



September 2014
AK Position Paper

Proposal for the European Parliament and Council Regulation on the implementation of the Single European Sky (revised version)

About us

The Federal Chamber of Labour is by law representing the interests of about 3.4 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.4 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske
President

Werner Muhm
Director

Executive Summary

The new proposal for creating a Single European Sky (SES2+) includes both the objective of allowing a greater influence of market forces on air traffic control, and a stronger focus on the customer, whereby it is envisaged that the airline companies, for example, should obtain the right to express their opinion about the investment in air traffic control. The link between tasks performed by air traffic control and duties performed by authorities (approval, permit, inspection) is to be broken, and these tasks separated out ("unbundling"), with air traffic control tasks subject to competitive procurement. So-called 'industrial partnerships' are to be introduced, without specific details being given on this, instead of the functional air space blocks with common supervision of the specific air spaces and maximum use of synergy effects. Finally, it is intended that in the future there should be a central network manager to act as a strong pan-European regulatory authority, which would call into question or indeed contradict the full and exclusive sovereignty of national states over their air space.

The Austrian Federal Chamber of Labour (AK) is strictly against the proposal, above all because air traffic control constitutes a public service with a strong safety aspect and high investment costs, and is definitely not an area which should be subject to market rules. The extensions and changes introduced in the proposal are actually against higher safety of aviation, against the inter-

ests of Austria as a business location and against the current cross-border cooperation with other air traffic control providers which is already well-proven. The proposal does not contribute to achieving the required cost savings and reductions in delays, nor does it have a positive effect on the environment or the security of civil aviation.

Further, it must be pointed out that the sweeping assertion that air traffic control services are still comparatively inefficient with respect to costs, number of flights and capacity, is inadmissible. It is indisputable that from time to time adjustments are necessary in such a complex and multifaceted area, but it would be preferable to continue with the current well-established and successful approach, rather than to adopt an entirely new approach such as SES2+.

It is also invalid to make a comparison with the United States which has an air space of a similar size, because only eye-catching, selected aspects have been considered. The argument that the entire air space in the USA is controlled by only one air traffic control organisation, whereas there are 38 such organisations in Europe, and that US air traffic control supervises approximately 70% more flights with 38% less personnel, must be dismissed, because the comparison of total costs shows costs to be 7% lower in Europe. The cost of supervising one km² of air space and the average cost per 100 air miles are in fact 16% lower in Europe than in the

USA. The share of air traffic control costs in airline ticket prices is 9% in the USA and 6% in Europe, which represents a 33% lower share. Only the average cost per controlled flight in Europe is significantly higher than in the USA.

If air traffic control were to be organised in Europe the same way as it is in the USA, both taxpayers and airline companies would have to make a significantly higher contribution to air traffic control costs.

The complexity of European air space requires a minimum number of sectors in order to fulfil daily requirements with respect to safety and quality.

No aviation safety authority covers more sectors than is necessary for the respective traffic volume. This means that a reduction of the current number of flight traffic centres would not change the fact that the same air space must continue to be covered to the same quality standard. Reducing the number of control centres to just a few would constitute a seriously infringement on quality and safety.

The assertion that fewer large centres is a cheaper solution than having a greater number of small ones is not supported, since in the event of outages, disruptions, etc., only a part of, and not the whole of, Europe is ever affected. Additionally, the possibility exists for neighbouring air traffic control services to provide “backup”.

Apart from the loss of high-quality jobs in the affected countries and the associated negative social effects, artificially “large” monopolies will be created at the expense of “small” entities.

The AK position in detail

Detailed remarks on the provisions:

In reference to recital 37

In this point there is only one reference to the fact that the targeted increase of safety standards for air traffic must “take into account the human factor”. Moreover, there are neither the social criteria which must be taken into account at the same time, nor other regulatory proposals related to work and social conditions of the employees. The “human factor”, the term irritatingly used to describe the employees in this proposed regulation, obviously has no importance in the view of the European Commission (EC).

In reference to recitals 13 and 34

In the opinion of the European Commission, the provision of communications, navigation and supervisory services as well as weather and flight consultation services should be organised under market conditions, taking into consideration the special features of these services and with adherence to a high security level.

According to the present draft, the procurement of support services should take place according to the same procedures which are used for granting public construction contracts, delivery contracts and service contracts and the same procurement procedures used by employers operating in the water, energy, transport and postal services sectors.

This attempt by the European Commission totally overlooks the fact that air traffic control services already belong to the core business of the air traffic control providers in many countries. A compulsory separation would result in public services becoming subject to competition, which would also lead to the loss of highly-qualified jobs and a deterioration of work conditions. There are already sufficient data and examples of this happening in the provision of public services in other sectors.

