



EUROPEAN COMMISSION

Brussels, 23.2.2021

C(2021) 1383 final

Dear Speaker,

The Commission would like to thank the Kamra tad-Deputati for its Opinion on the amended proposal for a Regulation on the implementation of the Single European Sky (recast) {COM(2020) 579 final}.

As the Kamra tad-Deputati notes in its Opinion, 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 Kamra tad-Deputati recalls the Commission's Aviation Strategy Communication (2015), which urges the European Parliament and the Council to adopt the initial SES2+ proposal of 2013 and work towards the full implementation of the Single European Sky (SES), the European Court of Auditor's Special Reports on SES and ATM modernisation (2017 and 2019, respectively), and the 2019 Wise Persons Report containing recommendations on the future of SES. In addition to other extensive consultations and studies resulting in i.e. the Airspace Architecture Study, this work served as the basis for the Commission's proposed Single European Sky's reform.

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. The principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions and action and authorises intervention by the Union only when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, 'by reason of the scale and effects of the proposed action'. Air traffic management, by nature and substance, affects the entire European airspace. Furthermore, cross-border movement of goods, services, capital and persons relies on aviation, which is therefore most efficiently dealt with at Union level. Finally, European air traffic functions as a network, and the achievement of the objectives of the Single European Sky require the involvement of a variety of stakeholders in all Member States, among which all European airspace users, air navigation service providers, and

*Mr Anġlu Farrugia
Speaker of the House of Representatives
Parliament of Malta
Freedom Square
MT - VALLETTA VLT1010*

airports. Only by action at European level, governing the position, conduct and cooperation of all these stakeholders, can these objectives be achieved.

The Kamra tad-Deputati fears that the scheme proposed by the Commission could lead to increases in administrative burden and higher costs on the part of the national competent authorities. It pleads against new measures that may affect the sovereignty of Member States and their responsibilities towards international institutions.

In this respect, the proposed distinction of the tasks of national competent authorities from national supervisory authorities aims to ensure greater independence of the authorities competent for safety oversight from those competent for economic regulation. In order to avoid increased cost and administrative burden, Member States could attribute the tasks of the national supervisory authority to an existing economic regulator at national level or the national competition authority.

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

The Kamra tad-Deputati also disagrees with the extension of the scope of responsibilities and the scope of the European Union Aviation Safety Agency acting as Performance Review Body on national security and other grounds.

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 and environmental performance of designated providers. The Commission, in charge of the implementation of this scheme, is supported in this task by an advisory body. The tasks which are proposed to be conferred upon the European Union Aviation Safety Agency (EASA) acting as Performance Review Body (and 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. In addition, the proposed appeal system would make the performance scheme more agile. Moreover, the Commission considers that these tasks do not have an impact on national security and national obligations towards ICAO.

The Kamra tad-Deputati also expresses strong concerns as regards the possibility for the EASA acting as Performance Review Body to apply corrective measures, which may include the delegation of the provision of services to another air traffic service provider.

The Commission would like to reassure the Kamra tad-Deputati that the issuance of corrective measures is, by nature, subject to the principle of proportionality. A requirement to delegate service provision to another provider could only be imposed where “objectively necessary” to remedy the situation, as the text proposed explicitly states. Should a designated service provider not implement, partially implement or incorrectly implement corrective measures required by the European Union Aviation Safety Agency acting as Performance Review Body, the Commission would be entitled to take action.

The Commission would like to point out, in this regard, that consequences for the lack of achievement of performance targets or for the non-implementation of performance plans must exist to ensure that the situation is remedied, and that the binding nature of those targets and plans can be enforced.

Taking these elements into consideration, the Commission considers that the proposal does neither conflict with the principle of subsidiarity, nor with the principle of proportionality.

