



ETF Response to the High Level Group Report

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The European Transport Workers' Federation (ETF) is the pan-European trade union organization which embraces transport trade unions from the European Union, the European Economic Area and Central and Eastern European countries, representing more than 2,5 million workers from 40 European countries.



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Introduction

The following is an examination by the European Transport Workers Federation (ETF) of the ‘Report of the High Level Group for the Future European Aviation Regulatory Framework’. The ETF represents over 250,000 workers including those across aviation within Europe.

High level questions can prove hard to solve when a group that has been especially designed to gather converging opinions, is confronted with the difficulty of delivering a new and workable outcomes.

Though we can imagine that some intense discussions took place within this group, we can see how their work could have benefited from some contradiction. Personnel representatives had been denied direct involvement in this group. They were given only one opportunity to have their say under the title of the so-called “professional staff associations”, as the words “trade unions” were quite deliberately and purposely NOT used. This undermines the integrity of the Report, the confidence in the Commissioner and promotes mistrust in the objectives and outcomes of the Single European Sky. The tens of thousands of European ATM workers who are the core driving force of this industry are not deemed reliable enough to be involved.



In these circumstances, to provide comprehensive workable results based on independent expertise when internal influences are potentially too conservative must create a handicap?

To be the mere reflection of the composition of the group was an easier task to perform. **Not to be** innovative, or **to be** unfaithful to the traditional liberal dogma, was a drawback that was seemingly accepted.

In the end, what is new in the HLG report? Probably only the creation of an Aviation System Coordinator.

The report quotes the Lisbon strategy in terms of economic and environmental dimensions. It does not mention the 3rd pillar: the Social Dimension. This is one of the main concerns that ETF has with the HLG report, the social aspect of the SES process is not considered in the report, except as an economical element from an economical point of view.

Vice President Barrot had appointed the High Level Group in November 2006. He intended to respond to influential Aviation stakeholders who wanted *“to simplify and increase the effectiveness of the regulatory framework for aviation in Europe. Vice President Barrot asked the High Level group to present a vision for the development of the aviation regulatory framework – with a particular focus on Air Traffic Management – and to provide a roadmap with practical next steps”*.



Analyse of the 10 recommendations

The report is made up of 10 recommendations which we present and analyse in the following lines:

1. EU as driving force aviation regulation in Europe

a. Position the EU as sole vehicle to set the regulation agenda for European aviation.

Since the beginning of the Single Sky initiative, ETF has had no problem with recognising the EU as sole European ATM regulator. The SES legislative package has very much stated this role. So what is new in this proposal which is presented as a “change”? Probably nothing, except that this paragraph starts with the word “fragmentation” which is used in so many different areas that it leads to some confusion as to the real intent of the HLG. “Fragmentation” as a description to address the patchwork of responsibilities and regulatory structures under the EU authority is quite acceptable to us in that context. The word “fragmentation” however was inappropriate if there was nothing else to express.



b. Increase the EU's capability to drive through change.

The HLG suggests here the creation of an “Aviation System Coordinator” and invites the Commission to hold regular meetings with the European Directors General. These are concrete steps but how necessary was the establishment of the HLG to come to such recommendations?

c. Reconfirm the importance of separating regulatory from other functions

Here again, there is nothing new as it is one of the main objectives of the Single Sky legislation. If it has not been fully implemented, the HLG could have analysed openly the reasons why it has failed so far.

d. Strengthen the relationship with non-EU Member States

Nothing else other than an updating of what SES has implemented.

2. Greater responsibility for industry

a. Ensure more systematic involvement

After having reaffirmed the necessity of functionally separating regulation and service provision to avoid conflict of interest, the HLG calls for consultation and involvement of industry in the rule making process. We



hope that this will not lead to a fundamental contradiction and a new conflict of interest. The consultation of the users is necessary to provide the best service in line with their requests and needs, but this involvement must be clearly defined with respect to who is responsible for issuing the rules and who has to comply with them, And who is responsible for providing a safety service and who is the customer.

