



Council of the
European Union

Brussels, 18 March 2024
(OR. en)

Interinstitutional Files:
2020/0264(COD)
2013/0186(COD)

7618/24
ADD 1

LIMITE

AVIATION 59
CODEC 774
FIN 264

NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part1)

No. prev. doc.: ST 7461/24 ADD1 to ADD12
No. Cion doc.: ST 10840/20 INIT+ ADD1,
ST 10841/20
ST 11020/20

Subject: Single European Sky 2+
- Final compromise text.

In view of the COREPER 1 meeting on 22 March 2024, delegations will find, in annex, the final compromise text for SES2+ Recast.

SES2+ Recast

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure

Whereas:

- (1) Regulation (EC) No 549/2004 of the European Parliament and of the Council¹, Regulation (EC) No 550/2004 of the European Parliament and of the Council² and Regulation (EC) No 551/2004 of the European Parliament and of the Council³ have been substantially amended. Since further amendments are to be made, those Regulations should be recast in the interests of clarity.
- (2) The adoption by the European Parliament and the Council of the first package of the single European sky legislation, namely, Regulation (EC) No 549/2004, Regulation (EC) No 550/2004, Regulation (EC) No 551/2004, and Regulation (EC) No 552/2004 of the European Parliament and of the Council⁴, laid down a firm legal basis for a seamless, interoperable and safe air traffic management (ATM) system. The adoption of the second package, namely, Regulation (EC) No 1070/2009 of the European Parliament and of the Council⁵, further strengthened the Single European Sky initiative by introducing the performance scheme and the Network Manager concepts to further improve the performance of the European ATM network. Regulation (EC) No 552/2004 has been repealed by Regulation (EU) 2018/1139 of the European Parliament and

¹ Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) (OJ L 96, 31.3.2004, p. 1).

² Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) (OJ L 96, 31.3.2004, p. 10).

³ Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) (OJ L 96, 31.3.2004, p. 20).

⁴ Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European air traffic management network (the interoperability Regulation) (OJ L 96, 31.3.2004, p. 26).

⁵ Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system (OJ L 300, 14.11.2009, p. 34).

of the Council⁶, as the rules necessary for interoperability of ATM systems, constituents and procedures have been incorporated in that Regulation.

(3) In order to take into account the changes introduced in Regulation (EU) 2018/1139, it is necessary to align the content of this Regulation with that of Regulation (EU) 2018/1139 and to amend that latter Regulation.

(3a) Detailed rules on the use of the airspace, operational provisions regarding services and procedures in air navigation and rules and procedures for the design of airspace structures are regulated under the Regulation 2018/1139, whereas the classification of airspace should be regulated under this Regulation.

(4) In Article 1 of the 1944 Chicago Convention on Civil Aviation, the Contracting States recognise that ‘every State has complete and exclusive sovereignty over the airspace above its territory’. It is within the framework of such sovereignty that the Member States of the Union, subject to applicable international conventions, exercise the powers of a public authority when controlling air traffic.

(4a) This Regulation should not affect Member States rights and responsibilities under the Chicago Convention.

(5) Implementation of the common transport policy requires an efficient air transport system allowing the safe, regular and sustainable operation of air transport services, optimising use of airspace and capacity, contributing to aviation sustainability and facilitating the free movement of goods, persons and services.

(6) The simultaneous pursuit of the goals of augmentation of air traffic safety standards and improvement of the overall performance of ATM and air navigation services (ANS) for general air traffic in Europe requires that the human factor be taken into account. Therefore, the Member States should uphold ‘just culture’ principles. The opinions and recommendations of the Commission Expert Group on the Human dimension⁷ of the Single European Sky should be considered and taken into account.

(7) Improvements in the climate and environmental performance of ATM also contribute to the achievement of the objectives contained in the Paris Agreement, in Regulation (EU) 2021/1119 of the European Parliament and of the Council, in Council conclusions on the Commission's Sustainable and Smart Mobility Strategy and in the Digital Agenda for Europe, in particular through the reduction of aviation emissions.

(7aa) A more efficient use of the air space, allowing for more options in terms of optimal flight trajectories, would lead to increased fuel efficiency and reduced emissions. Various climate and environmental elements should also be taken into account when optimising flight trajectories and flight profiles, in order to reduce emissions and air pollutants. A methodology on how to take

⁶ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1).

⁷ Commission Decision (EU) 2023/2109

into account those various elements and their interdependencies should be developed in particular when designing performance indicators.

(7a) Airspace is a common resource for all categories of users that needs to be used flexibly by all of them, ensuring fairness and transparency whilst taking into account security and defence needs of Member States and their commitments within international organisations.

- (8) In 2004, the Member States have adopted a general statement on military issues related to the Single European Sky⁸, which they have reiterated. According to that statement, Member States should, in particular, enhance civil-military cooperation and, if and to the extent deemed necessary by all Member States concerned, facilitate cooperation between their armed forces in all matters of air traffic management.
- (9) Decisions relating to the content, scope or carrying out of military operations and training do not fall within the sphere of competence of the Union under Article 100(2) of the Treaty on the Functioning of the European Union.
- (9a) Article 9a of Regulation (EU) 550/2004 provided for the establishment by Member States of functional airspace blocks with a view to enhancing cooperation between air navigation service providers in order to improve performance and create synergies, and regulated such airspace blocks. Member States may maintain the cooperation and coordination within such formerly established airspace blocks with the view to fostering the performance of the air traffic management network within the Single European Sky, in particular by submitting joint performance plans, provided in particular that this does not affect the efficient implementation of this Regulation.
- (10) Member States should nominate a national supervisory authority in order to assume the tasks assigned to such authority under this Regulation. To ensure the consistent and sound oversight of service provision across Europe, the national supervisory authorities should be guaranteed sufficient independence and resources. In particular, the financing of those authorities should guarantee their independence and should allow them to operate in accordance with the principles of fairness, transparency, non-discrimination and proportionality. This should not prevent a national supervisory authority from being joined with another regulatory authority, such as the national competent authority or the national competition authority if the joint authority fulfils the independence requirements and provided that the decisions related to the tasks conferred upon the NSA under this Regulation are taken independently from other tasks conferred to the joint authority.
- (11) Appropriate procedures for appointing staff of national supervisory authorities should contribute to guaranteeing the independence of those authorities. Staff of national supervisory authorities should act independently, in particular by avoiding conflicts of interest between air navigation service provision and the execution of their tasks. The rules regarding conflict of interest for staff and persons who take decisions exercising the powers defined in this Regulation should also prevent possible conflict of interest during their active assignment to the National supervisory authority and in connection with a new position in a regulated entity for the time immediately following their assignment to the National Supervisory Authority.
- (11a) Procedures should be put in place to ensure the cooperation and exchange of information between NSA and NCA with the view to ensure proper application of this Regulation.

⁸ See OJ L 96, 31.03.2004, p. 9.

- (11b) Requirements for being granted a certification regarding financial robustness, liability, insurance cover and ownership and organisational structure have a strong link to the safety and security requirements for the service provision and to the operational/technical oversight to be carried out by the national competent authority. In respect of certification, oversight, and enforcement activities relating to the requirements regarding financial robustness, liability, insurance cover, ownership and organisational structure listed in point 7 of Annex VIII to Regulation 2018/1139, Member States should arrange their administrative processes in accordance with their national organization to ensure proper and efficient execution of the tasks of both national competent and supervisory authorities.
- (12) National supervisory authorities have a key role to play in the implementation of the Single European Sky and they should therefore cooperate with each other in order to enable the exchange of information on their work and decision making principles, best practices and procedures as well as with regard to the application of this Regulation and to develop a common approach, including through enhanced cooperation at regional level. This cooperation should take place on a regular basis in the context of the National Supervisory Authorities Cooperation Board.
- (13) The cooperation between air navigation service providers is an important tool for improving the overall performance of the European ATM system and should be encouraged.
- (14) An air navigation service provider should be able to offer services in the Union under non-discriminatory conditions where it holds a certificate or a declaration pursuant to Article 41 of Regulation (EU) 2018/1139.
- (14a) In accordance with Article 2(5) of Regulation 2018/1139 and subject to the conditions set out therein, Member States should allow the provision of air navigation services referred to in Article 2(3)(c) of Regulation 2018/1139 under their responsibility by military without certification where military offers such services primarily to aircraft movements other than general air traffic. In such cases, the Member State concerned should inform the Commission and the other Member States of its decision.
- (14b) This Regulation does not require the certification of signals provided by Global Navigation Satellite Systems (GNSS).
- (15) There should be no discrimination between airspace users as to the provision of equivalent air navigation services.
- (16) Air traffic services should be provided on an exclusive basis. Providers of such services should be subject to designation and public interest requirements. In this respect, it should be taken into account that the provision of air traffic services which are connected with the exercise of the powers of a public authority and are not of an economic nature are not subject to the application of the Treaty rules on competition.
- (16a) Designation process should take into account the need for service continuity and long-term investment planning by air traffic service providers. Notwithstanding the above, the fast-evolving context of air navigation requires that a monitoring of the right and obligations is performed, to ensure that they remain fully applicable and that the obligations are fulfilled. In case Member States consider necessary to launch a new designation process in the context of their monitoring, they should be able to designate the same air traffic service provider, in accordance with national law.

- (16b) Member States should ensure that the designation of an air traffic service provider is not prevented by their national law on the grounds in particular that the service provider concerned has its principal place of business in another Member State or is owned by nationals of that Member State in case the application of such national law entails an unjustified restriction of the freedom to provide services or the freedom of establishment, which should be assessed on a case-by-case basis in the light of all relevant circumstances.
- (17) Air traffic service providers may procure communication, navigation and surveillance services (CNS), aeronautical information services (AIS), air traffic data services (ADS), or meteorological services (MET) in cases where Member States have not designated a MET provider, under market conditions, or under other forms of agreements where Directive 2014/24/EU and Directive 2014/25/EU do not apply, taking into account specific situations such as lack of solutions available on the market and consideration relating to the public interest. Member States may allow airport operators or a group of airport operators to procure terminal air traffic services for aerodrome control and/or air traffic services for approach control under market conditions.
- (18) Where air traffic services for aerodrome control and approach control are procured, they should not be subject to performance target setting set out in this Regulation. The service providers should nevertheless provide data on the performance of the air navigation services. Where air traffic services for aerodrome control and approach control are procured, technical requirements in the tender specifications should include requirements on service quality.
- (19) Air navigation service providers should keep separate accounts for each air navigation service as they would be required to do if these services were carried out by separate undertakings with a view to avoiding discrimination, cross-subsidisation and distortion of competition.
- (20) Where applicable, the procurement of air navigation services, should be carried out in accordance with Directive 2014/24/EU of the European Parliament and of the Council¹¹, Directive 2014/25/EU of the European Parliament and of the Council¹², and with the principles of equal treatment, non-discrimination and transparency as well as with the applicable provisions of the Treaty, in particular the Treaty rules on the freedom to provide services and the freedom of establishment. The tender procedures for the procurement of services should be designed so as to enable the effective participation of competing providers in these procedures including through regular reopening of competition.
- (21) The traffic management of unmanned aircraft requires the availability of common information services (CIS). When CIS are provided by a single CIS provider designated by the Member State in respect of a specific U-space airspace, the prices should be regulated in order to contain the costs of such traffic management. Prices for CIS should therefore be based on cost and a reasonable mark-up for profit, and should be subject to approval by national supervisory authorities. To enable the provision of the service, access to relevant operational data should be granted to CIS providers on fair, reasonable and non-discriminatory terms. Where CIS are not provided by a single CIS provider, the individual CIS should be provided for free.
- (21a) Availability of relevant operational data with respect to general air traffic is essential for enabling the flexible provision of air traffic data services, on cross-border and on Union-wide bases. Therefore, such data should be made available to relevant stakeholders including to entities having a proven interest in considering the provision of air navigation services, on fair, reasonable, and non-discriminatory terms. Accuracy of information including on airspace status

and on specific air traffic situations and timely distribution of this information to civil and military controllers has a direct impact on the safety and efficiency of operations, including the environmental efficiency of flights. Timely access to up-to-date information on airspace status is essential for all parties wishing to take advantage of airspace structures made available when filing or re-filing their flight plans.

- (21b) The performance and charging schemes should not apply to terminal air navigation services provided at airports with less than 80 000 air transport movements per year performed using instrument flight rules (IFR). The setting of performance targets for such services would have little added-value as such targets would, in most cases, be closed to zero. Moreover, submitting those services to the performance and the charging schemes set up by this Regulation would lead to a disproportionate administrative and financial burden compared to the expected benefits in terms of performance improvement and better service quality. However, Member States may decide that such terminal air navigation services are subject to the performance and charging schemes.
- (21c) Military which provide air navigation services primarily to aircraft movements other than general air traffic, including their financing, should not be subject to the performance and charging schemes set up by this Regulation. Therefore, the costs of their services should not be regarded as determined costs under this Regulation. However, Member States may decide to apply those schemes to military which provide such services. The Performance and Charging Schemes should apply to military providers of air navigation services which provide air navigation services primarily to general air traffic.
- (22) The performance and charging schemes should ensure the efficient, sustainable and continuous operation of the European ATM system and are also intended to make air navigation services provided under conditions other than market conditions more cost- efficient and to promote better service quality. To this end, they should include relevant and appropriate incentives. In view of this objective, the performance scheme should not cover services supplied under market conditions. The performance scheme should cover all air navigation services which a designated air traffic service provider provides or procures from other service providers, including when that service provider provides air navigation services and air traffic services.
- (22a) Member States may develop joint performance plans for air navigation services with the aim to improve the level of performance of air traffic management beyond the level which would be achievable on an individual Member States basis, covering at least the duration of the reference period and. Member States should include in those joint plans at least one joint target and initiatives on cross-border cooperation, while considering the added-value of setting other joint targets, of conducting joint procurement and of establishing joint governance.
- (22b) When adopting implementing acts to set out incentive schemes, the Commission should define the applicability of such schemes to situations where air navigation service providers go beyond or do not comply with the relevant binding performance targets for air navigation services during the reference period. Without prejudice to the measures that are to be implemented by the air traffic service provider to mitigate the impact of such events, the applicability criteria should take due consideration of unforeseeable and significant events outside the air traffic service provider's control. In order to promote better service quality, those performance and charging schemes should include relevant and appropriate incentives. Financial incentives should be set

with a view to encouraging better air navigation service performance in a balanced manner by rewarding or penalising actual performance in relation to binding performance targets.

