



Opinion No 04/2013

Alignment of the EASA and the Single European Sky frameworks through the SES2+ initiative

17/05/2013

EXECUTIVE SUMMARY

This Opinion addresses the impact on the EASA system of the forthcoming SES2+ initiative for the simplification and modernisation of the SES legislation and for the alignment of the EASA and the SES frameworks. The SES2+ initiative includes several proposals, one of which aims to amend Regulation (EC) No 216/2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (the Basic Regulation).

The EASA system is the European aviation framework covering all domains (airworthiness, air operations, flight crew licencing, ATM/ANS and airports). Its aim is to ensure a high uniform level of safety and also a level playing field for the aviation industry, to promote free movement and regulatory efficiencies as well as to assist Member States in fulfilling their ICAO obligations. It contains measures to directly prepare binding rules and means of compliance, to monitor their implementation, to act as an oversight body as well as to analyse safety risks and take mitigation measures as necessary. The main objective of SES is to improve the overall efficiency of the way the European airspace is organised and managed. SES has been developed through two legislative packages (SES I & II), the latter including EASA’s extension to ATM/ANS as its safety pillar. The SES and the EASA frameworks are therefore closely interdependent and new SES developments have a direct impact on the EASA system.

When SES II was approved and certain competencies were transferred to EASA, the existing competencies in the SES regulations were left intact, which created a regulatory overlap. The issue was addressed by the European legislator by inserting a new Article 65a in the Basic Regulation requiring the Commission to propose amendments to the SES regulations to take into account the requirements of the Basic Regulation and its implementing rules. SES2+ aims to remove this overlap and to amend the Basic Regulation accordingly.

Moreover, it intends to further harmonise the regulatory approach in ATM and other aviation domains in order to enhance safety and the regulatory efficiency as well as to ensure legal certainty. In other domains the technical regulation is incorporated in the EASA framework to serve its defined objectives, whereas economic regulation is performed by the Commission. In the ATM domain the situation partly differs; the technical regulations are stemming from various sources. The approach of the SES2+ initiative is to incorporate technical regulations covering all aviation domains in the EASA framework.

SES2+ also proposes to strengthen the EASA framework to enable and facilitate a coordinated entry into operation of the various technological innovations stemming from the SES technical research under its SESAR initiative touching upon all aviation domains, and especially the airborne and ground equipage and procedures.

This Opinion presents the views of the Agency on the policy underpinning the SES2+ initiative and on the Commission proposal to amend the Basic Regulation for the implementation of the said proposed policy.

Applicability		Process map	
Affected regulations and decisions:	Regulation (EC) No 216/2008 (the Basic Regulation)	Concept Paper:	No
Affected stakeholders:	All aviation domains which fall under the Basic Regulation	Rulemaking group:	No
Driver/origin:	European Commission’s <i>Single European Sky 2+</i> initiative (SES2+)	RIA type:	None
Reference:	Commission letter Ares(2013)983268 of 30/04/2013	Technical consultation during NPA drafting:	No
		Publication date of the NPA:	n/a
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1. Procedural information

1.1. The rule development procedure

The European Aviation Safety Agency (the 'Agency') developed this Opinion in line with Regulation (EC) No 216/2008¹ (the 'Basic Regulation') and following a specific request by the European Commission². The Basic Regulation establishes as one of the Agency's tasks the provision of the necessary technical support to the Commission as well as the development and adoption of opinions on which the Commission bases its own legislative proposals concerning the safety of civil aviation. This Opinion has been developed to present the views of the Agency on the SES2+ initiative of the European Commission and to support its implementation. In preparing this Opinion the Agency has not followed its regular rulemaking procedure, since the initiative as a whole is managed by the Commission. A 3-month public consultation, concerning the SES2+ in general, was performed from September until December 2012 on the DG MOVE website. The Commission has also carried out a comprehensive internal impact assessment of the overall SES2+ initiative. However, no specific consultation has been performed with regard to the EASA framework-related amendments.

1.2. The structure of this Opinion and related documents

Chapter 1 of this Opinion contains the procedural information related to this task.

Chapter 2 'Explanatory Note' explains the core technical content. This Opinion consists of the present memorandum explaining the views of the Agency on the policy underpinning the SES2+ initiative and on the content of the amendments to the Basic Regulation proposed by the Commission to implement the said policy. This Opinion is published on the Agency's website³.

1.3. The next steps in the procedure

This Opinion is addressed to the European Commission, which will use it as a technical basis to prepare a legislative proposal.