But we do question how it is possible to consult and involve industry without including the people within the industry, ie the ATM workers?

b. Realign governance structures to give industry a greater voice

Some stakeholders wish to exert much greater control over the future of ATM. This may be understandable if the objective was to build a better synergy across the Air Transport industry. Unfortunately we observe that this is rarely the case and that there is an attempt to try to impose a view without sufficient prior knowledge of the ATM sector, along with using other sectors as an example that do not fit with the real position of ATM.

c. Unbundle activities where appropriate

Here, a liberal dogma is used with questionable judgement. These services are clearly involved in the ATM safety chain. ATC services are dependant on them for their quality and we cannot see what operational or



financial advantage could be drawn from a competitive market. In particular, we are convinced there is no overall value in separating ATC and CNS. Other sectors that are not comparable to ATM should not be used as examples in this instance. [However, what has happened with UK transport infrastructure may provide a useful comparison].

On the contrary, we request a better symbiotic relationship, and the establishment of a licence for all personnel involved in the ATM safety chain to give assurance and improve the requested safety level.

3. Better regulation

The input of the HLG on this point is reduced to the minimum as it refers to the better regulation agenda communicated by the Commission, which we would wish to see the Commission apply.

4. Drive improved performance

Performance is labelled as a key word in this report. Performance management is said to be equally applicable to public and private activities. However, according to the HLG, only market mechanisms are likely to improve performance, which we believe to be a potentially dogmatic view. Where market principles cannot be applied, the HLG recommends developing and implementing economic regulation.



As a complement to recommendation N°2, this point does not take into account previously poor experience specifically in the transport sector. In ATM it does not reflect the outstanding performance improvement which has been achieved since year 2000. It ignores the search for improvement based on operational, technical and cost assessment and it raises a market-based approach as the only way forward. How did the European ATM system facilitate the significant increase of traffic in the last decade without a market based approach? How did the average delay go down to 1 minute without using a market mechanism?

HLG members certainly would have been surprised to learn if one of them had been a trade-union representative that workers do not object to performance improvement. Nor do they object to setting performance targets if those targets are commonly and sensibly defined. In their day to day life a vast majority of the workers are dedicated to such goals and they to continue to be able to increase performance into the future. Having denied the possibility for workers representatives to express themselves in this context, the HLG members remained convinced that the workforce is objecting to any performance improvement and therefore the only solution is to apply good old employers' methods and specifically those which could cause conflict from time to time.



5. Deliver the Single European Sky

a. develop an SES implementation strategy and plan

The HLG says here that the Single Sky legislation fails to provide a vision for how the ATM network should meet its objectives (improve safety, capacity and efficiency). It recommends a strategy which should incorporate SESAR, defines which functions should apply subsidiarity principles and which functions should be carried out and at what level. In addition, what should reduce fragmentation and stimulate consolidation, should support establishment of FABs, and should provide performance targets in order to measure progress.

Note; SES does not provide for consolidation among its objectives. The report mixes two different ideas causing confusion: the de-fragmentation of the system and ANSP consolidation, without providing evidence to support its conclusion.

b. Incentivise ANSP performance within new EU regulatory framework.

The main question raised by the HLG in this paragraph could be interpreted as “how to bypass the SES regulation which underlines the duty of general interest of ANS, including public service obligations, and also states that the provision of ATS is NOT of an economic nature justifying the



application of the Treaty rules of competition?” (Actually the HLG speaks of “non–economic activity”). The answer to this question is, according to the HLG, economic regulation and unbundling of services. Moreover, the HLG recommends changing the current charging principles to adopt the principles used by the privatised provider. Does the report want to incentivise ANSP performance (that we still consider in terms of safety, capacity and efficiency) or does it want to obtain a market economy where demand and supply meet on a quantity and price balance. Where is the space for other priorities such as safety?

c. Accelerate progress of FABs

The HLG assesses progress towards establishment of FABs as slow. It notes that many barriers are under the direct influence of States, which is a point of view that we share. The HLG should have more clearly underlined the EU Commission’s responsibility, who have done nothing so far in the area of the legal framework or on liabilities. The HLG report also refers to one of the Palermo principles “One size does not fit all” but regrets that the FAB concept has not been defined and deliberately ignores the work done by CANSO and ETF as European Social Partners. The HLG report also calls upon the European Commission to intervene more strongly where progress is slow. Some sort of come back for a top-down approach?

d. Facilitate success of SESAR



We support this point as far as SESAR should itself be well defined and managed. It would have been hoped that the HLG could come up with novel proposals given that SESAR project was launched after adoption of the SES package. The HLG report is right when it states that “the HLG considers it essential that each phase is completed successfully before moving on to the next phase”. This is a worry that we have expressed many times, underlining the perception that our experts were not given sufficient time to bring valuable input and that their comments were ignored most of the time.

e. Engage the military more effectively

We share the assessment made by the HLG on the slow progress of civil / military relationship. Unfortunately, the HLG proposals in this domain are weak and improvements should have been implemented right after the adoption of the SES.

6. Empower and focus EUROCONTROL

a. Enable the necessary convergence between Eurocontrol and the EU



We support this point and the transfer of responsibility for safety regulation to EASA when there is appropriate definition and delineation of responsibility and allocation of resource.

b. Strengthen performance management

We have the same critical view on this point as the one we expressed on point 4 referring to performance for the ANSPs.

c. Enable further separation and possible unbundling of selected functions

The HLG distinguishes four categories of function in Eurocontrol: support to regulation, network planning, network optimisation, regional ATC service provision.

The HLG is considering some form of unbundling for the three first functions. We do not support this view which could lead to a diminution of Eurocontrol experience and competence in these areas. Eurocontrol's role is essential for network planning and optimisation.

We support that Eurocontrol should comply with SES which implies separation between regulation and operation as far as ATC provision is concerned. The future of MUAC however should be examined under this aspect with the full involvement of personnel.



d. Increase industry responsibility

Once again, a further involvement of industry seems to be considered more from the point of applying a business model rather than reinforcing a synergy between Air Transport's main actors. Eurocontrol remains an inter-governmental body and, if consultation of stakeholders can be improved, governance should be kept in the hands of the Member States.

e. Prepare for post-SESAR JU situation

We support this point.

7. Address airport capacity

We mainly support this point as we have identified several times the problem that current real bottleneck within the European ATM system is airport capacity. But we regret that it does not clearly recognise that airports have been a factor of limitation and delay for air traffic for some time. Airspace users are usually quick to blame ATC for delays but what have they contributed in this area? An inter-modal approach would contribute to better utilisation of airport capacities and to better address environmental concerns.

We also regret that this point does not mention safety issues in this context because runway incursions remain one of the main difficulties.



Technology, SESAR and training should be mobilized for this. This same remark can also be contained within following point.

8. Deliver continuously improving safety

On this point, the HLG rightly assesses the weak level of incident reporting throughout Europe. But it fails to bring energetic solutions to an issue which should have been addressed before. This is the first indispensable step if we want air transport to continue to improve its safety standards.

The HLG is moving in the right direction when they want to “facilitate the uniform adoption of just culture”. They recommend that the European Commission promotes dialogue with judicial authorities in order to enshrine application of just culture in European law. The HLG does not mention other aspects of promotion of just culture such as communication and social dialogue on which the Social Partners are working.

The report considers as a major safety challenge the impact the SESAR deployment phase will have in term of new interaction between system and users, whilst ignoring another big challenge, the new interaction between system and operators.



The HLG also fails to mention the importance of staff competence in safety issues. In safety occurrences, 75% are identified with causes mainly related to human factors. Licensing of personnel (ATCOs, ATSEPs, other jobs within the safety chain) and high training standards are essential. Once again, we see that the lack of direct involvement of ATM worker representatives in this report weakens it and makes it incomplete.

