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From:	General Secretariat of the Council
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Subject:	Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the implementation of the Single European Sky (recast) – Compromise text on Chapter II - National Supervisory Authorities

In view of the meeting of the members of the Aviation working party on 4 February 2021, delegates will find in annex the compromise text by the Presidency on Chapter II of the above mentioned proposal.

The draft follows the principles related to a recast proposal. In particular, modifications to the Commission proposal are indicated by "➡ Council" in the text box preceding any changes.

Furthermore, all modifications are enclosed between markers ➡ and ⬅.

↓ 1070/2009 Art. 1.3 (adapted)

⇒ new

CHAPTER II

⊗ NATIONAL SUPERVISORY AUTHORITIES ⊗

Article 34

⊗ **Nomination, establishment and requirements regarding** ⊗ ~~N~~n**ational supervisory authorities**

1. Member States shall, jointly or individually, either nominate or establish a body or bodies as their national supervisory authority in order to assume the tasks assigned to such authority ~~under~~ ⊗ by ⊗ this Regulation ~~and under the measures referred to in Article 3.~~

~~2. The national supervisory authorities shall be independent of air navigation service providers. This independence shall be achieved through adequate separation, at the functional level at least, between the national supervisory authorities and such providers.~~

↓ 1070/2009 Art. 1.3 (adapted)

⇒ new

~~32.~~ ⊗ The ⊗ ~~N~~n~~ational~~ supervisory authorities shall exercise their powers impartially, independently and transparently. ~~This shall be achieved by applying appropriate management and control mechanisms~~ ⇒ and shall be organised, staffed, managed and financed accordingly. ⊗, ~~including within the administration of a Member State. However, this shall not prevent the national supervisory authorities from exercising their tasks within the rules of organisation of national civil aviation authorities or any other public bodies~~

↓ new

↻ Council

3. ↻ [...] ⌂ ↻ The national supervisory authorities shall be independent in organisational, hierarchical and decision-making terms, from any air navigation service providers. That independence shall not prevent those entities from exercising their tasks within a common civil service framework. ⌂

↻ [...] ⌂

4. Member States may set up national supervisory authorities which are competent for several regulated sectors, if those integrated regulatory authorities fulfil the independence requirements set out in this Article. The national supervisory authority may also be joined in respect of its organisational structure with ↻ other public authorities, in particular ⌂ the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003¹, ↻ the national competent authority, or, if applicable, a national transport authority, ⌂ ↻ [...] ⌂ ↻ provided that ⌂ the joint body ↻ hereby set up ⌂ fulfils the independence requirements set out in this Article.

5. Staff of the national supervisory authorities shall comply with the following requirements:

- (a) they shall be recruited under clear and transparent processes which ensure their independence;
- (b) they shall be selected on the basis of their specific qualifications, including appropriate competence and relevant experience or they shall be subject to appropriate training.

Staff of national supervisory authorities shall act independently, in particular by avoiding conflicts of interest between air navigation service provision and the execution of their tasks.

6. ↻ [...] ⌂

¹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

↓ 1070/2009 Art. 1.3 (adapted)

⇒ new

⇒ Council

74. Member States shall ensure that national supervisory authorities have the necessary
⊗ financial ⊗ resources and capabilities to carry out the tasks assigned to them under this
Regulation in an efficient and timely manner. ⇒ [...] ⇄

↓ new

[8. A Member State may request the Agency acting as Performance Review Body (PRB), to carry out the tasks related to the implementation of the performance and charging schemes laid down in Articles 14, 17, 19, 20, 21, 22 and 25, and in the implementing acts referred to in Articles 18 and 23 and for which the national supervisory authority of that Member State is responsible under this Regulation and the delegated and implementing acts adopted on the basis thereof.]

Once the Agency acting as PRB accepts such a request, it shall become the supervisory authority responsible for the tasks covered by that request and the national supervisory authority of the requesting Member State shall be relieved of the responsibility for those tasks. The rules contained in Regulation (EU) 2018/1139 and pertaining to the Agency acting as PRB shall apply to the performance of these tasks, including as regards the levying of fees and charges.]

↓ 1070/2009 Art. 1.3

⇒ new

~~95.~~ Member States shall notify the Commission of the names and addresses of the national supervisory authorities, as well as changes thereto, and of the measures taken to ensure compliance with ⇒ this Article ⇐ ~~paragraphs 2,3 and 4.~~

↓ new

⇒ Council

10. The Commission ⇨ [...] ⇩ ⇨ may develop guidelines ⇩ laying down the modalities of recruitment and selection procedures referred to in paragraph 5, points (a) and (b). ⇨ [...] ⇩

↓ 1070/2009 Art. 2.1 (adapted)

Article ~~42~~

Tasks of the national supervisory authorities

1. The national supervisory authorities referred to in Article ~~3 4~~ of the framework Regulation shall ~~ensure the appropriate supervision of the application of this Regulation, in particular with regard to the safe and efficient operation of air navigation service providers which provide services relating to the airspace falling under the responsibility of the Member State which nominated or established the relevant authority~~:

↓ new

⇒ Council

- [(a) conduct the activities necessary for the issuance of the economic certificates referred to in Article 6, including the oversight of the holders of those economic certificates;]
- (b) oversee the correct application of procurement requirements in accordance with Article 8(6) ⇨ where applicable in conjunction with the national authorities in charge of procurement control, ensuring in particular the fulfilment of national security and defence requirements by the service providers ⇩;

(c) apply the performance and charging schemes set out in in Articles 10 to 17 and 19 to 22 [and the implementing acts referred to in Articles 18 and 23,] within the limits of their tasks defined in those articles and acts, and oversee the application of the Regulation regarding the transparency of accounts of designated air traffic service providers in accordance with Article 25.

