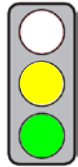


KEY ISSUES

Objective of the Regulation: The Commission wants to speed up the establishment of a Single European Sky (SES) which will increase the overall efficiency of air traffic in Europe.

Parties affected: Airlines, air navigation service providers, air passengers.



Pro: (1) The creation will reduce the price of air traffic services.

(2) The planned responsibilities of the European Network Manager are essential for the SES.

Contra: The legal requirement for certainty makes it necessary to explain in more concrete terms what is meant by an "integrated" provision of air traffic services.

CONTENT

Title

Proposal COM(2013) 410 of 11 June 2013 for a **Regulation** of the European Parliament and of the Council on the **implementation of the Single European Sky** (recast)

Communication COM(2013) 408 of 11 June 2013 on **accelerating the implementation of the Single European Sky**

Brief Summary

In the absence of any indication to the contrary, references relate to the Proposal for a Regulation COM(2013) 410.

► Background and context

- EU airspace and that of neighbouring regions (Art. 1 (4))
 - is currently divided on the basis of national borders rather than in order to optimise the flow of traffic and
 - is controlled by 38 air navigation service providers with varying air navigation systems. This fragmentation increases the costs for aircraft operators ("airspace users", Art. 2 (8)) because itineraries are not optimised and air-traffic control is inefficient.
- For the establishment of a "Single European Sky" (SES), the EU issued four Regulations in 2004 (SES I) and modified them in 2009 (SES II); see [cepBackground](#) and [cepAnalysis](#). The SES will increase the overall efficiency of air traffic in Europe by
 - planning and monitoring the usable airspace based on optimum flow of traffic and
 - creating a single market for air navigation services.
- There were "significant delays" in the implementation of SES I and SES II (p. 2). The proposed Regulation ("SES II+") therefore aims to accelerate the process of establishing the SES.

► Air navigation service providers and air navigation services (ANS)

- "air navigation service providers" are any public or private entity providing air navigation services (ANS) for general air traffic (Art. 2 (4) and (5)).
- "Air navigation services" include "air traffic services" and "support services" (Art. 2 (4)).
 - "Air traffic services", in particular, prevent collisions between aircraft (Art. 2 (1) and (11)). Air traffic service providers control the air traffic within their allocated geographical area and are solely responsible for it.
 - "Support services" include communication, navigation and surveillance services and aeronautical and meteorological information services (Art. 2 (4) and (37)).
- Only those air navigation service providers that have been certified by a national supervisory authority or the European Union Agency for Aviation (EAA) are permitted to carry out air navigation services [Art. 8 in conjunction with EASA Regulation (EC) No. 216/2008, Art. 8b; COM(2013) 409; see [cepBackground](#)].
- Certified air navigation service providers can offer their services EU-wide (Art. 8 (4)).
- For the provision of air traffic services in a specific area, the Member States have the discretionary power to choose a single air navigation service provider (Art. 9 (1) and (4)).
- For the provision of support services, the Member States must guarantee by no later than 1 January 2020, that their providers
 - can compete with each other on the basis of "equitable, non-discriminatory and transparent" conditions (Art. 10 (1)), e.g. by way of tender, and
 - are chosen by reason of the cost-efficiency, overall quality and safety of the services (Art. 10 (3)).
- Air traffic service and support services must be provided by separate entities (Art. 10 (2)).

► **Independent national supervisory authorities**

- Member States have to establish supervisory bodies that are "legally distinct and independent" from the air navigation service providers (Art. 3 (1) and (2)).
- The staff of the national supervisory authorities (Art. 3 (6))
 - must not take instructions from any government and
 - must not take on any professional position with an air navigation service provider for a period of at least one year insofar as they were entrusted directly with the oversight of air navigation service providers.
- The supervisory authorities are responsible, in particular, for (Art. 4 (1), Art. 5)
 - supervision of the "safe and efficient" operation of air navigation service providers,
 - granting of certificates to air navigation service providers and issuing licenses for air traffic controllers,
 - monitoring implementation of the charging scheme (Art. 12 and 13) and
 - cooperation and exchange of information with the supervisory authorities in other Member States.

