

Air Navigation Services



Silvio Magnosi and Chiara Vagaggini

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Abstract This chapter examines the development of international regulation for air traffic management. It considers the previous 1919 Paris Convention and the relevant provisions of the 1944 Chicago Convention on International Civil Aviation, also focusing on the measures adopted by the European Union concerning ATM. In particular, the contribution examines the original 2004 European Community Regulations establishing the Single European Sky, the innovations introduced by Regulation (EC) 2009/1070 (commonly referred to as SES II, no longer in force), and, above all, the new Regulation (EU) 2024/2803 on the implementation of the Single European Sky (SES II+). Furthermore Regulation (EU) 2018/1139, with the relevant role of EASA, will also be examined.

Silvio Magnosi is author of Sects. 1–4, Chiara Vagaggini is author of Sects. 5–7.

S. Magnosi (✉)

Department of Sciences and Technologies, Parthenope University of Naples, Naples, Italy
e-mail: silvio.magnosi@uniparthenope.it

C. Vagaggini

Department of Management and Law, “Tor Vergata” University of Rome, Rome, Italy
e-mail: chiara.vagaggini@uniroma2.it

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1 The Birth and Spread of Air Navigation Services: International Law

Flight handling has undergone a profound evolution, involving both technical and operational aspects, as well as legal and regulatory issues. This change is connected to the growth and expansion of air transport, particularly since the Second World War. In fact, air transport has gradually shifted from being a niche, almost exclusive sector to becoming a mass phenomenon. Consequently, flight assistance has also evolved considerably from its original framework. It emerged nearly simultaneously with the advent of flight, serving both as a navigational aid and a means of monitoring and controlling airspace. In addition to the ‘traditional’ functions (issuing take-off, landing, and overflight authorisations; transmitting information and meteorological data, route, aircraft position, etc.), new responsibilities have been added, particularly regarding the management of aircraft movement across increasingly vast areas. In addition to ensuring flight safety, air navigation assistance services now aim to support the growing need to guarantee efficient and economical transport by making optimal use of available space.

This important change from an operational and functional viewpoint has had a considerable effect on the structure of legal regulation. In international law, this transition is clear when comparing the two earliest legal texts related to civil aviation. The Paris Convention of 1919¹ contained a single, isolated rule, but by the time of the Chicago Convention of 1944,² which replaced it, regulations had become much more comprehensive and detailed. Specifically, Article 25 of the Paris Convention required broad compliance with Annex D. Among the technical Annexes to that agreement, Annexe D was unique in establishing directly binding rules, mainly concerning essential safety standards for air traffic, such as beacons, signalling, maps, and rules for overflying airports and hazardous areas.³

The Chicago Convention dedicates, more extensively, its entire Chapter IV to “Measures to Facilitate Air Navigation”, as well as Annex 11 to “Air Traffic Services (ATS)”. Notably, Article 22 of the Chicago Treaty (the opening provision of Chapter IV) requires all contracting states to adopt the necessary measures to make air navigation within their jurisdiction as safe and efficient as possible. This obligation reflects the principle in Article 1 of the Convention, which states that each country exercises full and exclusive sovereignty over the airspace above its national territory and, where applicable, the territorial sea. Exercising such sovereignty also entails responsibility for the safety and efficiency of air navigation. Accordingly, the

¹ See Convention relating to the regulation of aerial navigation, signed in Paris on 13 Oct. 1919, no longer in force.

² Convention on International Civil Aviation, signed in Chicago on 7 Dec. 1944, entered into force on 4 Apr. 1947.

