SESAR: The Performance System and the related, updated Safety Issues

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SESAR is the EU's Single Skies technological programme, aimed essentially at improving ATM's (Air Traffic Management) performance, which acts basically as a guardian of safety, but also aims at enabling interoperability at global level.

After the completion of SESAR 1 (2008-'16), the first phase of the Research and Development Programme, phase 2 is proceeding in the form of SESAR 2020.

As far as content is concerned, SESAR wants to guarantee the sustainable development of safe air transport in the EU, with the following specific objectives: bring about a three-fold increase in capacity, reduce by 10% the environmental impact per flight, cut air traffic management costs by 50% and improve safety by a factor of 10.
Indeed, the whole set-up is geared towards a series of new functionalities all aimed at enhanced safety, which is actually the guiding principle of the entire programme.
In 2019, SESAR's Joint Undertaking (SJU) published a document, called "*A proposal for the future architecture of the European Airspace*", which highlights that safety should be SESAR's top priority.

SESAR's concept consists, *inter alia*, of new modes for operating aircraft, improving safety as well as system-wide information management, providing secure connections for all ATM stakeholders who share the same data, assisting operators, such as controllers and pilots, with new, automated functions to ease their workload and guide them through complex decision-making processes.
In light of the above-said regarding safety and interconnections, reference should be made to the Commission Implementing Regulation (EU)2019/317, published on the 11th of February 2019, laying down a performance and charging scheme for the Single European Sky and repealing Implementing Regulations (EU)390 /2013 and (EU) 391/2013.

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In terms of semantics, the notion "prepose" includes exclusively air carrier's employees. Legal theory and court practice established criteria for delimitation of the notions of air carrier's "servant" and "agent" from other legal persons participating in a chain of the international air transport of cargo:

- Basic criterion is that the damage was sustained during the international air transport of cargo.

- Servant and agent were performing their duties in order to realize the contract on air carriage of cargo.

- Carrier's servant or agent performed their jobs in accordance with the work contract or agency contract.

- Carrier's agent does not have a monopoly at the market.

The most controversial issue of the notion „agent" in terms of provisions of the Warsaw system and Montreal convention is whether the notion „agent" covers a monopolistic status at the market of the legal person that concluded a contract with air carrier. Historical, language related and systemic interpretation of the notion „agency" cannot help in interpretation of the „agent", and they do not establish a legal foothold for the conclusion that due to monopolistic status of a legal person providing its services to air carrier, it cannot be considered the carrier's agent. Judicial practice took a view that legal persons having a legal monopoly cannot be understood as carrier's agents; thus the Air traffic control centre, meteo service providers, flight controllers, Customs officers or Directorate of Civil Aviation are not considered servants or agents of air carriers in terms of provisions of the Warsaw system and Montreal convention.

As far as implementation is concerned, the Commission and the Member States should coordinate with the European Union Aviation Safety Agency (EASA) to ensure that the safety aspects stemming from Reg. (EU)2018/1139 are taken into due account.

These include the setting, revision and implementation of key performance indicators (FAB).

The key indicators should be in line with the European Plan for Safety referred to in Art. 6 of Reg. (EU) 2018/1139, and should be used to in order to establish achievable, sustainable, realistic and time-bound performance targets at Union level, national level or FAB-level.

They must cover both en route and terminal air navigation services, but also network functions, the idea being to improve the performance of the network as a whole.
According to this logic, the national supervisory authorities are the ones responsible for designing performance plans at national or functional air space level. These plans must contain binding performance targets, based on key performance indicators.

When determining those targets, due attention should be given to the interdependencies that exist between them as a consequence of the strong links between the key performance areas, whilst never losing sight of the all-important safety objectives.

For the sake of coherence, the Member States should submit their draft performance plans to the Commission for assessment and review. First the Commission will verify whether the performance plans are complete, and if so, the Commission will go on to assess whether the proposed performance targets are in line with the Union-wide performance ones.
Member States can only adopt and publish the final versions of their plans after they have passed the Commission's scrutiny.

If necessary, in order to gain an insight into the detailed functioning of the performance scheme, the Commission may ask for input from the Performance Review Body. This entity has an advisory function on anything related to the performance of air navigation services and network functions in the Single European Sky as referred to in Commission Implementing Decision (EU)2016/2296 of the 16th of December 2016.
Only recently, on the 11th of March 2019, the Commission launched a call for applications for the selection of experts for the above-mentioned body.

Finally, it is worth mentioning that on the 15th of April 2019 the so-called "wise persons group", a high-level aviation experts on the future of air traffic management in Europe, handed over to the European Commission a set of 10 recommendations on how to make the European air traffic management system more efficient, flexible and sustainable in the future. They recommended using the performance and charging scheme to support the digitalisation of air traffic services.