

**ASSEMBLEIA DA REPUBLICA**  
**COMISSÃO DE ASSUNTOS EUROPEUS**

**OPINION**

**COM(2013) 408, COM(2013) 409 AND COM(2013) 410**

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – Accelerating the implementation of the Single European Sky**

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services**

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the implementation of the Single European Sky**

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### PART I – INTRODUCTORY NOTE

Under Article 7 of Law No 43/2006 of 25 August 2006, as amended by Law No 21/2012 of 17 May 2012, which regulates the Portuguese Parliament's monitoring, assessment and reporting of the European integration process and the methodology for overseeing European initiatives, adopted on 20 January 2010, the *Comissão de Assuntos Europeus* [Commission for European Affairs] received the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – Accelerating the implementation of the Single European Sky [COM(2013) 408], the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services [COM(2013) 409] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the implementation of the Single European Sky [COM(2013) 410].

In light of their subject-matter, these initiatives were forwarded to the *Comissão de Defesa Nacional* [National Defence Commission] and the *Comissão de Economia e Obras Públicas* [Commission for the Economy and Public Works], which examined them and adopted the respective Reports. These reports are annexed to and form an integral part of this Opinion.

### PART II – CONSIDERATIONS

1 – These initiatives relate to the implementation of the Single European Sky.

2 – According to first initiative, the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – Accelerating the implementation of the Single European Sky [COM(2013) 408], the European aviation industry plays a vital role in the European economy by promoting trade and tourism and acting as a vehicle for employment growth. Air traffic control is a key factor in the value chain of the aviation industry. It should ensure the safe, expeditious and cost-efficient flow of air traffic, thereby minimising fuel usage, carbon emissions and flying times.

3 – However, European air navigation services have historically evolved primarily within national borders, with each Member State establishing its own Air Traffic Management (ATM) system, leading to costly and inefficient structural fragmentation of Europe's airspace and a persistent lack of responsiveness to the requirements of its customers – the airlines, and ultimately, the paying customers.

4 – In 2004<sup>1</sup>, the EU launched the Single European Sky (SES) initiative with a threefold objective: 'to enhance current safety standards and overall efficiency for general air traffic in Europe, to optimise capacity meeting the requirements of all airspace users and to minimise delays'<sup>2</sup>. The commitment to these objectives was further enforced by formulating high level

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<sup>1</sup> Regulations (EC) Nos 549, 550, 551, 552/2004 of 10 March 2004 (OJ L 96, 31.3.2004, p. 1) as amended by Regulation No 1070/2009 of 21 October 2009 (OJ L 300, 14.11.2009).

<sup>2</sup> Regulation (EC) No 549/2008 [sic: 2004], Article 1(1).

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goals to be achieved by 2020<sup>3</sup>.

A major project to modernise the technology behind the European ATM system was launched in 2007 (the SESAR<sup>4</sup> project). Then 2009 saw the addition of additional concrete tools to drive performance and steer the reform of the European ATM system<sup>5</sup>: a revised approach to stimulate integrated service provision, a process of target-setting for performance objectives and the establishment of the Network Manager to coordinate action at the European network level. A five-tier approach was finally devised to cover the various aspects of the SES: safety, performance, technology, airports and human factor.

5 – The Commission also states that the achievement of the SES is one of the key priorities of the European Commission's overall transport policy<sup>6</sup>. But although all Member States remain committed to the SES, implementation still falls well below the original expectations, and accelerating the process of reform of the European ATM system through a new package of measures was identified in 2012 as a key action for the development of the Single Market<sup>7</sup>. Air traffic delays have been reduced (partly as a consequence of the financial crisis which has reduced air traffic in Europe). But while safety levels have been constantly maintained, cost-efficiency has not improved quickly enough, and the environmental impact of sub-optimal flight profiles remains significant. At a time when European airlines are facing tough competition globally and aviation growth is shifting towards the Middle East and Asia-Pacific regions, it is hard to ignore the untapped potential gains of the SES, amounting to € billion per year<sup>8</sup>. The faster the Single European Sky is implemented, the quicker the expected returns will materialise.

6 – The Communication under examination concludes by stating that achieving the Single European Sky remains a key priority in European aviation policy with the as yet unrealised potential to deliver major savings for the aviation sector and indeed the European Economy as a whole. Based on this analysis and the associated impact assessment, the Commission proposes a legislative package (SES2+) to consolidate and where possible accelerate the process of reform of ATM in Europe, by further addressing the inefficiencies in the provision of air navigation services and by continuing to drive towards the defragmentation of the European ATM system. The legislative proposals represent evolution, not revolution, and build on, and do not supplant, previous reforms. But they should significantly contribute to turn the European ATM system into a more efficient integrated operating airspace in the coming years.