³ Comenale Pinto (1999), p. 13.

organisation and provision of flight assistance services within a State's areas fall under that State's sovereignty.⁴

In this light, flight-handling services emerge and develop at the national level. These services have always operated within national borders; however, there has been, and continues to be, no shortage of tools—both technical-operational and regulatory—to achieve a high degree of standardisation and improve efficiency.⁵ Chapter VI of the Chicago Convention, “International Standards and Recommended Practices (SARPs)”, is particularly relevant. The aim is to commit States to work together to ensure maximum uniformity. This should be achieved by implementing rules and procedures to cover all aspects of aviation, including aircraft, personnel, routes, and above all, auxiliary systems. ICAO, of course, retains the authority to update and, therefore, modify these rules and procedures, including through the adoption of new SARPs in line with Art. 37 of the Chicago Convention.⁶

Technical uniformity, consistently pursued under the SARPs, heavily influences the provisions outlined in the aforementioned Annex 11, which is dedicated to ATS. It identifies and defines the numerous aspects related to flight-handling activities (para. 2.3). This includes the communication and exchange of flight information, traffic control, and the management of risk and alarm situations. The various control bodies are thus called upon to collaborate to ensure the safe, orderly, and efficient movement of aircraft (para. 3.1.1). Essentially, the primary aim is to prevent accidents while maintaining efficient and cost-effective transport.

2 Next: European Union Legislation, the Single European Sky (SES)

The trend towards uniformity (or, at least, standardisation) in the regulation and conduct of ATS also arises from initiatives initially undertaken by the European Community and later by the Union.

Article 100 TFEU,⁷ which has always been directly applicable within the system of sources, states that the rules set out in Title VI of the Treaty (specifically in the section concerning transport) apply only to “transport by rail, road, and inland waterway”. The regulation of maritime and air navigation is delegated to periodic, individual, and specific “initiatives” adopted by the European Parliament and the Council. This has led to the gradual predominance of derived European rules over the various national systems related to the maritime and aeronautical sectors.⁸

⁴Magnosi (2008), p. 14.

⁵Rizzo (2004).

⁶Ballarino and Busti (1988), p. 82.

⁷Treaty on the functioning of the European Union (TFEU), signed in Lisbon on 13 Dec. 2007, entered into force on first Dec. 2009.

⁸Munari (1996).

In the civil aviation sector, Union rules have addressed not only the specific regulation of air transport services. These services have, in fact, long been governed by principles based on the full application of liberalisation and competition—mechanisms that, as is widely recognised, were historically almost entirely absent from this particular sector. However, “European legislation” has also been extended to cover distinct but closely related aspects beyond transport strictly speaking.⁹

The objectives pursued in the civil aviation sector at both Community and Union levels have remained largely aligned with those recognised in international law, as noted. The overarching aim is to ensure the highest safety standards while improving efficiency and cost-effectiveness in air transport. Therefore, the creation of the Single European Sky (SES), together with the regulatory framework adopted by the European Parliament and the Council through the well-known set of regulations of 10 March 2004 (SES I), clearly forms part of this broader strategy.¹⁰ In particular:

- Regulation (EC) 2004/549¹¹;
- Regulation (EC) 2004/550¹²;
- Regulation (EC) 2004/551¹³;
- Regulation (EC) 2004/552.¹⁴

Of these, the recent Regulation (EU) 2024/2803,¹⁵ discussed in great detail below, retains very few provisions from the first two regulations until 2 December 2026. The third Regulation has been repealed and replaced by Regulation (EU) 2024/2803, while Regulation (EC) 2004/552 was repealed some time ago and replaced by Regulation (EU) 2018/1139,¹⁶ which will also be discussed.

⁹Tuo (2008).

¹⁰Van Antwerpen (2002), p. 15.

¹¹Regulation (EC) 2004/549, laying down the framework for the creation of the single European sky (the framework Regulation)—Statement by the Member States on military issues related to the Single European Sky, in force until 2 Dec. 2026.

¹²Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the service provision Regulation), in force until 2 Dec. 2026.

¹³Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the Single European Sky (the airspace Regulation)—Commission Statement, no longer in force.

¹⁴Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation), no longer in force.

¹⁵Regulation (EU) 2024/2803 of the European Parliament and of the Council of 23 October 2024 on the implementation of the Single European Sky (recast).

¹⁶Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91.