¹ Regulation (EC) No 216/2008 of the European Parliament and the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1), as last amended by Commission Regulation (EU) No 6/2013 of 8 January 2013 (OJ L 4, 9.1.2013, p. 34).

² Commission letter Ref.: Ares(2013)983268 of 30.4.2013.

³ <http://easa.europa.eu/agency-measures/opinions.php>

2. Explanatory Note

2.1. Issues to be addressed

This Opinion addresses the impact of the forthcoming Single European Sky legislative proposals, the so-called SES2+ initiative, on the EASA system. The SES2+ initiative includes an amendment to the Basic Regulation.

The EASA system forms the safety pillar of SES; these frameworks are therefore very closely interconnected. This Opinion explains the views of the Agency on the policy underpinning the SES2+ initiative and on the content of the amendments to the Basic Regulation proposed by the Commission to implement the said policy.

2.2. Objectives

The overall objectives of the EASA system are defined in Article 2 of the Basic Regulation. This proposal will contribute to the achievement of these objectives, and will also address the specific issues outlined in this chapter.

The main objective of this proposal is to align the EASA and the SES frameworks with the aim to remove existing overlaps and inconsistencies between the two regulatory systems, as part of the objectives of the SES2+ initiative. This proposal also aims at harmonising the approach to developing common technical rules in ATM with other aviation domains within the EASA system. This would mean that the rule development process is harmonised (including its thorough consultation mechanism), and that new rules would serve the same objectives and follow a consistent rule structure. This would support the further elimination of gaps and overlaps between different regulatory measures and would reduce the burden on those responsible for applying or overseeing the application of the rules. Such a harmonised approach in rule development would facilitate as well a coordinated entry into operation of the various technological innovations stemming from the SES technical research under the SESAR initiative, which concerns all aviation domains, and especially the airborne and ground equipment and procedures.

2.3. Overview of the proposed amendments

The proposed amendments are presented here following the overall structure of the Basic Regulation.

2.3.1. Scope (Article 1)

Currently the scope of the EASA and the SES regulations in relation to ATM issues are slightly different. These differences are mainly related to the provision of air navigation services to civilians by military organisations. The Agency fully agrees that it is advisable to remove such differences in order to ensure full consistency between the two frameworks. In the current situation the scope of regulatory measures in the ATM domain is more limited for the purposes of high uniform level of safety than it is, for example, for economic regulation.

Currently the EASA Basic Regulation and the common rules issued for its implementation do not apply to ATM/ANS services provided or made available by military personnel and organisations, nor to aerodromes which are controlled and operated by the military. However, an obligation has been imposed on Member States to ensure that aircraft are separated where appropriate and to ensure that any military aerodrome open to public use, or services provided by military personnel to the public, shall offer a level of safety

that is at least as effective as that required by the Basic Regulation and its implementing rules.

The definition of scope in SES is different, i.e. all service providers serving primarily civilian traffic are included. The Agency is not aware of the exact way in which this provision has been interpreted and implemented, but assumes that the word 'primarily' reflects a threshold of 50 % of traffic subject to air traffic services. This is also assumed to cover the whole scope of services, from area control centres to service providers at an airport.

The difference in scopes between the EASA and the SES frameworks implies that certain organisations are subject to certification in accordance to the current SES rules but do not have any direct obligation for that according to the Basic Regulation and its implementing rules. Evidence shows that in some Member States this has already caused problems as regards the acceptance of military providers for civilian traffic.

When it comes to military airspace users, the SES framework makes a distinction between flying in accordance with ICAO standards (i.e. as General Air Traffic (GAT)⁴) and flying under operational rules (i.e. as Operational Air Traffic (OAT)). This distinction aims at ensuring the safety of (civil) air traffic on the one hand, and on the other hand at giving the necessary flexibility to military operators to manage their activities carried out as OAT taking into account their various different operational needs. Slightly differing from this the EASA Basic Regulation does not apply to military activities carried out or services provided by the military, but the Member States must ensure that such activities have due regard to the objectives of the Basic Regulation.

