

**Amended Proposal for a Regulation  
on the Implementation of the Single European Sky (Recast)**

**COM (2020) 579**

**Reasoned Opinion  
of the  
House of Representatives, Parliament of Malta**

**1. Aim of the Proposal**

The general objective 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, including its organisation and governance.

**2. Commission justification on compliance with the principle of subsidiarity**

According to the proposal's legal basis for the proposed amendment, Article 100(2) of the Treaty on the Functioning of the European Union, The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea and air transport. They shall act after consulting the Economic and Social Committee and the Committee of the Regions. This report is being drawn up in terms of Protocol 2, Article 6, annexed to the Lisbon Treaty on the application of the principles of subsidiarity and proportionality, which states that: 'Any national Parliament...may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.'

The Commission provided the following justification in its explanatory memorandum.

***Subsidiarity (for non-exclusive competence)***

*Article 100(2) of the Treaty on the Functioning of the European Union gives the Union the right to act in this area, which is one of shared competence.*

*Air traffic management more specifically has been covered since 2004 by provisions of Union law, which cannot be amended by Member States acting in their own right. On substance, and by nature, air traffic management affects the airspace of the entire European Union, and cross-border movements of persons, goods, services and capital are inherent to aviation and is hence dealt with most efficiently at Union level.*

*Action at Union level is necessary to defragment the European airspace and thereby to allow more efficient management capable of tackling lack of capacity in an overall perspective and hence to combat delays and ensuing additional emissions.*

### ***Proportionality***

*The proposal does not go beyond what is necessary to achieve its objectives. It focuses on elements supported by the various inputs listed in Annex III of the accompanying Staff Working Document.*

### **3. Evaluation on the compliance of the principle of subsidiarity**

The House of Representatives of Malta notes that the principles of subsidiarity and proportionality become relevant where the Union and the Member States share competence in a sector in terms of the Treaty on European Union and the Treaty on the Functioning of the European Union.

The House of Representatives of Malta retains that the proposed Implementation of The Single European Sky **does not comply with the principle of subsidiarity**. Thus, the House of Representatives of Malta,

#### **RECALLS**

The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An Aviation strategy for Europe (COM (2015) 598);

the original proposal for a regulation of the European Parliament and of the Council on the implementation of the Single European Sky (SES2+) which was adopted by the Commission on 11 June 2013 (COM (2013) 410);

the 2017 Special Report of the European Court of Auditors (ECA) on the Single European Sky which was followed up in 2019 with another Special Report on the regulation of ATM modernisation in the EU; and

the Report of the Wise Persons Group on the future of the Single European Sky in April 2019, containing ten recommendations.

NOTES that during the last couple of years the aviation sector has further evolved, with developments in technology and overall sustained traffic growth followed by a sharp drop in traffic caused by the COVID-19 pandemic which has shown that, structurally, the SES lacks resilience as service provision is hardly adjustable to traffic developments.

WELCOMES a more flexible air traffic management system which allows more efficiency, eliminating ineffective regulation, facilitating innovation and boosting the competitiveness of the aviation industry.

SUPPORTS the Commission initiatives that aim at strengthening the legislative basis for the Single European Sky (SES) and favours reforms aimed at accelerating the implementation of the Single European Sky enhancing and ensuring the safe operation and growth of the aviation industry.

WHEREAS the Commission can and must be effective and decisive in its actions, it is also essential that the proposal provides protection for specific areas of shared competences while also taking into consideration the territorial specificities of each Member State and related interests.

CONSIDERS that the amended proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky (recast) (COM (2020) 579) fails to comply with the principle of subsidiarity.

URGES the Commission against increased administrative burdens, increased costs on the national competent authorities and operators as well as against the establishment of new measures that might affect the sovereignty of the Member States and their responsibilities towards international institutions.

DOES NOT AGREE with certain aspects of the proposal which extend the scope and responsibilities of the Commission and the Agency acting as the Performance Review Body on the grounds that these impinge on national security, international obligations towards ICAO, impracticability and loss of State responsibilities.

#### **4. Proposed Measures and Conclusions**

The Maltese Parliament considers the proposed revision of the Single European Sky legislation as a strategic opportunity for economic recovery and growth, paying particular regard to the need to increase the capacity of air transport, boost trade and rationalise routes, which should lead to cost savings and a reduction in polluting emissions.