- (22c) Revenues from charges imposed on airspace users could result in financial surpluses or losses for air navigation service providers due to the application of the incentive schemes and the risk sharing mechanisms.
- (22d) A Performance Review Board (PRB) should be established to advise and assist the Commission in the implementation of the performance and charging schemes. The set up of the PRB should guarantee that its tasks are carried out with the required expertise and independence from public or private interests, and is able to rely on dedicated resources. The PRB should replace and succeed to the Performance Review Body established under Article 11(2) of Regulation 549/2004.
- (22e) The PRB should be supported by a secretariat provided by the Commission. For the purpose of preparing the content and orientations of the opinions, recommendations, reports and guidance material of the PRB, the secretariat should act without taking any directives except from the PRB itself in order to enable the PRB to fulfil its advisory role and to ensure the PRB independence. The main task of the secretariat should be to contribute to the independent execution of the tasks of the PRB.
- (22f) The staff of the secretariat is subject to the rules on professional secrecy and on conflict of interests included in EU staff regulations, which ensure their independence. The selection process and eligibility criteria should be detailed in an implementing act, which should not include the appointment of specific PRB Members or make that appointment subject to approval of Member States in any way.
- (25) Given the cross border and network elements inherent in the provision of air navigation services en-route performance should be assessed against Union-wide performance targets.
- (25a) The national targets for the provision of terminal air navigation services should drive improvements in the performance of those services over time and enabling a gate-to-gate approach for the regulation of air navigation services.
- (25b) The Member States, the national supervisory authorities and the Commission should have clearly defined tasks in the performance and charging schemes, with respect in particular to the preparation of the performance plans, to the approval of those plans and to the monitoring of performance of air navigation service providers.
- (25c) The key performance area of climate and environment should address the impact of aviation on climate and environment that can be influenced by the air navigation service providers, in particular the CO₂ emissions. Performance plans should contain for each reference period en route performance targets consistent with Union-wide performance targets in the key performance areas of climate and environment, capacity and cost-efficiency, as well as terminal performance targets in the key performance areas of capacity and cost-efficiency. At the date of adoption of this Regulation, existing available data do not allow for the establishment, in the key performance area of climate and environment, of key performance indicators for terminal air navigation services which are valid, reliable, measurable, and allow for measuring impacts in that area which can be directly influenced by the air navigation service providers. Therefore, Member States should be obliged to include in performance plans binding targets for terminal air navigation services in the key performance area of climate and environment only after the Commission has been able to set, in an implementing act, of key performance indicators meeting

those conditions. The setting of binding performance targets for terminal air navigation services included in the performance plan should take into account local circumstances, in particular local environmental policy requirements.

- (27) The performance of the network functions should be subject to criteria specific to them, having regard to the peculiar nature of these functions. The network functions should be subject to performance targets in the key performance areas of climate and environment, capacity and cost-efficiency.
- (27a) The charging scheme set up in this Regulation should be consistent amongst others with Article 15 of the Chicago Convention. That scheme should be without prejudice to the possibility for Member States to finance the provision of air navigation services covered by this Regulation through public funds, insofar as it is in line with Treaty rules on competition where applicable.
- (28) The charging scheme should be based on the principle that airspace users should pay for the cost incurred in respect of services and functions for the benefit of airspace users and which are not covered otherwise. The costs incurred in relation to the provision of air navigation services by Member States national authorities, including the national competent authorities and the national supervisory authorities as well as EUROCONTROL and the Network Manager may be included in the determined costs eligible to be charged to airspace users. Charges should encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to achieving a high level of safety and cost-efficiency and meeting the performance targets and they should support the reduction of the environmental impact of aviation.
- (28a) Costs stemming from the Eurocontrol International Convention relating to cooperation for the safety of air navigation of 13 December 1960 as last amended may be included in the determined costs given that all activities covered by that Convention at the time of adoption of the Regulation are considered as related to air navigation services.
- (29) The Commission should carry out a feasibility study on the impact of the modulation of charges on air traffic, service provision, administrative costs and on stakeholders, as well as on the contribution of that modulation to achievement of the Single European Sky objectives. Based on that study, the Commission should determine whether to adopt an implementing act to ensure the uniform application of modulation of charges to encourage airspace users to support improvements in climate and environmental performance notably through the use of the most fuel-efficient available routing, increased use of alternative clean propulsion technologies including sustainable alternative fuels, while maintaining an optimum safety level. Even in case the Commission does not adopt such an implementing act, Member States should have to right to modulate charges to encourage air traffic service providers and airspace users to support improvements in service quality such as increased capacity, reduced delays and sustainable development.
- (30a) In case of a network crisis, such as geopolitical conflicts, health crises or natural disaster, which prevents the issuing of reliable traffic forecasts, the Commission should be able to adopt transitional provisions including the temporary suspension or adaptation of the performance scheme system until the end of network crisis and the new reliable forecasts are available.
- (30b) Without prejudice to the procedure laid down in Article 258 TFEU, The Commission should regularly review the compliance of Member States with this Regulation. When carrying out that

review, the Commission should assess whether Member States ensure compliance by the air navigation service providers with their obligations.

- (31) Provision should be made for the transparency of the accounts of air navigation service providers, as one means to prevent cross-subsidisation and ensuing distortions.
- (32) ATM network functions should contribute to the sustainable development of the air transport system and support the achievement of Union-wide performance targets. They should lead towards the sustainable, efficient and environmentally optimal use of airspace and of scarce resources, reflect operational needs in the deployment of the European ATM network infrastructure and should provide support in case of network crises.
- (32a) A number of network functions, such as air traffic flow management, need to be coordinated centrally by a single body in support of actions taken by Member States and the relevant operational stakeholders. Therefore, a number of tasks contributing to the execution of these functions should be carried out by a Network Manager, whose action should involve all operational stakeholders concerned. The specific tasks of the Network Manager should be laid down in this Regulation. The Network Manager should be appointed by the Commission.
- (32b) Commission appointed Eurocontrol, in 2011 and 2019 as Network Manager; in order to ensure business continuity in the performance of the ATM network functions, the mandate could be renewed subject to the conditions laid down in this Regulation.
- (32c) In case the Network Manager resides in another entity, there should be functional and hierarchical separation as well as separate accounting from that entity.
- (33) Operational stakeholders, which have to implement network functions at local and operational levels, as well as Member States should be fully involved in the implementation of those functions and in the decision-making process. Accordingly, the Network Manager should take measures through cooperative decision-making based in particular on the consultation of operational stakeholders and Member States and detailed working arrangements and processes for operation. In such cooperative decision-making process, parties to the cooperative decision-making process should act to the maximum extent possible with a view to improving the functioning and performance of the network including the achievement of the Union wide targets in the key performance area of climate and environment and the interest of the network should prevail, without prejudice to security and defence needs and be such that issues are resolved and consensus found wherever possible. In the context of the cooperative decision-making process for the execution of the network functions, Member States should ensure adequate coordination at national level with the civil and military operational stakeholders. Moreover, to ensure the appropriate governance relating to the execution of the network functions, a Network Management Board, ensuring an appropriate representation of the interests of all the actors involved, in particular the operational stakeholders, in the implementation of those functions, should be set up. Without prejudice to the consultation of the Network Management Board on regulatory or strategic decisions such as the endorsement of the Network Strategy Plan, the measures adopted through cooperative decision-making and by the Network Management Board should be operational or technical in nature, ensuring the day to day operation of the network in accordance with the objectives of this regulation.
- (34) To enhance the customer focus of air traffic service providers, relevant stakeholders should be consulted in major operational decisions of the air traffic service providers.

- (36) The provision of complete, high-quality and timely aeronautical information has a significant impact on safety and on facilitating access to Union airspace and the possibilities of moving within it. Access to those data should be facilitated through an appropriate information infrastructure.
- (37) The safe and efficient use of airspace can only be achieved through close cooperation between civil and military airspace users, which in practice is mainly based on the concept of flexible use of airspace and effective civil-military coordination as established by ICAO. With a view to ensuring the uniform application of this concept, the Commission should be empowered to adopt implementing acts, within the limits of the common transport policy and without prejudice to Member States' responsibilities over their airspace.
- (38) The SESAR project is aimed at enabling the safe, efficient and environmentally sustainable development of air transport by modernising the European and global ATM system. In order to contribute to its full effectiveness, proper coordination between the phases of the project should be ensured. The European ATM Master Plan should result from the SESAR definition phase, and should contribute to achieving the Union-wide performance targets. For the period 2022-2027, the European Commission and the SESAR Deployment and Infrastructure Partnership (SDIP) signed a long-term Framework Partnership Agreement, in order for the SDIP to carry out tasks related to the timely and synchronised implementation of common projects (Commission Implementing Regulation (EU) 2021/116) and monitoring by coordinating and supporting the stakeholders concerned. The SDIP is a consortium comprising 20 major European airspace users, air navigation service Providers and airport operators, and EUROCONTROL, as Network Manager.
- (39) The concept of common projects should aim at implementing, in a timely, coordinated and synchronised manner, the essential operational changes identified in the European ATM Master Plan which have a network-wide impact and having reached sufficient maturity for implementation. In particular the common projects should promote and accelerate the uptake of new digital technologies. The Commission should be charged with carrying out a cost-benefit analysis in respect of the funding with a view to speeding up the deployment of the SESAR project.
- (40) Compliance with the requirements for ATM systems and constituents established by Regulation (EU) 2018/1139 should ensure the interoperability of those systems and constituents, to the benefit of the Single European Sky.
- (42) In order to ensure uniform conditions for the implementation of this Regulation, in particular with regard to the PRB, the implementation of the performance and charging schemes, including on the setting of Union-wide performance targets and complementary baseline values, alert thresholds, breakdown values and benchmark groups, the setting of performance targets and the criteria and conditions for their assessment, the preparation, assessment, approval and revision of the performance plans, including joint performance plans, and performance targets, the monitoring of performance, including of performance of network functions, the allocation of costs between en route and terminal air navigation services, the setting of key performance indicators and indicators for monitoring, methodology for benchmarking, incentive schemes, rules on the modification of a terminal charging zone, rules for the provision of information on costs and charges, the content and establishment of the cost base for charges and the setting of unit rates for air navigation services, incentive mechanisms and risk-sharing mechanisms, the

modulation of charges, rules on the modalities of the provision of data by the national supervisory authorities to the Commission, a mechanism to address unforeseeable and significant events which have a material impact on the implementation of the performance and charging schemes, rules on the execution of the network functions, on the appointment of the Network Manager and the terms and conditions of such appointment, as well as the tasks and functioning of the Network Manager, on the Network Management Board, on cooperative decision-making process and the network governance mechanisms, requirements regarding the availability of operational data, application of the concept of flexible use of airspace, the establishment of common projects and the governance mechanisms applicable to them, as well as implementation of the ICAO airspace classification, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁶. Where the committee delivers no opinion, the Commission should not adopt the draft implementing act.

- (43) The social and professional staff organisations should respectively be consulted on all proposed measures having significant social, technological and human dimension or performance related implications. At Union level, the Sectoral Dialogue Committee set up under Commission Decision 98/500/EC⁹ and the Commission Expert Group on the Human dimension of the Single European Sky should also be consulted.
- (44) The penalties provided for with respect to infringements of this Regulation should be effective, proportional and dissuasive, without reducing safety.
- (44b) This Regulation should not prevent the application by Member States of measures necessary to safeguard essential security or defence policy interests. Moreover, it does not affect the power of Member States to adopt provisions in relation to the organisation of their armed forces. This power may lead Member States to adopt measures to ensure that their armed forces have sufficient airspace for adequate education and training purposes. Provision should therefore be made for a safeguards clause to enable this power to be exercised.
- (45a) It is appropriate to integrate in Regulation (EU) 2018/1139 the requirements linked to certification of air navigation service providers that were previously laid down in Regulation 550/2004 to allow for a simplified regulatory framework for certification and a single certification process. In particular, it is appropriate to provide that, in order to be certified, providers of air traffic management and air navigation services (ATM/ANS) should demonstrate sufficient financial robustness and obtain appropriate liability and insurance cover, comply with applicable requirements on ownership and organisational structure and manage security risks. The conditions that may be applied to the certificates issued should also be specified.
- (45b) Moreover, essential requirements applicable to ATM/ANS and air traffic controllers should be supplemented with respect to requirements applicable to air traffic data services.
- (45c) For the purpose of performing their tasks of certification, oversight and enforcement in relation with the essential requirements relating to financial robustness, liability, insurance cover, ownership and organisational structure, the competent authorities should rely on the assessments made by the national supervisory authority, unless the national competent authority is responsible for all tasks related to certification.

⁹ OJ L 225, 12.8.1998, p. 27.

(45d) Since Regulations (EC) 549/2004¹⁰, 550/2004¹¹ and 551/2004¹² are replaced and repealed by this Regulation, it is appropriate to update the references made in Regulation (EU) 2018/1139 to Regulations (EC) 549/2004, 550/2004 and 551/2004.

(45e) In order to ensure uniform conditions for the implementation of Regulation (EU) 2018/1139, in particular with regard to the conditions that may be applied to the providers of ATM/ANS' certificates and concerning the rules and procedures for the assessment and oversight, by the national supervisory authority, of compliance of those providers with the essential requirements relating to financial robustness, liability, insurance cover, ownership and organisational structure, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(45f) Regulation (EU) 2018/1139 should therefore be amended accordingly.

(46) Since the objective of this Regulation, namely the implementation of the Single European Sky, cannot be sufficiently achieved by the Member States but can rather, by reason of the transnational scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

¹⁰ Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) (OJ L 96, 31.3.2004, p. 1).

¹¹ Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) (OJ L 96, 31.3.2004, p. 10).

¹² Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) (OJ L 96, 31.3.2004, p. 20).

CHAPTER I - GENERAL PROVISIONS

Article 1 - Subject matter and scope

1. This Regulation lays down rules for the creation and effective functioning of the Single European Sky in order to reinforce air traffic safety standards, to contribute to the sustainable development of the air transport system and to improve the overall performance of air traffic management and air navigation services for general air traffic in Europe, with a view to meeting the requirements of all airspace users. The Single European Sky shall comprise a coherent pan-European network, a progressively more integrated airspace, network management and air traffic management systems based on safety, efficiency, interoperability and technological modernisation, for the benefit of all airspace users, citizens and the environment.
2. The application of this Regulation shall be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, as set out in Article 44. This Regulation does not cover military operations and training. The coordination with military authorities shall be ensured to identify and address potential impacts of the application of this Regulation on military activities.
3. The application of this Regulation shall be without prejudice to the rights and duties of Member States under the 1944 Chicago Convention on International Civil Aviation (the Chicago Convention). In this context, this Regulation aims to assist, in the fields it covers, Member States in fulfilling their obligations under the Chicago Convention, by providing a basis for a common interpretation and uniform implementation of its provisions, and by ensuring that these provisions are duly taken into account in this Regulation and in the rules drawn up for its implementation.
4. This Regulation shall apply to the airspace within the ICAO EUR region where Member States are responsible for the provision of air traffic services. Member States may also apply this Regulation to airspace under their responsibility within other ICAO regions, on the condition that they inform the Commission and the other Member States thereof.

Article 2 - Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'aerodrome control service' means an air traffic control (ATC) service for aerodrome traffic;
2. 'aeronautical information service' means a service, established within a defined area of coverage, responsible for the provision of aeronautical information and data necessary for the safety, regularity, and efficiency of air navigation;
- 2a. 'Agency' means the European Union Aviation Safety Agency established by Regulation (EU) 2018/1139;
3. 'air navigation service provider' means a public or private entity providing one or more air navigation services for general air traffic;
4. 'air navigation services (ANS)' means air traffic services; communication, navigation and surveillance services (CNS) including services which augment signals emitted by satellites of core constellations of GNSS for the purpose of air navigation; meteorological services for air navigation (MET); aeronautical information services (AIS); and air traffic data services (ADS);

5. ‘air traffic control (ATC) service’ means a service provided for the purpose of:
- (a) preventing collisions:
 - (i) between aircraft;
 - (ii) in the manoeuvring area between aircraft and obstructions;
 - (b) expediting and maintaining an orderly flow of air traffic;
6. ‘air traffic data services’ means services consisting in the collection, aggregation and integration of operational data from providers of surveillance services, from providers of MET and AIS and network functions and from other relevant entities generating operational data, and the provision of processed data for air traffic control and air traffic management purposes;
8. ‘air traffic flow management (ATFM)’ means a function established with the objective of contributing to a safe, orderly and expeditious flow of air traffic covering the full trajectory by ensuring that ATC capacity is utilised to the maximum extent possible, and that the traffic volume is compatible with the capacities declared by the appropriate air traffic service providers;
9. ‘air traffic management (ATM)’ means the aggregation of the airborne and ground-based functions and services (air traffic services, airspace management and air traffic flow management, including flight procedures design;) required to ensure the safe and efficient movement of aircraft during all phases of operations;
10. ‘air traffic services’ means the various flight information services, alerting services, air traffic advisory services and ATC services (area, approach and aerodrome control services);
11. ‘airspace block’ means an airspace of defined dimensions, in space and time, consisting of one or more airspace structures, within which air navigation services are provided;
12. ‘airspace management’ means a planning and monitoring function with the primary objective of optimising the utilisation of available airspace by dynamic time-sharing and, at times, the segregation of airspace among various categories of airspace users on the basis of short-term needs;
13. ‘airspace structure’ means a specific volume of airspace defined with a view to ensuring the safe and optimal operation of aircraft;
14. ‘airspace users’ means operators of aircraft operated in accordance with general air traffic rules;
15. ‘alerting service’ means a service provided to notify relevant organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;
16. ‘approach control service’ means an ATC service for arriving or departing controlled flights;
17. ‘area control service’ means an ATC service for controlled flights in control areas ;
18. ‘baseline value’ means a value defined for the purpose of setting performance targets and estimated by using actual costs or actual unit costs during the year preceding the start of the relevant reference period;
19. ‘benchmark group’ means a group of air traffic service providers with a similar operational and economic environment;
20. ‘breakdown value’ means the value obtained, for a given air traffic service provider, by breaking down a Union-wide performance target to the level of one or more air traffic service providers and serving as a reference for assessing consistency of the performance target set in draft performance plan with the Union-wide performance target;
21. ‘certificate’ means a certificate as defined by Article 3(12) of Regulation (EU) 2018/1139;
22. ‘common information service (CIS)’ means a service consisting in the dissemination of static and dynamic data to enable the provision of U-space services for the management of traffic of unmanned aircraft;

- 22a. ‘U-space airspace’ means a UAS geographical zone designated by Member States, where UAS operations are only allowed to take place with the support of U-space services;
- 22b. ‘U-space service’ means a service relying on digital services and automation of functions designed to support safe, efficient and secure access to U-space airspace for a large numbers of UAS;
- 22c. ‘U-space service provider’ means any legal person providing U-space services;
23. ‘communication services’ means aeronautical fixed and mobile services to enable ground-to-ground, air-to-ground and air-to-air communications for ATC purposes;
24. ‘constituents’ means tangible objects such as hardware and intangible objects such as software upon which the interoperability of the European Air Traffic management Network (EATMN) depends;
25. ‘control area’ means a controlled airspace extending upwards from a specified limit above the earth;
26. ‘cooperative decision-making’ means a process in which decisions, are made based on interaction and consultation with the relevant Member State authorities, operational stakeholders and other actors as appropriate and aiming at consensus;
27. ‘cross-border services’ means air navigation services provided in one Member State by a service provider having its principal place of business in another Member State;
28. ‘declaration’ means, for the purposes of air traffic management and air navigation services, a declaration as defined in Article 3(10) of Regulation (EU) 2018/1139;
- 28a. ‘design of airspace structures’ means a process that ensures the development and implementation of advanced navigational capabilities and techniques, improved route networks and associated sectorisation, optimised airspace structures and capacity-enhancing ATM procedures;
30. ‘en route charging zone’ means a volume of airspace that extends from the ground up to, and including, upper airspace, where en route air navigation services are provided and for which a single cost base is established;
31. ‘EUROCONTROL’ is the European Organisation for the Safety of Air Navigation set up by the International Convention of 13 December 1960 relating to Cooperation for the Safety of Air Navigation;
32. ‘European air traffic management network’ (EATMN) means the collection of systems, referred to in point 3.1 of Annex VIII to Regulation (EU) 2018/1139 , enabling air navigation services in the Union to be provided, including the interfaces at boundaries with third countries;
33. ‘European ATM Master Plan’ means the plan endorsed by Council Decision 2009/320/EC, and as subsequently amended;
34. ‘flexible use of airspace’ means an airspace management concept, as described by ICAO, based on the fundamental principle that airspace should not be designated as either pure civil or military airspace, but rather be considered as a continuum in which all user requirements have to be accommodated to the extent possible ;
35. ‘flight information service’ means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights;
- 35b. ‘flight procedures design’ means all tasks relevant to the design of an instrument flight procedure;
36. ‘general air traffic’ means all movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when those movements are carried out in

conformity with the procedures of the International Civil Aviation Organisation (ICAO) as established by the Chicago Convention ;

36a. ‘Instrument flight rules (IFR)’ are rules which allow an aircraft which is equipped with suitable navigation equipment appropriate to the route to be flown in accordance with the applicable requirements on air operations.

36b. ‘IFR air transport movements per year’ means the sum of take-offs and landings performed under IFR, calculated as the yearly average over the three calendar years preceding the year in which the draft performance plan is to be submitted.

37. ‘interoperability’ means a set of functional, technical and operational properties required of the systems and constituents of the EATMN and of the procedures for its operation, in order to enable its safe, seamless and efficient operation;

38. ‘meteorological services for air navigation (MET)’ means the facilities and services that provide meteorological forecasts, warnings, briefings and observations for air navigation purposes, as well as any other meteorological information and data provided by States for aeronautical use;

39. ‘national competent authority’ means the entities as defined in point (34) of Article 3 of Regulation (EU) 2018/1139;

40. ‘national supervisory authority’ means the national body or bodies entrusted by a Member State with the tasks under this Regulation ;

41. ‘navigation services’ means the facilities and services that provide aircraft with positioning and timing information;

42. ‘network crisis’ means a state of inability to provide air traffic management and or air navigation services at required level resulting in a major loss of network capacity, or a major imbalance between network capacity and demand, or a major failure in the information flow or integrity in one or several parts of the network following an unusual or unforeseen situation;

43. ‘Network Manager’ means the entity entrusted with the tasks necessary to contribute to the execution of the network functions referred to in Article 26, in accordance with Article 27;

43a. ‘Network Operations Plan (NOP)’ means a plan established through cooperative decision-making process to implement at operational level the objectives of the network functions, and to contribute to performance objectives;

43b. ‘Network Strategy Plan (NSP)’ means a plan established through cooperative decision-making process guiding the network’s long-term development;

43c. ‘Operational air traffic’ means all flights, which do not comply with the provisions stated for general air traffic and for which rules and procedures have been specified by appropriate national authorities;

44. ‘operational data’ means information concerning all phases of flight that is required for operational purposes by air navigation service providers, airspace users, airport operators and other actors involved;

44a. ‘operational stakeholders’ means the civil and military airspace users, civil and military air navigation service providers as well as airport operators;

45. ‘performance plan’ means a plan aimed at improving the performance of air navigation services and network functions;

46. ‘putting into service’ means the first operational use after the initial installation or upgrade of a system;

47. ‘route network’ means a network of specified routes for channelling the flow of general air traffic as necessary for the provision of ATC services;
48. ‘SESAR definition phase’ means the phase comprising the establishment and updating of the long-term vision of the SESAR project, of the related concept of operations enabling improvements at every stage of flight, of the required essential operational changes within the EATMN and of the required development and deployment priorities;
49. ‘SESAR deployment phase’ means the successive phases of industrialisation and implementation, during which the following activities are conducted: standardisation, production and certification of ground and airborne equipment and processes necessary to implement SESAR solutions (industrialisation); and procurement, installation and putting into service of equipment and systems based on SESAR solutions, including associated operational procedures (implementation);
50. ‘SESAR development phase’ means the phase during which research, development and validation activities aiming to deliver mature SESAR solutions are conducted;
51. ‘SESAR project’ means the project to modernise air traffic management in Europe, aimed at providing the Union with a high performance, standardised and interoperable air traffic management infrastructure, and consisting in an innovation cycle that includes the SESAR definition phase, the SESAR development phase and the SESAR deployment phase;
52. ‘SESAR solution’ means a deployable output of the SESAR development phase introducing new or improved standardised and interoperable operational procedures or technologies;
53. ‘surveillance services’ means the facilities and services used to determine the respective positions of aircraft to allow safe separation;
54. ‘system’ means the aggregation of airborne and ground-based constituents, as well as space-based equipment, that provides support for air navigation services for all phases of flight;
56. ‘terminal charging zone’ means an airport or a group of airports, located within the territories of a Member State or Member States, where terminal air navigation services are provided and for which a single cost base is established;
57. ‘upgrade’ means any modification that changes the operational characteristics of a system.
58. ‘utilisation of airspace structures’ means the way that airspace structures are operationally used, which is to be understood as different from airspace management as defined in Article 2 paragraph 12.

Article 2a – Functional airspace blocks

Member States may maintain the cooperation and coordination within the airspace of functional airspace blocks formerly established under Article 9a of Regulation (EU) 550/2004 with the view to fostering the performance of the air traffic management network within the Single European Sky, in particular by submitting joint performance plans in accordance with Article 13(1c) of this Regulation, provided that this does not affect the efficient implementation of this Regulation and that costs related to functional airspace blocks are reported separately, as part of the data to be provided under the charging scheme set up in Articles 19 to 25.

CHAPTER II - NATIONAL SUPERVISORY AUTHORITIES

Article 3 - Nomination, establishment and requirements regarding national 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 by this Regulation.
2. The national supervisory authority shall exercise its powers impartially, independently and transparently and shall be organised, staffed, managed and financed accordingly.
3. Without prejudice to paragraph 1, the national supervisory authorities shall be independent from any air navigation service providers, in organisational, hierarchical and decision-making terms, and shall be either legally or functionally distinct from the air navigation service providers. In addition, the air navigation service providers shall have no decision-making power over the allocation of the budget of the national supervisory authority. Provided that such independence is guaranteed, that authority may be part of the same national ministry or administration as the air navigation service providers.
 - 3a. In the case where the national supervisory authorities are not legally distinct from the air navigation service providers, the Member States concerned shall inform the Commission on the measures they have taken to ensure that they meet the requirements of independence of paragraph 3 and shall document how this separation is achieved, showing the effectiveness of the authorities' independence. To this end, where the national supervisory authority and the air navigation service provider are part of the same administration, the national supervisory authority shall not seek nor take instructions from a hierarchical level of that administration having authority over the air navigation service providers, as far as their tasks referred to in Article 4 and related decisions are concerned.
4. The national supervisory authority may be joined with another regulatory authority, such as the national competent authority or the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003, provided that the decisions related to the tasks conferred upon the NSA under this Regulation are taken independently from other tasks conferred to the joint authority. In that case, the joint authority shall fulfil the independence requirements set out in this Article.

The national supervisory authority shall be represented for matters related to the tasks set out in Article 4 of this regulation in a way that ensures the independence of its decisions.
5. Without prejudice to national legislations regarding the recruitment of public servants, Member States shall ensure that staff of the NSA, including temporary staff, are recruited through clear and transparent recruitment processes, which ensures their independence and shall ensure that the staff of national supervisory is selected on the basis of their specific qualifications, including appropriate competence and relevant experience or is subject to appropriate training, for the effective performance of the tasks set out in Article 4.

Member States shall lay down rules to avoid conflict of interest for staff, including persons who take decisions exercising the powers defined in Chapter III of this Regulation, so that the national supervisory authorities can carry out the tasks set out in Article 4 independently.

7. Without prejudice to Article 20(3), Member States shall ensure that national supervisory authorities have the necessary financial resources and capabilities to carry out the tasks set out in Article 4 in an efficient and timely manner.

8. 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.

Article 4 - Tasks of the national supervisory authorities

1. The national supervisory authority shall carry out the tasks assigned to it under this Regulation and under Regulation 2018/1139 and the implementing acts adopted on the basis thereof, in particular the following tasks:

(a) assess and oversee the fulfilment of requirements regarding financial robustness, liability, insurance cover, ownership and organisational structure referred to in point 7 of Annex VIII to Regulation (EU) No 2018/1139 and of the requirements set out in the implementing acts adopted on the basis of Article 43, of that Regulation;

A Member state may decide to attribute the assessment and oversight of the compliance by the air navigation service provider with those requirements, to the national competent authority. In such a case, the Member State shall ensure that the national competent authority disposes of sufficient resources and expertise to execute those tasks and shall inform the Commission thereof;

(b) verify the compliance with, and the fulfilment of national security and defence requirements by the service providers referred to in Article 7(1a)b) and Article 8(4)d), unless this task is assigned to another authority by the Member State. Where a Member State decides to assign this task to another authority, it shall inform the Commission.

(ba) Without prejudice to Directive 2014/25/EU and Directive 2014/24/EU, contribute when relevant and as appropriate to the correct application of procurement requirements in accordance with Article 8;

(c) assess and approve the price setting for the provision of the CIS, in accordance with Article 9;

(d) implement and monitor the performance and charging schemes in accordance with and within the limits of their tasks under Articles 10 to 17 and 19 to 22 and with the implementing acts adopted on the basis of articles 18 and 23.

(e) oversee the application of the Regulation regarding the transparency of accounts of air navigation service providers in accordance with Article 25.

3. Each national supervisory authority shall, in cooperation with the national competent authority without prejudice to Article 3(4), conduct the necessary monitoring activities, including, as appropriate, inspections and audits, to identify possible non-compliance by entities subject to their oversight under this Regulation with the requirements set out in this Regulation and the implementing acts adopted on the basis thereof.

Without prejudice to Article 4(1)(a), second subparagraph, the national supervisory authority, shall provide the national competent authority with its assessment of the compliance by the air navigation service provider with the requirements listed in point 7 of Annex VIII to Regulation (EU) No 2018/1139 regarding financial robustness, liability, insurance cover, ownership and organisational structure. This assessment shall, where appropriate, include a recommendation for amending, limiting, suspending or revoking the certificate pursuant to Article 41 of Regulation (EU) 2018/1139.

In case of non-compliance, by entities subject to their oversight under this Regulation, with other requirements set out in this Regulation, the national supervisory authority shall enforce the necessary corrective measures.

The air navigation service providers, airport operators and the CIS providers concerned shall comply with any enforcement measures taken by the national supervisory authorities in that context.

3a. Member States shall ensure that the decisions taken by the national supervisory authority pursuant to this Article are subject to the right of appeal, in accordance with national legislation.

Article 5 - Co-operation between national supervisory authorities

1. The national supervisory authorities shall exchange, in the framework of the NSA Cooperation Board referred to in Article 9f, information relevant for the other national supervisory authorities, in particular information relating to their work and decision-making process, best practices and procedures in the application of this Regulation.

2. The national supervisory authorities shall cooperate, where appropriate, through working arrangements, for the purposes of mutual assistance in their tasks laid down in Article 4 and handling of investigations and surveys.

3. In the case of cross-border provision of air navigation services in airspaces falling under the responsibility of two or more Member States, the Member States concerned shall ensure that the necessary agreements in respect of the supervision of those services are concluded. The national supervisory authorities concerned shall facilitate the provision of those cross-border services by air navigation service providers and may establish appropriate working arrangements or oversight plans specifying the implementation of their co-operation.

4. In the case of cross-border 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 Member States or their authorities, of the 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 tasks set out in Article 4(1).

5. Where permitted by national law and with a view to regional cooperation, national supervisory authorities may also conclude agreements on the division of responsibilities regarding the supervisory tasks.

5a. Agreements referred to in this Article shall be notified by the Member States concerned to the Commission.

CHAPTER III - SERVICE PROVISION

Article 6 - Provision of services by air navigation service providers

1. Without prejudice to Articles 7, 7b and 8(4) of this Regulation, an entity that complies with the requirements set out in Articles 40 and 41 of Regulation (EU) No 2018/1139 and in the implementing acts and in the delegated acts adopted on the basis of Article 43 and 47, respectively, of that Regulation shall be entitled to provide within the Union air navigation services for airspace users, under non-discriminatory conditions.
2. Without prejudice to the national organisation resulting from Article 3(4) and to Article 4(1)(a), second subparagraph, the national supervisory authorities of the Member State whose national competent authority is responsible for the certification referred to in Article 41 of Regulation 2018/1139, pursuant to Article 62 of that Regulation, shall be responsible for the tasks set out in this Article in respect of assessing compliance with the essential requirements regarding financial robustness, liability, insurance cover, ownership and organisational structure listed in point 7 of Annex VIII to Regulation (EU) 2018/1139.
3. Without prejudice to the national organisation resulting from Article 3(4) and to Article 4(1)(a), second subparagraph, with a view to establishing whether an entity complies with the essential requirements regarding financial robustness, liability, insurance cover, ownership and organisational structure listed in point 7 of Annex VIII to Regulation (EU) No 2018/1139 and with the requirements set out in the implementing acts adopted on the basis of Article 43 of that Regulation, the national supervisory authorities shall:
 - (a) assess the compliance of applicants for certification, in accordance with Article 41(2) of Regulation (EU) 2018/1139, with the essential requirements regarding financial robustness, liability, insurance cover, ownership and organisational structure listed in point 7 of Annex VIII of that Regulation and with the requirements set out in the implementing acts adopted on the basis of Article 43 of that Regulation and provide its assessment to the competent authority referred to in Article 62 of that Regulation.
 - (b) Pursuant to Article 4(3), perform the oversight of holders of a certificate issued in accordance with Article 41 of Regulation (EU) 2018/1139, with respect to the compliance with the essential requirements regarding financial robustness, liability, insurance cover, ownership and organisational structure listed in point 7 of Annex VIII of that Regulation and with the requirements set out in the implementing acts adopted on the basis of Article 43 of that Regulation.
4. Notwithstanding paragraph 2, and subject to the conditions set out in Article 2(5) of Regulation 2018/1139, Member States may allow the provision of air navigation services referred to in Article 2(3)c) of Regulation 2018/1139 in all or part of the airspace under their responsibility by military without certification where military offers such services primarily to aircraft movements other than general air traffic. In such cases, the Member State concerned shall inform the Commission and the other Member States of its decision.

Article 7 - Designation of air traffic service providers

1. Member States shall ensure the provision of air traffic services on an exclusive basis within specific airspace blocks in respect of the airspace under their responsibility. For this purpose, Member States shall individually or collectively, designate one or more air traffic service provider(s). Member States shall have discretionary powers in designating air traffic service provider(s), on the condition that the air traffic service provider(s) fulfils the requirements laid down in this Article without prejudice to Article 8(1b).

1a. The air traffic service providers shall fulfil the following cumulative conditions:

- (a) they hold a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 or a valid declaration pursuant to Article 41(5) of Regulation (EU) 2018/1139, without prejudice to Article 6(4) of this Regulation;
- (b) they comply with the national security and defence requirements;
- (c) their principal place of business is located in the territory of a Member State and
- (d) Member States or nationals of Member States own more than 50% of the service provider and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except where otherwise as provided for in an agreement with a third country to which the Union is a party.

By way of derogation from points c) and d), a Member State may designate an air traffic service provider having its principal place of business in a third country and/or not complying with the condition set out in point d) to provide air traffic services in a limited part of the airspace for which that Member State is responsible where that part of the airspace borders an airspace under the responsibility of that third country.

2. The designation of the air traffic service providers shall not be subject to any condition requiring those providers to:

- (a) be owned directly or through a majority holding by the designating Member State or its nationals;
- (b) have their principal place of operation or registered office in the territory of the designating Member State;
- (c) use only facilities in the designating Member State

in case the application of such conditions entails a restriction of the freedom to provide services or the freedom of establishment which is not justified in the light of a legitimate objective of general interest, such as public policy, public security or safety, and proportionate to that objective.

3. Where relevant, Member States shall specify the rights and obligations to be met by the air traffic service providers, designated in accordance with this Article. The obligations may include conditions for the timely supply of relevant information enabling all aircraft movements to be identified in the airspace under their responsibility.

3a. Member States shall assess the rights and obligations referred to in paragraph 3 and the compliance with the obligations stemming from this Regulation and from Regulation 2018/1139 periodically, or whenever they identify relevant changes in the provision of the services, and, if deemed necessary, they shall take appropriate decisions regarding the designation of the air traffic service providers concerned, without prejudice to service continuity.

4. Member States shall inform the Commission and other Member States immediately of any decision within the framework of this Article regarding the designation of air traffic service providers within specific airspace blocks in respect of the airspace under their responsibility.

Article 7a (new) - Relations between air navigation service providers

1. Air navigation service providers may avail themselves of the services of other service providers that are certified or that declared their capability according to Article 41 of Regulation (EU) 2018/1139 without prejudice to Article 6(4) of this Regulation. Such cooperation shall be made in accordance with Article 8 where applicable.

For air traffic service providers designated in accordance with Article 7 and MET providers designated in accordance with Article 7b, such cooperation shall be subject to the authorisation of the Member States concerned.

2. For the purpose of paragraph 1, air navigation service providers shall formalise their working relationships by means of written agreements or equivalent legal arrangements, setting out the specific duties, including financial settlements if applicable, and functions assumed by each provider. Those agreements or arrangements shall be notified to the national supervisory authority, the national competent authority or authorities concerned.

Article 7b (new) - Designation of MET providers

1. Member States may designate, individually or collectively, a MET provider on an exclusive basis in all or part of the airspace under their responsibility, taking into account safety considerations.

2. Member States shall inform the Commission and other Member States without delay of any decision taken on the basis of this Article.

Article 8 - Conditions regarding the provision of CNS, AIS, ADS, MET and the provision of air traffic services for approach and aerodrome control

1. Without prejudice to Directive 2014/24/EU and Directive 2014/25/EU, where applicable, designated air traffic service providers may decide to procure, under market conditions, including public procurements, or under other forms of agreements in cases those Directives do not apply, taking into account specific situations such as lack of solutions available on the market and considerations relating to the public interest, CNS, AIS, ADS, or MET services in cases where Member States have not designated a MET provider in accordance with Article 7a.

1a. Member States may allow airport operators or a group of airport operators to procure air traffic services for aerodrome control and/or air traffic services for approach control under market conditions. To this end, Member States may require from the airport operators a proper justification that this will enable quality of service gains to the benefit of airspace users, while maintaining the required level of safety.

1b. When this procurement is allowed, the relevant airport operator or a group of airport operators shall ensure that the technical requirements in the tender specifications include requirements on

service quality. Member States shall designate the service provider selected as a result of the procurement referred to in this paragraph.

2. Where air navigation services are procured under market conditions, procurement procedures for the provision of air navigation services shall be carried out in accordance with the principles of equal treatment, non-discrimination and transparency as well as of the applicable provisions of the Treaty and with Directive 2014/24/EU of the European Parliament and of the Council¹³ Directive 2014/25/EU of the European Parliament and of the Council¹⁴, where applicable.

3. Member States shall take all necessary measures to ensure that the provision of *en route* air traffic services respects the requirement concerning the separation of accounts referred to in Article 25(3).

In addition, where the air navigation service provider intends to participate in procurement procedures for the provision of air navigation services in accordance with paragraphs 1 and 1a, the relevant Member State shall take appropriate measures to avoid cross subsidization with other air navigation services.

4. A provider of CNS, AIS, ADS, MET or air traffic services for aerodrome control or for approach control may only be selected and, if appropriate, designated to provide services in a Member State as a result of a procurement pursuant to paragraphs 1, 1a or 1b, on the condition that it complies with the following cumulative conditions:

- (a) holds a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 or a valid declaration pursuant to Article 41(5) of Regulation (EU) 2018/1139, without prejudice to Article 6(4) of this Regulation;
- (b) its principal place of business is located in the territory of a Member State;
- (c) Member States or nationals of Member States own more than 50% of the service provider and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Union is a party; and
- (d) the service provider complies with national security and defence requirements.
- (e) By way of derogation a provider of global satellite services that was granted a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 to provide services within the Union prior to the adoption of this Regulation may be selected to provide services in the Union even if it does not comply with the conditions set out in subparagraph (b) and (c).

5. Articles 13, 13a, 13b and 17 and the implementing rules relating to those Articles adopted on the basis of Article 18 shall not apply to the air traffic service providers designated as a result of a procurement procedure conducted in accordance with paragraphs 1a and 1b. The air traffic service providers concerned shall provide data on the performance of air navigation services in the key performance areas referred to in Article 10(2)a) and in safety area to the national supervisory authority. The national supervisory authority shall provide this information to the Commission without delay.

¹³ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

¹⁴ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

6. Without prejudice to Directive 2014/25/EU and Directive 2014/24/EU, the first time that an air traffic service for approach and/or aerodrome control is procured at a given airport in accordance with paragraph 1a, and whenever essential conditions would require a change of tender specifications, Member States shall ensure the verification of the technical requirements on service quality included in the tender specifications for the specific service concerned.

Article 9 - Provision of common information services

1. Where CIS are provided, the data disseminated shall present the integrity and quality necessary to enable the safe and secure provision of services for the management of traffic of unmanned aircraft in a way that enables the shared use of the airspace together with manned aircraft.

2. The CIS provider shall fulfil the following cumulative requirements:

(a) they comply with the national security and defence requirements;

(b) their principal place of business is located in the territory of a Member State and

(c) Member States or nationals of Member States own more than 50% of the service provider and effectively control it, whether directly or indirectly through one or more intermediate undertakings, except where otherwise provided for in an agreement with a third country to which the Union is a party.