7 – The second initiative, the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services (COM(2013) 409), aims 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 (ANS). Its development has involved two comprehensive legislative packages – SES I and SES II

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<sup>3</sup> A three-fold increase of capacity, an improvement in safety by a factor of 10, a 10% reduction in the effects flights have on the environment and a reduction of the cost of ATM services to airspace users by at least 50%.

<sup>4</sup> Single European Sky ATM Research.

<sup>5</sup> Regulation (EC) No 1070/2009 of 21 October 2009 (OJ L 300, 14.11.2009, p. 34).

<sup>6</sup> See Annex I to COM(2011) 144 final.

<sup>7</sup> COM(2012) 573 final.

<sup>8</sup> Based on estimates documented in reports by the Performance Review Body of the Single European Sky and the Performance Review Commission.

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composed of four regulations, i.e. Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004<sup>9</sup>, and also includes a comprehensive project to modernise equipment and systems for air navigation services under the SESAR title<sup>10</sup>.

8 – The third initiative, the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the implementation of the Single European Sky (COM(2013) 410), underscores the importance of the Single European Sky (SES) initiative, which aims 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 (ANS).

9 – This initiative also states that its launch involved two comprehensive legislative packages – SES I and SES II composed of four regulations<sup>11</sup> – and over 20 Commission implementing rules and decisions<sup>12</sup>. The framework of the four SES regulations is intertwined with the development of the European Aviation Safety legislation<sup>13</sup>, the latter comprising a number of tasks entrusted to the European Aviation Safety Agency (EASA)<sup>14</sup> and the launch of a comprehensive project to modernise equipment and systems for air navigation services under the SESAR title<sup>15</sup>. Existing rules touch upon five interrelated pillars addressing performance, safety, technology, the human factor and airports.

10 – This initiative also summarises a range of other objectives which will now be set out in full.

#### General objective:

- To improve the competitiveness of the European air transport system vis-à-vis other comparable regions and in particular to develop further the Single European Sky initiative.

#### Specific objectives:

- To improve the performance of air traffic services in terms of efficiency.
- To improve the utilisation of air traffic management capacity.

#### Operational objectives:

- To ensure that the provision of Air Navigation Services is transparent, based on market principles and customer value;

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<sup>9</sup> The Framework Regulation ((EC) No 549/2004) - laying down the framework for the creation of the Single European Sky; The Service Provision Regulation ((EC) No 550/2004) - on the provision of air navigation services in the Single European Sky; The Airspace Regulation ((EC) No 551/2004) - on the organisation and use of airspace in the Single European Sky; The Interoperability Regulation ((EC) No 552/2004) - on the interoperability of the European Air Traffic Management network.

<sup>10</sup> Council Regulation (EC) No 219/2007; SESAR (the Single European Sky ATM Research Programme) is a technical pillar of SES - an ATM improvement programme involving all aviation.

<sup>11</sup> See footnote 10.

<sup>12</sup> An overview of SES legislation can be found in Annex III to the SES2+ Impact Assessment document.

<sup>13</sup> Regulation (EC) No 216/2008, as amended by Regulation (EC) No 1108/2009.

<sup>14</sup> Whereas the Commission Roadmap on implementation of the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies, of July 2012, requires the standardisation of the names of all EU Agencies to conform to the same format, for reasons of clarity, this explanatory memorandum uses the currently existing name of the European Aviation Safety Agency (EASA) throughout the text. The text of the legislative proposal itself has been adapted in accordance with the new Joint Statement and Roadmap to use the standardised name "European Union Agency for Aviation (EAA)".

<sup>15</sup> Council Regulation (EC) No 219/2007; SESAR (the Single European Sky ATM Research Programme) is a technical pillar of SES - an ATM improvement programme involving all aviation.

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- To strengthen the role of the National Supervisory Authorities;
- To strengthen the process of setting up targets and enforcing the performance scheme (including the reinforcement of the Performance Review Body/Performance Review Unit (PRB/PRU));
- To undertake a strategic redirection of Functional Airspace Blocks;
- To strengthen the governance and operational scope of the Network Manager.