In reference to Art. 2 Cl. 5 Air traffic control organisation

“Air traffic control organisation” is defined in the draft as a public or private organisation which provides the air traffic control services for general flight traffic. The definition of the term “independent” public or private organisation needs to be added here, to make it clear that this means an autonomous authority.

In reference to Art. 3 National supervisory authorities

It is planned that the national supervisory authorities should be legally separate and independent from all air traffic control organisations or all private or public organisations which have an interest in the activities of these air traffic control organisations, in particular with regard to their organisation, hierarchy and decision-making. It is expected that there will be a transitional period until 1st January 2020.

The wording should be amended, so that the compulsory legal separation becomes an optional provision, allowing for an optional separation between the organisation and the decision-making. A purely operational separation between the supervisory authorities and service providers is hardly grounds for any safety or service deficiency, would also not facilitate any improvements to that effect and does not satisfy the objective of system improvement as required by the European Commission, because the resources would not be used more efficiently. The Member States must be allowed to decide what forms of organization are the most efficient ones in each case.

In reference to Art. 7 Para. 1 Consultation with participants

The national supervisory authorities, which operate according to their national legal regulations, are in future to establish a consultation procedure for the appropriate involvement of the parties concerned, including the representative bodies of professional personnel, for performing their duties in the implementation of the Single European Sky. This point should be expanded to say that alongside the representative bodies mentioned, social partners must be consulted as well.

In reference to Art. 9 Para. 1 Appointment of service providers for air traffic services

According to the draft the Member States should take care of providing air traffic services on an exclusive basis within the specific air space blocks with respect to the air space in the area of their responsibility. For that purpose they must appoint a service provider for air traffic services that holds a certificate

or declaration valid within the European Union. The term declaration should be deleted, because the requisite qualification can only be ensured by a certificate and a declaration alone does not guarantee this.

In reference to Art. 10 Provision of support services

It is specified in Para. 2 that Member States must guarantee by all necessary means that the provision of air traffic services and provision of support services be separated from each other. This separation includes the requirement that the air traffic services and support services must be provided by different companies.

In this point as well the obligation for separation must be changed to an optional provision. The freedom of choice of Member States should not be restricted. Equally, the social impact of such a separation must be examined in advance.

Para. 3 provides that in selecting the provider of support services, the competent organisation must take into account in particular cost-efficiency, overall quality of service and the security of the services.

Firstly, it is imperative to also include the working and social conditions of the employees when listing legitimate factors, and secondly, the fundamental stipulation of a compulsory separation with competitive assignment to a provider must be changed to an optional provision. Consequently, Para. 3 must set out that in the event of procuring external support services, the competent organisation must take into account in particular service security, overall quality and cost-efficiency. Likewise, the interope-

rability between the providers and their services is a criterion of utmost importance and must be included on the list.

In reference to Art. 11 Performance appraisal system

In order to improve air traffic control services and network services in the Single European Sky, a performance appraisal system is to be set up, which must include the following:

- a) associated local service performance targets across the European Union in the central service areas of security, environment, capacity and cost-efficiency,
- b) national plans or plans for functional air space blocks, including performance targets, which guarantee compliance with the performance targets for the entire European Union, and
- c) periodical verification, monitoring and comparison of services provided by air traffic control providers and network providers.

It is stated in Para. 4 that if the European Commission determines that the national plans or plans for functional air space blocks or local targets do not comply with the targets for the entire European Union, the Commission can demand that the affected Member State must take the required correctional measures.

Para. 5 goes even further and provides that if the European Commission thinks that the corrective measures taken to resolve the situation are not sufficient, it can decide that the affected Member States take the necessary corrective measures or it will impose sanctions.

This right to intervene, which the European Commission would like to ensure by the current draft, seems excessive and is rejected. Therefore, Para. 5 should read as follows: "if the European Commission is of the view that these corrective measures to rectify the situation are not sufficient, it can decide together with Member States, and after performing an analysis/appraisal of the social impact, that the affected Member States take the required corrective measures or it will impose sanctions."

Para. 7 sets out what the performance appraisal system should be based on and letter g) of this list names the criteria for imposing sanctions, if the performance targets for the entire European Union and associated local performance targets are not complied with during the period under review, and support for a warning procedure. In the opinion of the Austrian Federal Chamber of Labour (AK) these criteria should be determined according to Art. 27 in cooperation with the Committee for the Single Sky, so that the social partners are also included.

