



IATA's Updated position on SES2+

September 2021

A welcomed update but weakened by the Council

On September 22, 2020 the EC proposed an upgrade of the Single European Sky (SES) regulatory framework by amending its 2013 SES 2+ text, introducing new measures, and adopting a separate proposal to amend the EASA Basic Regulation.

We welcomed this¹ update of the Single European Sky (SES) project. The completion of the SES would finally create the opportunity to reform the operation of Air Navigation Service Providers (ANSPs), deliver improvements to the environment, and reduce flight delays for airlines and consumers. It will also generate jobs and prosperity,

A study commissioned by IATA from SEO Amsterdam Economics, found that €245bn in GDP and 1 million jobs a year, would be foregone from 2036, if the European airspace is not modernized and optimized.

However, the Council did not take on board several key provisions of the proposal and did not clarify a number of safeguards to ensure that a sustainable modernization of the European ATM system finally kicks, in along with a stronger liability of ANSPs.

Thankfully, the Parliament supported several provisions and improvements to ensure a strong independence of skilled economic regulators vis à vis existing entities, a robust set of corrective measures and most of the time a deeper involvement of airspace users. IATA supports the vast majority of the EP position but would like to express some concerns on some provisions (such as the modulation of charges but not only)

More than never, a holistic approach is necessary to ensure that the use of all mechanisms associated with this proposal can be put in place in a timely fashion, before Reference Period 4 starts.

IATA updated its position paper as follows; any provision will start by stating our preferences between the EP and the Council positions followed by an updated background note. We invite the co-legislators to take into account the following comments:

National Supervisory Authorities (NSAs)

Council position

IATA welcomes the Council position to somehow guarantee the independence of the NSA.

IATA strongly believes that NSAs are required to be independent from any air navigation service providers, in organizational, hierarchical, and decision-making terms, in particular by avoiding

European Parliament position

IATA strongly support a full independence of National supervisory authorities (NSA) to monitor the performance targets to be achieved has been agreed.

IATA welcomes the establishment of truly national independent, skilled, and powerful economic regulators for air navigation charges and

¹ https://ec.europa.eu/transport/modes/air/news/2020-09-22-ses-more-sustainable-and-resilient-air-traffic-management_en



conflicts of interest with those service providers, from any air navigation service providers. However, IATA insists on the necessity to clarify how conflicts of interest will be tackled and how NSAs can be properly skilled to perform their duties.

performance distinguish public funding to finance the NSA.

IATA strongly supports article 42 allowing Member States to impose effective, proportionate, and dissuasive penalties to under-performing ANSPs. However, IATA believes that a proper methodology should be set up to define a set of additional corrective measures.

IATA strongly supports the obligation for ANSPs to demonstrate sufficient financial robustness and the obligation to set up contingency plans in case of when a limitation, suspension or revocation of an economic certificate occurs.

NSAs shall be fully independent

The establishment of an independent European economic regulator for air navigation charges that will define the targets to be achieved, oversee progress, and determine binding financial corrective actions, is fundamental to the success of the SES. We therefore **strongly support** the creation of a truly independent economic regulator for Air Navigation Services (ANS). The same rationale is valid at the national level.

We support Article 3.3 stating that the national supervisory authorities shall be legally distinct and independent from any other public or private entity in terms of their organisation, functioning, legal structure and decision-making. This independence would follow the same approach as regulation in other transport sectors (such as rail, for example as regards requirements on persons in charge of strategic decisions²). IATA proposed to go one step further by clarifying that the national supervisory authorities shall also be financially and budgetarily distinct and independent from any other public or private entity. This strict separation has been supported by the Parliament. We strongly support the idea that the NSA could join authorities which are competent either for several regulated sectors or for several areas of regulation within the transport sector provided that those integrated regulatory authorities fulfil the independence requirements set out in this Regulation.

As an example, in France, ART³ is recognised as an independent and competent body and the determination of ATM charges should be included in its portfolio.

The position from the Council goes in the right direction and is in line with the Council Conclusions on the European Court of Auditors' Special Report No 18/2017 "Single European Sky: a changed culture but not a single sky" where Member States highlighted *"the importance of the independence and capacity of national supervisory authorities in the exercise of their functions under the SES legislative package. These include the proper oversight of the financial performance of air navigation service providers"*⁴. However, we are looking for additional guarantees to ensure a proper independence with a robust controlling mechanism.

We expect regulators to be independent of direct control by governments or airports and ANSPs. They must also be given clear objectives, or statutory duties and have the resources and operational independence to meet these principles. Furthermore, economic oversight is a core state function which should be funded by the general

² As referred on page 13 of the SWD. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=SWD:2020:187:FIN>

³ <https://www.autorite-transports.fr/>

⁴ See point 8: <https://data.consilium.europa.eu/doc/document/ST-7466-2018-INIT/en/pdf>



budget. A neutral dispute settlement mechanism for appeals against the regulator's decisions must be available to users.

