation. Would you foresee any scenario/KPA in which certain airports might be comparable at EU level in terms of terminal target setting (e.g. by examination procedure, at NOP/CP1 level, etc.)?

The Finnish delegation is critical in supporting EU-wide performance targets for terminal operations. The operating environments of airports differ. Therefore, it is difficult to set common goals.

- ii. Do you envisage any modification of the current target setting process that could streamline the whole scheme?

The Finnish delegations considers reference values as possible tool.

#### **Question 5.d – Local particularities VS EU-wide targets:**

- i. In your opinion, could the factors falling outside the ATSP's or the Network Manager's control (such as, e.g. traffic flows shifts, etc) be proposed for the calculation of breakdown values from EU-wide targets?
- ii. What potential advantages do you see in defining a methodology by implementing acts to calculate breakdown values that considers an open list of potential local circumstances (such as, e.g. airspace complexity, cost-evolution trend, etc.), along with airspace users' needs and capacity set in the NOP? May the application of bandwidths be useful in this process?
- iii. Provided the above, would you be open to defining a closed list of local circumstances, to be amended by IA, to be considered in the assessment of performance targets? Any alternative?

For the development of performance plan and allocation of costs, refer to question 10.a and 11.a below.

The Finnish delegation understands that the goal of this regulation is flexibility. We support this methodology in terms of the transparency and predictability of legislation.

#### **Question 5.e – Incentives scheme**

- i) The initial proposal considers financial disincentives when relevant common projects are not duly implemented. How, in your opinion, could the incentives scheme foster digitalization and the implementation of technological and operational projects while not affecting unit rates?
- ii) Refer to question 10.a for the development of a methodology for the incentives scheme.

**Question 6.a** – As a compromise solution to differentiate the entity assessing the plan from the entity drafting it (as proposed by EP):

Would you support a greater involvement of ATSPs in the performance plan elaboration process? For example, such as each ATSP drafting its own plan based on performance targets and an agreed methodology, and submitting it to the NSA for consolidation at State level? (e.g. providing information on costs or investments plans)

The Finnish delegation supports maintaining strong service provider role.

**Question 6.b** – In your view, which are the positive alternatives to having one Performance Plan per MS regardless of the number of ANSPs?

The Finnish delegation does not find this relevant to our State.

**Question 6.c** – Considering all the questions above and the proposal to involve MS in PRB governance, would you be willing to explore a reinforced role of the PRB, in coordination with NM, in the assessment of PP? If so, please specify under which conditions for MS representation in the governance of PRB.

The Finnish delegation supports strong PRB role. In addition, MS having clear role in administration (MS board) is a priority.

**Question 7.a** – When underperformance is due to safety considerations, can you identify any barriers to require ATSPs to mitigate the impact of those safety considerations on their operations?

The Finnish delegation does not identify any barriers concerning our State.

**Question 7.b** – For the sake of harmonization, in case of underperformance, would you be willing to explore the idea of empowering the Commission to lay down principles/guidelines on the imposition of fines and penalties?

The Finnish delegation can be flexible with exploring this idea.

**Question 8.a** – Which benefits do you foresee in having the PRB involved in the process assessing the NM Performance Plan?

The Finnish delegation can be flexible with having the PRB involved in the process assessing the NM Performance Plan.

**Question 9.a** – What should be the role of the PRB in the revision of targets, in coordination with NM and NSAs?

The Finnish delegation supports strong PRB role.

**Question 10.a** – Development of performance plans For the development of performance plans/targets, assuming that the general principles and minimum content are established by the Commission beforehand by IA, would you consider it useful that:

