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REPORT

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 1)

No. prev. doc.: 14654/23
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Subject: Amended proposal for a Regulation on the implementation of the Single European Sky
Proposal for a Regulation amending Regulation (EU) 2018/1139 as regards the capacity of the European Union Aviation Safety Agency to act as Performance Review Body of the Single European Sky
– Preparation for the trilogue - Four Column - Performance Review Body (PRB)

In view of the COREPER 1 meeting on 15 December 2023, in annex are the four-column documents on the Performance Review Body (PRB).

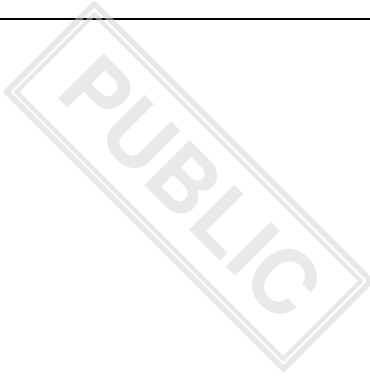
In SES2+ Regulation

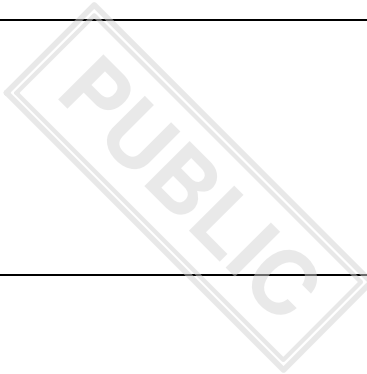
	Commission proposal COM(2020) 579 final	EP amendments (updated first reading) PE662.138v01-00	Council document 9616/21	COREPER meeting – 15 December
113.		Article 5a (new)- Agency acting as Performance Review Body	Article 9b - Performance review body	113 Article 9b - Performance review body
114.		1. A Performance Review Body (PRB) shall be established with the competence to implement various tasks notably in respect of the performance and charging schemes. A permanent structure shall be established with the European Union Aviation Safety Agency (EASA) in a manner that separates, functionally and hierarchically, the discharge of the PRB's tasks regarding the performance and charging schemes of the Single European Sky, from	1. In accordance with the examination procedure referred to in Article 37(3), the Commission may, by means of an implementing act, designate an independent and impartial Performance Review Body (PRB). The PRB shall have no regulatory function or other decision-making power. The role of the PRB shall be limited to providing advice and assistance to the Commission and the national supervisory authorities on request in particular as regard the collection, examination,	114 Compromise text proposed by the PCY, in relation to the GA: 1. With the aim to advise and assist the Commission, as well as the national supervisory authorities, in the implementation of various tasks in respect of the performance and charging schemes defined in Chapter III of this Regulation, an independent Performance Review Body (PRB) [is / shall be] established as a permanent and distinct entity, with its own legal personality, [as a stand-alone Agency / within an

		<p>the Agency’s activity as a safety authority.</p>	<p>validation and dissemination of relevant data as well as the implementation of the performance scheme set out in Articles 10 to 18 and of the charging scheme set out in Articles 19 to 23. The Commission and the national supervisory authorities shall remain responsible for the implementation of their tasks and obligations under this Regulation. The Commission shall supervise the proper execution of the PRB tasks.</p>	<p>Agency]¹. The PRB shall have its own structure and staff, in order to guarantee that the tasks conferred upon it are carried out with the required expertise and independence from public or private interests, and be able to rely on dedicated resources.</p> <p><i>[+ Recital: By means of a service level agreement, the corporate services of the PRB could be hosted in the headquarters of an international organisation. This could include offices, meeting room facilities, IT services and administrative support. Such agreement should respect EU rules, including on data protection, and should ensure that there is no dependence on non-EU States for implementation of the agreement.]</i>²</p>
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¹ If a stand-alone Agency is created, it may be in the SES2+ Regulation. If the PRB is hosted in an existing Agency, the Regulation establishing that Agency will be referred to here. A proposal for modifying that Regulation would then be needed.