The last sentence of Para. 7 authorises the European Commission to issue delegated legal acts according to Article 26 in order to determine the detailed provisions for proper functioning of the incentive system according to the points listed in this paragraph. This self-empowerment is excessive and should be amended, so that in each case prior to the authorisation being issued, the European Council and the European Parliament shall be involved in authorising the European Commission.

In reference to Art. 16 Functional air space blocks

The Member States are to guarantee that functional air space blocks (FABs) are created and implemented on the basis of one integrated provision of air services, so that the required capacity and efficiency of the air management network within the Single European Sky is achieved, a high safety level is maintained, and a contribution is made towards the overall performance of the air traffic system and towards reducing the environmental impact.

It must be noted here that Art. 2 Cl. 24 of the Definition of 'Functional air space blocks' describes an air space block according to operational requirements, regardless of air space blocks established in national borders, so that the provision of air traffic control services and the related functions are performance-related and are optimized to bring about stronger cooperation between the air traffic control organisations and, if applicable, an integrated provider in every functional air space block.

For this reason, the phrase "if applicable" is also introduced in Art. 16 Para. 1 in connection with this integrated provision of air traffic services, if applicable.

It is generally seen as positive that functional air space blocks should no longer be determined purely geographically, but also from a commercial perspective.

When the TOPSKY air traffic control system (formerly COOPANS), which has operated in Austria since February 2013, was implemented, the ACG joined a consortium which already operated as a functional air space block. Ireland, Sweden, Denmark, Austria and Croatia operate the system together.

In reference to Art. 17 Network management and design

This article seeks to optimize the use of air space by the widest possible access to air space and to air traffic control services through the services of the air traffic management network. In Para. 2 of the draft there is a list of services which the network manager should administer. In our opinion, before the network manager can provide the services listed, the following issues must be urgently dealt with:

- analysis of all possible variants for centralized services
- analysis of the advantages and disadvantages of services centralization
- examination of the impact on safety ('safety case') for each proposed service
- examination of the social impact of centralizing every service

In reference to Art. 19 Relations with the participating organizations

According to the present draft, in the future, the air traffic control organisations should set up consultation procedures for consulting with the relevant groups of air space users and airport operators on all significant aspects of the provided services or about the relevant changes of the air space configurations. Air space users should also be involved in the approval of strategic investment plans. Further, the European Commission plans to issue measures for establishing methods of consultation with and participation of air space users in the approval of investment plans. In the view of The Austrian Federal Chamber of Labour (AK), the relevant groups should also include social partners and these must therefore also be included on the list.

The Austrian Federal Chamber of Labour (AK) proposes that a new paragraph be inserted in Art. 19:

Without prejudice to the role of the Committee for the Single European Sky, the European Commission will establish an advisory expert group for social aspects related to the Single European Sky, to which the European social partners will belong. The role of this panel will be to advise the European Commission on all measures and their social impact before a decision relating to the implementation and development of the Single European Sky is taken.

This expert group could be created under the umbrella of an existing committee, such as the Social Dialogue Committee on Civil Aviation.

Therefore, the heading of this Article should be: Relations with the participating organisations and social partners.

In reference to Art. 25 and 26 Adjustment of annexes and exercise of authorisation

In both of these articles the European Commission tries again to grant itself authority to issue delegated legal acts to extend or amend the requirements for qualified organisations and the conditions for the certificates which are issued to air traffic control organisations, and thus to take into account the experience of the national supervisory authorities in applying these requirements and conditions or the development of the air traffic management system with regard to the interoperability and integrated provision of air traffic control services. The authorisation can at any time be revoked by the European Parliament or European Council.

This right to intervene, which the Commission would like to ensure by the current draft, seems excessive and is rejected. The wording must be changed to an optional provision and moreover, a change to that effect must be made so that the Parliament and the Council first issue the authorisation and the Commission may take action only afterwards.

Should you have any further questions
please do not hesitate to contact

Doris Unfried

Tel: + 43 (0) 1 501 65 2720
doris.unfried@akwien.at

and

Gudrun Kainz

(in our Brussels Office)
T +32 (0) 2 230 62 54
gudrun.kainz@akeuropa.eu

Bundesarbeitskammer Österreich

Prinz-Eugen-Straße 20-22
A-1040 Vienna, Austria
T +43 (0) 1 501 65-0
F +43 (0) 1 501 65-0

AK EUROPA

Permanent Representation of Austria to the EU
Avenue de Cortenbergh, 30
B-1040 Brussels, Belgium
T +32 (0) 2 230 62 54
F +32 (0) 2 230 29 73