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Updated ETF position paper on SES2+ legislative proposal

Introduction

The ETF, representing more than 25,000 Air Traffic Controllers (ATCOs) and ATM Staff, has been supportive to the overall idea of a Single European Sky from the very beginning of the process. However, ETF has been opposing the use of SES as an instrument of unnecessary further liberalisation of ATM services with negative social consequences for workers.

For this reason, ETF has been fighting against the Commission text on SES2+ because this proposal introduces competition into all fields, with a mandatory separation between supervisory authorities and service providers, mandatory application of market principles for the support services, performance requirements driven by cost reduction and with the attempt to impose a unique model of FAB (Functional Airspace Block) which disregards particularities of individual member states.

With regard to the consultation process, ETF deeply regrets the lack of willingness of the EC to organise a real consultation with the social partners and the other stakeholders on SES2+. The EC failed to use existing consultation tools for social partners on SES issues, like the ATM sectorial social dialogue and/or the SES social expert group to try to tackle those issues.

The SES2+ legislative proposal has created social tensions everywhere in Europe. It was one of the main reasons of several European actions organised by ETF members during the last years : European strikes on the 12th June 2013 and 30th January 2014 and a European demonstration in front of the EP on the 14th October 2013.

Now, this position paper aims to give an updated ETF opinion on the SES 2+ proposal following the developments over the last past years.

The debate demonstrated that there is a clear divergence of opinion between ETF members and the EC on the analysis of ATM situation in Europe. For ETF, ATM is a public service with a high safety dimension and very long term investment cycles. This particular dimension of ATM is not recognised by the EC which considers ATM as a marketable sector. Therefore the general ETF comments on the SES2+ new proposals are not very supportive.

1. Some concerns about the process

Lack of consultation

With regard to the consultation process, ETF deeply regrets the lack of willingness of the EC to organise a real consultation with the social partners and the other stakeholders before the release of the SES2+ draft proposal, despite that a lot of concerns were already identified as very important issues. Some examples of these concerns from a social perspective are the introduction of market principles for support services, FAB implementation,



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performance scheme modification etc... The EC didn't use the existing consultation tools for social partners on SES issues like the ATM sectorial social dialogue and/or the SES social expert group to try to address these issues. The signals sent by ETF and its members were strong enough and the EC couldn't ignore them.

Over regulation

ETF regrets the tabling of this proposal only a few years after the adoption of the last SES legislative text in 2009. This over-regulating legislative process creates uncertainty and instability in the ATM industry as the legislative background is changing continuously. ETF believes it is now time to stabilise the legislation in order to give the possibility for ATM stakeholders to fully implement the existing legislative packages. The continuously changing legislative background makes it extremely difficult to analysis the impact to date of the results of the existing packages which could result in unintended consequences from new initiatives.

Furthermore, this new text is presented by the EC as only an update of the previous one with no significant changes in the regulation. This analysis is clearly not supported by ETF which considers that the SES2+ proposal is challenging a lot of political consensus obtained in SES1 and SES2. Such consensus is necessary to create a general agreement among all stakeholders on the SES project. Acting like this the EC takes the risk that some important categories of stakeholders, for instance workers, will withdraw their support to the SES idea.

2. National Authorities (article 3, 13)

Independence of NSA

ETF supports the need for NSA to act independently from any industrial, economic and political pressure. To achieve this, it is important to keep NSA activities in the remit of the public sector.

Therefore the EU rules laying down selection processes for NSA staff should not be in contradiction with the usual selection processes for civil servants of any Member State.

Additionally, any new rules for selection processes adopted at EU level shouldn't prevent mobility of staff between supervisory and service provision bodies which is a good way to ensure a good level of expertise for both sides.

Link between supervisory authorities and service provision (article 3)

Following the SES1 regulation there is a mandatory separation between supervisory and service provision sides at least at functional level. The new wording will impose a structural separation. This is clearly not supported by ETF. There is no justification to change the regulation on that point as it permits to harmonise organisations throughout Europe whilst allowing some countries to keep their own organisation for ATM to take into account specific developments for civil aviation and/or cultural and social aspects.

It is also important to note that the structural separation will create strong negative social reactions in some Member States, as it will lead to privatisation of the ATM sector.

Creation of an European Union Agency for Aviation (EAA) (Article 5)

ETF doesn't see the added value in the creation of a new EU agency to organise cooperation and exchange of information and practices between NSA at EU level. This task can already be performed by EASA.

Additionally ETF identifies several risks with the creation of the EAA:

–The current EASA consultation process is not functioning well; the creation of a new agency with more responsibilities will enlarge the number of issues on which staff representatives will have difficulties to be heard.