The resulting framework seems designed to reduce fragmentation both of spaces and the allocation of management responsibilities in the provision of flight assistance services and, more broadly, air navigation support. Through the SES, a process of harmonisation has been initiated among the various European States, which nevertheless continue to perform their respective roles according to the fundamental principles of international law applicable in this area.¹⁷ Strict respect for national borders, although complemented by a more flexible and coordinated use of available airspace, therefore remains in place.¹⁸

The SES regulatory framework has inevitably undergone amendments and updates over time, all of which reflect the trend towards a more integrated approach to managing the European Union's airspace, not so much geographically as in its functional and procedural organization.¹⁹ Comparisons with the situation in the United States of America often appear in EU documents. In the US, airspace control and related services are characterised by greater cohesion and more efficient organisation, despite the broadly similar development leading to the adoption of Regulation (EC) 2009/1070,²⁰ which established what is commonly referred to as SES II. Although this Regulation is no longer in force, it was followed by numerous implementing measures that significantly strengthened the safety dimension across all sectors of civil aviation, including air traffic control and management. In parallel, greater emphasis was placed on economic and performance-related aspects in the regulation of the sector than had been the case previously. This process of regulatory evolution has necessarily had implications for the various aviation bodies and authorities. The legal framework governing their respective functions and competences (and, at times, their very organisational structures) appears to reinforce the broader trend, repeatedly noted above, towards uniformity or, at the very least, standardisation.

3 The role of the European Union Aviation Safety Agency (EASA)

Regulation (EU) 2018/1139 assumes particular importance in the context described at the end of the previous paragraph. This instrument sets out general rules for civil aviation safety, including air traffic management and air navigation services. It therefore covers a much wider scope than the specific sector discussed here. It includes provisions relating to, among other things, the manufacture of aircraft and

¹⁷ Antonini and Severoni (2009), p. 75.

¹⁸ Trovò (2011), p. 489.

¹⁹ Van Houtte (2017), p. 447.

²⁰ Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system, no longer in force.

their individual components; their operation (including unmanned systems); recreational and sport aviation; environmental protection; aeronautical infrastructure; and air navigation support services. In all these areas, the central role assigned to the European Union Aviation Safety Agency (EASA) is clearly evident.²¹ The Agency acts as a link between the European Commission and the individual National Competent Authorities (NCAs), thereby helping to establish a uniform European aviation safety system.²² To achieve this, the Regulation ensures the adequate and continuous exchange of data and information between various national aviation authorities and EASA, which increasingly plays a key role in promoting and disseminating a shared safety culture.

Particularly significant in this regard is Chapter IV, entitled “Joint certification, oversight and enforcement system” (Articles 62 et seq.). The above-mentioned uniform safety system essentially results in a strong degree of standardisation, carried out, as noted, by the Commission, EASA, and the Member States, with respect to all aspects of certification and the monitoring of compliance with, and continued fulfilment of, the legally prescribed requirements. To this end, the Agency also has the task of establishing, “in cooperation with the national competent authorities, a mechanism for the voluntary pooling and sharing of inspectors and other personnel with expertise relevant for the exercise of the certification and oversight tasks under this Regulation”.

Based on that same cooperation, the technical and professional profiles, along with the necessary experience, must be identified and defined to select the personnel to be appointed to the shared mechanism mentioned above (Article 63).

Chapter V then sets out in even more detail the EASA’s functions and responsibilities. Its interaction with the Commission and the NCAs extends beyond certification and oversight, including cooperation—especially with the Commission—in drafting rules and technical measures, proposing amendments to the Regulation itself, providing appropriate scientific and administrative support, and other related tasks (Articles 75 et seq.).

The application of the Regulation to flight assistance activities is explicitly outlined in Article 2, which states that the instrument applies to air traffic management and air navigation services conducted within the Single European Sky. However, it also reaffirms the jurisdiction of the Member States over the airspace for which they are responsible. Naturally, the importance of the functions assigned to the Agency, acting as a guarantor of safety, also emerges in this area. Its responsibility for verifying compliance with the prescribed parameters and for issuing certifications extends not only to ATM/ANS but also to the training and organisation of air traffic controllers (Articles 80 and 81).

²¹ Zunarelli and Comenale Pinto (2023), p. 42.

²² Masutti (2021), p. 622.

Further powers are granted to EASA in relation to the implementation of the SES. These include providing technical assistance to the Commission, conducting inspections, technical audits, and other investigations. Such tasks may only be undertaken by the Agency if requested by the Commission itself.