We support the part of this point related to EASA which recommends bringing together responsibility for safety regulation under the EASA umbrella and to reinforce the EASA committee. We also agree with the concern of the HLG regarding the funding of EASA. We wish to suggest that EASA funding must guarantee its independence from any part of the industry.

9. Deliver environmental benefits

The HLG justifiably places environmental issues as a major challenge for Air Transport [and for humanity]. We can understand that airlines repeatedly stress the benefits that improved ATM can have for the environment, as it is easier to give a difficult challenge to others than to be involved themselves. Nevertheless we agree that ATM has a part to play. Reducing trajectories and improving capacity can certainly bring some environmental benefits.



We support that the second package of SES legislation should include environmental issues in all their aspects.

We are not convinced that, as a whole, market mechanisms can bring an overall benefit. We understand that emissions trading and environmental charges can contribute to solutions in certain cases. Nevertheless market mechanisms as they are pursued by the HLG primarily favour business profits. This business model does not have any particular concern for environmental effect.

We also insist on an “inter-modal” approach for transport such as ETF is defining it through its TRUST project

(<http://www.itfglobal.org/etf/trust.cfm>).

10. Commit Member States to deliver

We can support most of this paragraph when it is not related to defragmentation as a pre-requisite. Otherwise it is true to say that Member States have a particular responsibility for ANSPs, airports, enforcement of regulations and environmental issues.



Overall analysis, proposals and conclusion

The HLG report appears to contain a degree of dogmatism in areas where operational issues should first be considered professionally and politically. Many of the above recommendations are primarily justified by this approach, before being considered to be operationally efficient. In the SES package, as it was adopted in 2004, the commercial emphasis that some stakeholders had advocated was not included but the objective of full co-operation between providers was not very clear either. It is quite obvious that the thrust of the HLG report is an attempt to turn the second SES package over to a business oriented regulation. This we would find difficult to accept.

In the ETF, we are fully aware of the difficulties facing the airline industry. We know that workers have paid a high price for past difficulties with thousand of job losses and lower working conditions. In many cases, these failures have turned out to be the result of poor management (Sabena, Swissair, Air Lib, and others) and / or a dogmatic business approach. Keeping the Air Transport industry as healthy as possible is a concern that we share with other workers. We are committed to work with all stakeholders to find solutions which can benefit the whole Air Transport sector. However, it would not be sensible to duplicate policies which have been applied to airlines, because of the different nature of the two



activities. It simply would not be in the interest of airlines and European citizens to face a partial or total failure of ATM or a potentially subtle decrease in safety standards within Europe.

The HLG report does not recognise the performance improvements in ATM over the last few years and how they were achieved. Performance is not a taboo subject for ETF. But what is performance for ATM? Is it to enhance safety, to be able to meet capacity demand and generally speaking to improve efficiency? It is not necessary to use market mechanisms to achieve a good performance level in these domains, and performance must not only be seen as economic performance.

De-fragmentation should not be seen as a pre-requisite for improvement in Europe. The cost of fragmentation is very theoretical. Should we address all the costs related to European history? There still needs to be a proper and transparent examination of the cost of 'de-fragmentation' however it is proposed. For any proposals on 'unbundling' there should be a full impact assessment because perceived benefits could easily be outweighed by disadvantages (eg UK rail experience?). On the one hand we are being told that 'de-fragmentation' is the biggest problem in Europe, and yet on the other there is now a suggestion which would lead to further 'fragmentation'! Such contradictions will lead to confusion and hinder any progress.



Would it not be better to be pragmatic and try to find practical solutions which will turn out to be much more cost efficient than the general defragmentation advocated by some stakeholders?

On the proposal to extend 'economic regulation' we believe that there is a limited level of experience and understanding on its construct, application and implications if applied across Europe. This needs to be examined very closely.

Because some States have decided to corporatise or privatise their ANSPs, the Report rightly identifies the question of aligning the governance by states of service provision at the national and international levels, but does not go any further on trying to answer this fundamental question. This is of course a paradox in trying to create a Single European Sky!