Taking into account that the overall objectives of the EU competences both in the SES and the EASA frameworks are very similar, as well as that the methods and procedures for developing and adopting implementing rules in both cases are based on similar principles (including a thorough consultation of the Member States), the Agency agrees that the most appropriate solution would be to amend the definition of the scope of the EASA Basic Regulation on military ATM and aerodrome services and activities to follow the current status in SES (as was already the case in the Commission legislative proposals on the SES II package in 2008). It should also be noted that the regulatory impact of this change would be quite small as it would merely change the situation to what it was from 2004 to 2009 before the extension of the Basic Regulation to ATM/ANS. Although the concrete impact of the change would be quite small, the Agency fully understands its sensitive nature and would be most willing, if so seen appropriate by the European Commission and the relevant Member State authorities, to elaborate more in order to improve further the possibilities for the affected stakeholders to proactively contribute to the different EASA activities.

2.3.2. Objectives (Article 2)

Article 2 of the Basic Regulation defines the establishment and maintenance of a high and uniform level of civil aviation safety as the principal objective of the EASA system. It further defines additional objectives, such as ensuring a level playing field, promoting free movement and regulatory efficiencies as well as assisting Member States in fulfilling their ICAO obligations. In general terms, these objectives could be seen as already including and accommodating the overall objectives of the SES programme to improve the overall performance and capacity of the European airspace and ATM system. However, the Agency fully recognises and agrees that some of the aspects related to the SES objectives would

⁴ Definition provided in Article 2(26) of Regulation (EC) No 549/2004.

merit being more precisely addressed. For example, the deployment of the SESAR deliverables as stemming from the ATM master plan will require specific actions by the Agency in a wide range of aviation subjects and hence a good coordination, and ensuring consistent quality of technical rulemaking activities across all aviation domains becomes increasingly important. Also the implementation of the interoperability regulation, containing various aspects such as technical interoperability between different systems and associated procedures, synchronised introduction of new concepts of operations and global interoperability, deserves special attention. These examples would indeed support clarifying in some more detail the objectives laid down in the Basic Regulation to cover specific SES objectives. Such amendment would emphasise the total system approach and the need for consistency in all aviation domains, and would also clarify the Agency's objectives to support the Commission by preparing technical rules purposed (also) to facilitate EU aviation policies and the overall need to develop the European aviation system.

2.3.3. Definitions (Article 3)

The Agency agrees that the Commission SES2+ proposals require some changes also to the definitions of the Basic Regulation and also agrees with the content and purpose of the presented changes in the draft Commission proposal as regards those definitions that are specific to ATM/ANS and hence the SES2+ initiative. However, the Agency considers that some of the changes proposed by the Commission on more general definitions should be reassessed regarding their necessity and impact on the total system. Such definitions are the following: 'continuing oversight', 'declaration' and 'qualified entity'. The Agency would of course welcome the possibility to assist the European Commission in an eventual detailed legal review.

Furthermore, the implementation of Regulation (EC) No 1108/2009 extending the EASA Basic Regulation to ATM/ANS (and aerodromes) has also raised some needs for minor changes concerning its definitions, which the Agency would suggest to the Commission to review.

The Agency notes particularly that currently the definition of ATM/ANS does not cover aspects of airspace design in line with the essential requirements for ATM/ANS of Annex Vb.2(i) to the Basic Regulation. For reasons of consistency and legal certainty it proposes to the Commission to consider whether this aspect could limit the possibilities of developing implementing measures to address these important safety objectives, and if deemed necessary to amend the definition in question accordingly.

2.3.4. Basic principles and applicability (Article 4)

The Agency concurs with the minor change proposed by the Commission.

In addition to the above, the Agency has found that the terms used in the Basic Regulation to refer to ATM/ANS providers are not harmonised throughout the Regulation. Article 4 refers to 'organisations providing ATM/ANS' whereas Article 8b refers to 'ATM/ANS providers' or 'providers of ATM/ANS', and moreover the essential requirements refer to 'service providers'. The Agency's recent Notice of Proposed Amendment proposing implementing measures concerning these organisations and the oversight (and certification) thereof, harmonised these terms by referring consistently to 'ATM/ANS providers'. Although this solution has been coordinated in advance at a technical level with

the Commission, the Agency would propose aligning the use of these terms accordingly also at the level of the Basic Regulation for reasons of consistency and legal certainty.

The Agency understands also that there is the intention in the SES2+ initiative to propose expanding the scope of the SES Airspace Regulation to cover also some NAT region high-seas areas, as currently this Regulation refers only to AFI and EUR regions. The Agency shares the rationale of such expansion and would see it as logical for a similar alignment of the airspace-related applicability provisions of the Basic Regulation to take place to ensure a comprehensive and consistent EU aviation system.

