



position paper

European Low Fares Airline Association

SINGLE EUROPEAN SKY II

ELFAA's comments on the European Commission's proposals for:

- **regulation amending Regulations 549/2004, 550/2004, 551/2004 and 552/2004 in order to improve the performance and sustainability of the European aviation system (COM(2008) 388); and**
- **regulation amending Regulation 216/2008 in the field of aerodromes, air traffic management and air navigation services and repealing Council Directive 06/23/EEC (COM(2008) 390).**

September 2008

The European Low Fares Airline Association's (ELFAA's) recent Airspace Manifesto¹ provides a high level vision for the future European Air Traffic Management (ATM) regulatory and operational framework. It is based on the principles of regulatory efficiency, non-discrimination, cost benefit analysis, operational efficiency, and opening of the market. The Commission's proposed Single European Sky II (SES II) package meets some of the requirements for the well-functioning ATM, and in so far it was welcomed by ELFAA. However, the package lacks ambition in key areas, stopping short of recommending the solutions that would guarantee the revolutionary change, called for by ELFAA, in the way European ATM operates and is regulated.

Air navigation service provision is the only part of the aviation value chain that has not been affected by the liberalisation of the European air transport in the 1990s. Following the liberalisation and the emergence of low fares airlines, airlines embarked on a constant search for efficiencies and cost savings, both internally and externally, i.e., within the supply chain. This pressure impacted on airports, ground handling companies, etc., but it did not affect monopoly Air Navigation Service Providers (ANSPs) operating in a full cost-recovery regime. Consequently, contrary to all other cost components in the supply chain (excluding fuel), the cost of ATM in Europe continues to rise unabated. This situation is no longer acceptable, particularly at the time of aviation's biggest ever crisis.

¹ Airspace Manifesto - ELFAA's view on how to save 5 billion euro, 12 million tonnes of CO2 and 21 million minutes of flight delays in the European airspace every year, March 2008. Available for download at: http://www.elfaa.com/documents/ELFAA_Airspace_Manifesto_March_2008.pdf.

ELFAA strongly believes that the underlying inefficiencies of the European ATM can only be properly addressed by the opening to competition of the market for air navigation service provision, which will be possible in the near future through the pan-European application of low-cost digital technologies, available already today. ELFAA remains committed to pursuing this objective, and maintains that only the rules of free market can lead to real efficiencies and cost savings, including through consolidation.

ELFAA is willing to support, however, as an interim solution, robust economic regulation of ANSPs, all of which enjoy total monopoly status. Amendments to the Commission's proposed performance regulation, suggested below, are aimed at correcting some of the major shortcomings of the proposal and maximising the effectiveness of this interim solution.

Although ELFAA would like to see a significant number of changes to the original proposal, we understand that the legislative process must necessarily be fast-tracked, due to the near end of the current parliamentary term. This paper, therefore, focuses on a limited number of key suggested amendments to the Commission's proposal, which, if implemented, have the greatest potential to improve the functioning of Europe's ATM. For the sake of clarity, ELFAA's suggested amendments do not include consequential amendments and amendments to recitals.

Next to performance regulation, these key areas include: the establishment of Functional Airspace Blocks (FABs), the introduction of competition in the ancillary ATM services markets, the so-called common projects, the network management function, the role of Eurocontrol in the EU regulatory process, and the continued possible cross-subsidy of charges between en-route and terminal navigation services.

It is also essential that the European Union provides appropriate public funding to EASA, to enable it to adequately execute its extended competencies. ELFAA further believes that the extension of EASA's scope should be followed over time by the scaling down of the national civil aviation authorities and their integration into EASA as regional offices. This would help increase the necessary efficiency and effectiveness of supervisory functions.

ELFAA encourages the Parliament and the Council to see SES II as a unique opportunity to eliminate some of the inefficiencies of this highly important part of the aviation value chain. The case for this reform has never been as urgent and strong as it is today, at the start of the greatest industry crisis in the history of aviation. If the competitiveness of European aviation, and, consequently, European tourism, business, regional connectivity, mobility and cohesion, are to be preserved, air navigation service provision must undergo a process of rapid and ambitious reform. It will otherwise continue to undermine the viability of the industry and jeopardise the very real gains for consumers of the EU's far-sighted liberalisation of air transport.

