



EUROPEAN COMMISSION

*Brussels, 18.3.2021  
C(2021) 1944 final*

*Dear President,*

*The Commission would like to thank the Senato della Repubblica for its Opinion on the amended proposal for a Regulation on the implementation of the Single European Sky (recast) {COM(2020) 579} and on the proposal amending Regulation (EU) 2018/1139 as regards the capacity of the European Union Aviation Safety Agency (EASA) to act as Performance Review Body for the Single European Sky {COM (2020) 577}.*

*The aim of this proposal is 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 Commission appreciates that the Senato della Repubblica considers that the proposal respects the principle of subsidiarity as air traffic management, by nature and substance, affects the entire European airspace, so that these objectives can be better achieved at Union level.*

*It notes, however, that the Senato della Repubblica considers that the principle of proportionality has not been fully respected for several reasons.*

*The Senato della Repubblica considers that the discretionary role of Member States is reduced in the provision of en route and terminal air navigation services, which could lead to possible incompatibilities with the principle of national sovereignty inherent in the Chicago Convention. Furthermore, certain aspects of air traffic management may affect military air traffic management and related national defence and security profiles, which should be carefully considered.*

*In this regard, the Commission would like to emphasise that the application of this proposed Regulation would be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters. The proposed Regulation does not cover military*

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*operations and training. The application of this proposed Regulation would also be without prejudice to the rights and obligations of Member States under the 1944 Chicago Convention on International Civil Aviation.*

*The Senato della Repubblica also disagrees with aspects of the extension of responsibilities of the European Union Aviation Safety Agency (EASA) acting as Performance Review Body in that it would give EASA an overly discretionary role. Furthermore, it contends that the proposed appeal body might not be impartial.*

*The exclusive provision of air traffic services upon designation by a Member State already under the current performance scheme includes a regulation of the economic, safety, capacity and environmental performance of designated providers. The Commission is in charge of the implementation of this scheme and is supported in this task by an advisory body. The tasks which are proposed to be conferred upon EASA acting as Performance Review Body (for which it is proposed to amend Regulation (EU) 2018/1139) do not involve political discretion. Those tasks would include among others: assessing the allocation of costs between en route and terminal air navigation services, assessing and approving the performance plans of designated air traffic service providers for en route services, providing opinions to the Commission and monitoring the performance of regulated service providers on a Union-wide basis. These tasks would be based on a methodology and criteria laid down in Union law. In addition, the proposed appeal system would make the performance scheme more flexible. The appeal board would be composed of current or former senior staff of national supervisory authorities, competition authorities or other Union or national institutions with relevant experience in the aviation sector. The members of the appeal board would act independently and in the public interest.*

*Taking these elements into consideration, the Commission considers that the proposal does not conflict with the principle of proportionality.*

*In response to other specific concerns raised in the opinion, the Commission would like to refer the Senato della Repubblica to the attached Annex.*

*The Commission hopes that these clarifications address the issues raised by the Senato della Repubblica and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

*Adina Vălean  
Member of the Commission*

## Annex

*The Commission has carefully considered all the issues raised by the Senato della Repubblica and is pleased to offer the following additional clarifications.*

- 1) *The amended recast proposal provides for the complete separation and independence of the National Supervisory Authority (NSA) from any other entity, including the National Safety Authority (NSA). The Senato della Repubblica puts forward that this separation is asymmetrical with respect to the proposed supervision of the functions of the Performance Review Body (PRB) within EASA (safety), as Member States, which are responsible for assessing the performance of terminal air traffic services, would have to impose a complete separation between the two areas (en route and terminal air navigation services), while at Union level the PRB functions and safety would be entrusted to EASA.*

*In this respect, the Commission recalls that the proposed distinction of the tasks aims to ensure greater independence of the authorities competent for economic regulation. This distinction would not prevent Member States from attributing both sets of tasks to one entity at national level, provided that independence requirements are respected. The proposed PRB functions would only be administratively located within EASA and be fully separated and independent from the other EASA tasks. To this effect, the decision-making process, and accountability, for the PRB functions would be fully independent from EASA safety tasks.*

- 2) *The Senato della Repubblica highlights the reduced role for Member States in the approval of Union-wide targets, limiting their role to providing an opinion in the Advisory Committee of the (new) PRB.*