The EASA is also tasked with assessing the performance aspects of the SES, which, as previously noted, have become increasingly important in the ongoing process of legislative reform in this sector.²³ Of particular significance in this context is Regulation (EU) 2024/2803, which will be discussed shortly. However, it should be recalled that a “performance scheme” was already established and regulated under Regulation (EC) 2004/549 (the SES Framework Regulation, cited above), aimed at improving the efficiency of air navigation services within the SES. In that regard, Article 11 assigned the Commission the duty of designating an impartial and competent body (Eurocontrol or another entity) to assess performance. The role of this assessment body involved, in practice, providing advice to the Commission and the NCAs, as well as assisting, upon request, with the implementation of the performance scheme itself. However, that provision ceased to have effect as of 2 June 2025, pursuant to Regulation (EU) 2024/2803.

The institutions of the European Union have consistently expressed their appreciation of the regulatory framework governing the (SES). It is worth noting in this regard the “Fact Sheets on the European Union. Air Transport: Single European Sky”, published by the European Parliament in 2024.²⁴ The document once again emphasises that the enhancement of safety and efficiency levels in air navigation is necessarily linked to greater uniformity in control procedures and airspace management systems. The aim is to achieve a significant reduction in the fragmentation of airspace among the Member States, with each retaining its own jurisdiction in accordance with the foundational principles of international civil aviation.²⁵ The fact sheet acknowledges the progress made in terms of efficiency and cost-effectiveness in air transport but does not fail to identify the shortcomings. In particular, there remain an excessive number of operational actors, affecting both service providers and supervisory bodies. This results in recurrent delays and service disruptions in certain areas. The complete consolidation and full operational implementation of the SES therefore still appear to be some way off. Competent authorities estimate that the attainment of the highest levels of efficiency and functionality will not be realistically achievable before 2030 to 2035.

²³Vagaggini (2025), p. 127.

²⁴European Parliament (2024), Fact Sheets on the European Union. Air Transport: Single European Sky.

²⁵Schubert (2003), p. 33.

4 The Role of the Aeronautical Authorities in the Single European Sky Reform (SES II +)

The evolutionary process regarding the SES, both in technical-operational terms and, inseparably, in terms of regulation, must therefore still be considered ongoing. This is evidenced by the package of proposals put forward by the EU institutions, beginning in 2020 and continuing through to the closing months of 2024. Regulation (EU) 2024/2803 sets out the new framework for the so-called SES II+.

The new legislative instrument reaffirms the fundamental principles set out in the 2004 package, now, as previously mentioned, repealed by the Regulation in question. It also confirms the necessity to adhere to the safety provisions mainly established in Regulation (EU) 2018/1139, briefly outlined above, although those provisions are subject to appropriate “alignment” and adjustment.

The objective was, and remains, to increase the functionality of European airspace, alongside higher safety standards and the gradual development of both economic and environmental sustainability.²⁶ In this context, the importance of maintaining centralised coordination of certain network functions, such as traffic flow management, is particularly emphasised.²⁷ This general coordination must be capable of involving the functions and activities of all operational stakeholders concerned, and it will be necessary to extend it to unmanned aircraft.

It should be noted that the new legislation also allows Member States to assign certain tasks—among those falling within the remit of the National Supervisory Authorities (NSAs)—to the National Competent Authorities (NCAs) or other entities. These tasks specifically concern assessing and oversight of the compliance of air navigation service providers with the requirements laid down in the Regulation. It follows that, in such cases, Member States must ensure that the designated authorities possess adequate resources and specific expertise, and must inform the Commission in this regard without delay.

The NSAs are, of course, required to be fully independent of air navigation service providers from the organisational, hierarchical, and decision-making points of view. Nonetheless, it is not ruled out that both entities (the NSAs and the service providers) may form part of the same ministerial body or belong to the same public administration, provided that the independence requirements are duly guaranteed.