We would suggest that a good starting point to qualify the independence of the NSA is in Article 11.3 of the Airport Charges Directive (on the Independent Supervisory Authority)⁵

NSA shall ensure the implementation of performance and charging schemes

We welcomed the EC proposal on Article 4 empowering NSAs to apply the performance and charging schemes (Articles 10 to 17 and 19 to 22) and their implementation (Articles 18 and 23).

It is crucial that the NSA can take all necessary enforcement measures which may, where appropriate, include the amendment, limitation, suspension, or revocation of economic certificates issued by them.

To further enforce a strong implementation of the performance and charging schemes, IATA suggested the NSA shall have the possibility to also impose financial penalties on ANSPs not achieving their targets, as already proposed for EASA acting as PRB. This should be given consideration under an additional article.

We support Article 6 including the Safety-related certification and oversight of air navigation service providers covered by Regulation 2018/1139. In addition, we consider as a positive step the support from the EP of Article 6- 1 b/ and Article 6-3 requiring an economic certificate for air navigation services conditioned upon the fulfilment of certain requirements regarding financial robustness, liability and insurance cover.

Furthermore, IATA supports the position from the EP on Article 6-1 obliging the NSA to set up contingency plans when a limitation, suspension or revocation of economic certificates occur.

NSA shall ensure a proper consultation of stakeholders

We still believe that, at all times, airlines and their representatives should be subject to meaningful consultation on all aspects related to performance and charging. In addition, defined timelines and strict transparent provision of advanced financial and performance information should be forthcoming. Safeguards and the principles of "better regulation" should be guaranteed. In addition, IATA strongly support a proper methodology in monitoring and assessing the noncompliance or the infringement of ANSPs vis à vis their performance targets and on a regular basis.

Service provision

Council position

IATA believes that the procurement, under market conditions, of certain air navigation services and of terminal air traffic services that remains subject to the authorization of the Member States is not ambitious enough.

IATA considers the following position as a step towards the right direction but is not ambitious enough: Air navigation services providers which

European Parliament position

IATA welcomes the definition of an 'air traffic service contract' making ANSPs somehow liable in article 2 - 10 a/ as "one or more legally binding acts, following a competitive tendering procedure, that confirm the agreement between Member States concerned and an air traffic service provider to entrust to provide air traffic services".

IATA could support the duration of an air traffic service contract not exceeding the length of one

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0012>



compete for, or engage in, the provision of air navigation services or terminal air traffic services under market conditions do not need to place the activities related to those services in a business entity operating independently. However, they must ensure the separation and the transparency of accounts.

On the designation of air traffic service providers, the possibility for Member States to impose conditions on ownership and control by their own nationals and establishment and use of facilities on their territory is limited to cases in which the application of such conditions would not entail an unjustified restriction of the freedom to provide services or the freedom of establishment. IATA considers this position as a step towards the right direction but should be clarified further.

We support the derogation (supported during discussions) for certified providers of global satellite services already operating in the EU.

reference period (can be extended to 2 reference periods).

IATA strongly support the possibility for Member States to individually or collectively designate a provider on the basis of a competitive tendering procedures. We strongly support the adoption of delegated acts in accordance with Article 36 concerning these tendering procedures to be followed by the Member States when designating air traffic service providers. IATA also supports the EP.

IATA supports the EP position (with some clarification) on other service provisions, Air traffic service providers shall procure CNS, AIS, ADS or MET services under market conditions, unless they prove to the National supervisory authorities concerned that the procurement would result in cost efficiency, operational, working conditions or climate and environmental loss. Airport operators shall also procure terminal and approaches services.

IATA strongly supports that air navigation services providers shall have the obligation to ensure the provision of en-route air traffic services is functionally and organizationally separated from the individually provision of CNS, AIS, ADS, MET and terminal air traffic services (possibility of fines and periodic penalty payments if it is not the case).

As stated above, IATA strongly supports the adoption of Article 6 on economic certificate which took onboard our proposal to have contingency plans in place in case of a suspension or a withdrawal of the economic certificate. The EP position goes further than what the current EASA BR and requires in term of economic certificate (i.e. in term of financial resilience).

Economic certificates must be accompanied by contingency plans (in case of suspension or revocation)

IATA welcomes the EC proposal and the EP position on Article 6 requiring an economic certificate for air navigation services conditioned upon the fulfilment of certain requirements regarding financial robustness, liability and insurance cover. We agree that this article could allow the development of a competitive market by allowing ANSPs to perform outside of their MS and we support the opportunity for MS to delegate to non-national ANSPs the air traffic services described in Article 7. However, we seek further clarification to understand how the rules for financial robustness can and will be developed within the framework of Article 37.

We supported Article 8 as it opens-up the air navigation and terminal Services (CNS, AIS, ADS, MET) market for competition. We strongly support the idea of having airspace users playing a fully part in the tender and procurement process, as it removes the requirement of performance and charging scheme on these terminal service providers. Transparency is required so that airspace users can ensure ICAO principles on cost-



relatedness are maintained and that charges levied are appropriate and based on services rendered. We also expect that any savings associated should be translated into lower unit rates.