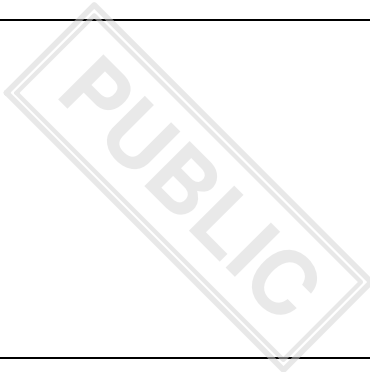
² This recital is proposed as an option in the case of a stand-alone Agency.

114a.				<p>114a Compromise text proposed by the PCY :</p> <p>2. The PRB shall have no regulatory function or other decision-making power having legal effects on parties regulated under this Regulation. The tasks of the PRB shall be to:</p> <ul style="list-style-type: none"> (a) provide advice and assistance to the Commission and the national supervisory authorities on request in particular as regard the collection, examination, validation and dissemination of relevant data; (b) assist the Commission to carry out the tasks of the Commission related to the detailed functioning of the performance and charging schemes defined in Chapter III of this Regulation and in the implementing acts adopted on the basis thereof; (c) upon request, assist national supervisory authorities on their
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				implementation of the performance and charging schemes defined in Chapter III of this Regulation and in the implementing acts adopted on the basis thereof. ³
114b.				114b Compromise text proposed by the PCY : 3. The Commission and the national supervisory authorities shall remain responsible for the implementation of their tasks and obligations under this Regulation. <i>(from line 346 of Amended EASA BR):</i> The Commission shall supervise the proper execution of the PRB tasks, without prejudice to the independence of the PRB regarding the opinions, recommendations, reports and guidance material to be provided to the Commission or the

³ In view of that point (c), the Presidency proposes to delete lines 86 to 90 of Article 3 (document ST 16430/23).



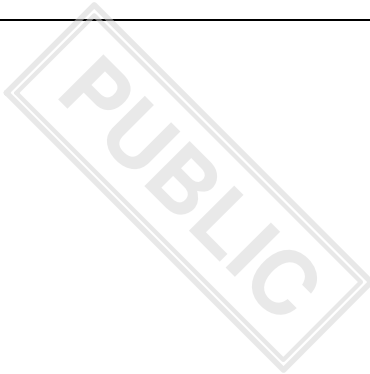
				<p>NSAs.</p> <p>The Commission shall provide an annual report on the results of its supervision to the European Parliament and the Council and the committee referred to in Article 37(1) of this Regulation.</p>
114c.				<p>114c</p> <p>Compromise text proposed by the PCY:</p> <p>4. The Commission shall grant access to the PRB to all relevant information for the execution of its tasks.</p> <p>In accordance with Article 41, the PRB shall respect the confidentiality of commercially sensitive information and national security and defence sensitive information of air navigation service providers.</p>
115.		<p>2. To carry out its tasks, the Agency acting as PRB shall have the required expertise. It shall be independent from public or private interests and</p>	<p>2. In case the Commission decides to designate a PRB pursuant to paragraph 1, it shall, in accordance with the examination procedure referred to in Article</p>	<p>115</p> <p>Compromise text proposed by the PCY:</p> <p>5. The Commission shall, in</p>

		shall be provided with its own dedicated resources. Its integration within the existing structure of the Agency shall be governed by the [Regulation (EU) 2018/1139 as amended by Regulation PRB].	37(3), adopt detailed rules regarding in particular the period of designation of the PRB, the composition of the PRB, the selection and appointment procedure as well as term of office of the PRB members, including, where relevant, of the PRB chair, the allowances, expenses and remuneration of the PRB members, the tasks of the PRB in accordance and within the limits of this Regulation as well as the specific financing modalities of the PRB activities.	accordance with the examination procedure referred to in Article 37(3) of this Regulation, adopt detailed rules regarding the tasks of the PRB and the oversight exercised by the Commission. <i>See also line 17 in Annex II containing other empowerements of the Commission.</i>
116.		Article 5aa – PRB See Articles 5b-5z of EP Resolution on the proposal to amend EASA BR regulation		116 Compromise text proposed by the PCY: [...]

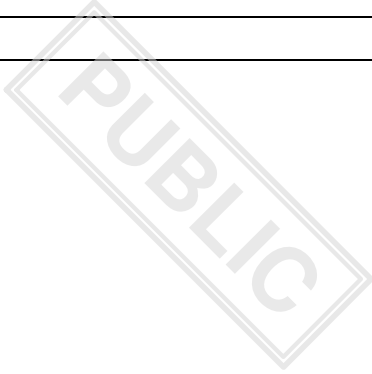
Either in SES2+ Regulation or in the Regulation of an existing Agency

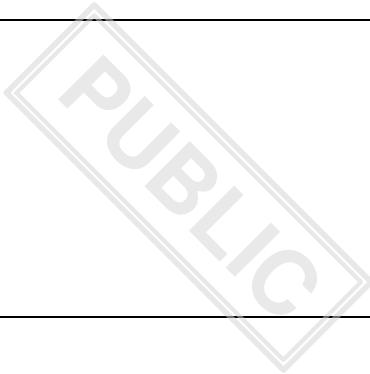
				COREPER meeting – 15 December
1.				<p>1</p> <p>Compromise text proposed by the PCY:</p> <p>[1. In accordance with Article 9b of SES2+ Regulation, a Performance Review Body (PRB) [is / shall be] established. The following conditions shall apply in respect to the hosting Agency:</p> <p>(a) its internal decision-making process shall be independent from the decision-making process of its hosting Agency;</p> <p>(b) there shall be a functional separation of its tasks;</p> <p>(c) its administrative functioning is supported by the hosting agency.]⁴</p>
3.				<p>3</p>

⁴ This text is only needed in the Regulation of an existing Agency if the PRB is hosted in that existing Agency.



				<p>Compromise text proposed by the PCY (from line 162 of Amended EASA BR):</p> <p>3. For carrying out its tasks in respect of the performance and charging schemes defined in Chapter III of [this Regulation/SES2+ Regulation], the PRB shall have:</p> <ul style="list-style-type: none">(a) A Board for Performance Review;(b) A Director for Performance Review;(c) An NSA Cooperation Board. <p>Secretariat shall be provided to the Board for Performance Review and to the NSA Cooperation Board by the [PRB/hosting Agency].</p>
4.				<p>4</p> <p>Compromise text proposed by the PCY (from line 99 of Amended EASA BR):</p> <p>4. The PRB shall be legally represented by its Director for</p>

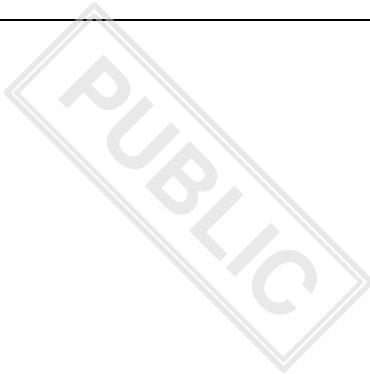
				Performance Review.
5.				<p>S Compromise text proposed by the PCY (from lines 142 and 202 of Amended EASA BR):</p> <p>5. The Director for Performance Review shall be selected by the Commission and the Board for Performance Review and appointed by [the Board for Performance Review/the Management Board of the hosting Agency] after consultation of the NSA Cooperation Board, on the basis of merit as well as skills and experience relevant to the air traffic management, air navigation services and economic regulation of network industries, following a public call for expression of interests.</p> <p>The Director for Performance Review shall be accountable [to the</p>



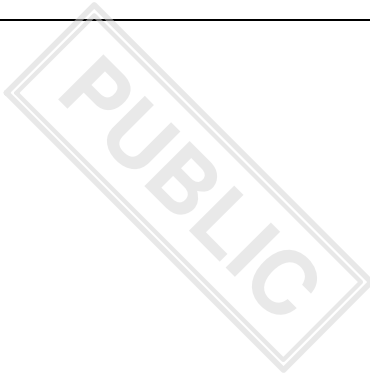
				Management Board of the hosting Agency] ⁵ with respect to administrative, budgetary and managerial matters[, but shall remain fully independent concerning his or her tasks under SES2+ Regulation] ⁶ .
6.				6 Compromise text proposed by the PCY: 6. The Director for Performance Review shall be responsible for the implementation of the tasks of the PRB carried out in accordance with [this Regulation/SES2+ Regulation] and the implementing acts established on the basis thereof and shall be in charge of the day-to-day administration in relation to those matters. In particular, the Director for Performance Review shall be responsible for drafting, consulting on, adopting and publishing opinions, recommendations, reports

⁵ This text is only needed in the Regulation of an existing Agency if the PRB is hosted in that existing Agency.