It should be added that, in what might be described as an effort to streamline the administrative and organisational structure of the aviation sector, Regulation (EU) 2024/2803 does not exclude the possibility of merging the two national authorities—namely the NSA and the NCA—into a single entity, provided that the strict requirements and parameters of full autonomy outlined above are duly observed. Nor is it ruled out that the NSAs might be incorporated under the same conditions of independence into other national authorities not necessarily operating within the civil aviation sector. In this regard, explicit reference is made, if only as an example,

²⁶ Abeyratne (2014).

²⁷ Magnosi (2025), p. 116.

to the National Competition Authority. Furthermore, strong and continuous cooperation between the various NSAs is maintained through the establishment of a National Supervisory Authorities Cooperation Board. The Board consists of representatives (one full member and one alternate) appointed by the NSAs of the various Member States and can elect its own leadership from among its members (a Chair and a Vice-Chair). The Board's collaborative activities extend beyond the work of the NSAs themselves (such as the exchange of information on decision-making principles and the most effective procedures for implementing the Regulation), including the Performance Review Body (PRB), particularly concerning certain tasks assigned to it, such as assisting the PRB in preparing its reports and annual work programmes.

The establishment, structure, and organisation of the PRB mainly focus on performance aspects, which are explained in more detail in the following section. According to the Regulation, the PRB is a fully independent advisory body. However, a significant connection with the Commission remains, beyond the support the PRB is required to provide, especially as the Commission appoints its members. The special procedure set out in the regulations, which also allows for the inclusion of nationals from third countries with which the European Union has agreements on air traffic management, charges, and performance systems, is also worthy of note.

5 Air Navigation Services in (EU) Regulation 2024/2803

Air navigation services are governed by Chapter III, “Service Provision”, of Regulation (EU) 2024/2803, which, after years of lengthy and intense negotiations, as previously noted, has reformed Single European Sky (SES) legislation,²⁸ implementing SES II plus. These services aim to ensure the safety and efficiency of airspace, which, regarded as a form of infrastructure in its own right, demands appropriate and carefully calibrated management proportional to the volume of traffic involved.²⁹ The provision of these services, closely tied to public safety needs—particularly for certain specific types of air navigation services—has, over time, justified legislation granting States strong oversight powers to ensure safe, efficient, and environmentally responsible services,³⁰ in line with the objectives outlined in the EU's climate legislation, especially Regulation (EU) 2021/1119.³¹

Authoritative scholarship describes these services as services of general interest: “a category that includes both market and non-market services (...) which public

²⁸ Van Houtte (2017), p. 447.

²⁹ Comenale Pinto (2007), p. 95.

³⁰ F. Salerno (2025), p. 73.

³¹ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (European Climate Law).

authorities regard as being of general interest and subject to specific public service obligations”.³²

Air navigation services of a non-economic nature fully include air traffic services, which are divided into air traffic control services (area, approach, and aerodrome control), flight information, alerting, and air traffic advisory services (Article 2, point 10, of Regulation (EU) 2024/2803). Given their importance for aviation navigation, these services are provided exclusively by entities designated at the discretion of Member States with regard to the airspace under their responsibility.³³

Meteorological services (MET) may also be provided on an exclusive basis, which Article 2, point no. 44 of Regulation (EU) 2024/2803 defines as “the facilities and services that provide meteorological forecasts, warnings, briefings and observations for air navigation purposes, as well as any other meteorological information and data provided by States for aeronautical use”.

Unlike air traffic services, MET services have an economic nature, as they involve technical activities not related to the exercise of public authority.³⁴ As a result, meteorological services are classified as services of general economic interest, subject to the provisions of Article 106(2) of the Treaty on the Functioning of the European Union (TFEU). These provisions establish their compliance with EU competition law, provided it does not hinder their specific mission. Article 10 of (EU) Regulation 2024/2803 states that: “Member States may designate, individually or collectively, a MET provider on an exclusive basis in all or part of the airspace under their responsibility, taking into account safety considerations.”

In accordance with this approach, Article 11(1) of Regulation (EU) 2024/2803 allows designated air traffic service providers to purchase certain air navigation services, including MET services, on market terms, provided that the specific conditions set out in the same Article are met, including the absence of exclusive designation of those services by Member States, as established by Article 10 of the aforementioned Regulation.