11 – In terms of the legal elements of this proposal, the four SES Regulations have been merged into a single regulation, which has in itself necessitated a number of changes, and it is now structured in five chapters:

Chapter I – General provisions

Chapter II – National authorities

Chapter III - Service provision

Chapter IV – Airspace

Chapter V – Final provisions

12 – It should be noted that the new rules on implementing and delegated acts stemming from the Lisbon Treaty have also been included throughout the Regulation. The new Regulation aims to strengthen the national authorities, both as regards their independence and their expertise and resources. Due to the need for some Member States to carry out some administrative reorganisation, a transitional period is foreseen until 2020.

13 – To improve expertise amongst the authorities, a network of national authorities is foreseen in this Proposal for a Regulation, including also the possibility of pooling experts so that States may benefit from experts coming from other Member States.

14 – Certain changes have been introduced into the performance scheme to rationalise the process of target setting and to allow focusing of target setting more at the local level. This allows for more educated tailored setting of targets. Small adjustments have also been made in this area on charging and on the possibility of ensuring that the funding of authority tasks covers also the extension of EASA competences.

Finally, it was decided to introduce more customer focus on the air navigation service providers and a new provision has been included to ensure the airspace users are consulted and also involved in the approval of investment plans.

The following questions must be raised with regard to the provisions of the proposal under examination:

### ***a) Legal Basis***

Articles 58(1), 90, 100(2) and 114 of the Treaty on the Functioning of the European Union.

### ***b) Subsidiarity Principle***

Contrary to the conclusions of the report of the Commission for the Economy and Public Works annexed hereto, these initiatives are not considered to breach the subsidiarity principle since the objective to be achieved will be better achieved by EU action, thereby ensuring compliance with Articles 58, 90, and 100 of the Treaty on the Functioning of the European Union, which extends to air transport the objectives of the internal market in the context of a

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Common EU Transport Policy, as stated in the conclusions of the National Defence Commission opinion annexed hereto.

Therefore, since the objective of this Regulation, namely the creation of the Single European Sky, cannot be sufficiently achieved by the Member States, by reason of the transnational scale of the action, and can therefore be better achieved at Community [sic] Union level, while allowing for detailed implementing rules that take account of specific local conditions, the Community [sic] Union may adopt measures in accordance with the subsidiarity principle as set out in Article 5 of the Treaty on European Union.

In light of the foregoing, the specific objectives of this initiative must be reiterated:

- To improve the performance of air traffic services in terms of efficiency.
- To improve the utilisation of air traffic management capacity.

The Member States therefore cannot guarantee the creation of capabilities and safety conditions and at the same time reduce the costs of air traffic management services in the EU on their own.

There is therefore no breach of the subsidiarity principle, since in view of the complexity and scope of the proposed objectives it is clear that these can be achieved more easily by European Union action. Article 1(2) of the Regulation on the implementation of the Single European Sky furthermore duly ensures that its application 'shall 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 [over their airspace] [sic]'.

### **PART III – OPINION**

In view of the considerations set out and the reports of the competent Commissions, the Commission for European Affairs takes the view that:

1. This initiative does not breach the subsidiarity principle since the objective to be achieved will be more effectively achieved by EU action.
2. With respect to the issues raised in the considerations, the Commission for European Affairs will continue to monitor the legislative process relating to these initiatives, particularly by exchanging information with the Government.

Palácio de S. Bento, 10 September 2013

**MP Author of the Opinion**

[signature]

**(Lídia Bulcão)**

**Commission Chair**

[signature]

**(Paulo Mota Pinto)**

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**PART IV – ANNEX**

Opinion of the National Defence Commission

Opinion of the Commission for the Economy and Public Works

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Comissão de Defesa Nacional

## **Report**

Com (2013) 409 final

**Author:** Member of Parliament

João Gonçalves Pereira

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services.

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Comissão de Defesa Nacional

**I – INTRODUCTORY NOTE**

**II – CONSIDERATIONS**

**III – CONCLUSIONS**

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Comissão de Defesa Nacional

## I – INTRODUCTORY NOTE

In accordance with Law No 43/2006 of 25 August 2006 on the Portuguese Parliament's monitoring, assessment and reporting of the EU integration process, the Commission for European Affairs referred the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services to the National Defence Commission for an opinion on the matters within its responsibility.

The National Defence Commission must therefore analyse the proposal, with particular reference to the principles of subsidiarity and proportionality, and issue the respective opinion, which must then be forwarded to the Commission for European Affairs.

