Gate One Position on the Wise Persons Group Report

Bucharest 3 June 2019 - Gate One is submitting these recommendations in a constructive spirit; highlighting certain aspects of the recommendations in order to contribute to the ongoing discussions.

General comments:

- In its 2017 report, the European Court of Auditors highlighted the fact that the original policy objectives of the Single European Sky initiative have become partly irrelevant and partly unachievable. Thus. we consider that the SES policy objectives need to be re-defined for the adoption of a new Single (Digital) European Sky policy.
- While the Report is referring to the creation of new governance structures, the need to clearly distinguish state functions from market activities is not acknowledged. While private involvement in state activities has its own complexities, the Report offers no justifications or modalities for such arrangements.
- While the Report declares that ATM infrastructure is reaching its limits, we consider that the infrastructural aspect of the Report needs further clarification, especially from the strategic perspective. Designing, operating and financing a robust European ATM infrastructure is an important policy issue in our view. While there exist some infrastructural initiatives and the Report is even referring to the SES Digital Backbone in one of its annexes, the strategic and policy implications of creating new infrastructure should be clarified.
- In our view, alternative interpretations of the current 'capacity crisis' should at least be examined. In other words, the current situation of the ATM sector is characterized by a higher level of complexity which is not sufficiently defined by the 'capacity crisis' narrative. As a result, the view that the ATM infrastructure has reached its limit may be one-sided and should be further analysed. Different perspectives may lead to different approaches, including addressing market failures (e.g.: unsustainable level of supply of cheap flight tickets inducing excessive demand for ATM capacity) of non-economic regulation.
- The proposition of the Report that capacity must be scaled to demand leaves open the question how an optimal level of capacity could be defined and what factors need to be taken into consideration. We would also like to underline that a potential alternative approach to scalability is defining the optimal level capacity. In our view, this potential path should also be explored.
- It is important to underline, that while providing sufficient capacity is important, it probably cannot be the main focus of a policy impacting State obligations, creating new markets and reorganizing a whole sector. What capacity is sufficient is another question that was not considered, which we see problematic, especially in the light of the EU initiatives to address climate change.
- While the Report proposes to oblige ANSPs to share information to increase network predictability, such obligations are not considered for airspace users. We believe that information sharing should be designed in a balanced manner. One solution could be making capacity forecasting a self-standing network function in the operation and

governance of which airspace users and ANSPs could participate on equal terms through the NMB mechanisms.

- While the environmental challenges are identified as a key challenge for the aviation sector, the report does not even mention climate change and treats the problem as one that is only marginally relevant for the ATM sector. We consider that this approach is outdated in the light of recent developments and reports on escalating climate change. In our view, ATM policy is closely related to how, to what extent and under what conditions States grant access to their airspaces. We believe that this is an increasingly important aspect of aviation policy and ATM policy in particular.
- While the Report does make a few references to the interdependence between the different performance targets, it does not sufficiently address the inherent contradiction between the capacity objective and the environmental objective.
- Finally, we would like to suggest that ATM policy should also address the question of how, to what extent and under which conditions airspace – a scarce resource belonging to sovereign states – may be utilized.
- Considering the initiatives for the integration of drones and new categories of airspace users (e.g.: higher airspace operations) in controlled airspace, we believe that this aspect of the development of ATM policy should be further elaborated. The safe integration of drones in the already crowded European airspace is one of the most important challenges that need to be considered when addressing the issues of capacity and airspace management.
- It should be noted that at this point there is virtually no time left to properly reflect the implementation and transition costs to support the WPG report recommendations in the RP3 performance and cost planning.

Recommendation 1

A NETWORK-CENTRIC APPROACH

Confirm and strengthen EUROCONTROL's Network Manager role by providing it with the necessary executive powers to manage the ATM network, including by managing European capacity and infrastructure based on standardised technology, while ensuring a clear division of responsibilities between the Network Manager and ANSPs.

While we support the network-centric approach, it must be recognized that may eventually lead to cases of sub-optimal performance at local level. Therefore, we consider that the impact at local level should be clarified before the introduction of new network-centric measures. Should the role of the NM be expanded as proposed, mechanism to properly address its impact on local responsibilities and performance must be introduced. Executive powers in relation to the proposed centralised functions – Airspace, Capacity and Infrastructure Management – must be based on appropriate accountabilities for the NM vis-à-vis local actors (ANSPs, NSAs, States).