2. The national supervisory authorities shall be responsible for assessing and approving the price setting for the provision of the common information service, in accordance with Article 9, as appropriate.

↓ 1070/2009 Art. 2.1 (adapted)

⇒ new

⇒ Council

~~32. To this end, each~~ Each national supervisory authority shall, in cooperation with the national competent authority, ~~organise proper~~ conduct the necessary inspections ~~and surveys~~, audits and other monitoring activities to identify possible infringements by entities subject to their oversight under this Regulation of the requirements set out in this Regulation and the delegated and implementing acts adopted on the basis thereof ~~verify compliance with the requirements of this Regulation including human resources requirements for the provision of air navigation services.~~

[It shall take all necessary enforcement measures which may, where appropriate, include the amendment, limitation, suspension or revocation of economic certificates issued by them in accordance with Article 6.]

The air navigation service providers, airport operators and the common information service providers concerned shall comply with the measures taken by the national supervisory authorities to this effect.

↓ new

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Article 5

Co-operation between national supervisory authorities

1. The national supervisory authorities shall exchange information [...].

2. The national supervisory authorities shall cooperate, ~~in the case of provision of cross-border services, [...]~~ through working arrangements, for the purposes of mutual assistance in their monitoring and supervisory tasks and handling of investigations and surveys.

↓ 1070/2009 Art. 2.1 (adapted)

⇒ new

⇒ Council

3. ~~In respect of [functional airspace blocks that extend across] the~~ ~~In respect of functional airspace blocks that extend across the~~ [...] ~~air~~ airspace falling under the responsibility of ~~two or more than one Member State~~ States, the Member States concerned shall conclude, if necessary, an agreement on the supervision to be carried out by them under this Regulation, of ~~with regard to~~ the air navigation service providers concerned ~~providing services relating to those blocks.~~ The national supervisory authorities concerned may establish a plan specifying the implementation and financing of their co-operation with a view to giving effect to that agreement.

↓ 1070/2009 Art. 2.1

~~4. National supervisory authorities shall cooperate closely to ensure adequate supervision of air navigation service providers holding a valid certificate from one Member State that also provide services relating to the airspace falling under the responsibility of another Member State. Such cooperation shall include arrangements for the handling of cases involving non-compliance with the applicable common requirements set out in Article 8b(1) of Regulation (EC) No 216/2008 or with the conditions set out in Annex II.~~

↓ 1070/2009 Art. 2.1

~~5. In the case of cross-border provision of air navigation services, such arrangements shall include an agreement on the mutual recognition of the supervisory tasks set out in paragraphs 1 and 2 and of the results of these tasks. This mutual recognition shall apply also where arrangements for recognition between national supervisory authorities are made for the certification process of service providers.~~

↴ new

4. In the case of provision of air navigation services in an airspace falling under the responsibility of another Member State, the agreements referred to in paragraph 3 shall provide for the mutual recognition of the discharge, by each of the authorities, of the supervisory tasks set out in this Regulation and of the results of the discharge of these tasks. They shall also specify which national supervisory authority shall be in charge of the economic certification set out in Article 6.

↓ 1070/2009 Art. 2.1 (adapted)

⇒ new

~~65.~~ ~~¶~~ ~~☒~~ Where ~~☒~~ permitted by national law and with a view to regional cooperation, national supervisory authorities may also conclude agreements ~~☒~~ on the ~~☒~~ ~~regarding the~~ division of responsibilities regarding ~~☒~~ the ~~☒~~ supervisory tasks. ~~⇒~~ They shall notify the Commission of these agreements. ~~↵~~

↓ 1070/2009 Art. 2.1

~~Article 3~~

~~Qualified entities~~

~~1. National supervisory authorities may decide to delegate in full or in part the inspections and surveys referred to in Article 2(2) to qualified entities that fulfil the requirements set out in Annex I.~~

~~2. Such a delegation granted by a national supervisory authority shall be valid within the Community for a renewable period of three years. National supervisory authorities may instruct any of the qualified entities located in the Community to undertake these inspections and surveys.~~

↓ 1070/2009 Art. 1.5

~~Article 10~~

~~Consultation of stakeholders~~

~~1. The Member States, acting in accordance with their national legislation, shall establish consultation mechanisms for appropriate involvement of stakeholders, including professional staff representative bodies, in the implementation of the single European sky.~~