3a. Where common information services (CIS) are provided by a single CIS provider (sCISP) designated by the Member State in respect of a specific U-space airspace, the price for these services shall be based on the fixed and variable costs of providing the service concerned and may, in addition include a mark-up reflecting an appropriate risk-return trade-off. Where CIS are not provided by a sCISP, the individual CIS shall be provided for free.

3. The costs on the basis of which the price for CIS is based shall be set out in an account separate from the accounts for any other activities of the service provider concerned and shall be accessible by the national supervisory authority concerned. These costs shall be made publicly available without prejudice to Article 41(3).

4. The price set by the CIS provider shall be subject to assessment and approval by the national supervisory authority concerned. The price of such services shall be made publicly available.

5. Data necessary for the operation of unmanned aircraft in the U-Space airspace shall be made available on a non-discriminatory basis, without prejudice to national security, public order and defence policy interests, by air navigation service providers. CIS providers and U-Space Service Providers shall use those data only for operational purposes of the services they provide.

Prices for access to such data shall be based on the additional costs of making the data available and the cost for generating the data, where the latter costs are not covered under Article 20 and unless other financial resources are used by Member States to cover such costs.

Article 9a – Establishment and role of the Performance Review Board

1. An independent and impartial advisory Performance Review Board (PRB) is hereby established. The PRB shall be represented by its chair and supported by a secretariat.

2. The role of the PRB shall be to assist the Commission to carry out the tasks of the Commission related to the detailed functioning of the performance and charging schemes laid down in Articles 10 to 17 and in Articles 19 to 22 and 23, respectively, as well as under Article 24, and in the implementing acts adopted on the basis of Articles 18 and 23. For this purpose, the PRB shall

provide opinions, recommendations, guidance material and reports to the Commission, in line with the priorities defined by the Commission.

3. The PRB shall issue guidance material to support national supervisory authorities, and, upon request, assist those authorities for the implementation of the performance and charging schemes.

4. The opinions, recommendations, reports and guidance material adopted or provided by the PRB shall not be binding. The PRB shall have a purely advisory role. It shall have no regulatory function or other decision-making power except for the adoption of its opinions, recommendations, guidance material and reports.

Article 9b – Composition of the PRB

1. The PRB shall be composed of 7 members, including its chair. Members of the PRB shall be EU nationals or nationals of third countries with which the Union has concluded an agreement under which those countries apply the relevant rules of Union law in the field of air traffic management and the performance and charging schemes. The term of office of the PRB members shall be five years non-renewable.

2. The members of the PRB, including the Chair, shall be appointed on the basis of merit as well as skills and experience relevant to the air traffic management, air navigation services or economic regulation of network industries, in accordance with the selection and eligibility criteria defined in the implementing act adopted in accordance with Article 9h. The appointment process shall ensure a balanced representation of competence and expertise as well as of gender and geographical origin.

3. The Commission shall, following a public call for expression of interest, establish the list of candidates for members and Chair of the PRB complying with the conditions set out in paragraph 2. The members and the Chair of the PRB shall be appointed by the Commission, from that list after consulting Member States, following the selection procedure defined on the basis of Article 9h.

4. The Commission may establish a reserve list on the basis of the list referred to in paragraph 3, first subparagraph.

A member who is no longer capable of contributing effectively to the work of the PRB, who resigns or who does not comply with the conditions set out in this Article shall be replaced by a person from the reserve list, appointed in accordance with the procedure referred to in paragraph 3, second subparagraph, for the remainder of the term of office of that member.

4a. The Commission shall inform the Member States of the results of the calls for applications and of the lists referred to in paragraphs 3 and 4.

Article 9c – Independence of the PRB

1. Members of the PRB shall neither seek nor take instructions from any government, institution, person or body, without prejudice to Article 9d(6). The PRB shall be fully independent when adopting its opinions, recommendations, reports and guidance materials.

2. Members of the PRB shall be impartial and act independently of any external influence and in the public interest.

For this purpose, they shall demonstrate independence and absence of conflicts of interest and shall be subject to the obligation of professional secrecy, in accordance with the rules defined in the implementing act adopted in accordance with Article 9h.

Article 9d – Procedures and functioning of the PRB

1. The PRB shall decide by a simple majority of its members, while aiming at consensus. Each member, including the chair, shall have one vote.
2. The PRB shall adopt its own rules of procedure and set up its working arrangements, in line with the Commission internal rules for expert groups.
3. The Commission may attend the meetings of the PRB, with the exception of the final deliberations of the PRB for the adoption of its opinions, recommendations, reports and guidance material, without voting right. The relevant stakeholders referred to in Article 38(3) may be invited to those meetings, on an ad hoc basis, without voting rights.
4. The PRB shall work on the basis of an annual work programme established by the PRB in line with the Commission priorities. That work programme shall fully respect the role of the PRB laid out in Article 9a (2) and include all activities, within the available budget, necessary to assist the Commission in respect to the tasks of the Commission referred to in Article 9a(2), including in order to allow the Commission to respect the required timeframes to implement its tasks. The PRB shall adopt the work programme after consulting the Commission. The PRB shall provide an annual report for publication by the Commission. The annual work programme and the annual report shall be provided by the Commission to the Member States. The annual report shall cover all activities of the PRB and contain information on the costs of the PRB.
5. The Commission shall grant access to the PRB to all relevant information for the execution of its advisory role.
6. The Commission shall monitor the functioning of the PRB and its compliance with this Regulation and regularly inform the Member States on the progress of PRB work.

Article 9e – Secretariat of the PRB

1. The Commission shall provide the secretariat of the PRB, including the necessary analytical, administrative and technical support, taking into account the needs indicated by the PRB. The main task of the secretariat shall be to contribute to the independent execution of the tasks of the PRB. For the purpose of preparing the content and orientations of the opinions, recommendations, reports and guidance material of the PRB, the secretariat shall provide its support to the PRB without taking any directives except from the PRB in order to enable it to fulfil its role. The secretariat shall be adequately resourced for the performance of its tasks.

Article 9f – National Supervisory Authorities Cooperation Board

1. The National Supervisory Authorities Cooperation Board is hereby established.
2. The National Supervisory Authorities Cooperation Board shall:
 - (a) exchange information about the work of national supervisory authorities and decision-making principles, best practices and procedures with regard to the implementation of the Regulation;
 - (b) provide recommendations to the PRB on the guidance material and reports to be issued by it;
 - (c) provide recommendations -to the PRB for complementary items in the annual work programme of the PRB.

3. The National Supervisory Authorities Cooperation Board shall be composed of a representative and an alternate from the national supervisory authority of each Member State, both nominated by the national supervisory authority. The National Supervisory Authorities Cooperation Board shall elect a Chairperson and a Deputy-Chairperson from among its members. The NSA Cooperation Board shall adopt its decisions by simple majority of its members. The Commission may attend the meetings of the National Supervisory Authorities Cooperation Board, without voting rights. The PRB may be invited to those meetings, on an ad hoc basis, without voting rights. Third countries may be invited to those meetings, on an ad hoc basis, without voting rights subject to the consensual agreement of the members of the NSA Cooperation Board.
4. The Secretariat referred to in Article 9e shall provide the necessary administrative and technical support to the National Supervisory Authorities Cooperation Board.

Article 9g – Financing of the PRB

The costs related to the Performance Review Board, the secretariat and the NSA Cooperation Board shall be financed from the budget of the Union.

Article 9h – Implementing acts

The Commission shall, by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 37(2), adopt detailed rules for the implementation of Articles 9a to 9g, including on:

- a) the tasks and the functioning of the PRB;
- b) the selection procedure of the members of the PRB, including the Chair;
- c) rules preventing conflict of interest and preserving the independence of the PRB.

Article 10 - Performance scheme

1. To improve the performance of air navigation services and network management in the Single European Sky, a performance scheme for air navigation services and network management shall apply in accordance with this Article and Articles 11 to 18.
- 1a. Articles 10 to 18 shall not apply to terminal air navigation services provided at airports, located in the territory of the Member States to which the Treaty applies, with less than 80 000 instrument flight rules ('IFR') air transport movements per year. However, a Member State may decide that such terminal air navigation services are subject to those Articles.
2. The performance scheme shall be implemented over reference periods, which shall be a minimum of three years and a maximum of five years. The performance scheme shall include:
- (a) key performance areas of climate and environment, capacity and cost-efficiency;
 - (aa) Union-wide performance targets for en route air navigation services in the key performance areas mentioned in point (a) for each reference period;
 - (b) performance plans including, for each reference period:

- i. binding performance targets and where applicable, incentive schemes, for en route air navigation services, in the key performance areas mentioned in point (a);
 - ii. binding performance targets and where applicable, incentive schemes, for terminal air navigation services in the key performance areas of cost efficiency and capacity; and
 - iii. subject to the adoption by the Commission, of an implementing act setting key performance indicators for terminal services in the key performance area of climate and environment on the basis of Article 18, point (g), under the conditions set out therein, binding performance targets for terminal air navigation services in that key performance area of climate and environment and where applicable, incentive schemes.
- (c) periodic review and monitoring of performance in the key performance areas mentioned in point (a) and of relevant safety indicators defined in coordination with the Agency.

3. The performance scheme referred to in paragraphs 1 and 2 shall be based on:

- (a) the collection, validation, examination, evaluation and dissemination of relevant data related to the performance of air navigation services and network management from all relevant parties, including air navigation service providers, airspace users, airport operators, national supervisory authorities, national competent authorities, and other national authorities, the Agency, the Network Manager and EUROCONTROL;
- (b) key performance indicators for target setting in the key performance areas referred to in paragraph 2, point (a), without prejudice to paragraph 2, point (b)(iii) and to Article 18, point (g);
- (c) indicators for monitoring performance in the key performance areas referred to in paragraph 2(a) and relevant safety indicators defined in coordination with the Agency;
- (cc) a methodology to calculate breakdown values;
- (d) procedures for the establishment and revision of performance plans and of performance targets for air navigation services, [...] and for the network management, as well as the templates, content and timetables of such plans;
- (e) the assessment of the draft performance plans and targets for air navigation services and network management;
- (f) monitoring of performance plans, including appropriate alert mechanisms for revision of performance plans and targets and for the revision of Union-wide performance targets in the course of a reference period;
- (g) benchmarking of air navigation service providers designated under Articles 7 and 7b where relevant;
- (h) incentive schemes including both financial positive incentives and disincentives. The financial positive incentives and disincentives shall be proportionate to the magnitude of the deviation of the achieved performance from the target. They shall take into account the impact on the network and the extent to which the air navigation service provider has reasonable means to mitigate the impact of external factors. The incentives and disincentives shall be set at a level effectively fostering the quality-of-service provision and shall not impair the ability of the air navigation service provider to comply with its obligations under Regulation (EU) 2018/1139, including on financial robustness.
- (i) risk sharing mechanisms in respect of traffic and costs;

- (j) timetables for target setting, assessment of performance plans and targets, monitoring and benchmarking;
- (k) general principles established by the Commission on a proportional allocation of costs common to en route and terminal air navigation services between the two categories of services.
- (l) mechanisms to address unforeseeable and significant events which have a material impact on the implementation of the performance and charging schemes.

In order to lay down the general principles referred to Article 10(3)(k), the Commission shall review the existing national criteria to allocate costs common to en-route and terminal air navigation services and shall consult national supervisory authorities and stakeholders. Based on this review, the Commission shall establish or, as appropriate, update those general principles no later than 12 months before the start of each reference period.

4. The setting of the performance targets included in the performance plans, the preparation and the assessment of draft performance plans, as well as the monitoring and benchmarking of performance of the air navigation services and network management shall take into account the impact of local circumstances as well as external factors that the air navigation service provider has no reasonable means to mitigate where appropriate.

The impact of local circumstances already taken into account in the setting of Union-wide performance targets, in accordance with Article 11(1), point (cc), and in the definition of breakdown values established under Article 11(1) shall subsequently not be taken into account when assessing the consistency of the performance targets included in the draft performance plan with Union-wide performance targets in order to justify the deviation of those former targets with those latter targets. The impact of local circumstances already taken into account for setting the performance targets included in the draft performance plan shall subsequently not be taken into account when monitoring the achievement of those targets.

5. The level of the performance targets referred to in point (b)(iii) shall be set taking into account local circumstances, in particular local environmental policy requirements.

6. For the purpose of implementing the performance scheme established under this Regulation, account shall be taken of the fact that en route services, terminal services and network functions have different characteristics and shall therefore be treated accordingly, including, if necessary, for performance-measuring purposes.

Article 11- Establishment of the Union-wide performance targets

1. In accordance with the examination procedure referred to in Article 37(3) and with paragraphs 2 to 3 of this Article, the Commission shall adopt, by means of implementing acts, the Union-wide performance targets for en route air navigation services, in the key performance areas referred to in Article 10(2)(a) for each reference period, and define the duration of that period.

In conjunction with those Union-wide performance targets, the Commission may, by means of implementing acts, define complementary baseline values, alert thresholds, breakdown values and benchmark groups in accordance with the examination procedure referred to in Article 37(3).

2. Union-wide performance targets referred to in paragraph 1 and performance targets for en route and terminal air navigation services defined by Member States at national level, referred to in Article 10(2)(b), shall be defined on the basis of the following essential criteria:

- (a) they shall strive gradual improvements in respect of the climate and environmental, operational and economic performance of air navigation services;
- (b) they shall be realistic and achievable during the reference period concerned, enabling the efficient, sustainable and resilient provision of air navigation services whilst fostering longer term technological developments;
- (c) they shall take into account the economic and operational context of the reference period, including traffic forecast and operational data, as well as the interdependencies between the key performance areas referred to in Article 10(2)(a) and (b) and the need to be aligned with the objectives of Regulation (EU) 2021/1119.
- (cc) they shall take into account local circumstances of the Member States.
- (d) they shall take into account the safety indicators referred to in article 10(2)(c).