Amendment 1

Article 8 paragraph 2 Regulation (EC) No 549/2004

2. For the development of implementing rules the Commission may issue mandates to **Eurocontrol** setting out the tasks to be performed and the timetable for this. In this connection, it shall endeavour to make best use of the arrangements of **Eurocontrol** for the involvement and consultation of all interested parties, where these arrangements correspond to Commission practices on transparency and consultation procedures and do not conflict with its institutional obligations. The Commission shall act in accordance with the procedure referred to in Article 5(2).

2. For the development of implementing rules the Commission may issue mandates to **an appropriate body** setting out the tasks to be performed and the timetable for this. In this connection, it shall endeavour to make best use of the arrangements of **the appropriate body** for the involvement and consultation of all interested parties, where these arrangements correspond to Commission practices on transparency and consultation procedures and do not conflict with its institutional obligations. The Commission shall act in accordance with the procedure referred to in Article 5(2).

Justification

Article 8 refers on several occasions to Eurocontrol as “the” body for developing mandates on behalf of the EC. Several competent bodies currently exist to undertake such tasks and others may exist in the future. In order to provide flexibility to the Commission, and ensure use of the most appropriate body, the Regulation should not stipulate the use of Eurocontrol for these functions but, rather, leave the option open for the Commission.

Amendment 2

Article 11 paragraph 1 (e) Regulation (EC) No 549/2004

(e) setting of Community-wide performance targets, their respective reference period covering a minimum of three years and a maximum of five years and appropriate convergence criteria in accordance with the procedure referred to in Article 5(3);

(e) setting of **binding** Community-wide, **regional and national** performance targets, their respective reference period covering a minimum of three years and a maximum of five years and appropriate convergence criteria in accordance with the procedure referred to in Article 5(3);

Justification

One of the complexities of meeting European performance targets will be the establishment of national and regional targets, which are supposed to collectively allow the European targets to be met. As proposed by the Commission, the setting of national targets will be left to national authorities. However, this will lead to endless arguments and legal battles about which national targets need to be more ambitious, etc. In order to increase the effectiveness of performance regulation and legal certainty, the European Commission should be responsible for setting both the European and national / regional targets. Member States and users should obviously be entitled to submit recommendations to the Commission.

The meaning of “appropriate convergence criteria” requires further explanation from the Commission.

Amendment 3

Article 11 paragraph 2 Regulation (EC) No 549/2004

2. Without prejudice to the role of the Committee, the Commission may designate ***Eurocontrol or another competent public*** entity to act as a 'performance review body'. The role of the performance review body shall be to assist the Commission in the implementation of the performance scheme referred to in paragraph 1. The Commission shall ensure that the performance review body acts independently when carrying out the tasks entrusted to it by the Commission.

2. Without prejudice to the role of the Committee, the Commission may designate ***an appropriately-qualified independent*** entity to act as a 'performance review body'. The role of the performance review body shall be to assist the Commission in the implementation of the performance scheme referred to in paragraph 1. The Commission shall ensure that the performance review body acts independently when carrying out the tasks entrusted to it by the Commission.

Justification

Whereas a significant amount of expertise in the area of performance review and benchmarking has been gathered in recent years by Eurocontrol's Performance Review Unit, it would be irresponsible to assume that Eurocontrol is, or will in the future be, the only body capable of providing this service. The regulation should allow the Commission to designate an independent entity which the Commission believes is best suited at any given time to perform performance review.

Amendment 4

Article 9a paragraph 1 Regulation (EC) No 550/2004

1. **Member States** shall take all necessary measures in order to ensure the **establishment** of functional airspace blocks as soon as possible and at the latest by the end of **2012** with a view to achieving maximum capacity and efficiency of the air traffic management network within the single European sky and maintaining a high level of safety and contributing to the overall performance of the air transport system and reduced environmental impact. Member States shall cooperate with each other to the fullest extent possible in order to ensure compliance with this provision.