Other air navigation services related to the provision of air traffic services include: communication, navigation, and surveillance (CNS) services, defined in Article 2, point 26 of Regulation (EU) 2024/2803 as “aeronautical fixed and mobile services to enable ground-to-ground, air-to-ground and air-to-air communications for ATC purposes”; aeronautical information services (AIS), described as “a service, established within a defined area of coverage, responsible for the provision of aeronautical information and data necessary for the safety, regularity, and efficiency of air navigation” (Article 2, point 2, of Regulation (EU) 2024/2803); and air traffic data services, which are newly designated as air traffic data services (ADS) in the 2024 Regulation. Article 2, point 7, of the 2024 Regulation defines these new ADS as “services consisting in the collection, aggregation and integration of operational data from providers of surveillance services, from providers of MET and AIS and

³² Rizzo (2022), p. 86.

³³ Comenale Pinto (2022), p. 315.

³⁴ Rizzo (2022), p. 86.

network functions and from other relevant entities generating operational data, and the provision of processed data for air traffic control and air traffic management purposes”.

The regulation of the above-mentioned air navigation services appears to differ from the rules governing air traffic and MET services. However, as noted in insightful scholarship,³⁵ these services, like the latter, are classified as services of general economic interest, which renders the provisions of Article 106(2) of the Treaty on the Functioning of the European Union (TFEU) applicable.

Regulation (EU) 2024/2803 introduces a new regulatory model for these services, which will be explained in more detail below. Article 11(1) of the Regulation states that designated air traffic service providers may opt to purchase CNS, AIS, ADS, or MET services on market terms, provided that the Member State has not granted exclusive designation under Article 10 of the same Regulation. This is subject to compliance with the public procurement rules set out in Directives 2014/24/EU³⁶ and 2014/25/EU,³⁷ which take precedence. According to Article 11, Member States may obtain these services through alternative arrangements (where EU directives do not apply) when market solutions are unavailable, while also considering the public interest.

6 Functions of the National Supervisory Authorities (NSAs) and the Designation of Air Traffic Service Providers

As mentioned earlier, Regulation (EU) 2024/2803 assigns the National Supervisory Authorities (NSA) the responsibility of ensuring consistent and reliable oversight of ANSPs.³⁸ Due to this vital role, the NSAs must operate independently of any air navigation service provider in terms of organisation, hierarchy, and decision-making processes. Separation from the ANSPs has been one of the key objectives of the SES initiative since the initial regulatory package was adopted in 2004 (Regulations (EC) No 549/2004, No 550/2004, No 551/2004, and No 552/2004), marking the start of the legislative reform process.

In accordance with Regulation (EU) 2018/1139, which establishes the competences of the EASA, and its implementing acts, Article 5 of Regulation (EU) 2024/2803 assigns the National Supervisory Authorities the responsibility of assessing and overseeing compliance with requirements relating to the financial robustness, liability, insurance coverage, ownership, and organisational structure of

³⁵ Rizzo (2022), p. 86.

³⁶ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

³⁷ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

³⁸ Magnosi (2025), p. 105.

ANSPs (Article 5(1)(a), Regulation (EU) 2024/2803). This financial certification aspect introduces a new requirement set by Regulation (EU) 2024/2803 to guarantee the economic stability of ANSPs and other air navigation service providers, whereas the issuance of safety certificates by the National Competent Authorities (NCAs) was already envisaged under Regulation (EU) 2018/1139 and Implementing Regulation (EU) 2017/373.³⁹ This is reflected in Article 57 of Regulation (EU) 2024/2803, “Amendments to Regulation (EU) 2018/1139,” where paragraph 7(d) adds point 7, “Financial robustness, liability, insurance cover requirements, ownership and organisational structure,” to Annex VIII of Regulation (EU) 2018/1139. Through this new function, the National Supervisory Authority transmits a conformity assessment to the National Competent Authority for the latter to issue the single certificate for ANSPs, in accordance with Articles 41 and 62 of Regulation (EU) 2018/1139.⁴⁰ Otherwise, the NSA may issue a recommendation for modification, limitation, suspension or revocation of the certificate (Article 5(2), Regulation (EU) 2024/2803). Article 5(1)(b) also assigns the same Authority the task of verifying compliance by ANSPs with national safety and security requirements in accordance with Regulations (EU) 2018/1139 and (EU) 2017/373. To ensure effective fulfilment of their duties, the NSAs must carry out necessary monitoring activities in cooperation with the national competent authorities, including inspections and audits, to detect any non-compliance with the requirements laid down in the aforementioned legislation by the entities under their supervision (Article 5(2), Regulation (EU) 2024/2803).