3. For the purposes of preparing its decisions on Union-wide performance targets and, if defined in application of Article 11(1), on complementary baseline values and breakdown values or benchmark groups, the Commission shall consult and collect any necessary inputs from national authorities, EUROCONTROL, the Network Manager and operational stakeholders.

Article 13 - Performance plans and performance targets for air navigation services

0. Member States shall, for each reference period, adopt a draft performance plan, pursuant to this Article.

1. The air navigation service providers designated under Articles 7 and 7b shall, for each reference period and for the air navigation services they provide and, where applicable, procure from other providers, prepare inputs to the draft performance plan and submit them to the national supervisory authority.

The national supervisory authority may request that those inputs are in the form of a draft performance plan.

Such inputs shall be prepared by the air navigation service providers designated under Articles 7 and 7b after the setting of Union-wide performance targets, in due time to enable the national supervisory authority to comply with the time-limit set out in paragraph 1b.

1a. Where they are designated in accordance with Article 7b, MET service providers shall also provide inputs on their cost base to the national supervisory authority.

1aa. The inputs, provided by the air navigation service providers designated under Articles 7 and 7b, under paragraphs 1 and 1a regarding the allocation of costs included in the performance plans shall be based on the general principles referred to in Article 10(3)(k).

1b. The national supervisory authority shall review the information, provided by each air navigation service providers designated under Articles 7 and 7b, under paragraphs 1, 1a and 1aa and shall approve it or shall make the necessary changes where appropriate. Subsequently, based on that information, the National supervisory authority, with inputs from other national authorities if appropriate, shall prepare a single national draft performance plan which shall be adopted by the Member State.

The draft performance plan shall be prepared by the National supervisory authority before the start of the reference period concerned.

1ba. National supervisory authorities shall ensure that the allocation of costs included in the draft performance plan complies with the general principles referred to in Article 10(3)(k) when preparing the performance plans.

1c. With the aim to improve the level of performance of air traffic management, several Member States may develop a joint performance plan for en-route services and, as appropriate, for terminal services. This plan shall at least cover the duration of one reference period, include at least one joint performance target and involve cross-border cooperation. The cross-border cooperation may include joint procurement with a view to improve interoperability and joint governance to optimise the use of airspace.

2. The draft performance plan referred to in paragraph 1 shall include relevant information, in particular traffic forecasts and operational data, provided by EUROCONTROL and the Network Manager or, if appropriate and justified and after consultation with airspace users and air navigation service providers concerned, other traffic forecasts.

In preparing the draft performance plan, the national supervisory authority shall consult airspace users' representatives and, where relevant, military authorities, airport operators, airport coordinators, as well as the national competent authority without prejudice to the national organisation resulting from Article 3(4). The compliance with Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof shall be verified.

3. The draft performance plan shall contain, as appropriate, performance targets for *en route* air navigation services in the key performance areas referred to in Article 10(2)(a) consistent with the Union-wide performance targets, as well as performance targets for terminal air navigation services, in the key performance areas of cost efficiency and capacity and, subject to the conditions set out in Article 10(2)(b)(iii), in the key performance area of climate and environment. Draft performance plans shall include a description on how the general principles referred to in article 10 (3) k) for the allocation of such common costs are applied.

Draft performance plans shall take account of the European ATM Master Plan, the interdependencies between the key performance areas referred to in Articles 10(2)(a) and the local circumstances.

3a. The adopted draft performance plans shall be made publicly available without prejudice to Article 41(3).

4. The adopted draft performance plans shall be submitted to the Commission for assessment and approval in accordance with Article 13a.

Article 13a (new) - Assessment of performance plans

1. The Commission shall assess the adopted draft performance plans referred to in Article 13, including the consistency of performance targets for en route air navigation services with Union-wide performance targets, in line with the criteria and conditions laid down in the implementing acts referred to in Article 18, point (b), and the allocation of common costs between en route and terminal air navigation services according to the general principles referred to in Article 10(3)(k). The assessment of the consistency of performance targets for en route air navigation services with Union-wide performance targets shall take into consideration performance improvements over

time. The Commission shall review the performance targets for terminal air navigation services in light of the elements specified in the implementing act referred to in Article 18 point (b).

2. When assessing the consistency of performance targets for en route air navigation services with the Union-wide performance targets, the Commission shall take due account of local circumstances and interdependencies between key performance areas referred to in Article 10(2)(a).

The Commission may allow a deviation of performance targets for en route air navigation services from Union-wide performance targets with respect to a key performance area where deemed necessary and proportionate to ensure consistency of performance targets for those services with the Union-wide performance targets with respect to other key performance areas.

3. Where the Commission finds that the adopted draft performance plan meets the criteria and conditions referred to in Article 13a(1) and laid down in the implementing acts referred to in Article 18, point (b), read in combination with paragraph 2 of this Article, it shall approve it in accordance with the advisory procedure referred to in Article 37(2).

4. Where the Commission finds that there are doubts whether the adopted draft performance plans meet those criteria and conditions, read in combination with paragraph 2 of this Article, it shall initiate a detailed examination of that draft performance plan, requesting additional information from the Member State concerned if necessary.

5. Where, having carried out the detailed examination, the Commission finds that the adopted draft performance plan meets those criteria and conditions read in combination with paragraph 2 of this Article, it shall approve it in accordance with the advisory procedure referred to in Article 37(2).

Where however the Commission finds that the adopted draft performance plan does not meet those criteria and conditions, the Commission shall adopt a decision, in accordance with the examination procedure referred to in Article 37(3), requesting the Member State(s) concerned to submit a revised draft performance plan, which shall comply with the said criteria and conditions and, when relevant, setting out the corrective measures to be taken by the Member State(s) concerned.

The Member State(s) concerned shall communicate to the Commission the measures that it has taken pursuant to that decision, as well as information demonstrating that those measures comply with that decision.

Where the Commission finds that those measures are sufficient to ensure compliance with its decision, it shall notify the Member State(s) concerned thereof and approve the draft performance plan in accordance with the advisory procedure referred to in Article 37(2).

Where the Commission finds that those measures are not sufficient to ensure compliance with the decision, it shall notify the Member State(s) concerned.

The Commission shall take, where appropriate, action to address the non-compliance, including through actions provided for in Article 258 of the Treaty on the Functioning of the European Union.

6. Draft performance plans approved by the Commission in accordance with this Article shall be adopted by the Member State(s) concerned as definitive plans, and shall be made publicly available without prejudice to Article 41(3).

Article 13b (new) - Performance monitoring

1. The national supervisory authority shall assess, in cooperation with the national competent authority without prejudice to the national organisation resulting from Article 3(4), whether the air

navigation services provided in the airspace under their responsibility meet the performance targets contained in the performance plans approved in accordance with Article 13a and whether those plans are implemented correctly, and shall implement the incentives schemes referred to in Article 10(3)h).

2. The national supervisory authority shall issue regular reports on the monitoring of performance of air navigation services provided by the air navigation service providers designated under Articles 7 and 7b and make them available to the Commission. The results of those assessments shall be made publicly available without prejudice to Article 41(3).

The air navigation service providers designated under Articles 7 and 7b shall provide the information and data necessary for such monitoring to the national supervisory authority. This shall include information and data related to actual costs of the services provided and procured and related revenues.

2a. To the extent that the air navigation service provider has reasonable means to mitigate the impact of external factors, where performance targets contained in the performance plans are not reached or the performance plan is not correctly implemented, the national supervisory authority shall require corrective measures to be implemented by the concerned air navigation service providers. Those corrective measures shall be adequate to improve the performance and proportionate, in particular considering interdependencies with safety and between performance areas, and the impact on the network.

Where corrective measures imposed are not properly applied, the Member State(s) concerned shall take appropriate measures and inform the Commission. In case of persisting underperformance, the Commission may take action in accordance with Article 24(2) and 24(3).

3. The Commission shall monitor the performance of the provision of air navigation services and network functions on the basis of the reports of national supervisory authorities and of analysis of data received and shall carry out regular assessments of the overall achievement of the Union-wide performance targets and present the results to the committee referred to in Article 37(1).

Article 16 - Network Performance Plan

1. The Network Manager shall, for each reference period, draw up, in accordance with the cooperative decision-making process referred to in Article 27(7), a draft Network Performance Plan.

The draft Network Performance Plan shall be drawn up after the setting of Union-wide performance targets and before the start of the reference period concerned. It shall contain performance targets in the key performance areas referred to in Article 10(2)a).

2. The draft Network Performance Plan shall be submitted to the Commission for assessment and adoption.

2a. The Commission shall assess the draft Network Performance Plan based on the following essential criteria:

- (a) consideration of performance improvements over time, for the reference period covered by the performance plan, and for the timeframe comprising both the preceding reference period and the reference period covered by the performance plan as well as contribution towards Union wide performance targets;

(b) completeness and consistency of the draft Network Performance Plan in terms of data and supporting materials, including key assumptions applied and traffic forecasts.

2b. Where the Commission finds that the draft Network Performance Plan is complete and shows adequate performance improvements, it shall adopt the draft Network Performance Plan as a definitive plan. Otherwise, the Commission shall request the Network Manager to submit a revised draft Network Performance Plan.

Article 17 - Revision of performance targets and performance plans during a reference period

1. Where, during a reference period, Union-wide performance targets are no longer adequate, in light of significantly changed circumstances or safety considerations, and where the revision of one or several targets is necessary and proportionate, the Commission shall revise those Union-wide performance targets. Article 11 shall apply to such decision.

Where, following such revision, the performance targets contained in the performance plans adopted pursuant to Article 13a(6) are no longer consistent with the Union-wide performance targets, the national supervisory authorities shall revise those plans with respect to the performance targets concerned. Articles 13, 13a and 13b shall apply to the revision of those plans. The consultation referred to in Article 13(2) may be limited, for the purpose of this subparagraph, to the performance targets and parts of the draft performance plans which are directly or indirectly affected by the revision.

Following the revision referred to in the first subparagraph, national supervisory authorities shall prepare new draft performance plans, to which Articles 13, 13a and 13b shall apply. The Network Manager shall draw up a new draft Network Performance Plan, to which Article 16 shall apply.

2. The decision on the revised Union-wide performance targets referred to in paragraph 1 shall include transitional provisions for the time period until the definitive revised performance plans become applicable. Revised Union-wide targets and transitional provisions shall not apply retroactively.

2a. In case of a network crisis, such as geopolitical conflicts, health crises or natural disaster, which prevents the issuing of reliable traffic forecasts, the transitional provisions adopted by the Commission in accordance with paragraph 2 may include the temporary suspension or adaptation of the performance scheme until the end of network crisis and the new reliable forecasts are available. In such a case, the Commission shall define the relating conditions, including necessary adaptations to applicable charges, in the decision referred to in paragraph 1.

3. Member States may, subject to the approval of the Commission, revise one or several performance targets, during a reference period where alert thresholds are reached, or where it is demonstrated that the initial data, assumptions and rationales underpinning the performance targets are to a significant and lasting extent no longer accurate due to circumstances that were unforeseeable at the time of the adoption of the performance plan. The Commission shall approve this revision if it concludes that the revision is necessary and proportionate and the revised performance targets are consistent with Union-wide performance targets.

In such a case, Member States shall revise the performance plans with respect to the targets concerned, in accordance with the procedures set out in Articles 13 and 13a. The consultation

referred to in Article 13(2) may be limited, for the purpose of this paragraph, to the performance targets and parts of the performance plans which are directly or indirectly affected by the revision.

Article 18 - Implementation of the performance scheme

For the implementation of the performance scheme, the Commission shall by means of implementing acts adopt detailed requirements and procedures in respect of Articles 10(3), 11, 13, 13a, 13b, 16 and 17, in particular as regards:

- (a) the preparation, development, assessment, approval and revision of performance plans,
- (b) the setting of performance targets, the criteria and conditions for their assessment, including for assessing the consistency of targets for en route air navigation services with Union-wide targets, and a methodology to define breakdown values,
- (c) general principles for the allocation of common costs between en route and terminal air navigation services, as referred to in Article 10(3)(k);
- (d) the monitoring of performance plans, of the performance of network functions, alert mechanisms for revision of performance plans and targets and for the revision of Union-wide performance targets during the course of a reference period and issuance of corrective measures as referred to in Articles 10(3), 13, 13a, 13b and 17;
- (e) the timetables for all procedures.
- (f) a mechanism to address events, referred to in Article 10(3)(l).
- (g) the setting of key performance indicators and indicators for monitoring. The Commission is empowered to set key performance indicators for terminal air navigation services in the key performance area of climate and environment once it is possible to establish indicators which are valid, reliable and measurable. -Those indicators shall as a minimum be capable of demonstrating and measuring the impacts in that area which can be directly influenced by the air navigation service providers.
- (h) methodology for benchmarking,
- (i) the incentive schemes,
- (j) conditions for the establishment of the joint performance plans.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

Article 19 - Principles for the charging scheme

1. Without prejudice to the possibility for Member States to finance the provision of air navigation services covered in this Article through public funds insofar as it is in line with Treaty rules on competition where applicable, charges for air navigation services shall be determined, imposed and enforced on airspace users.

The charging scheme set up under this Article as well as Articles 20 to 22 shall be consistent with Article 15 of the 1944 Chicago Convention on International Civil Aviation. For en route charges, the charging scheme set out under this Regulation and the implementing acts adopted on the basis of Article 23 and EUROCONTROL's charging system for en route charges shall be consistent.

1a. Articles 19 to 25 shall not apply to terminal air navigation services provided at airports, located in the territory of the Member States to which the Treaty applies, with less than 80 000 instrument flight rules ('IFR') air transport movements per year. However, a Member State may decide that such terminal air navigation services are subject to those Articles.

2. Charges shall be based on the costs of air navigation service providers designated under Articles 7 and 7b incurred in respect of services and functions for the benefit of airspace users over fixed reference periods as defined in Article 10(2). Those costs may include a reasonable return on assets.

3. Charges shall encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to achieving a high level of safety and cost-efficiency whilst reducing the environmental impact of aviation.

5. Revenues received by an air navigation service provider designated under Articles 7 and 7b from charges imposed on airspace users in accordance with this Article shall not be used to finance services which that air navigation service provider provides under market conditions in accordance with Article 8 or to finance any other commercial activity performed by that provider.