*Union-wide performance targets will not be set by the PRB. Since Union-wide performance targets have an element of political discretion, they will continue to be set by the Commission. Member States will be involved through the advisory procedure according to the proposal. Performance plans and performance targets would then be assessed by the PRB as regards en route air navigation services whilst the national supervisory authorities would be responsible for assessing the performance plans and targets for terminal air navigation services. This empowers national supervisory authorities to assess local service provision, in a more independent manner than today.*

- 3) *The Senato della Repubblica claims that the amended recast proposal would mean increased costs for air traffic managers, as it is expected that annual contributions will be paid for the operation of the (new) PRB to be paid by designated air traffic service providers who are covered by the tasks and powers of the Agency acting as PRB. In this context, the transfer of the financing burden of a European agency, now financed from the EU budget, to operators should be carefully considered.*

*The funding rules proposed should ensure that the Agency be endowed with the necessary resources. In the same manner as for costs of the national supervisory*

*authority in the current and future framework, the costs of the new PRB functions would also be passed on to airspace users.*

*For this purpose, the proposed PRB functions are to be financed by fees and charges, charged to air traffic service providers. The amount of fees and charges shall be fixed by the Commission at such a level as to ensure that the revenue covers the full cost of the activities related to the services delivered, and to avoid a significant accumulation of surplus. They should be clearly identified and separated from the other fees and charges from EASA.*

*Furthermore, it is proposed to provide for annual contributions to be made by designated air traffic service providers concerned by the Agency's tasks and powers as PRB, for the build-up of the new PRB functions. Such annual contributions are proposed to be collected for five financial years following the entry into force of the amending Regulation, in order to cover the costs of setting up the new functions within the Agency.*

*The Staff Working Document accompanying the Commission proposal clearly showed, however, that the costs of those PRB functions would be insignificant for the airspace users and that the benefits of a permanent and expert structure largely outweigh such additional costs.*

- 4) *The Senato della Repubblica considers that the proposal to allow airports to choose whether or not to procure air traffic services could lead to increased fragmentation and possible negative effects on small local airports.*

*Regarding terminal air traffic services, the amended recast proposal (Article 8) gives a choice to airport operators, who should be allowed to decide whether to procure services for aerodrome control, where such procurement would enable cost-efficiency gains to the benefit of airspace users. Under the same conditions, Member States should be able to allow the procurement of services for approach control. Where a Member State has allowed procurement, the decision on whether to procure or not would be left to the airport operator, or to the national supervisory authority where the approach control is not provided by an airport, but is provided by a group of airports.*

- 5) *The Senato della Repubblica highlights the numerous provisions of Implementing Regulation 2019/317 that are included in the basic act proposal and notes the legal inflexibility this could cause.*

*Indeed, for legal certainty and clarity, several provisions from the performance and charging implementing regulation were raised to the level of the basic act. Since the initial SES Regulations in 2004 and 2009, inter-institutional practices have evolved to require more details in legislative acts, in particular where those put direct obligations on Member States' authorities or users. Implementing acts should merely set out the modalities for the implementation of legislative obligations. This is precisely to ensure that the co-legislators decide on key elements. This includes*

*provisions establishing a clear relationship between the Commission, PRB, Member States and national supervisory authorities, as in Articles 10(3), 11(3), 13, 14 and 15.*

- 6) *The Senato della Repubblica considers that including the Network Operations Plan (NOP) and performance plans in Network Management chapter makes it inflexible. Furthermore, it considers it inappropriate to confer delegating powers to the Commission to modify network functions as it affects the sovereignty of Member States.*

*In order to facilitate capacity management, the NOP should become mandatory and should be developed with the aim that the performance targets are adequately reflected in the capacity to be delivered by individual air traffic service providers for the operation of the network. Evidence from the Network Manager reproduced in the Staff Working Document accompanying the Commission proposal has shown a lack of commitment by some service providers to provide capacity agreed with other stakeholders and the Network Manager, leading to capacity shortages and lower performance affecting the entire network. Delegated powers of the Commission to add network functions would allow adding new elements which may appear necessary in the future for the functioning and performance of the network. On the claim that modifying network functions would affect the sovereignty of Member States, the proposal suggests adding functions to the existing functions only where necessary for the functioning and performance of the network.*