Air traffic services are supplied under an exclusive regime within designated airspace blocks, as previously established in Article 9a of Regulation (EC) 550/2004.⁴¹ However, this requirement is no longer mandatory according to the current wording of Article 3 of Regulation (EU) 2024/2803. Article 8(1) of Regulation (EU) 2024/2803 grants Member States the discretion to designate one or more air traffic service providers, provided they meet certain requirements related to certification, principal place of business, ownership, and control (Article 8(2), Regulation (EU) 2024/2803). According to paragraphs 4 and 5 of the same Article, Member States are required to set out the rights and obligations that designated ATSPs must follow, and they must conduct periodic assessments to ensure compliance with those obligations.

In order to improve the overall performance of the European ATM system, the new 2024 Regulation promotes cooperation among certified ANSPs in accordance with Article 41 of Regulation (EU) 2018/1139, provided they meet the procurement requirements set out in Article 11 of Regulation (EU) 2024/2803. Article 8 of

³⁹ Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, and repealing Regulation (EC) No 482/2008, implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377, and amending Regulation (EU) No 677/2011.

⁴⁰ Vernizzi (2018), p. 615.

⁴¹ Trovò (2011), p. 439.

Regulation (EU) 2024/2803 therefore confers discretionary power on the Member States regarding the designation of providers, an authority that was not retained in Commission Proposal No. 579 of 2020⁴² for either en-route or terminal services.⁴³ It should be noted that Article 7 of the proposal reaffirms the exclusive regime for providing air traffic services within specific airspace blocks but introduces a different designation mechanism. This mechanism states that the service should be assigned to an operator, either individually or jointly designated, which will no longer be selected from one or more national providers but will be chosen through a procedure open to all compliant European providers. The Commission's proposal, which was ultimately not adopted in the final negotiations, envisaged a shift from a model where the national provider was selected by the Member State to one based on public tendering open to all eligible European providers.⁴⁴ Regulation (EU) 2024/2803 confirms that Member States retain discretionary authority in designating air traffic service providers, stating that their provision, being essential to the safety of air navigation, should be subject to designation and linked to public interest requirements. These characteristics emphasise the non-economic nature of such services and their consequent exemption from the rules on free competition established in the EU Treaties. The new Regulation also specifies that the designation process must be regulated to ensure service continuity and enable long-term investment planning by air traffic service providers. This reflects concerns raised during discussions on the aforementioned Commission Proposal No. 579/2020, whose Article 7(1)(b) sets a maximum term of 10 years for the designation of air traffic service providers, posing clear risks of market instability to the detriment of service quality and safety.

As previously noted, Regulation (EU) 2024/2803 sets out specific conditions that air traffic service providers must satisfy in order to deliver their services. In particular, Article 8(2) of Regulation (EU) 2024/2803 states that:

Air traffic service providers shall fulfil the following cumulative conditions:

- (a) hold a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 or a valid declaration pursuant to Article 41(5) of Regulation (EU) 2018/1139, without prejudice to Article 7(4) of this Regulation;
- (b) comply with the national security and defence requirements;
- (c) have their principal place of business located in the territory of a Member State; and
- (d) be owned more than 50% by Member States or nationals of Member States and effectively controlled by them, whether directly or indirectly through one or more intermediate undertakings, except where otherwise provided for in an agreement with a third country to which the Union is a party.

These conditions relating to certification, national security, defence requirements, principal place of business, and ownership and control are also necessary for the

⁴² European Commission (2020), *Proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky (recast)*. COM (2020) 579 final, 22 September 2020.

⁴³ Masutti (2021), p. 621.

