Implementation of the Single European Sky legislation

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PURPOSE: presentation of a report from the Commission on implementation of the Single Sky legislation: time to deliver.

BACKGROUND: following the launch of the Single European Sky (SES) initiative in 2000, Regulation (EC) No 549/2004 brought Air Traffic Management (ATM) under EU competence with the aim of reducing the fragmentation of the European airspace and increasing its capacity. There is now an evolving institutional framework, safety and interoperability standards and rules on airspace and air traffic flow management as well as improved cost transparency.

But while the first legislative framework was necessary, it was not sufficient, and accordingly, a second package of legislation (SES II) was adopted in November 2009 with the objective of accelerating the establishment of a truly single SES from 2012 onwards. It is based on five pillars: performance, safety, technology, airports and the human factor. The second package has received strong and vocal support not only from the airlines and airports but also even from the air navigation service providers (ANSPs). The support of the whole ATM community was reaffirmed at the Council of Ministers of 4 May 2010 and this strong political support confirms the urgency of the need for reform of the ATM sector and in particular the high level of priority to be given to the full and timely implementation and delivery of SES.

CONTENT: this report provides an overview of the state of play of the application of the SES legislation and of key actions taken or still to be taken since the approval of the second package in November 2009.

(1) Implementation of the First Package: considering the volume of implementing measures, it should be stressed that Member States and the stakeholders have done significant work. In particular:

- all Member States have now established a National Supervisory Authority (NSA);
- the vast majority of the ANSPs have been certified and duly designated;
- a transparent charging system has been implemented;
- oversight of the airspace management and air traffic flow management takes place at national level; and
- the Single Sky Committee and the Industry Consultation Body play full and important roles at EU level.

Nevertheless **more is required to achieve full and timely compliance** with SES legislation. For example, 60 recommendations were given by Eurocontrol relating to concrete actions that Member States should take either to improve their level of compliance or their checks on the level of compliance by ANSPs. In particular:

- the **lack of resources for NSAs is a major issue of concern** that must be addressed at national political level swiftly. The proper functioning of the SES can only be assured if the NSAs have the

right resources for effective oversight in all areas including safety, interoperability and performance (a new area of competence where NSAs act as national regulator). Possible solutions to these problems are well known and include cooperation, delegation and/or outsourcing;

- **insufficient steps** have been taken at Member State and NSA level to ensure **proper supervision of cross-border air navigation service provision**. The framework for the provision and supervision of cross-border services is not yet properly established in a number of Member States. Numerous cross-border arrangements seem to be known only at operational level but not yet formalised at institutional level. Member States must ensure that the legal basis for the cross-border provision of ANS in their sovereign territory is correctly established and enforced, and;

- Regulation (EC) No 552/2004 (the Interoperability Regulation) has been poorly observed. Seven years after the adoption of the basic regulation, approximately a third of the NSAs have not properly verified the capability of the ANSPs to conduct conformity assessment activities – which are the corner stone of the implementation of interoperable ATM systems. Similarly, around a third of the NSAs are not exercising the required oversight to ensure the compliance of the ANSPs with the implementing rules and are not sufficiently active in verifying the timelines of the ANSPs' implementation plans against the required deadlines;

- although progress has been made by Member States in the implementation of Flexible Use of Airspace, more needs to be done to improve its effectiveness, especially in relation to its performance monitoring.

The Commission has insisted on full compliance with EU law keeping in mind that the implementation of the SES first package is required for the successful implementation of the SES second package. Where non-compliance is confirmed and not rectified in due time, the Commission will consider all options at its disposal, including the opening of infringement procedures.

(2) Implementation of the Second Package: the basic SES II architecture (both the rule-making programme and organisational aspects) has been set up according to the initial time schedule. The regulations and subsequent main implementing measures directly related to SES II have all been adopted. The time for implementation has come. The successful delivery of the SES relies on the timely implementation of its different components. Priority should be given to actions that will make the biggest contribution to performance:

- in particular the performance scheme (starting early in 2012);
- the FABs (to be operational by end 2012),
- the network functions (already in place) and
- the deployment of the SESAR programme (to start in 2014).

2012 is a pivotal year for implementation of the SES. A table providing an overview of the state of play of key priorities in the second package of SES is attached.

If the level of progress achieved so far in the implementation of the first package falls short of initial expectations, the simultaneous implementation of key measures of the second package will start in 2012 and should deliver significant benefits swiftly. Member States are invited to confirm their commitments and to take action across the board to make this process a success. In particular, the Union needs to establish an integrated European air traffic management system, a true network with a single governance structure and a stronger regulatory and oversight capability. Additional measures may well need to be developed, such as the extension of the performance scheme to airports in accordance with a true gate-to-gate approach and the management of investments to ensure the contribution of SESAR deployment to the performance of the SES as a network. Impact assessment will be carried out where appropriate.