A voluntary de-coupling of data services

IATA supports Article 31 proposing to facilitate the provision of air traffic data services on a cross-border and Union-wide market.

We believe that any new architecture must be safe, flexible, resilient, and subject to a best practice business continuity framework, which guarantees enroute availability during disruptive events across the entire European network, with the ability to shift capacity as needed to meet demand.

However, we strongly believe that robust safeguards should be added protecting against the creation of a new monopolistic data provider or providers. The position of the EP on Article 31-4 proposing the adoption of implementing acts on the methodology of price setting is a positive development. While the economic benefit of separation from support service provisions from ATS should be realized, it must also be supported by a transparent and strong cost benefit analysis. IATA would welcome the reorganization of supporting data service infrastructures at a European level to be provided by the best value operator, and subject to a periodic tendering process. This should deliver better value services and reduce the potential for waste from the duplication of infrastructure designed along national lines, rather than focused on the needs of a European air transport network.

Common information services for unmanned aircraft (i.e. drones)

Council position

IATA believes in the importance of a price capping in specific situations and to set up additional safeguard against monopolies: (Art 9.4: "The price set by the CIS provider shall be subject to assessment and approval by the national supervisory authority concerned"). There is no reference to pricing linked to marginal costs anymore.

IATA will continue to support the "user pays principle".

European Parliament position

IATA supports Article 9 and the dedicated recitals ensure a safe and secure inclusion of drones in European airspace. We support the provisions allowing the common information service provider to set a price subject to assessment and approval by the national supervisory authority concerned.

We welcome a safe inclusion of drones in the airspace

We welcome a safe and secure inclusion of drones in European airspace.

The European Commission's 'U-space' initiative provides a policy framework for the safe integration of drones. While the initiative is fully supported, we must first establish a Common Operational Concept (CONOPS) to explain the U-Space System and its Services in relation to the ICAO Rules of the Air.

For the sake of future integration and convergence between air traffic management (ATM) and unmanned aircraft systems traffic management (UTM), the U-space concept should be developed in line with the global UTM framework under ICAO and should also consider harmonization at a global level, e.g. the variations between below 400ft or 500ft, the different category bands that vary between Europe and other regions of the world.



The U-space integration concept should be also supported by a proper safety case, business case driven by the CONOPS. Given that U-Space systems are being designed to support safe, efficient, and secure access to airspace for large numbers of drones, it will be important that it is done in a manner that will ensure a safe interface between the drone world, manned aviation, ANSPs, and other relevant authorities, including but not limited to the new U- Space Service Providers (USSP).

The evolution of U-Space systems relies on greater digitalisation, automation, and the evolution of operations at a higher pace as compared to conventional air traffic management. The “common information service” should be clearly required to provide that “single point of truth”, capturing the status of operations in any given piece of airspace, at any given point in time, in order to create the conditions for manned and unmanned aircraft to operate safely, in the airspace (controlled and uncontrolled) where U-space services are provided. This includes a central registration, geo data and track data base and should include a collaborative airspace management and sharing of digital situation awareness. U-Space systems must be interoperable with existing air traffic management (ATM) systems and must demonstrate that they provide an equivalent level of safety and compliance with the applicable and forthcoming rules.

As in ATM, a collaborative approach between stakeholders is essential in ensuring efficient and effective services. While some ANSPs will be able to provide a number of essential U-space services critical to its success while ensuring the safe integration with ATM, IATA believes this should not be a barrier to the entry of new market entrants that can demonstrate the appropriate safety, airspace and traffic management culture, expertise, skills and means needed to implement key U-space services. To that end Common Information Services should be fully liberalised and open to the same market conditions as envisaged by the Commission for terminal navigation services. What is critical is that the cost of integration shall not be borne by the airlines in the form of increased charges, but in fact should be the responsibility of the UAS operators, Here again, IATA strongly believes that robust safeguards against the creation of new monopoly/oligopoly data provider or providers, should be foreseen. Indeed, we do not support the existence of monopolistic/oligopolistic situations where prices for access to data is based on the marginal cost of making the data available (As referred in Articles 9.4 and 31.2).

Performance targets & Charging

Council position

IATA welcomes the Council position on the fact that targets are binding.

We welcome the fact that safety has not been re-introduced as an union performance target. Safety is a prerequisite and should not be used as an excuse by ANSPS to not fulfil their obligations However, safety and environment will be/remain key performance indicators to be monitored. .

IATA is very concerned by the possibility for Member States to support the implementing acts when establishing targets, implementing acts will give more power to Member States than delegated acts and the examination procedure could considerably slow down the process). IATA strongly rejects the Council position on the PRB which does not have any regulatory role to play but should act as a consultative body only. Here again, we fear an endless process.

European Parliament position

On Performance targets:

IATA could support that the Reference period length shall be a minimum of two years and a maximum of three years (Article 10). However, we require further clarification on how the shortening of a reference period would affect the investment/CAPEX programs of States and ANSP`s.

