



NEW STATUTES OF ENAIRE AND AESA

On 7th March 2023, the Council of Ministers approved the Statute of the public business entity Enaire and the modification of the Statute of the Spanish Aviation Safety Agency (AESA) through Royal Decree 160/2023. This note will summarize these regulatory changes.

Let us begin this newsletter by recalling the context in which the recent legislative amendment takes place, which, as it will be seen, is related to the separation of functions that historically were attributed to the airport manager of our country named "Spanish Airports and Air Navigation (AENA)".

More than 10 years ago, through Royal Decree-Law 13/2010², it was implemented the first significant reform of the airport management model, in which the functions and competences of AENA were modified. In doing so the legislator agreed (i) to create a new company that would assume the management and operation of airport services, based on providing a commercial structure that would enable a more appropriate legal framework for such purposes (Aena Aeropuertos, S.A., hereinafter, "Aena"); and (ii) to maintain the air navigation functions to AENA.

After that, Law 18/2014³, amended the name, remained as Enaire Public Business Entity* (Enaire), which performs all functions related not only to air navigation and airspace but also to *the national and international operational coordination of the national air traffic management network and others related to the uses for efficient management of the airspace taking into account the needs of users.*

Given the above, it has turned out essential to approve a Statute that

provides ENAIRE a regulatory framework in which its functions and competences were regulated. This would also aligned it with community regulation of the Single European Sky⁴.

For its part, it should be reminded that the Spanish Aviation Safety Agency (AESA), which is attached to the Ministry of Transport, Mobility, and Urban Agenda, was set up by Act 28/2006⁵. The Agency would be responsible for supervising compliance with civil aviation regulations in all aeronautical activity in our country.

Specifically, and with the clear purpose of increasing transport safety, the quality of aeronautical services, and promoting Spain's international presence in the air transport sector, AESA would assume the functions of *organization, supervision, and inspection's air transport safety, the inspection and control of aeronautical products in air navigation systems and airport security, air activities, and aeronautical personnel, as well as the functions of detection, analysis, and assessment of safety risks in the air transport, defining, through its Statute, all the legal and organizational instruments that were necessary to ensure its functioning*⁶.

As will be seen, as a result of the changes introduced through the creation of ENAIRE's Statute, it has also been necessary to amend the Statute of AESA, which goes on to assume new functions.

¹ Royal Decree 160/2023, of 7th March, approving the Statute of the public business entity ENAIRE, and modifies the Statute of the State Aviation Safety Agency, approved by Royal Decree 184/2008, of 8th February (hereinafter, "Royal Decree 160/2023").

² Royal Decree-Law 13/2010, of 3th December, on fiscal, labour and liberalization measures to foment investment and creation of employment (hereinafter, "Royal Decree-Law 13/2010").

³ Act 18/2014, of 15th October, approving urgent measures for growth, competitiveness and efficiency (hereinafter, "Act 18/2014").

⁴ The legislator points out that *the Single European Sky framework has brought significant changes for air navigation service providers, which are currently subject to certification by the national supervisory authority of each Member State, in accordance with requirements set at a European level, and in the case of air traffic services, subject to designation on an exclusive basis within specific blocks of airspace.*

⁵ Act 28/2006, of 18th July, on State Agencies for the improvement of public services.

⁶ Royal decree 184/2008, of 8th February, which approves the Statute of the State Agency of Aerial Safety (hereinafter, "Royal decree 184/2008")

First off, it should be noted that Enaire continues as a public organism, attached to the Ministry of Transport, Mobility, and Urban Agenda, with independent legal personality, full legal capacity and ability to act in fulfillment of its purposes, and its own assets.