## II – CONSIDERATIONS

### II.1. Context

- The development of the European Aviation Safety Agency (EASA) framework, set out in particular in Regulation EC No 216/2008, is intertwined with the development of the Single European Sky initiative.
- Its development has involved two comprehensive legislative packages – SES I and SES II composed of four regulations, i.e. Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004, and also includes a comprehensive project to modernise equipment and systems for air navigation services under the SESAR title.
- In 2009, Regulation (EC) No 1108/2009 extended the competences of EASA to include air traffic management and air navigation services (ATM/ANS).
- Whilst this also implied the incorporation of various ATM/ANS technical regulation elements into the scope of EASA, the corresponding changes to the four SES Regulations were not completed simultaneously.
- Instead the European Parliament and the Council preferred to leave the corresponding and existing competencies in the four abovementioned SES Regulations intact to ensure that there would be no gaps during the move from the old legal framework to the new one and also to support the idea that the new EASA-based framework should be built on existing SES principles.
- The legislators addressed this overlap in the Regulations by inserting a new Article 65a into Regulation (EC) No 216/2008. This article requires the Commission to propose amendments to the four SES Regulations to take into account the requirements of Regulation (EC) No 216/2008.
- There is a more general mismatch between the approach used for all other sectors of aviation (airworthiness, crew licensing, air operations etc.) in the EASA framework and air traffic management (ATM/ANS).
- Generally speaking the approach is that all technical regulations are concentrated within the scope of EASA to meet the objectives of Article 2 of Regulation (EC) No 216/2008 and economic regulation is carried out by the Commission.
- However in ATM/ANS (i.e. SES) the picture is more mixed, with technical regulations stemming from various sources.

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- It would therefore be beneficial to ensure a harmonised approach to this important regulatory area, so that all consultations are conducted with the same thoroughness, all rules fit in the same structure and serve the same objectives, making life easier for those responsible for applying the rules and finally to ensure that the impending wave of technological innovations stemming from the SESAR initiative can be implemented in a co-ordinated manner in both airborne and ground equipage [sic] and procedures.

## II.2. Content of Proposal

This regulatory initiative aims mainly:

- to fulfil the requirement of Article 65a, by deleting the overlaps between the SES and EASA Regulations and simplifying and clarifying the border line between EASA and SES legal frameworks;
- to support the political objective of ensuring clarity of tasks between the Commission, EASA and the Eurocontrol organisation so that the Commission focuses on economic and technical regulation, with EASA acting as its agent on technical regulation drafting and oversight, while Eurocontrol will focus on operational tasks, in particular built around the Network Manager concept;
- to make some minor adaptations to Regulation (EC) No 216/2008, because previously the text of this Regulation relied on the terminology of some SES provisions – in particular in the area of interoperability – and hence the same terminology needs to be introduced in Regulation (EC) No 216/2008, now that it is being repealed from the four SES Regulations.

## III.3. Consultations with the Interested Parties and Impact Assessment

### Consultation with the interested parties

- Although there has not been any specific consultation on the EASA-related amendments, [there was] a three-month public consultation was held between September and December 2012 on the DG MOVE website between September and December 2012 concerning the SES changes.
- Two high-level events – a conference in Limassol and a hearing in Brussels – have also been organised and numerous bilateral meetings have taken place with all affected stakeholders. The issue of EASA's role was also raised during these events and stakeholders expressed the need to ensure a more co-ordinated drafting of technical rules.

### Impact assessment

- DG MOVE has prepared an impact assessment (IA) to support legislative proposals for improving the efficiency, safety and competitiveness of the Single European Sky;
- The amendments to Regulation (EC) No 216/2008 in this package, however, intend to address issues that were left over from a previous amendment through Regulation (EC) No 1108/2009, notably Article 65a;
- These amendments, were covered by the 2008 impact assessment leading up to the approval of Regulation (EC) No 1108/2009.

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## **Subsidiarity principle**

The proposal complies with the subsidiarity principle, as laid down in the Treaty, since the objectives cannot be sufficiently achieved by the Member States.

The objectives of the proposal can be achieved only by EU action, as this proposal amends an act of EU law which is in force, something which cannot be done by the Member States themselves.

The subsidiarity principle is complied with in that the proposal amends existing EU legislation.

## **Proportionality principle**

The proposal complies with the proportionality principle because, since it concerns an amendment to a regulation, the only appropriate solution is to adopt another regulation. Other instruments would therefore not be adequate.