2.3.5. ATM/ANS (Article 8b)

Article 8b of the Basic Regulation defines the basic principles of the regulation of ATM/ANS services and their providers. These providers are subject to common safety rules stemming from the essential requirements defined in Annex Vb, and compliance verification is normally made by means of certification. The competence for issuing the relevant certificates belongs to the national supervisory authorities (NSAs), as regards operators residing in their territory, and according to Article 22a of the Basic Regulation to the Agency for foreign or pan-European organisations providing services in the European airspace.

In addition to demonstrating compliance with safety requirements in order to provide their services, providers require also an authorisation (designation or selection by a competent air traffic service provider) in accordance with the current SES regulations. While the first obligation aims at ensuring that providers have the means to fulfil their safety responsibilities, the second one is more related to market regulation. Both processes can be disconnected, and both are essential for the service providers. The Agency fully agrees with this current approach where the safety-related certification of service providers falls under the EASA system, while market aspects are regulated by the SES rules. Removing the overlapping certification requirements in the SES regulations would not necessitate changes to the Basic Regulation except from some editorial changes ensuring full textual consistency. In this regard the Commission may wish to check that the designation provisions under the SES framework reflect the same principle and ensure consistency, with particular attention to the case of AFIS providers which are (conditionally) subject to a declaration scheme in the Basic Regulation.

ATM/ANS systems and constituents are currently covered in both frameworks and are subject to common requirements when so defined by the relevant implementing rules. In this context the Agency notes that the current SES interoperability framework, however, may lack some clarity on the requirements that systems and constituents must comply with and also against which criteria the related declarations (verification of systems and conformity or suitability for use of constituents) are issued. In addition, interoperability aspects may not be clearly under the oversight scheme and respective enforcement of the national competent authorities. The Agency acknowledges the processes put in place through the SES interoperability framework and agrees with the intention to integrate it also in the EASA framework. A self-declaration of compliance, possibly supported by verification by responsible bodies, is a well-established approach in the Union's global approach to regulation. Therefore, the Agency agrees that Article 8b be revised so that the existing principles and concepts of the interoperability Regulation can be continued as necessary. This also justifies removing the existing limitation of 'safety-critical' ATM/ANS systems and constituents. Integrating these two schemes would remove another major overlap and inconsistency which exist between the two frameworks and would further

clarify the oversight and enforcement responsibilities by the competent authorities. Once again the Agency would wish to have the opportunity to assist the European Commission in the legal review of the proposed provisions.

2.3.6. Articles 9, 10, 11, 13, 14, 17, 19, 21, 33 and 52

These articles contain minor changes proposed by the Commission which are purposed to ensure consistency with the more substantial changes in some other articles as explained above. The Agency fully concurs with the aim of these changes and would of course be pleased to assist the Commission, if possible, in a detailed legal review thereof.

For Article 11 the Commission proposes a forum to support the national competent authorities in carrying out their tasks by providing a forum for exchange of information and expertise. The Agency fully supports this aim, but wishes also to highlight that this would represent additional work and that any overlaps with other existing advisory forums of the Agency should be avoided.

In this context the Agency wishes also to query whether Articles 18 and 19 addressing the powers and competences of the Agency should be amended in order to take into account the need for technical regulation in the ATM domain. Such regulation, irrespective of whether it is stemming from the SES interoperability needs or from the implementation of Article 8b, may include issuing technical specifications, possibly endorsing recognised industry standards. Such technical specifications could be seen as being similar to the EASA certification specifications, but since they are not actually used for a certification activity, they may have to be named accordingly. It could be advisable to include the adoption of technical specifications as one of the Agency's measures.

2.3.7. ATM/ANS (Article 22a)

The Commission's proposal is understood to contain two significant changes. Firstly, it would mandate the Agency to act as an ATM/ANS competent authority if so requested by a Member State. In other aviation domains (i.e. airworthiness), the Basic Regulation allows Member States to request the Agency to issue or renew certificates also of organisations located within their territory (e.g. Production Organisation Approvals). This alternative in the ATM/ANS domain does not exist today. The Agency considers that the extension of this possibility in the ATM/ANS domain would prove beneficial to the Member States, and would enable efficiencies in the regulatory system.

Secondly, this proposal is understood to suggest that the Agency could act as the competent authority for ATM/ANS systems and constituents to be used by organisations it has certified when such measures are applicable stemming from the implementation of the Articles 8b(4) and 8b(5). Also in this case the Agency does support the overall rationale of the proposal. Apart from its high appreciation of the proposal, the Agency wishes to stress the evident need for adequate resourcing in such additional tasks, if applicable. The Agency would in this case welcome the possibility to mutually review the related (quite complex) legal drafting.