⁶ This text is only needed in the Regulation of an existing Agency if the PRB is hosted in that existing Agency.



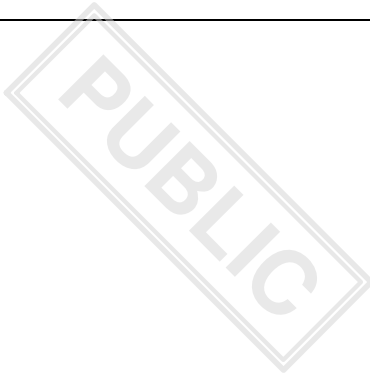
				<p>and guidance material in respect of the tasks of the PRB.</p> <p>The Director for Performance Review shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government or from any other public or private body, including the Commission without prejudice to its supervisory role.</p> <p>The Director for Performance Review may conclude working arrangements with other organisations, such as the Network Manager.</p> <p><i>(from lines 285 and 288 of Amended EASA BR):</i></p> <p>The Director for Performance Review shall draft annual and multi-annual work programmes for approval of the Board for Performance Review.</p> <p>[After the draft being approved by the Board for Performance Review, the Director for Performance</p>
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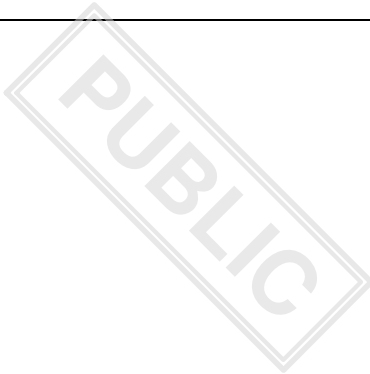
				<p>Review shall submit it to the Management Board of the existing Agency in order to be integrated in the Agency's draft programming document]⁷.</p> <p>The Director for Performance Review shall draft a PRB annual activity report for approval of the Board for Performance Review. After the draft being approved by the Board for Performance Review, the Director for Performance Review shall send it to the Commission, the European Parliament, the Council and the Court of Auditors [and submit it to the Management Board in order to be integrated in the Agency consolidated annual activity report]⁸.</p>
7.				7 Compromise text proposed by

⁷ This text is only needed in the Regulation of an existing Agency if the PRB is hosted in that existing Agency.

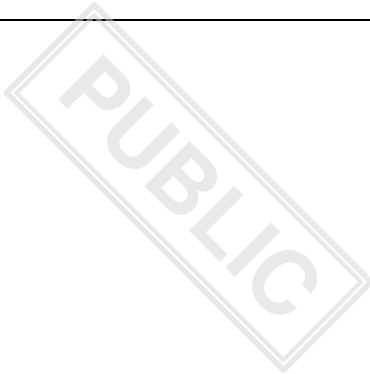
⁸ This text is only needed in the Regulation of an existing Agency if the PRB is hosted in that existing Agency.