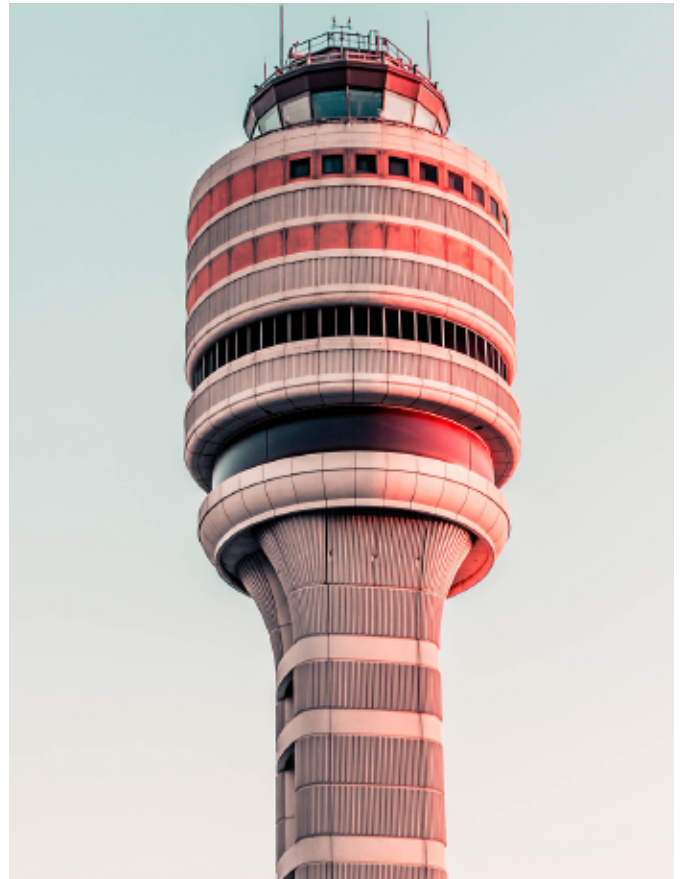
This Statute enables Enaire to exercise the provision of air navigation and airspace services delegated by the State, as well as the national and international operational coordination of the air traffic management network and *others related to the uses for the efficient management of airspace taking into account the needs of airspace users.*

Among the main changes, it should be noted that the new Statute removes the airport functions carried out by Enaire in accordance with Law 18/2014, as well as the functions of the substantive organism, with decision-making capacity, in the airspace design that should no longer be exercised by an air navigation services provider according to European Union regulations. These competences are transferred to AESA, which also becomes, as will be referred in the following paragraphs, a substantive body for the environmental handling of new airport projects, due to its general competences on this type of infrastructure.

Likewise, the Statute details the governing and executive bodies of the entity, the operation and functions attributed to them; as well as the economic, financial and labor regime.

As for AESA, it has been agreed to modify the competences contained in Royal Decree 184/2008, recognizing the Agency as the competent authority to the introduction of noise-related operating restrictions for the purposes of EU regulations, as well as the supervision, inspection and sanction of the obligations set at Act of Noise 37/2003, 17th November, in the civil airports of the General State Administration competence, assuming additionally the condition of substantive body in relation to the projects related to said airports⁷; and the executive functions attributed to the Ministry of Transport, Mobility, and Urban Agenda regarding greenhouse gas emission rights in civil aviation.

Related to these functions, it is recognized its sanctioning competence, not only referring to the administrative infractions stated in Safety Act 21/2003, 7th July, but also by those stated in Act 21/2013, of 9th December, on Environmental Assessment, when the Agency becomes the substantive body and in Act of Noise 37/2003, 17th November.



In addition to what has been said, certain operational bodies⁸ have been removed and the organizational structure of the Agency has been simplified, being reduced to the Directorate, the General Secretariat, and the corresponding operational bodies, whose articles have been updated in accordance with the aforementioned amends.

All changes introduced by Royal Decree 160/2023 came into force on 8th March 2023, with the exceptions indicated on this note.

We hope that the above is of interest. In case you need any clarification or assistance, please do not hesitate to contact us.

PionAirLaw

Silvia Frade Sosa
Diego Olmedo de Cáceres

⁷ These functions would not enter into force until three months after the publication of Royal Decree 160/2023 in BOE, that is, until 8th June 2023.

⁸ Following bodies have been removed: the Directorate of Security Assessment and Internal Technical Audit, the Directorate of Airport Security and Air Navigation and the Directorate of Civil Aviation Security and User Protection. Any reference made to these bodies should be understood to be made to those that assume their competencies.