We support the deletion of safety as a union performance target. Safety is a prerequisite and should not be used as an excuse by ANSPS to not fulfil their obligations

IATA expects some clarification on the following vague provision: “a climate Union-wide performance target as an obligation to contribute



Indeed if the draft performance plan is not supported, the EC can adopt implementing acts (giving more power to MS than delegated acts) and via the examination procedure (delaying the process).

IATA supports the adoption of article 17.2: "In case of a network crisis which prevents the issuing of reliable traffic forecasts, the transitional provisions (...) may include the suspension of the performance system until new reliable forecasts are available. In such a case, the Commission shall define the relating conditions, including necessary adaptations to applicable charges (...)"

On penalties at national level:

IATA supports the positive development on Article 42. "Member States shall lay down rules on penalties applicable to infringements of this Regulation and of implementing acts adopted (...) and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive".

We also welcome the fact that charges "shall not include the costs of penalties imposed by Member States on ANSPs" (Art 20-4).

up to 10% of CO2 emissions savings as part of the climate neutrality goal".

We support the possibility for the Commission to add additional key performance areas for performance target setting or monitoring purposes with delegated acts and to be assisted by the Agency acting as Performance Review Body (PRB) and national supervisory authorities in the implementation of the performance scheme. The Union-wide performance targets for terminal air navigation services shall take account of differences in the provision of those services due to local circumstances.

Incentives are foreseen for providers exceeding binding performance targets. However, the evaluation of financial incentives should be based on a clear focus on effects attributable to air navigation service providers and taking due account of impacts stemming from actions of other stakeholders (recital 22a).

We strongly support Parliament position on the possibility for the PRB to impose corrective measures, including fines, and periodic penalty payments in accordance with Article 42 a/ and the current Article 84 of the EASA Basic regulation (fines can go up to 4 % of the annual income or turnover!) Of course, we support the provision that charges shall not include the costs of penalties imposed by Member States or the PRB.

A reference to Article 15 of the Chicago convention has been amended to support the "user pay principle" for the necessary use of services" (COMP 19).

Targets to be binding and properly implemented

We strongly welcome the exclusion of safety as a performance target, because safety is a prerequisite and not a target. However, safety is a key performance area that should be periodically reviewed, monitored, and benchmarked as proposed in Article 10.2 (c).

In 2018 the European Commission (EC) commissioned an academic study on benchmarking of ANSPs. This study conservatively estimated EU-wide cost-inefficiencies in the range of 25% to 30%.

In 2018 delays amounted to more than 19 million minutes, 105% more than in 2017, much of which has been caused by outdated work practices in monopoly suppliers.



Ambitious target setting is necessary for the various Key Performance Areas/Indicators at the Union-wide, Member State and local level. To ensure equity, coherence and adequate contribution from all service providers, the setting and revision of targets must be transparent and the accountability of the independent regulator.

Consultation with Member States, service providers, the airspace user community and staff associations to support the target setting process is essential. The established targets should be based on a set of KPIs, which are easily measured. The KPIs must be independent and airspace users must be involved in the process. A transparent appeal mechanism under the supervision of the EC must be provided. All targets should be considered as a minimum, and service providers are expected to identify where enhanced performance can be achieved.

Investments must be cost efficient. The new regulation package should ensure that the future framework provides the right mechanisms in the context of the challenges facing the States with increased emphasis for behavioural change and for investments in rationalization and modernization of the ATM supply chain. The profitability or return on investments is a key driver: this can be achieved by a change in the air navigation charges regulation, linking the rate of return on the investments made by the ANSPs and equity of their shareholders to the achievements of the performance scheme.

We support the provisions in the EC proposal on Article 13-11 stating that if performance targets are not reached or the performance plan is not correctly implemented, the Agency acting as PRB shall issue decisions requiring corrective measures to be implemented by the air traffic service providers, with the possible requirement that an air traffic service provider may be required to delegate the provision of the relevant service to another air traffic service provider. A proper contingency plan should be foreseen if obstacles (constitutional or technical) prevent this possibility from being implemented.

Failing to deliver performance targets must result in meaningful penalties. Where network, national or local capacity targets are not met, service providers shall be subject to pre-defined financial penalties directly linked to the missed performance. Vigilance is required to guard against the potential for costs associated with any penalties, to being included in standard charges. The framework for penalties must be designed at an EU level to ensure inappropriate "trade-offs", cannot occur.

Strong economic regulation is needed by means of a genuine price cap scheme and by monitoring the approval process for the unit rates of the air navigation charges according to the objectives of the performance scheme. Such regulation shall also consider the situation of each individual ANSP and the level of efforts made to engage in the structural reforms and investments requested to deliver SES benefits. A robust airspace users' consultation mechanism must be implemented in this process.