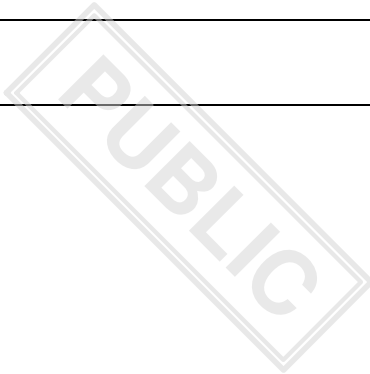
				<p>the PCY:</p> <p>7. The Board for Performance Review shall be composed of 5 members, including its chair.</p> <p>The members of the Board for Performance Review shall be appointed by the Commission, following a public call for expression of interest, upon approval by the Member States. The Chair of the NSA Cooperation Board shall be involved in the selection process by the Commission. The members of the Board for Performance Review shall be appointed on the basis of merit as well as skills and experience relevant to the air traffic management, air navigation services and economic regulation of network industries.</p> <p><i>(from line 188 of Amended EASA BR):</i></p> <p>The Board for Performance Review shall elect a Chairperson</p>
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				<p>and a Deputy Chairperson from among its members.</p> <p>The Director for Performance Review shall attend the meetings of the Board for Performance Review. The Chairperson of the Board for Performance Review may invite the Commission and other experts on specific topics to attend the meetings.</p> <p><i>(from line 186 of Amended EASA BR):</i></p> <p>When carrying out the tasks conferred upon it by [this Regulation/SES2+ Regulation] and by the implementing act adopted on the basis thereof, the Board for Performance Review shall act independently and shall not seek or follow instructions from any government or from any other public or private body, including the Commission, without prejudice to its supervisory role must be included.</p>
8.				8

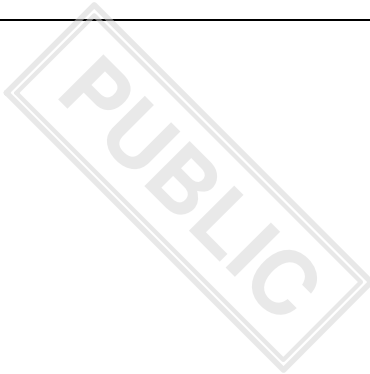


				<p>Compromise text proposed by the PCY:</p> <p>8. The Board for Performance Review shall provide opinions, and where appropriate comments on and amendments to the text of the Director for Performance Review’s proposals for draft opinions, recommendations, reports and guidance material in respect of the tasks of the PRB carried out in accordance with [this Regulation/SES2+ Regulation] and other administrative aspects related to the functioning of the PRB.</p> <p>Opinions, recommendations, reports and guidance material drafted by the Director for Performance Review shall be adopted only after obtaining the favourable opinion of the Board for Performance Review.</p> <p>The Board for Performance Review shall approve the annual and multi-annual work programmes and the PRB annual</p>
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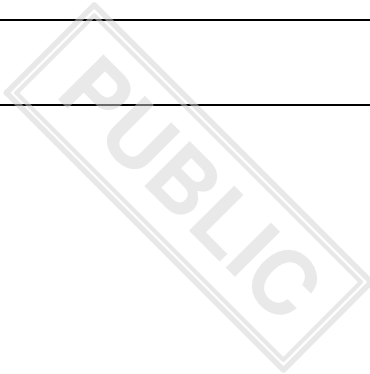
				activity report drafted by the Director for Performance Review ⁹ .
9.				9 Compromise text proposed by the PCY: 9. The NSA Cooperation Board shall be composed of a senior representative and an alternate from the national supervisory authority of each Member State, both nominated by the NSA. The NSA Cooperation Board shall elect a Chairperson and a Deputy-Chairperson from among its members. The Commission, the Director for Performance Review and the Chairperson of the Board for Performance Review may participate in the meetings of the NSA Cooperation Board. Third countries may also participate as observers.
10.				10 Compromise text proposed by the PCY:

⁹ In case the PRB is hosted in an existing Agency, some more details might be needed for the interactions between the Board of Performance Review and the Management Board of the hosting Agency.