## **III – CONCLUSIONS**

- 1) The Commission for European Affairs referred this proposal to the National Defence Commission for a specific opinion.
- 2) This Proposal for a Regulation amends Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services.
- 3) The objectives of this proposal cannot be sufficiently achieved unilaterally by the Member States. They can be achieved more effectively at European Union level, which therefore means that there has been no breach of the subsidiarity principle.
- 4) Finally, since this matter concerns a proposed amendment to an existing regulation, there is no doubt that the most appropriate legislative instrument to achieve the intended objective in this specific case is also a regulation.

In light of the foregoing, the National Defence Commission is of the:

## **OPINION**

That, in light of the above considerations and conclusions, as laid down in Law No 43/2006 of 25 August 2006, this report should be referred for consideration to the Parliamentary Commission for European Affairs.

Palácio de S. Bento, 19 July 2013

**MP Author of the Opinion**

[signature]

**(João Gonçalves Pereira)**

**Commission Chair**

[signature]

**(José Matos Correia)**

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Comissão de Defesa Nacional

**Report**

COM (2013) 410 final

Proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky.

**Author:** Manuel Correia  
de Jesus

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## 1. Preliminary observation

Under the Portuguese Parliament's monitoring, assessment and reporting of the European integration process, the National Defence Commission hereby gives its opinion on the European initiative COM (2013) 410 Final – Proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky.

## 2. Objectives, content and scope of the proposal

### 2.1 – Objectives

The document under examination begins by stating that the Single European Sky initiative (SES) aims 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 (ANS).

The development of this initiative involved two comprehensive legislative packages, SES I since 2004 and SES II since 2009, each composed of four regulations and over 20 Commission implementing rules and decisions.

These four regulations are intertwined with the development of the European Aviation Safety legislation, the latter comprising a number of tasks entrusted to the European Aviation Safety Agency (EASA) and the launch of a comprehensive project to modernise equipment and systems for air navigation services under the SESAR title, the Single European Sky ATM Research Programme.

Existing rules touch upon five interrelated pillars addressing performance, safety, technology, the human factor and airports.

The EU believes that with SES I since 2004 and SES II since 2009, the principles and direction of the SES are valid and warrant a continuation of their implementation. However the initiative is experiencing significant delays in its implementation, notably in the achievement of the performance goals and the deployment of its basic elements.

As shown in this initiative, when the SES II package was adopted it was decided that it would be done in two stages, and the Commission was therefore invited to come back 'to do an alignment of SES and EASA regulations'. A recast of the legislative package was foreseen, primarily aiming at simplifying and clarifying the border line between the legal frameworks of these two bodies.

This revision also provided the opportunity to assess the effectiveness of the existing legal provisions in light of the lack of timely implementation of the Single European Sky initiative. This process of revision of the SES legal framework, known under the abbreviation of SES 2+, is intended to accelerate the implementation of the reform of air navigation services without departing from its original objectives and principles. It is at the same time part of the Single Market Act II initiative, which aims to improve the general competitiveness and growth of the EU economy and not just that of the air traffic management system.

The principal aim of the SES 2+ package is to introduce improvements in oversight of rules,

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the performance scheme, the customer focus of the service providers and in overall performance. It will at the same time simplify the legislation by eliminating certain overlaps in the existing framework and clarifying the roles of the various actors at EU-level.

According to the document under examination, the first question addressed in SES2+ is the insufficient efficiency of Air Navigation service provision, which remains relatively inefficient in terms of cost- and flight efficiency as well as the capacity offered. This is highlighted by a comparison with the United States, which covers similar sized airspace and where there is a single service provider as opposed to 38 en-route service providers in Europe, with a consequent lack of productivity.

Another problem highlighted in the document and which is being addressed is the fragmented ATM system. The European ATM system consists of 27 national authorities overseeing in total over a hundred Air Navigation Service Providers, with the associated variance in systems, rules and procedures. There is a large amount of additional costs caused by the fact that Europe has a large number of service providers, each procuring their own systems, mostly training their own staff, creating their own operating procedures and being limited territorially to providing services in a small airspace. To overcome fragmentation, the SES has introduced the ideas of cross-border Functional Air Blocks and the centralised Network Manager to run certain network level services.

By way of a practical summary of the measures it is intended to apply, the general objective of the initiative is to improve the competitiveness of the European air transport system vis-à-vis other comparable regions and in particular to develop further the Single European Sky initiative.