1. **The Commission** shall take all necessary measures in order to **establish and** ensure the **implementation by Member States** of functional airspace blocks as soon as possible and at the latest by the end of **2010** with a view to achieving maximum capacity and efficiency of the air traffic management network within the single European sky and maintaining a high level of safety and contributing to the overall performance of the air transport system and a reduced environmental impact. Member States shall cooperate with each other to the fullest extent possible in order to ensure compliance with this provision.

Justification

The development of FABs has so far not led to any tangible efficiencies. All existing FAB projects follow national borders rather than operationally optimised boundaries. The lack of a “top down” approach to FABs has led, and will continue to lead, to unspecified national interests hindering the development of FABs. This amendment calls on the Commission to take a pan-European lead in establishing FABs while leaving Member States to implement FABs. The choice of 2010 rather than 2012 reflects the urgency of deriving meaningful benefits from FABs.

Amendment 5

Article 15 paragraph 2 point (b) Regulation (EC) No 550/2004

(b) The costs to be taken into account in this context shall be those assessed in relation to the facilities and services provided for and implemented under the ICAO Regional Air Navigation Plan, European Region. They may also include costs incurred by national supervisory authorities **and/or recognised organisations, as well as other costs incurred by the relevant Member State and service provider in relation to the provision of air navigation services.** They shall not include the costs of sanctions imposed by Member States according to Article 9 of the framework Regulation nor the costs of any corrective measures imposed by Member States according to Article 11(1)(g)(v) of the framework Regulation;'

(b) The costs to be taken into account in this context shall be those assessed in relation to the facilities and services provided for and implemented under the ICAO Regional Air Navigation Plan, European Region. They may also include costs incurred by national supervisory authorities. They shall not include the costs of sanctions imposed by Member States according to Article 9 of the framework Regulation nor the costs of any corrective measures imposed by Member States according to Article 11(1)(g)(v) of the framework Regulation;'

Justification

As drafted, point (b) allows for the recovery of the costs incurred by “recognised organisations” and “other costs incurred by the relevant Member State and service provider in relation to the provision of air navigation services”. These definitions are extremely broad and vague and could all too easily lead to abuse.

Amendment 6**Article 15 paragraph 2 point (d) Regulation (EC) No 550/2004**

(d) cross-subsidy shall not be allowed (d) ***Deleted***
between en-route services and terminal services. It shall be allowed between different air navigation services in either one of those two categories only when justified for objective reasons, subject to clear identification;

Justification

The effect of disallowing such cross-subsidy is likely to threaten the viability of the many new point-to-point, region-to-region services, introduced since liberalisation, which are so germane to the objectives of the Lisbon Agenda. The gainers would be operators overflying Europe - an own goal for Europe.

Major European airports benefited greatly in the past from cross subsidies between en route and terminal services. This led to the current significant disparity in terms of ATM infrastructure between such major airports and smaller regional and secondary airports. It would be highly inequitable to disallow further cross subsidies at a time when, due to capacity constraints at many major airports, regional and secondary airports are expected to play an important role in the European air transport network and require significant infrastructure investment which cannot be funded solely from terminal navigation charges.

Amendment 7

Article 15 paragraph 3 point (e) Regulation (EC) No 550/2004

(e) Charges shall encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to a high level of safety and cost-efficiency and shall stimulate integrated service provision. To that end, and in relation to the national or regional performance plans, national supervisory authorities may set up mechanisms, including incentives consisting of financial advantages and **disadvantages**, to encourage air navigation service providers **and/or airspace users to support improvements in the provision of air navigation services such as increased capacity, reduced delays and sustainable development, while maintaining an optimum safety level.**

(e) Charges shall encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to a high level of safety and **significantly improved** cost-efficiency, and shall stimulate integrated service provision. To that end, and in relation to the national or regional performance plans, national supervisory authorities may set up mechanisms, including incentives consisting of financial advantages and **penalties**, to encourage air navigation service providers **to meet their performance targets.**

Justification

The imposition of financial incentives to deliver improved performance should not be directed at airspace users. The objectives of delivering improved performance in the context of the Single European Sky should be targeted towards monopoly service providers. Consequently, financial advantages and penalties should be used to incentivise service providers to meet performance targets.