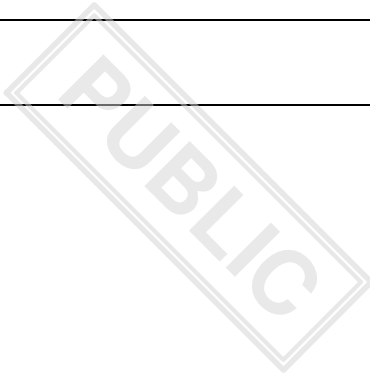


				<p>10. The NSA Cooperation Board shall:</p> <ul style="list-style-type: none">(a) exchange information about the work of national supervisory authorities and decision-making principles, best practices and procedures with regard to the application of [this Regulation/SES2+ Regulation]¹⁰;(b) provide recommendations on guidance material to be issued by the PRB;(c) provide recommendations to the Director for Performance Review in the execution of his or her tasks;(d) provide recommendations to the Director for Performance Review on the annual and multi-annual programming;(e) provide recommendations to the Director for Performance Review for the conclusion of working arrangements with
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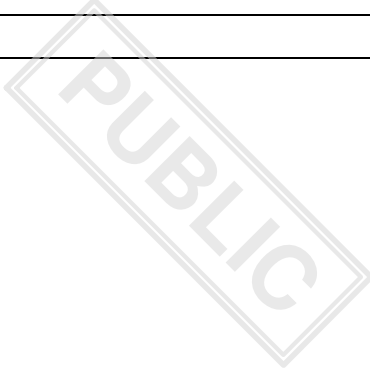
¹⁰ This way of cooperation was established already in Article 5(1), but that article shall be modified to take into account the creation of this Board if accepted.

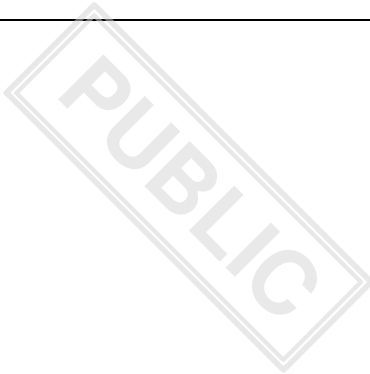


				other organisations, such as the Network Manager.
11.				11 Compromise text proposed by the PCY: 11. The PRB [is/shall be] composed of full-time staff with relevant qualifications and experience, which allows for an increasing professionalization of this body. The staff shall have relevant skills and experience relevant to the air traffic management, climate and environmental performance of air navigation services and other areas closely linked to air navigation or economic regulation of network industries. The staff of the PRB shall be recruited under clear and transparent processes and criteria which ensure their independence. In addition, the staff of the PRB may be persons having the relevant skills and expertise mentioned in

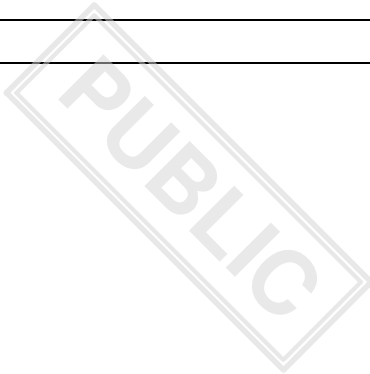


				the first subparagraph seconded from other organisations.
12.				12 Compromise text proposed by the PCY (from line 153 and 155 of Amended EASA BR): 12. The Director for Performance Review shall be responsible for deciding whether it is necessary, for the purpose of carrying out the PRB tasks in an efficient and effective manner, to establish one or more local offices in one or more Member States. This decision requires the prior consent of the Commission, [the Management Board of the existing Agency] and, where applicable, the Member State where the local office is to be established. Those decisions shall specify the scope of the activities to be carried out at that local office or by that co-located staff in a manner that avoids unnecessary costs and duplication of administrative

				functions.
13.				<p>13 Compromise text proposed by the PCY (from line 387 and following of Amended EASA BR):</p> <p>13. The PRB shall be open to the participation of third countries which have concluded agreements with the Union and which have adopted and are applying the relevant rules of Union law in the field of air traffic management including, in particular, the rules on independent national supervisory authorities and on performance scheme and charging scheme of [this Regulation/SES2+ Regulation].</p> <p>That participation shall be formalised by means of working arrangements, specifying the nature, scope and procedural aspects of the involvement of those countries in the work of the PRB and including provisions relating to financial contributions and to staff.</p>

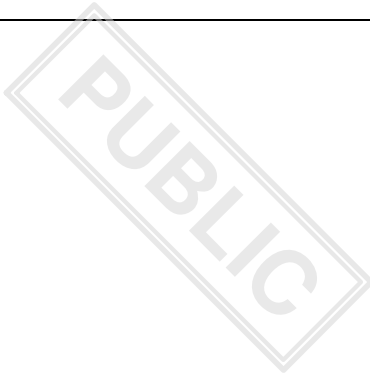


14.				<p>14 Compromise text proposed by the PCY (from lines 296 and 297 of Amended EASA BR):</p> <p>14. In carrying out its tasks, the PRB shall extensively consult at an early stage the stakeholders listed in Article 38(3) of [this Regulation/SES2+ Regulation] and, where relevant, competition authorities, without prejudice to their respective competence, in an open and transparent manner and shall establish consultation mechanisms to this end in accordance with Article 38.</p>
15.		15.		<p>15 Compromise text proposed by the PCY (from lines 298 and 299 of Amended EASA BR):</p> <p>15. The PRB shall ensure that the public and any interested parties are, where appropriate, given objective, reliable and easily accessible information, in particular with regard to the results</p>