European regulation should balance the risk of actors in the value chain. Provisions for traffic risk sharing, cost exemption, inflation and modulation of charges should be eliminated to generate a level playing field. The independent regulator should regulate the return for a service provider based on efficient costs. Service providers shall bear the potential costs and benefits relating to their own financial performance. Performance plan investments need to be delivered – since 2012 a total of 35% of the planned and funded investments have not been implemented. In order to ensure capacity expansion, a compensation mechanism shall be introduced that assists the financing of capital expenditures. Unspent capex must be returned to users.

The National Supervision Authorities (NSAs) shall be responsible for the elaboration of the performance plan. However, those plans will have to be submitted to the economic regulator for endorsement before adoption by individual states.

We support binding performance obligations: where monopoly ATM services are maintained at the local, national or regional level, because rationalization of these services is expected to provide better cost efficiency. The new regulation will have to state clearly that providers of these services have to be designated by Member States as



service providers, for a limited and regularly reviewed term, with a service level agreement containing binding performance obligations aligned to the performance scheme.

Modulation of Charges

Council position

IATA supports the majority of Member States who shared the same concerns regarding the modulations of charges. Whereas the modulation of charges by Member States is possible, we welcome the necessity of a feasibility study to implement such a modulation at EU level. Airlines must be involved in all aspects of this assessment.

European Parliament position

We do not support the EP position on the the Modulation of ANSP charges in relation to CO2 emissions or the use of SAF and the creation of a common unit rate; In addition, the wording is vague in encouraging the use of "alternative clean propulsion technologies" and should be clarified further

The EC proposal to modulate charges is not supported

IATA welcomes the continued collaboration with airports and ANSPs on measures to reduce the environmental impact of aviation. With technologies available today, significant opportunities remain to reduce actual aircraft fuel burn and should be prioritized. Notably, airspace optimization and initiatives to enable more direct aircraft routing can achieve substantial emissions reductions that would, in Europe, surpass the contribution of SAF or fleet renewal in the near term.

We strongly believe that real progress will be achieved through such continued collaboration. In contrast, the modulation of user charges will not lead to any measurable positive impacts. In practice, it may actually incentivize carbon leakage and distract from the real solutions.

- Airspace users already have strong financial incentives to reduce greenhouse gas emissions and fuel use as a result of fuel costs and market-based measures such as CORSIA and EU ETS. To the extent that the modulation of airspace user charges would be such that it would act as an incentive that would be meaningful compared to fuel costs and existing market-based measures, it would likely incentivize operators to fly longer routings in order to avoid more costly charging schemes, potentially leading to higher fuel use and CO2 emissions. If ANSPs are serious about facilitating fuel savings, the focus needs to be on offering optimized routings and not creating financial incentives that interfere with rational decisions on optimal flight operations.
- IATA is strongly concerned that linking airspace user charges to CO2 emissions would lead to more contention on how to address aviation's emissions and undermine a global and multilateral long-term approach in ICAO. Modulating charges on the basis of CO2 would be equivalent to modulating them in relation to fuel use and would, therefore, likely be challenged under the Chicago Convention and air services agreements. In addition, this would de facto mean that emissions from international flights would be accounted for under charging schemes, in addition to being accounted for under CORSIA (EU ETS and the many taxes introduced by European States). This would be against the principles agreed in ICAO Assembly Resolutions A40-18 and A40-19.

The modulation of charges in relation to CO2 emissions would give a false sense that an additional measure has been introduced by ANSPs, when in reality it would be a mere distraction from the real need for ANSPs to provide infrastructure that allows airspace users to achieve real fuel savings.

We would also like to note that EUROCONTROL recently published a report which concluded that there is little evidence that taxing aviation or raising fuel prices leads to lower CO2 emissions. The effects (or rather lack of effects) of modulation would be equivalent to those analyzed by EUROCONTROL.



Paradoxically, charging airspace users for CO₂ emissions would incentivize ANSPs to provide less efficient infrastructure as the charges would be higher if longer routings and less efficient procedures have to be followed by users.

Sustainable Aviation Fuel (SAF)

The proposal to modulate ANSP charges in relation to the use of SAF raises the same concerns and issues as those raised above on the modulation of charges in relation to greenhouse gas emissions.

However, in addition, the proposal suffers from 2 further fundamental flaws:

- It is well known that it is impossible to determine on which aircraft SAF are used. The use of SAF is accounted for under a “book and claim” methodology which, to put it simply, is based on airlines demonstrating purchases of SAF rather than demonstrating where the SAF have been used. It is therefore not possible to modulate charges based on whether SAF are used for a specific flight or not. The only workable approach would then be to allow airlines to claim SAFs they purchased to benefit from lower airspace user charges. However, this would likely prevent them from claiming the same SAF batches under other schemes, i.e. CORSIA or EU ETS, to avoid double-claiming/counting. As a result, the financial incentive created here would be “neutralized” by weaker incentives under other schemes.
- The European Commission proposed in July 2021 in its “Fit for 55 package” a regulatory framework (“RefuelEU”) to increase the use of SAF and it is therefore unclear why this is also addressed in this context. In particular as some of the measures considered in the context of RefuelEU, such as a blending mandate, would make the modulation of charges in relation to SAF completely meaningless.