Amendment 8

Article 15 paragraph 4 Regulation (EC) No 550/2004

4. The Commission may decide, in accordance with the procedure referred to in Article 5(3) of the framework Regulation, **that charges shall be used to finance** common projects designed to assist **specific categories of** airspace users and/or air navigation service providers in order to improve collective air navigation infrastructures, the provision of air navigation services and the use of airspace, in particular those that may be required for the implementation of the ATM Master Plan. Such decisions shall identify the common project and specify in particular the timetable for implementation, **the cost to be charged to airspace users and its allocation amongst Member States.**

4. The Commission may decide, in accordance with the procedure referred to in Article 5(3) of the framework Regulation, **to provide public funding for** common projects designed to assist airspace users and/or air navigation service providers in order to improve collective air navigation infrastructures, the provision of air navigation services and the use of airspace, in particular those that may be required for the implementation of the ATM Master Plan. Such decisions shall identify the common project and specify in particular the timetable for implementation.

Justification

The SESAR project, which can be seen as the best example of a 'common project', will require significant airborne and ground-based investment.

Currently all such investment is funded by airspace users through charges. Airspace users are unable to bear the expected investment required to deliver the improvements envisaged as part of the Single European Sky. In order to deliver the operational, economic, safety and environmental advantages from the SES and 'common projects' it is essential that public funding is provided.

Users should not either be expected to pay for investments, in advance of receiving any benefit from them. In a related field, Boeing and Airbus fund all R&D and recover this only upon sale of the aircraft in question.

Amendment 9

Article 18a paragraph 1 Regulation (EC) No 550/2004

1. *As part of the periodical review referred to in Article 12(2) of the framework Regulation and no more than four years after the entry into force of this Regulation, the Commission shall finalise a prospective study on the conditions for the future application of market principles to the provision and designation of services in the fields of communication, navigation, surveillance, meteorology and aeronautical information.*
1. *The Commission shall take all necessary measures to ensure the application of market principles to the provision and designation of services in the fields of communication, navigation, surveillance, meteorology and aeronautical information not later than by the end of 2010.*

Justification

There is no logical reason why the Commission should wait four years before finalising a study to investigate this area. It is common knowledge that the application of market principles to these services is possible already today. It is only appropriate, therefore, to immediately introduce competition for these services. This will lead to reduced cost and increased quality of service.

Amendment 10

Article 6 paragraph 2 Regulation (EC) No 551/2004

2. In order to achieve the objectives referred to in paragraph 1, the Commission shall ensure that the following functions are carried out:

(a) design of the European route network;

(b) coordination and allocation of scarce resources, in particular radio frequencies and radar transponder codes;

(c) additional functions for the ATM network, as defined in the ATM Master Plan.

The Commission may, under its own control and responsibility, entrust to **Eurocontrol** tasks relating to the execution of the above functions, which do not involve the adoption of binding measures of a general scope or the exercise of political discretion. These tasks shall be executed in an impartial and cost-effective manner; taking into consideration the needs of the whole ATM network and with the full involvement of the airspace users and air navigation service providers.

2. In order to achieve the objectives referred to in paragraph 1, the Commission shall ensure that the following functions are carried out:

(a) design of the European route network;

(b) coordination and allocation of scarce resources, in particular radio frequencies and radar transponder codes;

(c) additional functions for the ATM network, as defined in the ATM Master Plan, **including air traffic flow management**.

The Commission may, under its own control and responsibility, entrust to **an appropriate body** tasks relating to the execution of the above functions, which do not involve the adoption of binding measures of a general scope or the exercise of political discretion. These tasks shall be executed in an impartial, and cost-effective manner; taking into consideration **user-preferred trajectories**, the needs of the whole ATM network and with the full involvement of the airspace users and air navigation service providers.

Justification

It is not clear why the Commission should entrust Eurocontrol with these functions. The regulation should allow the Commission to designate an entity which the Commission believes is best suited at any given time to perform these tasks.