Furthermore, we would like to underline the need to clarify the legal nature of the activities of the Network Manager and to clearly distinguish state or EU prerogatives from economic activities. This also entails the clarification of what the Network Manager is doing as a regulator and what it is doing as service provider. The legal bases of these different activities should be clearly identified in order to ensure the proper legal structuring of the activities

involved. This of course does not exclude the possibility of providing “services” as state functions.

A network centric approach entails that some competences are moved from the national to the EU level. We consider that this aspect of the question should be openly discussed with all the stakeholders, including Member States and the operational stakeholders and clear, justified proposals need to be developed in this respect. It would also be relevant to clarify the legal standing of the Network Manager from the aspect of the EU-EUROCONTROL as well as the public-private dichotomy.

In respect of airspace management, the scope of the “possibility to take executive decisions in the network’s interest” should be clarified. We would like to recall the provisions of Article 6 of Regulation 551/2004, where responsibilities of the Member States are acknowledged. Accordingly, we suggest that the dividing line between State functions and NM functions is clarified.

We consider that one of the less obvious concepts of the Report is the part focussing on the capacity manager function. A contractual framework is proposed, but it is not clear which domain of law these contracts may belong to. It is also unclear how prices would be calculated, whether the contractual framework would somehow replace economic regulation or how such contracts would be governed by economic regulation. It is difficult to understand in what respects this contractual framework would differ from economic regulation, considering their outcome.

The proposed yearly capacity contracts with ANSPs are in contradiction with the current principles of performance planning (performance plan vs. capacity contract) and only add complexity while also leading to potential conflict of interest if the NM is also exercising pseudo-regulatory tasks.

In our view, the concept of infrastructure manager is equally problematic. According to the text, the Network Manager would define the ATM infrastructure needed to support the future development of the network on the basis of the Network Strategy Plan. It seems that ANSPs would have to make their own investments into tools in line with the expectations defined by the NM. In other words, the Network Manager would also have the right to define national infrastructure to some extent. At the same time, ANSPs are expected to operate increasingly as independent business entities. This approach is strengthened, by the possibility of removing certain systems on the basis of advice from the Network Manager from the cost base through economic regulation. While all this points to the creation of a centralized public authority, the technicalities and sovereignty aspects of this question are not addressed. Furthermore, the added value and the potential methods of integrating the SDM into the NM are not discussed.

In addition to the issue of a legal basis, burdening the NM with the micromanagement of ANSPs through infrastructure management would bring another layer of complexity to the system. It may be difficult for the proposed Infrastructure Manager to take into account the local state/national interest, as the local ATM infrastructure is often considered national critical infrastructure with specific State obligations which may not be compatible with NM

executive powers. Instead of simplification, the establishment of the NM as the Airspace, Capacity and Infrastructure Manager, may add more overlaps and complexity to the system.

Finally, it is not clarified what the preservation of the broad industry partnership concept (e.g.: integration of the SDM function into NM) exactly means and how the Network Manager is supposed to be a public authority, a service provider and an industrial partnership at the same time.

Recommendation 2

A NETWORK-CENTRIC APPROACH
Fully integrate airports into the network on the basis of linking the Network Operations Plan and Airport Operation Plans, using extensive Collaborative Decision Making.

We support this recommendation.

Recommendation 3

IMPLEMENTATION OF A DIGITAL EUROPEAN SKY
Implement a Digital European Sky based on an agreed roadmap building on the recommendations described in the Airspace Architecture Study, managed by the Infrastructure Manager, ensuring resilience of the system.

GateOne welcomes the AAS study, which provides an overall transition strategy. At the same time we consider that a detailed and realistic transition plan needs to be developed, including concrete steps and roles of all stakeholders. A successful transition will require collaboration and commitment from all stakeholders.

From a technical point of view, the AAS, as the basis for a Digital European Sky (DES), is to a significant extent based on assumptions, which are also based on further assumptions. The development and implementation of the DES will have to rely on mature and properly validated systems while concepts like capacity-on-demand and many others introduced in the AAS and/or WPG report require multiple prerequisites to be put in place first in order for them to theoretically work.