More fundamentally, it is unclear how SAF are related to airspace use and it should be recalled that some international agreements specify that user charges should be related to the provision of air navigation facilities and services.

Common Unit Rate

Council position

IATA supports the deletion of the provision covering a common unit rate

European Parliament position

IATA does not support the EP position on the set up of a common unit rate. This option is largely ineffective in solving the problems they are intended or supposed to resolve including the easing of capacity constraints and the reduction in unit costs.

[Congestion and peak charges](#) (i.e., different charges during particular periods) have very little impact or influence on traffic patterns and especially within relatively dense and complex airspace such as core Europe. They are largely ineffective in solving the problems they are intended or supposed to resolve including the easing of capacity constraints and the reduction in unit costs.

In our experience congestion charging arbitrarily redistributes costs between different airline users and can make matters worse by introducing distortions into the overall network. Congestion or peak charging are also a double hit on the users who are already funding the system and paying for delay and fuel costs.

Airline schedules are primarily driven by demand and aircraft availability within an intensely competitive business. We have little opportunity to adjust schedules to such a system in an efficient way due to the complex task of



scheduling operations. The challenge for airlines is to maximize aircraft utilization and optimize aircraft rotation within the restraints of slot availability, airport curfews, opening hours, increasing environmental restrictions, crew availability and many other factors.

To overcome these operational and commercial issues any differentials would have to be so high to influence behaviour that they would likely also generate claims of discriminatory or anti-competitive charging or unjustified surpluses for providers. It should also be considered that given that fuel is now some 32% + of our total operating costs there are limited opportunities to fly different routings for savings from differential charges.

The call for congestion or peak charges and pursuit of market mechanisms has previously generated interesting economic and academic theoretical discussions because of their application within other industries. Such proposals are also raised under the guise of making best use of assets or scarce resources. The aviation market however is substantially different from other markets where congestion pricing has been tried or used. Electricity, roads, hotels or theatre-tickets for example are straight-forward products where consumers and producers can easily switch, which is not the case for aviation. Economic experiments should not be allowed to detract from the focus and requirement to manage congestion and providing the necessary capacity.

Consideration should be given to the ICAO requirements in relation to differential charges requirements. Document 9082 says: - *"States should assess on a case-by-case basis and according to local or national circumstances, the positive and negative effects of differential air navigation services charges. States should ensure that the purpose, creation, and criteria for differential charges are transparent. Without prejudice to modulated charging schemes, the costs associated with such differential charges should not be allocated to users not benefiting from them."*

Economic pricing supposedly encourages efficient use and provision of airspace. However, having been involved in discussions at fora such as ICAO and EUROCONTROL we are well aware of the difficulties for establishing the sound basis for calculating marginal costs necessary to implement economic pricing. These include the practical difficulties for service providers in identifying and evaluating:

- The costs of serving peak and non-peak users.
- Which users are peak or non-peak?
- How does users behaviour change if differential charges are initiated?
- To determine whether any group of users are imposing a cost on another group.
- Identify that cost in addition to establishing a system to internalize those externalities.

EASA should act as a strong Performance Review Body ...with guarantees

Council position

We strongly reject the position of the Council considering the Performance Review Body (PRB) as a consultative body only.

European Parliament position

IATA welcomes the European Parliament position on EASA / Performance Review Body and its amendments reinforcing the role and the independence of a permanent PRB have been adopted

A strong sanctioning mechanism



As already mentioned:

- We strongly support dissuasive actions against Member States infringing this legislation.
- All targets should be considered as a minimum and service providers are expected to identify where enhanced performance can be achieved.
- Failing to deliver performance targets must result in meaningful penalties.
- Where European, national or local targets are not met, service providers shall be subject to pre-defined financial penalties directly linked to the missed performance of the target.

For these reasons we support a more ambitious mechanism to implement foreseen provisions on performance and charging schemes with a sanctioning mechanism such as fines or *periodic penalty payment*. To this respect we believe that the EASA basic regulation should be amended accordingly. We strongly support article 20 (4) stressing that determined costs shall not include the costs of penalties imposed by Member States.

A true PRB independence with a bigger involvement of the industry in the governance

Airspace users need to have the guarantees that the PRB should/ will not report to the EASA management board. In addition, and to avoid any conflict of interest, the PRB shall not receive orders from the EASA management board and be fully independent. IATA suggests Airspace users must be involved in the Advisory Board for Performance Review to mirror the Network Management Board (cf. Article 18-3 of the Commission Implementing Regulation (EU) 2019/123)

Need of a well-defined appeal mechanism

IATA is concerned that the appeal mechanism foreseen in the regulation may have unintended consequences, which could see ANSPs continuing to appeal PRB decisions and delaying implementation of the findings. Clarification on how this can be addressed is required.