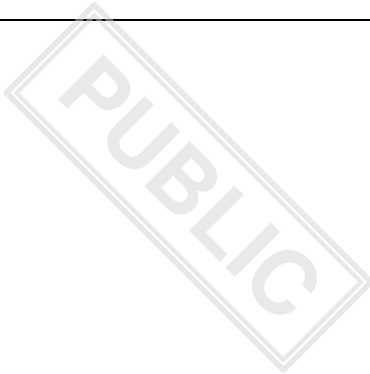


				of its work.
16.				<p>16</p> <p>Compromise text proposed by the PCY are the two following options, that might need to be complemented based on the final decision on the location of the PRB (from lines 322 and following of Amended EASA BR):</p> <p>OPTION A</p> <p>16. Financing of the PRB for the execution of its tasks shall come from fees paid by ANSPs. Those fees are eligible to be recovered through air navigation charges imposed to airspace users according to Article 19 of [this Regulation, SES2+ Regulation]. ¹¹ Those fees shall have no impact on the financing of air navigation service providers and national supervisory authorities;</p>

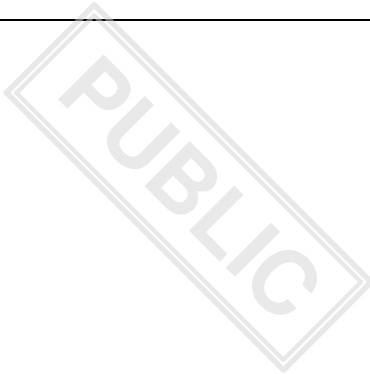
¹¹ This shall be reflected also in the list of eligible costs in Article 20(3).



				<p>OPTION B</p> <p>16. The revenues of the PRB for the execution of its tasks shall comprise:</p> <ul style="list-style-type: none">(a) a contribution from the Union;(b) fees paid to the PRB by the NSA in case NSA request its assistance pursuant to Article 9b(2) of [this Regulation/SES2+ Regulation], which shall be part of the determined costs in accordance with Article 20(3)(b) of [this Regulation/SES2+ Regulation];(c) any contribution from third countries or other entities, provided that such a contribution does not compromise the independence and impartiality of the PRB.
17.				<p>17</p> <p>Compromise text proposed by the PCY:</p> <p>17. The Commission shall, in accordance with the examination procedure referred to in [Article</p>



				<p>37(3) of this Regulation/[relevant Article of hosting Agency Regulation], specify the detailed arrangements for the establishment of the PRB, in particular by adopting detailed rules regarding:</p> <ul style="list-style-type: none">(a) the Board for Performance Review, in particular its voting rules, rules on meetings, election of the chair, its tasks, criteria for the selection of its members and the length of their terms of office;(b) the Director for Performance Review in particular on his or her tasks, the procedures for adopting opinions, recommendations, reports and guidance material by the Director for Performance Review, criteria and procedure for the selection of the Director for Performance Review, length of term of office, on cooling-off period, on assessment of the performance of the Director for Performance Review and its tasks;
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				<ul style="list-style-type: none">(c) the NSA Cooperation Board in particular regarding its membership, the term of office of its members and rules on meetings;(d) requirements for the recruitment of the staff;(e) conflict of interest for staff, for the members of the board for performance review and for the Director for Performance Review and its staff so that the PRB can carry out the tasks conferred upon it under [this Regulation/SES2+ Regulation] independently.(f) the annual and multi-annual programming including content of the programmes and procedures for their establishment.(g) the PRB annual activity report;(h) conditions on participation of third countries, including on financial aspects.
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