The document also summarises a range of other objectives which will be set out here in full:

### Specific objectives

- To improve the performance of air traffic services in terms of efficiency;
- To improve the utilisation of air traffic management capacity.

### Operational objectives:

- To ensure that the provision of Air Navigation Services is transparent, based on market principles and customer value;
- To strengthen the role of the National Supervisory Authorities;
- To strengthen the process of setting up targets and enforcing the performance scheme (including the reinforcement of the Performance Review Body/Performance Review Unit (PRB/PRU));
- To undertake a strategic redirection of Functional Airspace Blocks;
- To strengthen the governance and operational scope of the Network Manager.

## 2.2 – Content

In relation to the legal elements of the proposal, the four SES Regulations have been merged into a single regulation, which has in itself necessitated a number of changes, and it is now structured in five chapters:

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- Chapter I – General Provisions
- Chapter II – National Authorities
- Chapter III – Service Provision
- Chapter IV – Airspace
- Chapter V – Final Provisions

The new rules on implementing and delegated acts stemming from the Lisbon Treaty have also been included throughout the Regulation, their aim being to strengthen the role of the National Authorities, both as regards their independence and their expertise and resources. Due to the need in some Member States to carry out some administrative reorganisation to accommodate these new rules, a transitional period is also foreseen until 2020. To improve expertise amongst the national authorities, a network of national authorities is foreseen, including also the possibility of pooling experts so that States may benefit from experts coming from other Member States.

As far as the performance scheme is concerned, in order to rationalise the process of target setting, certain changes have been introduced to allow focusing of target setting more at the local level. This allows for more educated tailored setting of targets. Small adjustments have also been made on charging and on the possibility of the funding of authority tasks being extended to cover EASA competences.

Finally, a need was felt to introduce more customer focus on the air navigation service providers, and a new provision has been included to ensure the airspace users are consulted and also involved in the approval of investment plans.

### **2.3 – Scope**

Because of its importance for this National Defence Commission, it should be noted that Article 1(2) of the proposal for a Regulation of the European Parliament and of the Council establishes that the application of the Regulation ‘shall 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’, and does not cover military operations and training.

### **3. Subsidiarity principle**

The initiative under examination states that Articles 58, 90 and 100 of the Treaty on the Functioning of the European Union extend the objectives of the internal market to air transport in the context of a common EU transport policy.

The Member States cannot guarantee the creation of capabilities and safety conditions and at the same time reduce the costs of air traffic management services in the EU on their own.

There is therefore no breach of the subsidiarity principle, since in view of the complexity and scope of the objectives proposed it is clear that they can be achieved more easily by European Union action.

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## **PART II – CONCLUSIONS**

1. The initiative under examination does not breach the subsidiarity principle since its objectives will be achieved more effectively by EU action.
2. In light of the foregoing, the National Defence Commission is of the opinion that this report on COM (2013) 410 Final (Proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky) should be referred back to the Commission for European Affairs.

Palácio de S. Bento, 23 July 2013

**MP Author of the Opinion**

[signature]

**(Manuel Correia de Jesus)**

**Commission Chair**

[signature]

**(José de Matos Correia)**

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Comissão de Economia e Obras Públicas

## **Opinion of the Commission for the Economy and Public Works**

Proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, accelerating the implementation of the Single European Sky; Proposal of the European Parliament and of the Council amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services. COM (2013) 410 final, COM (2013) 408 final and COM (2013) 409 final.

**Author:** Member of Parliament

Hélder Amaral

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Comissão de Economia e Obras Públicas

## PART I – INTRODUCTORY NOTE

### 1. Preliminary observation

Under Article 7(1), (2) and (3) of Law No 43/2006 of 25 August 2006 (amended by Law No 21/2012 of 17 May 2012), which regulates the Portuguese Parliament's monitoring, assessment and reporting of the European integration process, the following documents have been referred to the Commission for the Economy and Public Works for examination and the drafting of this report: the Proposal for a Regulation of the European Parliament and of the Council on the Implementation of the Single European Sky; the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, accelerating the implementation of the Single European Sky; and the Proposal of the European Parliament and of the Council amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services.

## PART II – CONSIDERATIONS

### 1. General

The European aviation industry plays a vital role in the European economy by promoting trade and tourism and acting as a vehicle for employment growth.