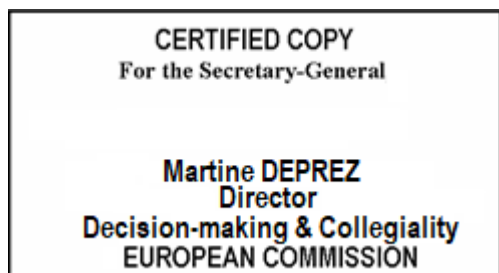
In response to other specific concerns raised in its reasoned Opinion, the Commission would like to refer the Kamra tad-Deputati to the attached Annex.

The Commission hopes that these clarifications address the issues raised by the Kamra tad-Deputati 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 Kamra tad-Deputati and is pleased to offer the following additional clarifications.

- 1) *The Kamra tad-Deputati contends that the proposal does not address the COVID-19 crisis and its impact.*

The Commission Staff Working Document accompanying the legislative proposals considers the significant decrease in air traffic due to the current crisis. The proposed reform is of a structural nature and seeks to ensure the scalability, resilience and sustainability of air traffic services in consideration of long-term improvements to the system. The proposal addresses the current crisis and any future crises resulting in significant air traffic fluctuations by introducing scalability of the system as an objective.

- 2) *The Kamra tad-Deputati expresses concerns about the introduction of a common unit rate, which may result in an increase of the present unit rate.*

As an environmental measure to prevent airspace users from flying longer routes to avoid zones with higher charges, the establishment of a common unit rate would incentivise airspace users to fly shorter routes, particularly in times of congestion. The Commission recalls that, according to the terms of the proposal, its power to establish a common unit rate, by way of implementing act, would include the power to set “detailed rules and procedures”. Any act to this effect would be preceded by careful analysis.

- 3) *The Kamra tad-Deputati states that the modulation of charges at EU level as incentives could skew behaviour in unintended areas and calls for an assessment of its effectiveness to incentivize the environmental behaviour of airlines.*

With respect to the charging scheme, the text proposed stipulates that charges ought to be modulated to encourage air navigation service providers, airports and airspace users to support, inter alia, improvements in environmental performance. It is also proposed to empower the Commission to establish more precise details. En route charges should be modulated at European level, in a harmonised way, to ensure consistency, fairness, a level playing field and effectiveness of such measures across the pan-European network. The benefits of modulation of en route charges can materialise only if a flight is incentivised in a similar manner across borders. Moreover, the environmental impact of aviation is cross-border by nature.

- 4) *The Kamra tad-Deputati questions the added value of proposed Articles 8 (conditions regarding the provision of CNS, AIS, ADS, MET and terminal air traffic services) and 12 (classification of en route and terminal air navigation services), stating that this was not subject to an impact assessment.*

The full mandatory unbundling of the services mentioned in Article 8 was considered in the impact assessment accompanying the initial SES2+ proposal in 2013. In the current proposal, procurement of CNS, AIS, ADS and MET services is possible (but not mandatory), where cost-efficiency gains are enabled.

In order to ensure a level playing field and avoid discrimination, cross-subsidisation and distortion of competition, en route services should be organisationally separated from other air navigation services. This approach would be without prejudice to the choice as to whether or not the above mentioned services are procured under market conditions. Should they be so procured, national supervisory authorities would be in charge of overseeing the correct application of the procurement requirements.

The Commission has undertaken a study to quantify possible benefits of procuring ATM data services in particular, under market conditions¹. The fact that procurement under market conditions is voluntary is not tantamount, but rather opposite to a ‘one size fits all’ approach. Member States, respectively their designated service providers, would have the flexibility to choose an appropriate business model.

- 5) *The Kamra tad-Deputati states that the Flexible Use of Airspace cannot be applied in the same manner to Malta as in other Member States.*

Article 33 on the Flexible Use of Airspace as figuring in the recast proposal has been largely taken over from Article 7 of Regulation (EC) No 551/2004, currently applicable. Only a clear requirement that flexible use of airspace is to be ensured “in consistency with the European ATM Master Plan” has been added. Furthermore, the requirement that the concept of flexible use of airspace must be applied in a ‘uniform’ manner has been removed in the text of the proposal.

¹ <https://op.europa.eu/en/publication-detail/-/publication/fd53d20f-3b60-11eb-b27b-01aa75ed71a1>