–The scope of responsibility of this new agency should focus only on technical regulations/aspects and not on general SES development regulations which should remain clearly under the responsibility of the SSC. This is not clear with the current SES2+ proposal.

–The transfer of some tasks from NSA to this new agency will have a social impact on number of jobs at national level.

–This new agency would be financed directly by users' charges (article 13) which will create additional costs at a time where there is already a very high pressure on ATM related charges.



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2. Performance Scheme (article 11)

ETF totally rejects the suggested changes for the decision making process of the national/FAB plans. The performance scheme is a very sensitive issue regarding its potential economic and social consequences. The two EU regulations (performance scheme and charging regulations) were adopted and amended in 2012. Now the EC is trying to amend once again these regulations. To change the rules every time on such important and complex issues will not help for its acceptance by all stakeholders. Furthermore, the suggested modifications aim to give more power to the EC in case of disagreement between EU and local targets. ETF doesn't support this top-down approach as it will lead to adoption at local level of targets which may be completely unrealistic.

According to ETF, other modifications to the performance scheme should be introduced :

- The Safety KPA should be developed at the same level as other KPA with EU metric targets and indicators.
- Mandatory consultation mechanisms should be introduced at local level to ensure appropriate involvement of staff representative for adoption of the local performance plans.
- Interdependency between the different KPA should be taken into account.

3. Functional Airspace Blocks (article 16)

ETF doesn't support the changes introduced by SES2+ in the articles in relation to FABs.

Particularly, the addition of the sentence « based on integrated provision of air traffic services » creates concerns as it could be interpreted as the will of the EC to impose a unique model of FAB based on consolidation of services (reduction of the number of ANSPs and the number of ATM facilities). ETF members oppose this kind of approach, which could be qualified as top-down and will have many negative social consequences.

Furthermore, ETF now challenges the added value of the implementation of FABs. More than ten years after its adoption in legislation (SES 1 in 2004), the FAB concept has failed to produce any real improvement for ATM in Europe. For the time being FABs haven't brought any real operational or economical benefits. On the contrary they have produced new administrative layers, additional costs, social tensions and many of the 9 FABs projects in Europe are still not really implemented.

As a consequence, ETF supports the idea to give up the mandatory request to set up FABs that is present in the existing SES legislation. FABs should be seen as a tool to improve some boundaries but not become an additional layer of costs.

ETF supports the idea that the legislation should be adapted to permit and encourage the setting up of international cooperations or partnerships on the various aspects of ATM activities (operational, technical developments, human resources etc.). The legislation should also take into account the social risks of the establishment of such cooperations or partnerships. These social risks should be avoided through compulsory social dialogue at ANSP level.

4. Provision of support services (article 10)

The question of the provision of the support services (CNS services, AIS, MET, Training) is a central issue for ETF members. Once again on this topic there is a clear divergence of opinion between ETF members and the content of SES2+ proposed by the EC. According to the SES1 and SES2 regulations the choice to unbundle and open to market principles for those services is left to each Member State in accordance with the subsidiarity principle. For ETF this compromise was acceptable as it permitted the choice of the best solution according to local situation and specific strategy decided by national ANSPs and Member States.

The draft SES2+ regulation challenges this agreement trying to impose mandatory separation of support services and application of market principles. This is clearly not supported by ETF.



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Separation of provision of support services

Currently in Europe, some Member States have decided to separate support services from ATM core business but many have decided not to do so. In the Member States where the decision was taken to keep those services inside the national ANSP, the performance of service provision is as good and sometimes better and cheaper as in the Member States where the decision was taken to unbundle the support services. That's why for ETF, there is no evidence that such a decision will lead to improved ATM efficiency. On the contrary it could lead to more inefficiency as it will introduce more fragmentation in service provision which is completely against the goals of SES. Furthermore, it is clearly a legislative interference inside the ANSP business model. It could challenge the ability of some ANSPs to continue to perform their activity as they will be reduced to very small entities after separation of support services from main ATC service provision.

Application of market principles to support services

This proposal is also not supported by ETF as it will create social tensions in many countries in Europe by destroying jobs and changing working conditions and quality of jobs in the field of ATM. It is clearly a very hot social issue that was never addressed by the EC. Furthermore there is no evidence that the introduction of competition in ATM services will increase efficiency in Europe. It will create tensions between stakeholders and will lead to conflicts of interest. For the ETF, the EC should try to promote cooperation instead of competition.