In this context the Agency wishes also to bring to the attention of the Commission some aspects related to the foreseen move towards more centralised services in the ATM/ANS domain. Such centralised services will most likely be provided by an entity or organisation such as the Network Manager. The Agency is of the opinion that such centralisation needs to be subject to adequate certification and oversight processes with clearly defined roles

and responsibilities associated to the provision of those services and a clear distribution of tasks between the national ATM/ANS providers and the centralised organisation. Centralised services are of pan-European nature which renders the Agency the appropriate competent authority. Certification and oversight schemes in this sense would facilitate a move towards such services without any need to amend existing or establish new regulatory material.

2.3.8. Budget (Article 59)

The Agency warmly welcomes the Commission's proposal to extend the possible revenues of the Agency to route charges paid in accordance with the related SES regulations for the relevant ATM/ANS authority tasks.

2.3.9. Essential requirements (Annex Vb)

Following the above-mentioned proposal to include the technical regulation of ATM systems and constituents exclusively in the Basic Regulation, it would be important to ensure that the essential requirements of the SES interoperability Regulation would continue to be fully covered. They are very similar compared to the respective essential requirements of paragraph 3 of Annex Vb to the Basic Regulation. Therefore, the Agency agrees with the proposal to include some language from the relevant provisions of the annexes of the SES interoperability Regulation (mainly to Annexes I and II) in the Basic Regulation. In doing so, care should be taken that any possible overlaps and inconsistencies be resolved.

The essential requirement of paragraph 2(c)(iv) of Annex Vb is proposed to be amended in order to clarify its intent, following the relevant ICAO standards and the existing SERA regulation concerning ATC responsibility to assist in avoiding collisions with ground obstacles. The Agency understands the reasoning for this change and agrees with the proposal.

The Agency also supports the alignment of the SES and the EASA rules as regards the oversight of the Network Manager and the changes following from this in the essential requirements of paragraph 2(g) of Annex Vb concerning air traffic flow management. The same applies to the changes proposed in the essential requirements in paragraph 2(h) concerning air space management aimed at clarifying aspects of the flexible use of airspace purposes.

The Agency also wishes to bring to the attention of the Commission some other possible changes to the essential requirements of Annex Vb based on the implementation expertise gained so far. In the essential requirement 5(b)(iii) the term 'cognitive judgment' could be clarified or deleted because its implementation at the level of implementing regulation has proven to be quite difficult, as the term is very complex and the results of implementation of this requirement could be disproportionate to its initial intent.

2.4. Conclusions

The Agency welcomes the Commission's SES2+ initiative and regards it as an important step to develop further the European aviation system.

The Agency emphasises in particular the need to align the EASA and the SES frameworks as was already anticipated by the European legislator when introducing Article 65a in the Basic Regulation.

This Opinion provides the Agency's view on the changes proposed by the Commission to the Basic Regulation, as presented in the Commission's related letter ref.: Ares(2013) 983268 of 30/04/2013.

The Agency supports the general principles and intent behind the changes proposed by the Commission and is prepared to provide all the necessary technical support to facilitate a smooth progress and adoption of the SES2+ proposals.

Most importantly, however, the Agency underlines the need to ensure its adequate resourcing, including the new tasks stemming from the changes proposed, if the general objectives of the SES2+ initiative are to be successfully implemented.

Done at Cologne, on 17 May 2013.

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Executive Director

3. References

3.1. Affected regulations

Regulation (EC) No 216/2008 of the European parliament and of the Council, of 20 February 2008, on common rules in the field of civil aviation and establishing a European Safety Aviation Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC (OJ L 79, 19.3.2008, p. 1), as amended by Commission Regulation (EU) No 6/2013 of 8 January 2013 (OJ L 4, 9.1.2013, p. 34).

3.2. Affected decisions

N/A

3.3. Reference documents

- **Update to the second package of the Single European Sky initiative (SES2+), with accompanying implementing measures and a recast of Regulations 549-552/2004 and a complementary update to Air Safety Regulation (EC) No 216/2008**
available at
http://ec.europa.eu/governance/impact/planned_ia/docs/2014_move_001_single_european_sky_en.pdf
- **Single European Sky 2+**, available at
http://ec.europa.eu/transport/modes/air/single_european_sky/ses2plus_en.htm