6. Financial data on determined costs, actual costs and related revenues of designated air navigation service providers shall be reported to national supervisory authorities. **For the purpose of enabling the Commission to carry out its tasks under this Regulation**, National supervisory authorities shall report those data to the Commission in accordance with the modalities defined in the implementing act referred to in Article 23. Financial data on determined costs, actual costs and related revenues shall be made available to airspace users, and shall be published in accordance with Article 41(3).

Article 20 - Cost bases for charges

1. The cost bases for charges for air navigation services shall consist of the determined costs, as established in the performance plans adopted in accordance with Article 13a(6), related to the provision of those services in the en route charging zone and terminal charging zone concerned.

2. The determined costs referred to in paragraph 1 shall include the costs of relevant facilities and services, cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration, including staff costs.

3. The determined costs referred to in paragraph 1 shall also include the following costs:

- (b) costs related to the oversight of air navigation services incurred by national supervisory authorities, national competent authorities, and other national authorities entrusted by Member States to carry out tasks in relation to this Regulation and Regulation 2018/1139, where the Member State so decides;
 - (c) costs incurred by the air navigation service providers designated under Articles 7 and 7b, in relation to the provision of air navigation services and the network functions;
 - (e) costs stemming from the EUROCONTROL International Convention relating to cooperation for the safety of air navigation of 13 December 1960 as last amended, where the Member State so decides.
4. Determined costs shall not include the costs of penalties imposed by Member States in accordance with Article 42.
5. Costs that pertain to both *en route* air navigation services and terminal air navigation services shall be allocated in compliance with the general principles referred to in Article 10(3)(k). Cross-subsidy between en route air navigation services and terminal air navigation services shall not be allowed. Cross-subsidy shall be allowed between different air navigation services within either one of those two categories only when justified for objective reasons, subject to transparent identification in accordance with Article 25(3).
6. Air navigation service providers designated under Articles 7 and 7b shall provide details of their cost base to the national supervisory authority. To this end, costs shall be broken down by distinguishing staff costs, operating costs other than staff costs, depreciation costs, cost of capital, exceptional costs and costs referred to in Article 20(3). For the purpose of enabling the Commission to carry out its tasks under this Regulation, the national supervisory authority shall provide this information to the Commission in accordance with the modalities defined in the implementing act referred to in Article 23.

Article 21 - Charging zone and unit rates

1. Unit rates shall be set per calendar year and for each charging zone, on the basis of the determined costs and the traffic forecasts established in the performance plans as well as applicable adjustments deriving from previous years and other revenues, in particular public funds, including financial support from Union assistance programmes.

1a. Without prejudice to Article 20(5), Member States shall define, before the start of a reference period, the charging zones for air navigation services and shall identify the air traffic service providers falling under the scope of each charging zone. The Commission shall, by means of an implementing act adopted in accordance with the examination procedure referred to in Article 37(3) define the conditions under which Member States may modify or establish a new terminal charging zone during a reference period.

2. Unit rates shall be set by the Member States, and be subject to verification by the Commission that they comply with Article 19, Article 20 and with this Article.
Unit rates shall be published.

Where the Commission finds that a unit rate does not fulfil those requirements, the unit rate shall be reviewed accordingly by the Member State concerned, and amended so as to fulfil those requirements.

Member States may define common charging zones and, in such cases, shall set common unit rates for those charging zones.

Article 22 - Establishment of charges

1. Charges shall be levied on airspace users for the provision of air navigation services, under non-discriminatory conditions, taking into account the relative productive capacities of the different aircraft types concerned. When imposing charges on different airspace users for the use of the same service, no distinction shall be made in relation to the nationality or category of the user.

2. The en-route charge for air navigation services for a given flight in a given en route charging zone shall be calculated on the basis of the unit rate established for that en route charging zone and the en route service units for that flight.

3. The terminal charge for air navigation services for a given flight in a given terminal charging zone shall be calculated on the basis of the unit rate established for that terminal charging zone and the terminal service units for that flight. For the purpose of calculating the terminal charge, the approach and departure of a flight shall count as a single flight.

4. Exemption of certain airspace users or flights from air navigation charges, especially those using or operated with light aircraft and State aircraft, may be permitted, provided that the cost of such exemption is covered by other resources and is not passed on to other airspace users.

5a. The Commission shall, in consultation with the Member States, air traffic service providers and airspace users conduct a study on the contribution of the modulation of charges to the achievement of the objectives of the Single European Sky, defined in Article 1(1), and of Regulation (EU) 2021/1119 of the European Parliament and of the Council. This study shall also assess the feasibility of that modulation and its impact on air traffic, service provision, administrative costs and stakeholders.

5b. The result of the study referred to in paragraph 5a will provide the essential information for the Commission to determine whether to adopt an implementing act in accordance with Article 37(3), to ensure the uniform application of modulation of en route charges to encourage airspace users to support improvements in climate and environmental performance such as the use of the most fuel-efficient available routing, increased use of alternative clean propulsion technologies including sustainable alternative fuels, while maintaining an optimum safety level.

5c. The modulation referred to in paragraph 5b shall consist of financial advantages or disadvantages and shall be revenue neutral for air traffic service providers.

5d. In addition to the modulation of charges referred to in paragraph 5b, charges may be modulated by Member States to encourage air traffic service providers and airspace users to support improvements in service quality such as increased capacity, reduced delays and sustainable development.

Article 23 - Implementation of the charging scheme

For the implementation of the charging scheme, the Commission shall, by means of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3), adopt detailed requirements and procedures in respect of Articles 19, 20, 21 and 22 in particular regarding the cost bases and determined costs, the setting of unit rates, risk sharing mechanisms and the modulation of charges, and the modalities of the provision of data by the national supervisory authorities to the Commission.

Article 24 - Review of compliance with the performance and charging schemes

1. The Commission shall regularly review compliance of Member States with Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23. When carrying out that review, the Commission shall assess whether Member States ensure, in line with their duty of sincere cooperation, compliance by the air navigation service providers with their obligations under those Articles. The Commission shall act in consultation with the PRB and with national supervisory authorities.

2. Where the Commission, has indications of non-compliance with the provisions referred to in paragraph 1, it may initiate an investigation. It shall conclude the investigation within four months, after having heard the Member State, and the national supervisory authority concerned.

3. Without prejudice to Article 41(1), the Commission shall share the results of the investigation with the Member State and, where appropriate, the air navigation service providers designated under Articles 7 and 7b concerned and the Commission may issue an opinion on whether Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23 have been complied with by that Member State. It shall notify this opinion to the Member State concerned.

Article 24a

1. Articles 10 to 24 shall not apply to military which provide air navigation services primarily to aircraft movements other than general air traffic.

Member States may decide to apply those Articles to military providers of air navigation services which provide air navigation services primarily to aircraft movements other than general air traffic. Where the provisions of Articles 10 to 24 do not apply to military providers of air navigation services, the costs of the related services shall not be part of the determined costs referred to in Article 20 (1).

2. Articles 10 to 24 shall apply to military which provide air navigation services primarily to general air traffic with respect to the services provided to general air traffic.

Article 25 - Transparency of accounts of air navigation service providers

1. Air navigation service providers, independently of their system of ownership or legal structures, shall annually draw up and publish their financial accounts. These accounts shall comply with the international accounting standards adopted by the Union.

Where, owing to the legal status of the air navigation service provider, full compliance with the international accounting standards is not possible, the provider shall achieve such compliance to the

maximum possible extent. Air navigation service providers shall publish an annual report and regularly undergo an independent audit for the accounts referred to in this paragraph.

2. National supervisory authorities shall have the right to access the accounts of the air navigation service providers under their supervision. Member States may decide to grant access to these accounts to national supervisory authorities of other Member States. Where necessary to enable the Commission to carry out its tasks under this Regulation, National Supervisory Authorities shall provide this information to the Commission.

3. Air navigation service providers shall, in their internal accounting, keep separate accounts for each air navigation service as they would be required to do if these services were carried out by separate undertakings with a view to avoiding discrimination, cross-subsidisation and distortion of competition. An air navigation service provider shall also keep separate accounts for each activity where:

(a) it provides air navigation services procured in accordance with Article 8(1) and 8(1a) and air navigation services not covered by that provision;

(b) it provides air navigation services and carries out other activities, of whatever kind, including CIS;

(c) it provides air navigation services in the Union and in third countries.

The determined and actual costs deriving from air navigation services shall be broken down into costs categories in accordance with article 20(6) and they shall be made publicly available, without prejudice to Article 41(3).

4. The financial data reported in accordance with Article 19(6) and other information relevant for the calculation of unit rates shall be audited or verified by the national supervisory authority or an entity independent of the air navigation service provider concerned and approved by the national supervisory authority. The conclusions of the audit shall be made publicly available without prejudice to Article 41(3).

CHAPTER IV - NETWORK MANAGEMENT

Article 26 - Network functions

1. The air traffic management network functions shall lead towards the sustainable and efficient use of the airspace and of scarce resources. They shall also ensure that airspace users can operate environmentally- and climate-optimised flight trajectories and profiles, while allowing fair and reasonable access to airspace and air navigation services and minimizing congestion. Those network functions, enumerated in paragraphs 2, shall support seamless access to air navigation services by airspace users as well as the achievement of the Union-wide performance targets, referred to in Article 10(2)(a) and shall be based on operational requirements. The implementation of the network functions shall respect the provisions of Article 1, and shall be without prejudice to Member States' sovereignty over their airspace and to their requirements relating to public order, public security and defence matters.

2. The network functions referred to in paragraph 1 are the following:

- (a) design and utilisation of airspace structures across the EU with a view to offering the required level of safety, capacity, flexibility, responsiveness, environmental performance, with due regard to security and defence needs and without prejudice to the responsibilities of Member States with regard to routes and airspace structures for the airspace under their responsibility.
- (b) ATFM;
- (c) the coordination of scarce resources within aviation frequency bands used by general air traffic, in particular radio frequencies as well as coordination of radar transponder codes.
- (d) facilitation of delegation of air traffic services provision through co-operation with the air traffic service providers and Member State authorities;
- (e) delivery of air traffic control capacity in the network in accordance with commitments set out in the NOP, view a view to fulfil network operational performance requirements and local reference values;
- (f) management of network crisis;
- (g) ATFM delay attribution;
- (h) the management of the planning, monitoring and coordination of implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, taking into account operational needs and associated operational procedures;
- (i) the monitoring of the functioning of the European ATM network infrastructure.

3. Member States and all relevant operational stakeholders shall execute network functions with the contribution of the Network Manager as defined in Article 27 (4) and the implementing act referred to in Article 27 (6a).

4. The functions listed in paragraphs 2 shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. They shall be performed in coordination with civil and military authorities, in particular in accordance with agreed procedures concerning the flexible use of airspace. The measures taken for the implementation of the functions listed in

paragraph 2 shall be of purely operational or technical nature and shall take into account the specificities of the Member States.

5. In order to ensure the uniform implementation of and compliance with the provisions referred to in this Article, the Commission shall, with a view to achieving the objectives set out in Article 1, adopt implementing acts, in accordance with the examination procedure referred to in Article 37(3), laying down detailed rules regarding the execution of the network functions, including on crisis management.

Article 27 - The Network Manager

1. In order to achieve the objectives referred to in Article 26 (1), the Commission, supported by the Agency in accordance with Regulation (EU) 2018/1139, shall ensure that the Network Manager contributes to the execution of the network functions set out in Article 26 (2), by carrying out the tasks referred to in paragraph 4. The Commission shall supervise the proper execution of the tasks of the Network Manager.

2. The Commission shall appoint an independent, impartial and competent body to carry out the tasks of the Network Manager.

2a. To this end, the Commission shall adopt an implementing act in accordance with the examination procedure referred to in Article 37(3).

This appointment Decision shall include the terms and conditions of the appointment, including the financing of the Network Manager.

2b. In order to ensure the uniform implementation of and compliance with the provisions referred to in Paragraph 2, the Commission shall, with a view to achieving the objectives set out in Article 1, adopt implementing acts laying down detailed provisions including:

- a) Appointment requirements and procedure;
- b) independence requirements;
- d) requirements of expertise
- e) financing
- f) Commission supervision of execution by the Network Manager of its tasks;
- g) Requirements for measuring the performance of the Network Manager.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

3. The Network Manager shall execute its tasks in an impartial and cost efficient manner and shall be subject to appropriate governance and independence. If the competent body appointed as the Network Manager has also regulatory functions, organisational separation with such functions shall be ensured. In the execution of its tasks, the Network Manager shall take into consideration the needs of the whole ATM network while safeguarding defence capabilities and it shall fully involve all the operational stakeholders.

4. The Network Manager shall, within the limits of Article 26(4), contribute to the execution of the network functions through the following tasks:

- (a) establishment of the Network Operations Plan and the preparation of the Network Strategy Plan;
- (b) support to the design and coordination of the utilisation of airspace structures;
- (c) facilitation of delegation of air traffic services provision, when approved by the concerned Member States, by supporting the Member States and air traffic service providers concerned taking

into account the necessary agreements for the coordination of general and operational air traffic and the need to maintain adequate coordination in the relevant airspace structures;

(d) coordination and support in the delivery of air traffic control capacity in the network in accordance with commitments set out in the NOP, with a view to fulfil network operational performance requirements and local reference values;

(e) coordination and support in the management of network crises,

(f) coordination of scarce resources within aviation frequency bands used by general air traffic, in particular radio frequencies as well as coordination of radar transponder codes;

(g) coordination of ATFM and provision, organisation and operation of the central unit of ATFM;

(h) development of procedures and organisation of processes for ATFM delay attribution through cooperative decision-making;

(i) coordination, monitoring and support in the planning and implementation activities of the deployment of infrastructure in the European ATM network in partnership with the operational stakeholders to ensure their active participation in management and governance;

(j) monitoring the performance of the European ATM network infrastructure ;

(k) coordination with ICAO and ICAO regions in relation with the execution of the network functions;

(l) establishment of the Network Manager's work programme and budget,

(m) provision of data on flight plans in relation to Regulation (EC) No 2111/2005 or with other safety and security measures and through any other tasks necessary for, and intrinsically linked to, the contribution by the Network Manager to the execution of the network functions, as specified in the implementing acts referred to in paragraph 6a.