No direct or indirect fees from airspace users to finance regulatory functions

The empowerment of EASA as PRB should not lead to extra cost/ fees on airspace users. As stated in Article 120 of the EASA Basic Regulation, route charges on airspace users are not foreseen as revenues since pursuant to international law, route charges may only include costs related to air navigation services and, more specifically, navigation services provided to the company actually paying a charge. The associations are proposing to refer to Article 15 of the 1944 Chicago convention on Civil Aviation in the EC proposal on EASA acting as PRB to ensure that the EU legislation shall be without prejudice to the rights and duties of Member States under international law. Recital 17 and Article 126 a/ should be amended accordingly.

Additional clarification is needed on the budget of the PRB. Airlines should not be double charged (at both Eurocontrol and EASA levels). It should also be made clear that if airlines are financing the new PRB under EASA, they need to be fully embedded in the governance structure.

Strengthening the power of the Network Manager should come with guarantees

Council position

IATA does not support the Council position making the Network Operations Plan (NOP) NON binding.

European Parliament position

IATA support the EP in empowering further an independent Network manager) with the following functions: optimization of airspace design and airspace structures ,management of the delivery of air traffic control capacity in the network as set out in



IATA would support clarification on a seamless service provision: indeed, this remains undefined.

IATA is concerned by the new definitions of Network Functions since it might limit the power of NM to achieve real performance improvements and introduction of Service Level Agreements.

a binding Network Operations Plan (NOP), coordination and support in case of network crisis, air traffic flow and capacity management, in order to deliver on key performance targets, planning, monitoring and coordination of implementation activities.

We strongly support the provisions allowing the Network Manager to take decisions through a cooperative decision-making process involving air space users

IATA supports the definition of 'cooperative decision-making' as set in Article 2-26: means a process in which decisions by the Network Manager are made based on interaction and consultation with operational stakeholders and with Member States and other actors as appropriate).

HOWEVER we strongly reject the absence of 'cooperative decision-making' in Article 27-6 on "*flight plan corrections in order to provide climate-optimized flight trajectories*". *There are serious questions to be addressed on liability for airspace users and the safety implications of flight plan corrections being made without a full picture of how the mission was originally planned.*"

The Network Manager (NM) function has a crucial role to play in the rationalization of the European ATM system and this role should be empowered as the manager of the ATM network in Europe. We therefore consider that the NM should be empowered to coordinate the implementation of the European ATM system. The local levels either cannot see, or are not motivated to optimize capacity at a European level. In this regard, we fully support the intent to make the network operation plan binding. This will assist the NM in managing the primary solution for tackling delays caused by insufficient capacity, or for balancing network challenges, especially in times of crisis such as the recent COVID-19 period.

A clear strategic view of network capacity improvements, to be coordinated between the different stakeholders, should also be considered. In our view the NM should not only be responsible for managing the optimisation of airspace and route designs, but also for the optimisation of technical and human resources, eventually leading to the integration and consolidation of national ATM infrastructures. However, the impact on individual airline planning and operations within this framework, must be clarified.

We support the cooperative decision-making approach proposed in Article 27. However, we believe that the role of the airspace users should be clarified and strengthened, as the current dual governance of Eurocontrol and the Network Manager mean that the financiers of the system cannot truly influence the outcome. Airspace users SHALL be consulted on "*flight plan corrections in order to provide climate-optimized flight trajectories*" contrary to what the EP adopted. Airspace users *have serious questions on the potential liability aspects of this provision along with potential safety impacts.*

In line with our position on achievement of binding performance targets (Article 10), IATA welcomes the intention to make the Network Operations Plan (NOP) binding. Throughout the past regulatory periods, ANSPs have failed



to meet the capacity and environmental targets which have led to significant CO2 generation and costs which had to be absorbed by airlines. In support of provisions in Article 13-11 financial penalties for non-performance should also be in scope for non-achievement of the binding NOP. Requiring ANSP`s to provide binding operational plans is a step in the right direction, and will ensure a more effective and efficient European network.

Airspace interoperability and technological innovation

Council position	European Parliament position
<p>IATA supports the following provisions FUA/SESAR:</p> <ul style="list-style-type: none">FUA: Mechanism to suspend operations is includedSESAR focused more on industrialization phase – reference to Common projects for Synchronization of mature operational changes in line with the ATM Master Plan	<p>We welcome the EP position stressing the importance of interoperability and of a ground/air investment coordination. This is a crucial point to avoid a “de-synchronized” development of the Single Sky.</p> <p>We also support the coordination of standardization activities to be executed by the Commission with assistance from the Agency. They shall be subject to appropriate governance, which shall recognize the needs and priorities of operational stakeholders. On Common projects: the Commission may set up common projects for implementing the essential operational changes identified in the European ATM Master Plan, which support a timely and synchronized deployment of the Union law as regards digital, climate and environment areas.</p>

IATA fully supports and welcomes the inclusion of FUA, SESAR Coordination and Common Projects within the regulatory framework

Flexible use of airspace

FUA was only mentioned in the recitals of the 2013 SES2+ proposal, the existing Article 7 of Regulation (EC) 551/2004 should be re-inserted. In addition, it should clearly assign the responsibility for ensuring the uniform application of FUA to Member States and ensure its consistency with the ATM Master Plan. This would be complementary to the EASA Basic Regulation, which establishes the essential requirement that airspace management needs to support the uniform application of FUA.