Air traffic control is a key factor in the value chain of the aviation industry and should ensure the safe, expeditious and cost-efficient flow of air traffic, thereby minimising fuel usage, carbon emissions and flying times.

However, European air navigation services have historically evolved primarily within the national borders of each Member State.

In 2004, the EU launched the Single European Sky (SES) initiative with a threefold objective: *'to enhance current safety standards and overall efficiency for general air traffic in Europe, to optimise capacity meeting the requirements of all airspace users and to minimise delays'*.

In 2009, and maintaining the will to further the reform of the European air traffic management system, a revised approach was adopted to stimulate integrated service provision. The process concerned led to a new definition of performance objectives and the establishment of the Network Manager (Eurocontrol) to coordinate action at the European network level. A five-tier approach was devised at this time to cover the various aspects of SES: safety, performance, technology, airports and human factor.

The concerns set out here prompted the Commission to submit a communication which aims to accelerate the implementation of the Single European Sky.

As a result of the concerns addressed, the Council proposed the drafting of a regulation (COM 410).

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The proposal concerned focuses on two problems which the Council believes must be addressed:

*‘The first problem area addressed in SES2+ is the insufficient efficiency of Air Navigation Service (ANS) provision. ANS provision remains relatively inefficient in terms of cost- and flight efficiency as well as the capacity offered. This is highlighted by a comparison with the United States, which covers similar sized airspace. In the US, the en-route airspace is controlled by a single service provider as opposed to 38 en-route service providers in Europe. The US service provider controls almost 70% more flights with 38% less staff. The main root causes for this difference in productivity in Europe are the shortcomings in setting up and enforcing the performance scheme, ineffective supervisory authorities and the disproportionately high amount of support staff in the service providers.’*

*‘The second key problem addressed is a fragmented ATM system. The European ATM system consists of 27 national authorities overseeing in total over a hundred Air Navigation Service Providers (ANSPs), with the associated variance in systems, rules and procedures. There is a large amount of additional costs caused by the fact that Europe has a large number of service providers, each procuring their own systems, mostly training their own staff, creating their own operating procedures and being limited territorially to providing services in a small airspace. To overcome fragmentation, the SES has introduced the ideas of cross-border Functional Air Blocks (FABs) and the centralised Network Manager to run certain network level services. However, FABs are not yet performance oriented and the Network Manager remains too weak.’*

The objectives of the Regulation are:

- To improve the competitiveness of the European air transport system vis-à-vis other comparable regions and in particular to develop further the Single European Sky initiative;
- To improve the performance of air traffic services in terms of efficiency;
- To improve the utilisation of air traffic management capacity.
- To ensure that the provision of Air Navigation Services is transparent, based on market principles and customer value;
- To strengthen the role of the National Supervisory Authorities;
- To strengthen the process of setting up targets and enforcing the performance scheme (including the reinforcement of the Performance Review Body/Performance Review Unit (PRB/PRU));
- To undertake a strategic redirection of Functional Airspace Blocks;
- To strengthen the governance and operational scope of the Network Manager.

Given the subject-matter under analysis, the proposal for a Regulation referred to this Commission for examination is identical to the Proposal of the European Parliament and of the Council amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services – COM (2013) 409 final.

Since the Regulation on aerodromes is compatible with and subject to the SES and the air traffic management scheme proposed under SES 2+, a joint opinion is presented.

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## 2. Relevant aspects

The following should be noted with respect to the text of the Proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky:

*‘One of the major needs for action identified in the impact assessment has been the need to strengthen the national authorities, both as regards their independence and their expertise and resources. For that purpose Article 3 describes the level of independence required from the authorities vis-à-vis the service providers they are intended to oversee. Due to the need in some Member States to carry out some administrative reorganisation, a transitional period is also foreseen until 2020.*

*(...) To improve expertise amongst the authorities, a network of national authorities is foreseen in Article 5, including also the possibility of pooling experts so that States may benefit from experts coming from other Member States.*

*Finally, a definition of the term “National Supervisory Authority” has been added, whereby it is clarified that for the purposes of this Regulation the competent authorities under Regulation (EC) No 216/2008 are considered to be National Supervisory Authorities, so that no second layer of administration is required.’*

In relation to the functional blocks, new alterations are proposed regarding the changes that had already been made under Regulation (EC) No 1070/2009. The aim was to give the functional airspace blocks (FABs) more of a performance focus and this process is continued in this revision. In the new proposal the FABs should not be seen as static blocks of airspace, but as industry-led initiatives to seek improvements in overall service provision. Changes have therefore been made which provide the system with more flexibility, allowing the development of different types of FABs, depending on where they expect to find the most synergies.