However, the proposal does not address the current COVID-19 crisis and its impact. The aviation and Air Traffic Management (ATM) industries will not be returning to pre-COVID situation any time soon, and this should be taken into consideration. Therefore, it is vital to follow a more cautious approach when it comes to the introduction and implementation of radical concepts intended to redress current perceived problems in air traffic management within Europe, especially when one considers the problems being faced by all aviation actors during the current pandemic crisis, which in turn may impact the competitiveness of Air Navigation Service Providers (ANSP).

In particular, the Maltese Parliament has serious concerns on:

- the structural changes and additional costs needed to implement the proposed changes in its air traffic management regulatory functions. In particular, the need for the segregation of the national competent authority, responsible for safety oversight, from the national supervisory authority, responsible for economic regulation;
- the use of a common unit rate which would result in an increase in the present unit rate, encouraging flights to pass through adjacent Flight Information Regions (FIRs), which would not be part of the Single European Airspace, and in a position to offer cheaper rates. A common unit rate may also result in States with low rates compensating those with high rates;

- the modulation of charges at EU level as incentives can skew behaviours in unintended areas. The effectiveness of modulation of charges to incentivise environment behaviour of airlines should be assessed taking into consideration the competitiveness and other known alternatives;
- the separation of *en-route* and terminal air navigation services, the added value of articles 8 & 12 is questioned, considering the administrative burden incurred on smaller ANSPs, that has not been subject to an impact assessment; and
- on the Flexible use of airspace (FUA) concept as this cannot be applied by Malta in the same manner as in other Member States. The application of the flexible use of airspace should considers such specific circumstances.

The Maltese Parliament is also strongly against the provisions of Articles 13(11) and 14 (10) of this proposal which allow for corrective actions to be imposed by the Performance Review Body (PRB) which could force a delegation of Air Traffic Services (ATS) to another service provider. Such corrective measures, that would allow the European Union Aviation Safety Agency (EASA) acting as PRB to outsource certain services to another ANSP, give rise to serious concerns and are too far-reaching in terms of both operational and technical difficulties.

Malta has one airport, Malta International Airport, and its air traffic services are provided by an entirely Government owned entity, Malta Air Traffic Services. The acceptance of Articles 13(11) and 14(10) as proposed, which allow an external entity to impose corrective measures which include the delegation of air traffic services to another service provider, goes against national security and defence policies which require that essential services are under the direct control of the Maltese authorities. There is no other Maltese air traffic service provider available, therefore it is not practical, feasible nor cost effective to seek to establish an alternate Maltese air traffic services provider. The proposed article would force the Maltese Government to seek a non-Maltese entity which would assume responsibilities which are vital for island Member state in terms of access to sovereign airspace and its airport, to aeronautical and flight data pertaining to military flights and other national defence and security considerations. Aviation is a lifeline for the well-being of Maltese citizens and Maltese economy and Malta needs to have unfettered control against any risk of disruption to this basic national requirement.

Malta has also obligations through the Chicago Convention to provide a safe and efficient air traffic services in the Malta Flight Information Region. The manner in which this obligation is fulfilled cannot be restricted or conditioned by third parties. More fundamentally, this would also have serious impacts on a Member States' national security and its responsibility to designate its service provider as per obligations to be fulfilled under the Chicago Convention.

## 5. Recommendation

**For the reasons outlined above, the Foreign and European Affairs Committee of the House of Representatives of Malta holds that less intrusive choices can lead to the achievement of the objectives behind the common system of a mechanism, both in the short term as well as in the long term, without interfering with the principles of subsidiarity and proportionality. Furthermore, the Committee believes that Amended Proposal for A Regulation on The Implementation of The Single European Sky (Recast) (COM (2020) 579) does not satisfy the subsidiarity principle.**

**The Committee on the Foreign and European Affairs has decided to object to the Proposal and to deliver this reasoned opinion in terms of the procedure defined in Article 6 of Protocol No. 2 concerning the Application of the Principles of Subsidiarity and Proportionality, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union.**



**Anglu Farrugia  
Speaker**

**House of Representatives Parliament of Malta**

**14<sup>th</sup> December 2020**