It is not clear how industrial partnerships are supposed to fulfil the originally intended purpose of FABs. While FABs would usually perform activities that belong to the public domain, industrial partnerships have private objectives, usually driven by a profit motive. Once again, more clarity is needed which activities belong to the public domain and which activities belong to the market. We believe that FABs and industrial partnerships can efficiently coexist and that the FABs can contribute to establishing industrial partnerships by facilitating co-operation within the context of the existing legal framework between the Sates under the FAB umbrella. As a consequence, there is a place for FABs in the delivery of the future European Airspace architecture.

While the report declares that the aim is a fully integrated and automated UTM-ATM system, it is not entirely clear what the ‘Digital European Sky’ concept entails and what role is envisioned for ‘traditional ATM’ in this fully automated system. If taken literally, this points

in the direction of a common European air traffic management system, which is not only integrated in the operational sense, but also legally. To achieve such legal integration, the current legal and political framework of the Single European Sky would need to change considerably. The Report does not discuss how this would happen. Furthermore, it is not explained what kind of infrastructure is needed to be developed to achieve such an objective, how this new infrastructure would be governed and what would happen to air traffic controllers after achieving full automation as proposed by the Report: "The aim should be that the development of U-space and the evolution of “traditional” ATM result ultimately in a fully integrated and automated system.” (p. 17).

We fully support the recommendations to develop standards that ensure interoperability.

Recommendation 4

IMPLEMENTATION OF A DIGITAL EUROPEAN SKY
Create a new market for ATM data service providers as recommended by the Airspace Architecture Study.

The creation of a new market and new business opportunities basically means the liberalization of certain activities that have so far been carried out as State functions, falling outside the scope of the market domain and competition law. According to the Report, this also requires the evolution of the “collaborative management of the airspace through remote provision of air traffic services” and a move away from traditional infrastructure to the procurement of services. It is not entirely clear how the collaborative management of the airspace will evolve into a fully automated system mentioned under Recommendation 3 and how business entities will take over all these tasks from the States involved.

GateOne may be able to support a market-driven approach where this is carried out on a voluntary basis and on the basis of a solid business case. In particular, any unbundling of the ADS provision from ANSPs has to be on a voluntary basis and where there is a proven positive business case, while at the same time ANSPs should be allowed the freedom to choose the most appropriate business model/set-up for the establishment of the ADSPs.

Another important aspect of this recommendation is the lack of a clear EU legal framework for data, including the lack of sectoral data regulation. The Report mentions data “ownership”, but legally speaking there is no right of ownership over data. There is ongoing discussion of potential new solutions such as a non-exclusive ownership right, these efforts may not result in actual legislation very soon. This in our view raises the need to consider the feasibility of sectoral data regulation that could clarify who controls data, classify data as public or restricted, define purpose-limitation rules (commercial use, R&D, etc.), access criteria as well as safety, cybersecurity, data quality requirements.

Creation of ADSPs must not lead to a reduced resilience of the system, where a failure of one centralised provider could cause a network failure on a scale far exceeding the potential impact of a similar event in the current system.

Recommendation 5

IMPLEMENTATION OF A DIGITAL EUROPEAN SKY

Use the performance and charging scheme to support the digitalisation of air traffic services, and public funding to support deployment only where necessary from a network perspective.

It is not entirely clear what is exactly meant by "digitalization". Air traffic services are already digitalized in Europe to a considerable extent. As other parts of the Report reveal, digitalization in its context may involve automation and virtualization. In our view, the expected level of automation and virtualization should be clearly defined, also clarifying the expected benefits, structural costs, social aspects and risks. Furthermore, such digitalization also means the development of new infrastructure. Since creating ATM infrastructure at the European level is an important aspect of ATM policy, we consider that the vision concerning the new digital infrastructure should also be clarified beyond the potential emergence of ADSPs.

Decommissioning "legacy" ATM infrastructure and using financial incentives and "disincentives" to achieve modernization raises several issues. One of these is related to the current legal framework of reimbursing the costs of air navigation services provision to the States providing such services. It is not entirely clear how certain tools that the States decide to employ could be excluded from the cost base. Furthermore, if infrastructure is defined and operated at an EU level, perhaps the relevant competences should also be defined at this, rather than at the national level.