► **Functional airspace blocks (FABs) and performance scheme**

- "Functional airspace blocks" (FABs) are optimised airspaces in which the air traffic itineraries and the provision of air navigation services are not based on state boundaries but on the optimisation of traffic flow (Art. 2 (24)). The Member States must take all necessary measures to create FABs based on the "integrated" provision of air traffic services (Art. 16 (1)).
- A "performance scheme" shall improve air navigation services (Art. 11 (1)). It includes
 - EU-wide performance targets on the "performance areas" of safety, the environment, capacity (e.g. delays) and cost efficiency,
 - national plans or plans for FABs drawn up by the supervisory authorities (Art. 11 (3)) in order to ensure that EU targets are met, and
 - review, monitoring and benchmarking of the performance of air navigation services.
- The air navigation service providers should, where possible, cooperate in setting up the FABs ("industrial partnerships", Art. 16 (2)) in order to create "maximum synergies" and "at least" achieve the performance targets (Art. 16 (4)).
- The Commission assesses compliance between the performance plans and EU performance targets (Art. 11 (4)).
- If the performance plans do not comply with EU performance targets, the Commission may
 - require corrective measures (Art. 11 (4) and (5)) and
 - impose sanctions (Art. 11 (5)).

► **Europe-wide air traffic management by a Network Manager**

- Air Traffic Management (ATM) covers all services necessary for the safe movement of aircraft (ATM services; Art. 2 (10)). These include:
 - air traffic services (Art 2 (11));
 - "airspace management" (Art. 2 (7)); this covers, in particular, the short-term allocation of rights to use airspace to various categories of user (e.g. scheduled and chartered aircrafts); the aim is to achieve the optimum use of airspace.
 - "air traffic flow management" (Art. 2 (9)); this means the alignment of the capacity of air traffic services with the actual level of air traffic; the objective is to ensure the smooth flow of air traffic and the optimum use of air traffic services.
- The air traffic services, airspace management and air traffic flow management will apply on a European level and will be administered by a "Network Manager" (Art. 17 (2), Recital 16).
- This aims to achieve (Art. 17 (1)).
 - an optimum use of airspace,
 - operation of "preferred trajectories" by air traffic and
 - support for "future initiatives" at national level and at FAB level.
- The responsibilities of the Network Manager include (Art. 17 (2))
 - design of the European route network,
 - coordination of aviation radio frequency bands,
 - air traffic flow management,
 - provision of an aeronautical information portal (Art. 23),
 - optimisation of airspace design (e.g. airport approach routes) and
 - aviation crisis coordination.
- The Commission must appoint a Network Manager by 2020 (currently Eurocontrol, see [cepBackground](#); Art. 17 (2)).

Main Changes to the Status Quo

- ▶ New is the fact that the supervisory authorities must be legally distinct from the air navigation service providers and that the staff of the supervisory authorities have to act independently of the air navigation service providers and governments.
- ▶ New is the fact that air traffic services and support services must be provided by different companies.
- ▶ New is the fact that the Commission can impose sanctions in the event that the national plans or FAB plans do not comply with EU performance targets.
- ▶ Until now, the Network Manager was only responsible for the design of the EU route network and coordinating the aviation radio frequency bands. Now it is also responsible for the air traffic flow scheme, the provision of an electronic aeronautical information portal, optimisation of airspace design and aviation crisis coordination.

Statement on Subsidiarity by the Commission

According to the Commission, action at EU level is necessary in order to create a Single European Sky (Recital 37).

Policy Context

The legislative package SES I includes the SES Framework Regulation (No. 549/2004), the air navigation services Regulation (No. 550/2004), the Airspace Regulation (No. 551/2004) and the Interoperability Regulation (No. 552/2004). The SES II Regulation (No. 1070/2009) amended all four SES I Regulations. (see [cepBackground](#) and [cepAnalysis](#)).

In parallel to this Regulation, the Commission has also proposed an amendment to the Regulation on the establishment of a European Aviation Safety Agency (EASA - Basic Regulation (EC) No. 216/2008) [COM(2013) 409], in order to bring its wording into line with that of the SES terminology. The proposals of SES II+ are intended to remove the overlaps between the existing SES Regulations and the EASA Basic Regulation by reformulating the four SES proposals into one single Regulation. Both proposals are accompanied by Communication COM(2013) 408 which details the main amendment proposals and the grounds put forward by the Commission.