Safety chain

In a general way, ETF doesn't support the idea that services like CNS, AIS, MET, Training could be set as secondary services (designated as « support services », previously « ancillary services ») which could be isolated and separated from a « core business » designated as a very tiny part of ATM services (ATCO activity only...). ETF supports the idea that the different ATM services are part of a global and integrated safety chain. Trying to mandate the unbundling of those services with introduction of market principles, the EC is going to breach the existing safety chain which will undoubtedly have consequences on service delivery and, at the first row, on the level of safety. For instance, Communication Navigation Surveillance services (CNS) gather services that contain radio communication, radar antenna, phone communication etc. which are directly the « Eyes and Ears » of ATCOs. To separate artificially such services is clearly a big mistake.

5. Network manager role (article 17)

ETF supports the idea that some ATM functions, including potentially some of the support services, could be delivered directly at EU level under the responsibility of the Network manager if there is evidence that it will have an added-value on the EU ATM system. Nevertheless ETF doesn't entirely support the model of Centralised Services recently proposed by Eurocontrol as it is based only on the principles of unbundling and application of market principles for the delivery of such functions. For ETF there is a risk that such model will end with monopolistic situations for the benefits of private consortiums which will create conflicts of interest at EU level. That's why those services proposed to be directly delivered by the Network Manager will have to be very carefully examined.

From a social perspective, if the creation of functions provided at EU level under the responsibility of the Network Manager will replace services delivered previously at ANSP/National levels then it will be necessary to find solutions to mitigate any social impact for workers.

6. Exercise of the delegation (article 26)

ETF does not support to empower the Commission to adopt delegated acts regarding article 11(7) performance scheme and article 17(3) Network manager.

The national expertise and circumstances must be taken into account for the national and FAB plans. The EC must not be able to overrule the plans from individual member states.

Overruling local targets by this top-down approach will limit the autonomy of the ANSP to make investment decisions, like the implementation of new technologies, personnel recruitment and planning and therefore will be



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detrimental to safety of the system and will limit the possibility to improve the performance of the system. Generally, the Commission shall not be empowered to add the list of services which are carried out under the responsibility of a Network Manager to provide different services in a centralised manner. ETF supports the proposal from the Council that the delegation of power to adapt the Annexes shall be conferred on the Commission for a renewable period of five years.

7. Relation with stakeholders (article 19)

ETF supports the idea of consultation of every group of stakeholders in general. Nevertheless the new idea to involve airspace user's representatives inside the ANSP internal decision making process is very surprising and is not supported by ETF. Firstly it is not necessary as airspace users already have many tools of consultation on ANSP activity at EU, FAB and national level. Secondly there is clearly interference inside the internal business of each ANSP which will lead to conflicts of interest and will raise many questions: which user's representatives to choose? Why only user's representatives? What about other stakeholders' groups, for instance, staff representatives?

8. The 5th Pillar is still not visible (article missing)

The social dimension of the SES2+ proposal is very weak. Nothing was put forward by the EC to try to fulfil workers expectations and counterbalance the possible threats of some aspects of the new legislative proposal. The idea of a 5th pillar, a human factor pillar, was introduced by the EC during the SES2 legislation process (reference to EC communication of 25th March 2009). Up to now it is only a slogan used by the EC to communicate to the workers than an action plan will address the social dimension of the SES. So far, the ETF hasn't seen any progress on this dossier.

From a legislative perspective, the 5th pillar could be defined in the SES legislation through the following additions:

- Mandatory social dialogue implementation for FAB implementation
- Development of guidelines for staff union's consultation for FAB implementation, development of national/FAB performance plans and SESAR implementation
- Commitment not to force mobility of staff due to SES implementation
- Impact assessment on introduction of market principles, FAB implementation, Centralised services etc.
- Safety and just culture implementation
- Change Management
- etc.

Conclusion



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ETF, representing the majority of ATCOs and ATM workers in Europe, is a key stakeholder and social partner for the SES success or failure. Our global analysis of the SES2+ draft regulation is very negative. The content of this proposal confirms the threats identified in the last months and is even worse than expected. This proposal will have negative effects on jobs and working conditions.

Many other stakeholders (States, ANSPs, other Staff Organisations) are not happy with the content of the SES2+ proposal. The Council position of December 2014 is very supportive to the ETF overall approach. The EC should take all this criticisms into account and step back on the main issues of its proposal.

The liberalisation process introduced by the EC in this new regulation is not needed. It will have a negative impact on safety and will never be accepted by workers. Socially speaking, it will create tensions in many countries and there is a high risk that ATM workers will lose confidence in the whole SES process.

Furthermore, this new package will not have a positive impact on ATM performance as expected by the EC. It will not reduce delays, will not improve environmental aspects, will not reduce cost and will not improve safety.

Considering all these aspects ETF affiliates decided to reject the SES2+ package as it stands.



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