While the document is proposing the incentivisation of early movers and disincentives for last movers, it is not providing a clear definition for "early mover" and "last mover". Furthermore, the Report suggest that the possibility of creating EU financial tools for non-physical infrastructure investments needs to be explored. In case this means that service procurement may be subsidized with EU funds, in our view competition law concerns may arise (e.g. state aid law).

Finally, incentives should be designed with a view to ensuring that real benefits may be realized by the stakeholders involved.

Recommendation 6

EVOLVING ROLE FOR PEOPLE DELIVERING THE ATM SERVICES

Facilitate the transition towards the Digital European Sky by reviewing current licensing and training requirements for ATCOs, with full involvement of staff representatives.

Recommendation 3 includes full automation as an end goal (Report p. 17). This may mean that according to the WPG the human role will not simply change, but that the traditional ATCO disappears from the system. We consider that the question of what is to become of trained air traffic controllers in that scenario needs to be considered. In the long-term, even if full automation is not achieved, implementation of new technology and increased automation will have an impact on the working methods and the role of ATCOs will change

from executing to monitoring traffic. This will not only increase ATCO capacity but also enable more flexibility regarding licensing.

Gate One recognises that there are some requirements on ATCO licensing that are too restrictive and could be simplified (e.g. medical requirements for ATCOs in a radar environment, some national requirements regarding language, nationality and security clearance). However, due to local specificities, ATCOs still need to go through a certain amount of local training, as a lack of local knowledge may have a negative impact on ATM capacity.

Finally, we consider that merely increasing ATCO mobility, will not solve general shortage of ATCO staff in Europe. It may even cause further capacity problems if ATCOs working at more cost-efficient ANSPs begin migrating to ANSPs capable of paying higher wages to ATCOs.

Recommendation 7

SIMPLIFYING THE REGULATORY FRAMEWORK
Simplify and strengthen economic regulation, while relying on a market-driven approach wherever possible.

We fully support the need for clear and well-defined objectives for both economic and non-economic regulation, as well as the necessity to take greater account of the interdependencies of the different targets. Since this is only marginally mentioned by the Report, we would also like to suggest that the interdependence between the capacity target and the environmental target is also taken into consideration.

It should be noted, though, that this recommendation seems to be in contradiction with recommendations 1 and 8, which propose introducing new subjects to the process of economic regulation of ANSPs,.

Recommendation 8

SIMPLIFYING THE REGULATORY FRAMEWORK
Establish a strong, independent and technically competent economic regulator at European level.

We support the objective of simplifying the regulatory framework, in particular the institutional framework needs to be clarified, including the different roles and responsibilities of all actors. The potential conflict of interest also need to be addressed. At the same time, we consider that more clarity is needed in respect of the proposed new regulatory framework. In our view, there is a need to define the potential new scope of economic regulation, non-economic regulation and also de-regulation. We suggest that it is further explained how additional economic regulation is expected to contribute to overall performance.

It is not clear what position the new body may have in the current landscape (replacing PRB? etc.) and the added value compared to the current setup is not demonstrated. The role and

competences of NSAs must be retained, if not strengthened, in parallel to the establishment of the EER. It is unclear how the suggested new economic regulator will be different from the current PRB in place. While a role for EASA is clearly a possibility, we believe that centralizing more regulatory tasks at the EU level is only possible if it is clarified to what extent the Member States may retain their powers and how their obligations under the Chicago Convention are executed.

Recommendation 9

SIMPLIFYING THE REGULATORY FRAMEWORK Establish a Seamless European (Upper) Airspace System including a common route charge.

We would like to suggest that the difference between the European Upper Flight Information Region (EUIR) and the proposed Seamless European (Upper) Airspace System is clarified. We consider this is in fact the question of how competences are divided between the EU and Member States and to what extent the EU will be able to centralize authority over the airspace. While this is obviously a political aspect of the question, in our view this aspect is at the same time the basis of any future arrangement and therefore needs to be clarified. (e.g.: It is not clear whether the SEAS would be managed by a single agency or otherwise; Common route charges may not be feasible considering the diversity in national rules and costs of service provision in Europe, potential difficulties of re-distribution, etc.).

Recommendation 10

SIMPLIFYING THE REGULATORY FRAMEWORK Encourage airports to procure tower services through competitive tender or contract, where operationally feasible and positively impacting users.

GateOne supports a market-driven approach as long as this is on a voluntary basis and where there is a solid business case.