To conclude the specific references, the changes provided for in relation to Eurocontrol in the text of the Commission proposal will now be highlighted:

*‘Article 17 on network management has been updated in two ways. (...)*

*Secondly, the article has been revised to align it with the language used in Regulation (EC) No 1108/2009, naming the "functions" as "services" and treating the Network Manager consistently in the same manner as other service providers insofar as certification, oversight and safety requirements are concerned. The language of the relevant definitions has also been updated accordingly.*

*Finally, a provision has been included in Article 17 to cover the further development of the Network Manager in the direction of an industrial partnership by 2020.’*

## 3. Legal Basis

The legal basis for the proposal is provided by Articles 53(1), 62 and 114 of the Treaty on the Functioning of the European Union (TFUE).

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## Subsidiarity principle

The general definitions of the concepts of subsidiarity and proportionality can be found in Article 5(2) and (3) of the Treaty establishing the European Economic Community (EEC Treaty). Protocol 30 to the Treaty provides further details on the application of these two principles.

Subsidiarity is a guiding principle for defining the boundary between Member State and EU responsibilities - that is, *who should act?* If the Community has exclusive competence in an area, there is no doubt about who should act, and subsidiarity does not apply. If the Community and the Member States share the competence, the principle clearly establishes a presumption in favour of decentralisation. The Community should only act if the objectives cannot be achieved sufficiently by the Member States (necessity test) and if the Community can achieve them better (value-added test or compared effectiveness).

What is at issue in discussing the Single European Sky is a non-exclusive European Union competence. As can be easily verified, the Proposals for Regulations involve Member State competence. European airspace rules have functioned by means of cooperation plans in order to respect each Member State's jurisdiction.

Since Member States rather than the European Union are best placed to manage their national airspace, subsidiarity has been breached.

## PART IV – CONCLUSIONS

The European Union aims to find a common mechanism for managing European airspace.

To that end, cooperation plans have been developed between the different European agencies responsible for managing national airspace, thereby giving rise to the SES I (2004) and SES II (2009) packages.

These plans have led to efficiency gains which have brought about a significant reduction in average flight delays.

The latest forecasts nevertheless indicate that there will be 14.4 million flights in Europe in 2035, 50% more than in 2012. Air traffic growth will put extra pressure on air traffic management capacity and will deepen the divide between that capacity and airport traffic, with almost 2 000 000 flights.

The European Union aims to deepen its intervention in response to this airspace management data. According to the text of the proposal: *'This is highlighted by a comparison with the United States, which covers similar sized airspace. In the US, the en-route airspace is controlled by a single service provider as opposed to 38 en-route service providers in Europe.'*

A type of intervention is therefore emerging that may allow a form of management which is different from the current one and that will be capable of managing airspace management resources as a whole on a central basis.

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In light of the above, this regulation aims to: achieve transparent air navigation service provision based on market principles and customer value; improve the competitiveness of the European air transport system vis-à-vis other comparable regions and in particular to develop further the Single European Sky initiative; improve the performance of air traffic services in terms of efficiency; improve the utilisation of air traffic management capacity; strengthen the role of the National Supervisory Authorities; strengthen the process of setting up targets and enforcing the performance scheme (including the reinforcement of the Performance Review Body/Performance Review Unit (PRB/PRU); undertake a strategic redirection of Functional Airspace Blocks; and strengthen the governance and operational scope of the Network Manager.

The Commission therefore proposes full separation of organisational and budget planning between air traffic control organisations and the national supervisory authorities which oversee them. Airlines will have a say in the investment plans of air traffic control organisations in order to ensure that they are better targeted to user needs.

As the title of the initiative (Single European Sky) shows, the aim is to ensure that the different national jurisdictions depend on a single body, thus bringing about a single European airspace management.

For that very reason, these initiatives breach the subsidiarity principle.

The Commission for the Economy and Public Works hereby concludes this examination of these initiatives, and in accordance with Law No 43/2006 of 25 August 2006, this opinion will be forwarded to the Commission for European Affairs for the relevant purpose.

Palácio de S. Bento, 17 July 2013.

**MP Author of the Opinion**

[signature]

**(Hélder Amaral)**

**Commission Chair**

[signature]

**(Luis Campos Ferreira)**