FABs are not the 'cure' which will bring quick progress everywhere. The current FAB process has a major drawback which could be to introduce many new constraints and to be too rigid. Sovereignty issues and divergent geopolitical strategies are not the easiest problems to solve. A more flexible approach, more adaptable to European regions, would certainly bring more productive results in the short and medium term.

The FAB process has to be accepted as a complex and possibly long process. The EU Commission and Member States have a prior responsibility on the legal framework.



We support

- ✓ The EU as sole ATM regulator in Europe
- ✓ Eurocontrol as support to the EU in the regulatory process
- ✓ The expertise role of Eurocontrol and its pan European competence
- ✓ EASA as safety regulator with appropriate funding and resourcing
- ✓ A safety and efficiency performance policy for ATM
- ✓ Establishment of FABs with a bottom-up approach
- ✓ An environmental policy for ATM, part of a wider environmental Air Transport policy included in an 'inter-modal' approach
- ✓ An airport capacity development policy compliant with the preceding point
- ✓ A pro-active role for, and the outputs, of the Sectoral Social Dialogue Committee and to be officially consulted by the Commission on the next steps to come



We do not support

- ✘ Trade unions being excluded from the consultation process
- ✘ Dogmatic market mechanisms applied to ATM
- ✘ Unbundling of services
- ✘ Defragmentation and/or consolidation as a pre-requisite
- ✘ A top-down approach for FABs
- ✘ ATM being labelled as the sole actor able to tackle air transport environmental issues



The way forward

The HLG has ignored a number of orientations which, in our view, are highly likely to bring workable and sustainable solutions.

Safety must come first! With insufficient maturity having been identified in 16 out of 32 European ATM regulatory authorities, there is every possibility to initiate programmes and change that cannot be managed safely. The Commission MUST bear this in mind in continuing to pursue SES/SESAR and any further legislative change.

Co-operation between ANSPs is able to bring concrete first results in areas such as technology, safety management, flow management and training for example. Because of the subtle threat of competition and the lack of political support, co-operation is too often very limited. The scope for improvement may be large and should be backed by a European wide co-operation scheme promoting clear performance objectives. Co-operation can be flexible for every ANSP to find the best suitable partner(s) and the best suitable cooperation level in every domain.

The involvement of trade-union representatives for the definition of the future SES legislation is a pre-requisite. There should be an ambition, as strong as any other, to work with ATM worker representatives and their Trade Unions through the Social Dialogue framework (Article 138 of the EC Treaty). The work done (and to be done) by the European Social Partners regarding the establishment of FABs has to be taken into account.



The future of Eurocontrol has to be further defined, taking on board the difficulties with the ratification of the revised convention. The possibility of Eurocontrol becoming an EU agency has to be examined. Eurocontrol can bring a pan-European network perspective that is needed in the FAB development process.

The importance of ATM staff competence for the quality of service has to be recognized and supported. ATCOs licence transposition should be monitored with the active participation of controllers at every level. A licensing scheme for personnel of the ATM safety chain should be developed.

The NSA's should be given more direction, support and resources where required.

The necessary and equal compliance with all the three pillars of the Lisbon strategy has to be underlined and guaranteed: the economic dimension, the social dimension, and the energy / environmental dimension.

Finally, in trying to ensure a balanced view of ATM, we should perhaps call for a wide ranging investigation into the fragmented nature of the airline industry in Europe to determine the additional costs associated with multiple providers, and the environmental impact of multiple providers on similar routes!!



Conclusion

Through the exclusion of a worker representative, the HLG report has potentially produced a report that is not properly balanced across the ATM community and is therefore not complete. Real progress will only be possible if all the parties are involved in the drafting process of the future legislation. Trade-unions at the national level and at the European level have a very important role to play in this context. The European Air Transport industry would not have any advantage in ignoring this role. ETF strongly requests of the Commission to be involved, on time, in all the next steps preparing the second Single European Sky package. For ETF, the cooperative approach should remain the main goal for a European integration through the Single European Sky.