SESAR coordination

Europe’s ATM system is based on airspace procedures and infrastructure that needs to be urgently updated.

SESAR, the technological pillar of the Single European Sky (SES), is the mechanism which coordinates and concentrates all EU research and development (R&D) activities in ATM. SESAR’s role is to define, develop and deploy tools to increase ATM performance and build Europe’s green, smart and digital air transport system.

IATA welcomes the initiative of the Commission to establish a European Partnership for Air Traffic Management under the umbrella of Horizon Europe. We believe that the work done by the SESAR Joint Undertaking (SJU) needs to be continued as the future research and innovation programme for ATM will still require a close coordination. It is essential that the systematic approach established by SESAR is kept and even strengthened



in order to successfully address the challenges of the coming decades: the achievement of the Digital European Sky.

IATA also believes that it is important to get more clarity on the pre-requisite to open-up the partnership to new participants. With the foreseen, from 9 total new Joint Undertakings (JU), it is only possible to become a member of the organisation after making a commitment to bring a significant contribution. While it is not clear to us what comes after acceptance of the first MoU, the AU associations should have a key role to play in guarantying traceability. This raises a threshold that is disadvantageous for small organisations and Airlines, limiting the ability of the industry to contribute at large.

We also believe that it is important that research results, including interim results, are made fully available to the widest possible number of worldwide stakeholders using a common global roadmap (US-NextGEN or CARAT).

1. Research and Development of Innovations

This new SESAR 3 Partnership(s) and Jus for Research and Development and the even more important Deployment of projects should also be appropriately reflected in the legal framework. Definitions for SESAR 3 should therefore be made clear about the laid down provisions for the effective coordination between all phases of the SESAR project should be defined. This would allow for increased coherence with other legal instruments related to SES and for Commission Implementing Regulation (EU) No 716/2014 of 27 June 2014 on the establishment of the Pilot Common Project supporting the implementation of the European Air Traffic Management Master Plan future changes to SESAR to address the challenges of ATM modernisation, while maintaining a strong and clear link to the Single European Sky framework.

2. Deployment of Solutions, Trials (VLD) and Gap Analyses

An ATM focused Infrastructure or Integrated Deployment partnership and fair funding process is vital; for maximum effectiveness, this partnership should be specifically focused on ATM, CNS and greener solutions. ATM has specific challenges that need to be addressed in further R&I and Deployment activities to avoid unnecessary gaps.

These include the further development of digitalisation and automation solutions for future ATM performance in all main dimensions (safety, capacity, environment and cost efficiency) and in the context of significantly heightened pressure on aviation as a whole, to demonstrate maximum environmental efficiency. Specific challenges also exist to address the still evolving need to accommodate and promote new classes of airspace users (e.g. drones, urban air mobility and sub-orbital flight).

IATA supports the continuation of an efficient SESAR Deployment of the developed Solutions resulting in Common Projects (CP1/2 etc.), however the benefits of these PCP/CP1 projects must be realised before the next sets are defined and implementation commenced. IATA supports the continuation of Union funding (via INEA) particularly in the area of projects that do not have a supporting positive cost benefit analysis, especially where network efficiency is at stake.

The future foreseen Joint Partnerships (SESAR 3 and SDM/NM) should improve the efficiency of the R&I and the Deployment through full transparent governance and coordination, any set up should address the shortcomings identified in the ECA report on SES (e.g. Rec. 9 Prioritize EU support to R&D solutions that promote defragmentation and a competitive environment).

The governing role of the operational stakeholders should be strengthened, as they are the ones finally accountable, to ensure a focus on solutions which are essential to achieve the promised objectives on time and without further delay. Any partnership, regardless of membership, should allow for participation of the entire Airspace User community, to ensure fairness and to give equal opportunities, as well as to be able to use the expertise available in the Industry,



Towards an evolution of ATCO training and licensing:

Council position

We do not support the lack of ambition of the Council on the harmonisation of training for air traffic controllers.

European Parliament position

IATA welcomes the European Parliament position on the possibility for the Commission in close cooperation with the Agency to adopt implementing acts laying down measures within the context of the common transport policy such as the harmonisation of training for air traffic controllers.

Post COVID-19 will require additional work and research by training organizations and regulators to adapt and develop a training framework that is fit for the 'new normal' making use of technology. A revised training framework will most probably need to combine different layers of virtual in-classroom, simulator, and assessment modules.

IATA is aware that much discussion of ATCO flexibility has been facilitated by the Network Manager, EASA and the social partners. The airspace user community needs to be included in this initiative as you move toward defining and implementing modern techniques such as evidence-based training and qualification. Much experience can be derived from modern airline training techniques to address bottlenecks in designing a more effective and efficient training regime for ATCO`s that embraces new technology from SESAR.