Legislative Procedure

11 June 2013	Adoption by the Commission
[last]	Discussion in the Council
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Mobility and Transport
Committees of the European Parliament:	Transport and Tourism (leading), Rapporteur Marian-Jean Marinescu (EVP Group, RO);
Federal Ministries:	Transport (leading)
Committees of the German Bundestag:	Transport (leading)
Decision mode in the Council:	Qualified majority (Adoption by a majority of the Member States and with 260 of 352 votes; Germany: 29 votes)

Formalities

Legal competence:	Art. 100 (2) TFEU
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The provisions under which the supervisory authorities must be legally distinct from the air navigation service providers primarily allow for effective control of the air navigation service providers.

The ability for certified air navigation service providers to offer their services in all Member States strengthens competition in the EU internal market.

The provisions, under which air traffic services are separated from support services and which require contracts to be awarded in a way which is non-discriminatory and transparent (e.g. by way of tender), enhance competition for support services. Since support services form part of air navigation services (ANS) this may

result in lower ANS prices which will in turn reduce costs for the airlines and ultimately lower the cost of air traffic services because air navigation service providers currently carry out both air traffic services and support services or can select the support service provider directly. Since the airlines bear the cost of ANS, the air navigation service providers have no strong incentive to offer support services to the airlines at more favourable prices. Furthermore the barriers preventing, in particular, small companies from entering the market for support services will be lowered because such companies will be able to specialise in individual support services.

The separation may, however, result in the loss of synergies between air traffic services and support services. In addition, air navigation service providers will be subject to contradictory requirements because, on the one hand, they are supposed to work together and create synergies, and on the other, compete with each other for the provision of support services. This may prevent the realisation of FABs.

The Commission's ability to impose sanctions, where national or FAB plans do not comply with EU targets, creates an incentive to draw up plans which are EU-compliant and thus contributes to actually bringing about the SES.

The extension of the Network Manager's duties, particularly the responsibility for the air traffic flow scheme, **is essential for the creation of an SES** because only a central body, at European level, can have an overview of all air traffic movements and therefore be able to ensure an optimum balance between the available capacity of air traffic services and the actual level of air traffic. The optimisation of airspace design at EU level can also contribute this. However, there is also a risk in this regard that the Network Manager could fail to take reasonable account of local negative impact e.g. due to aircraft noise.

Consequences for Efficiency and Individual Freedom of Choice

The creation of an SES, particularly by organising European airspace to ensure optimum flow of traffic, **reduces** the costs for airlines and thereby **the prices for air traffic services**. The suppliers and consumers of air traffic services will both profit from this because shorter itineraries can now be flown in the SES. Fuel consumption will also drop and thus also the CO₂-emissions per flight route.

The creation of an electronic aeronautical information portal reduces the cost of information for all concerned because the necessary information no longer has to be assembled via a large number of locations but can now be accessed centrally.

Consequences for Growth and Employment

The efficient use of the available airspace and an optimum utilisation of the available capacity of air traffic services tend to have a positive effect on growth and employment because airlines can now offer more flights than before and are thus better able to address the increasing demand for transport.

Impact on Europe as a Business Location

Negligible.

Legal Assessment

Legislative competence

Unproblematic. The EU can issue "suitable provisions" for the creation of a single air traffic policy (Art. 100 (2) TFEU).

Subsidiarity

Unproblematic. A "Single European Sky" which is not based on national boundaries but which draws on the possibilities of cross-border cooperation can only be created at EU level.

Proportionality

The obligation of the Member States to guarantee the establishment of FABs, characterised by an "integrated" provision of air traffic services (Art. 16 (1)), is too imprecise. This lack of clarity gives cause for concern, **in view of the requirement for legal certainty** arising from the Rule of Law (Art. 2 TEU). Thereunder it is the duty of the EU legislator to formulate provisions clearly and precisely so that those affected are able to recognise their rights and duties without ambiguity and take the appropriate precautions (cf. ECJ, Case 169/80, margin no. 17 – *Gronrand Freres*). In this regard, **there is a need for clarification of what is meant by an "integrated" provision of air traffic services** within FABs.

Conclusion

The creation of a Single European Sky (SES) reduces the prices for air traffic services. The extension of the Network Manager's duties is essential for the creation of an SES. In view of the requirement for legal certainty there is a need for clarification of what is meant by an "integrated" provision of air traffic services.