⁴⁴ Masutti (2022), p. 153.

procurement of other air navigation services. Providers intending to operate within European airspace must adhere to all of them. These standards are more rigorous than those specified in Annex IV to Implementing Regulation (EU) 2017/373, which sets out more general EU compliance criteria. The 2017 Regulation mandates that ATSPs inform the competent authorities about their legal status, ownership structure, and any arrangements that may significantly influence their control. Furthermore, providers must disclose any links with organisations not involved in providing ANSs and, more broadly, must implement all necessary measures to prevent conflicts of interest that could compromise the impartial and objective delivery of services (Annex IV—Section 1—General Requirements). The stricter framework introduced by Regulation (EU) 2024/2803 aims to uphold even higher standards for the protection of EU airspace and enhance the overall performance of the ATM system. Achieving these fundamental goals requires not only increased cooperation among air navigation service providers but also tighter coordination among the competent authorities of the Member States, which, under the new 2024 framework, are now obliged to intensify their oversight through investigations and inspections to ensure compliance with the stipulated conditions.

7 Air Navigation System (ANS) Providers: Access and Requirements

Designated ATS providers may choose to procure CNS, AIS, ADS, and MET services, but only if the Member State has not exercised the option to designate them on an exclusive basis under Article 10 of Regulation (EU) 2024/2803. They can do so either on market terms or through other forms of agreement, where Directives 2014/24/EU and 2014/25/EU do not apply, while considering public interest factors (Article 11(1), Regulation (EU) 2024/2803). Regarding terminal air traffic services (aerodrome and/or approach control), however, airport operators may only procure them on market terms with the consent of the Member State concerned, subject to prior submission of adequate justification showing anticipated service quality benefits for airspace users and assurance that the required safety levels will be maintained (Article 11(2), Regulation (EU) 2024/2803).

As previously noted, the regulatory framework in question is a significant innovation compared with the pre-existing legislative structure, partly incorporating the content of Commission Proposal No 579/2020. Article 8(1) of the proposal allowed designated air traffic service providers to purchase CNS, AIS, ADS, or MET services on market terms only if this would lead to cost-efficiency gains for the benefit of airspace users. Conversely, Article 11(2) of Regulation (EU) 2024/2803 does not adopt the rule in the second subparagraph of Article 8(1) of the Commission proposal, which would have made local tenders at airport level mandatory for the provision of terminal air traffic control services. Instead, the current 2024 Regulation specifies that Member States “may”—and not “must”—allow airport operators to

procure such services on market terms, thereby granting a power rather than imposing an obligation.

This provision appears to be in line with Article 35 of Regulation (EU) 2019/317,⁴⁵ which expressly states that “Member States may decide, either before or during a reference period, that the provision of some or all of the terminal air navigation services, CNS, MET, AIS services or air traffic management (‘ATM’) data services provided in their charging zones established in accordance with Article 21 is subject to market conditions”. A provider of CNS, AIS, ADS, MET, or terminal air traffic services (aerodrome or approach control) may therefore only be selected—and, where necessary, designated—through a public procurement process. The selection must comply with a set of cumulative conditions concerning certification, principal place of business, ownership, and national security and defence requirements in accordance with the criteria specified for exclusive designation under Article 8 of Regulation (EU) 2024/2803.

The same requirements—except for those related to certification under Article 41 of Regulation (EU) 2018/1139—apply to CIS providers that transmit essential data within U-Space airspace,⁴⁶ with the aim of ensuring the safe and efficient integration of drones with conventional air traffic. Although these services, governed by Article 12 of Regulation (EU) 2024/2803, are not classified as air navigation services in the traditional sense, such as those examined here, they nonetheless play an important role by contributing to the effective management of automated traffic in European airspace.

The legislation examined here seeks to strike a balance between the need for flexibility in a rapidly evolving sector and the necessity of implementing effective regulations to ensure high safety standards and continuous improvement in the management of air traffic in Europe.

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⁴⁵ Commission Implementing Regulation (EU) 2019/317 of 11 February 2019 laying down a performance and charging scheme in the Single European Sky and repealing Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013.

⁴⁶ Huttunen (2019), p. 69.

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