4a. The Network Manager shall contribute to the execution of the network functions through support measures aimed at safe and efficient planning and operations of the stakeholders within the network under normal and network crisis conditions and measures aimed at the continuous improvement of network operations in the Single European Sky and the overall performance of the network, especially regarding the implementation of the performance scheme including in respect of climate and the environment. The action taken by the Network Manager shall take account of the need to fully integrate the airports in the network and aim to ensure compliance with the performance plans and performance targets of designated air traffic service providers.

5. The Network Manager shall cooperate closely with the Commission in order to facilitate that the performance targets referred to in Article 10 are adequately reflected in the overall capacity planning, as well as the capacity to be delivered by individual air traffic service providers and agreed between the Network Manager and those air traffic service providers in the NOP.

6. The Network Manager shall:

(a) through cooperative decision making, determine operational actions and propose remedial measures to be taken by operational stakeholders with a view to contributing to the achievement of the Union-wide performance targets and binding local performance targets with due consideration for regional and local circumstances, and to implementing the network operational performance requirements and local reference values as set out in the NOP and advise on climate-optimized flight trajectories. The operational stakeholders may decide whether any proposed remedial measures shall be implemented, and shall inform the Network Management Board of the reasons for not implementing them.

(b) in coordination with relevant parties, advise the Commission and provide relevant information to the PRB on the deployment of the ATM network infrastructure in accordance with the European ATM Master Plan, in particular to identify investments necessary for the network.

6a. In order to ensure the uniform implementation of the provisions referred to in Paragraph 4 to 6, the Commission shall, with a view to achieving the objectives set out in Article 1, adopt implementing acts establishing detailed rules for the implementation of the tasks of the Network Manager, as defined to in those paragraphs.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

7. In the execution of its tasks, the Network Manager shall take measures through a cooperative decision-making process. Parties to the cooperative decision-making process shall act to the maximum extent possible with a view to improving the functioning and performance of the network including the achievement of the Union wide targets in the key performance area of climate and environment. The cooperative decision-making process shall promote the interest of the network taking into account essential security and defence interests, and other local or regional conditions, such as geographical, topographical and meteorological conditions.

Member States shall be fully involved in decisions of strategic importance, in particular in the shaping of the network strategy plan.

7a. The cooperative decision-making process referred to in paragraph 7 shall be based, in particular, on consultation process of operational stakeholders, airport slot coordinators, Member States and, where relevant, the Agency and the Commission, on working arrangements and processes for operations and on resolution mechanisms involving the Network Management Board where necessary.

Where Member States' sovereignty over their airspace is concerned, the consent of the Member State(s) concerned is required.

7aa. In order to ensure the uniform implementation of and compliance with the provisions referred to in Paragraph 7 and 7a, the Commission shall, with a view to achieving the objectives set out in Article 1, adopt implementing acts laying down, detailed provisions regarding the cooperative decision-making process including:

- (a) consultation process of operational stakeholders, airport slot coordinators, Member States and, where relevant, the Agency and the Commission;
- (b) working arrangements and processes for operations;
- (c) involvement of Member States' authorities when required;
- (d) resolution mechanisms involving the Network Management Board where necessary;
- (e) any other measure necessary with regard to the decision-making processes.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

7b. A Network Management Board is established in view of ensuring appropriate governance over the execution of the Network functions. The Network Management Board shall be responsible for approving or endorsing measures taken or proposed by the Network Manager in the conditions set out in the implementing act referred to in paragraph 8, for approving the specifications for the consultation and the detailed working arrangements referred to in paragraph 7a and 7aa, for approving the NOP and endorsing the NSP, after consulting and taking into account the opinion of the Member States, and before it is approved by the Commission by means of an implementing act

adopted in accordance with the examination procedure referred to in Article 37(3), for monitoring the implementation of network functions and for providing opinions or recommendations on specific issues and for any other measure necessary for the execution of the governance mechanism.

The Network Management Board shall have voting and non-voting members. It shall be composed of representatives of the operational stakeholders, of representatives of the Commission, of representatives of the Network Manager and of representatives of Eurocontrol.

8. In order to ensure the uniform implementation of and compliance with the provisions referred to in Paragraph 7b, the Commission shall, with a view to achieving the objectives set out in Article 1, adopt implementing acts, in accordance with the examination procedure referred to in Article 37(3), laying down detailed rules regarding the Network Management Board in particular for:

(a) composition of Network Management Board:

(b) the functioning and responsibilities of Network Management Board as defined in paragraph 7b;

(c) the network governance mechanisms.

9. Without prejudice to Article 26(2)(a) of this Regulation and to Articles 44 and 46 of Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof, Member States shall have the complete competence for the development, approval and establishment of the routes and airspace structures for the airspace under their responsibility. In this regard, Member States shall take into account air traffic demands, seasonality and complexity of air traffic and of performance plans. Before deciding on those aspects, they shall take under due consideration needs of airspace users concerned or groups representing such airspace users and military authorities as appropriate.

Article 28 - Transparency of accounts of the Network Manager

1. The financial accounts of the Network Manager shall be drawn up and published annually. Those accounts shall comply with the international accounting standards adopted by the Union. Where, due to the legal status of the Network Manager, full compliance with the international accounting standards is not possible, the Network Manager shall achieve such compliance to the maximum possible extent.

2. The Network Manager shall publish an annual report on its activities and regularly undergo an independent audit.

Article 38a - Relations with stakeholders

The air traffic service providers shall establish consultation mechanisms to consult the relevant airspace users, aerodrome operators and military authorities on all major issues related to services provided, including relevant changes to airspace configurations, or major investments which have a relevant impact on air traffic management and air navigation service provision and/or charges; in particular, their positions shall be taken into consideration at an early stage in the process of developing long-term strategic investment plans especially as regards aspects requiring synchronisation between air and ground equipment deployment.

Article 30 - Relations with military authorities

Member States shall, within the context of the common transport policy ensure that written agreements between the competent civil and military authorities or equivalent legal arrangements are established or renewed in respect of the management of specific airspace blocks and inform the Commission accordingly.

Article 31 - Availability of and access to operational data for general air traffic

1. With regard to general air traffic, relevant operational data shall be made available in an interoperable format in real-time, on a transparent and non-discriminatory basis and without prejudice to national security, public order and defence policy interests, by all air navigation service providers, airspace users, airports and the Network Manager, including on a cross-border and a Union-wide basis. Such availability shall be to the benefit of certified or declared air navigation service providers, entities having a proven interest in considering the provision of air navigation services, military entities in charge of security and defence activities, military air navigation service providers, airspace users and airports as well as the Network Manager. The data shall be used only for operational purposes.
2. Prices for the service referred to in paragraph 1 shall be based on general principles and common pricing rules to be established in the implementing act referred to in paragraph 4.
3. Access to relevant operational data as referred to in paragraph 1 shall be granted free of charge to the authorities in charge of safety oversight, performance and network oversight, security, public order, and defence, including the Agency, in accordance with Regulation (EU) 2018/1139.
4. The Commission shall adopt implementing acts laying down the detailed requirements for the making available of and the access to data in accordance with paragraphs 1 and 3, including the specific operational data concerned, the general principles and common pricing rules for setting the prices as referred to in paragraph 2 and requirements for the identification of entities having a proven interest in considering the provision of air navigation services. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

CHAPTER V - AIRSPACE, INTEROPERABILITY AND TECHNOLOGICAL INNOVATION

Article 32 - Electronic aeronautical information

Without prejudice to the publication by Member States of aeronautical information and in a manner consistent with that publication, the Network Manager shall establish a Union-wide aeronautical information infrastructure to further the availability of electronic aeronautical information of high quality, presented in an easily accessible way and serving the requirements of all relevant users in terms of data quality and timeliness. The aeronautical information thus made available shall only be the information that complies with the essential requirements set out in point 2.1 of Annex VIII of Regulation (EU) 2018/1139.

Article 32a (new) - Airspace classification

The Commission shall, in accordance with the examination procedure referred to in Article 37(3) adopt appropriate provisions to ensure uniform implementation of the ICAO airspace classification with appropriate adaptation, with a view to ensure the seamless provision of safe and efficient air traffic services within the Single European sky.

Article 33 - Flexible use of airspace

1. Taking into account the characteristics and nature of military activity in each Member State as well as the organisation of military aspects under their responsibility, Member States shall ensure the application within the single European sky of the concept of the flexible use of airspace, in order to facilitate airspace management and air traffic management in the context of the common transport policy and, where appropriate, in consistency with the European ATM Master Plan.
2. Member States shall report annually to the Commission on the application, in the context of the common transport policy, of the concept of the flexible use of airspace in respect of the airspace under their responsibility.
3. Where, in particular in the light of the reports submitted by Member States, uniform conditions for the application of the concept of the flexible use of airspace within the single European sky are needed, the Commission shall, within the limits of the common transport policy and without prejudice to article 1(2), adopt implementing acts in accordance with the examination procedure referred to in Article 37(3).
4. In cases of significant operational difficulties in the application of this Article impairing the safeguard of essential security or defence policy interests, Member States may temporarily suspend such application on condition that they inform without delay the Commission and the other Member

States thereof. Following the introduction of a temporary suspension, adjustments to the rules adopted under paragraph 3 may be worked out for the airspace under the responsibility of the Member State(s) concerned. The temporary suspension and any such adjustments shall be lifted when those operational difficulties cease.

Article 34 - SESAR coordination

The entities in charge of tasks established in Union law in the areas of coordination of the SESAR definition phase, the SESAR development phase and the SESAR deployment phase, as the case may be, shall ensure effective coordination between those three phases so as to achieve a seamless and timely transition between them, focussing in particular on the industrialisation phase. All relevant civil and military stakeholders shall be involved to the widest possible extent.

Article 35 - Common projects

1. The Commission may set up common projects, based on the needs for synchronisation amongst stakeholders, for implementing the essential operational changes identified in the European ATM Master Plan having a network-wide impact and having reached sufficient maturity for implementation in order to enable interoperable capabilities in all Member States with a view to improving the performance of the Single European Sky.
2. The Commission may also establish governance mechanisms for common projects and their implementation. All relevant civil and military stakeholders shall be involved in these mechanisms to the widest possible extent and, where possible and as appropriate, have a leading role.
3. Common projects may be eligible for Union funding within the multiannual financial framework. To this end, and without prejudice to Member States' competence to decide on the use of their financial resources, the Commission shall carry out an independent cost-benefit analysis and appropriate consultations with Member States and with relevant stakeholders in accordance with Article 38, exploring prioritisation and all appropriate means for financing the implementation thereof.
4. The Commission shall establish the common projects and governance mechanisms referred to in paragraphs 1 and 2 through implementing acts adopted in accordance with the examination procedure referred to in Article 37(3).

CHAPTER VI - FINAL PROVISIONS

Article 37 - Committee procedure

1. The Commission shall be assisted by the Single Sky Committee, hereinafter referred to as ‘the Committee’, composed of two representatives of each Member State and chaired by the Commission. The Committee shall ensure an appropriate consideration of the interests of all categories of users. The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 38 - Consultation of stakeholders

1. Member States, national supervisory authorities, the PRB and the Network Manager, as well as the Agency for its tasks referred to in Article 10, paragraphs 2 and 3, and Article 27, paragraph 1, shall establish consultation mechanisms for appropriate consultation of stakeholders.
2. The Commission shall establish a mechanism at Union level to consult the relevant stakeholders on matters related to the implementation of this Regulation.
The specific Sectoral Dialogue Committee set up under Commission Decision 98/500/EC shall be involved in the consultation. For the purpose of point (e) of paragraph 3, when consultation relating to military aspects is required, the Commission shall, in addition to Member States, consult the European Defence Agency and national military authorities.
3. For the purposes of paragraphs 1 and 2, at least the following operational and non-operational stakeholders shall be consulted if relevant:
 - (a) air navigation service providers or groups representing them;
 - (b) the Network Manager;
 - (c) airport operators or relevant groups representing them;
 - (d) airspace users or relevant groups representing them;
 - (e) the military;
 - (f) the manufacturing industry;
 - (g) professional staff representative bodies;
 - (h) relevant national authorities;
 - (i) airport slot coordinators.
 - (j) non-governmental organisations with an interest in aviation or ATM.

Article 39 - Relations with third countries

The Union and its Member States shall aim at and support the extension of the Single European Sky to countries which are not members of the European Union. To that end, they shall endeavour, in the framework of agreements concluded with neighbouring third countries in particular in the EUROCONTROL area or in the ICAO EUR region, to extend the Single European Sky to those countries. In addition, they shall endeavour to cooperate with those countries either in the context of agreements on cross-border service provision with third countries, on cooperation on ATM modernisation, on network functions, or in the framework of the Agreement between the Union and EUROCONTROL providing a general framework for enhanced cooperation, reinforcing the 'pan-European dimension' of ATM.

This Article shall be without prejudice to the decision of Member States on whether the Single European Sky should be extended to their overseas countries and territories or autonomous territories in other ICAO regions.

Article 40 - Support by other bodies

The Commission may request support from other bodies for the fulfilment of its tasks under this Regulation, including from EUROCONTROL in the framework of the Agreement between the Union and EUROCONTROL providing a general framework for enhanced cooperation.

Article 41 - Confidentiality

1. Neither the national supervisory authorities, acting in accordance with their national legislation, nor the national competent authorities, nor the Commission, nor the PRB, nor the Network Manager, nor the Agency shall disclose information of a confidential nature, in particular information about air navigation service providers, their business relations or their cost and revenues components.

2. Paragraph 1 shall be without prejudice to the right of disclosure by national supervisory authorities and the Commission where this is essential for the fulfilment of their duties. In that case such disclosure shall be proportionate and shall have regard to the legitimate interests of air navigation service providers, airspace users, airports or other relevant stakeholders in the protection of their commercially sensitive information.

3. Information and data made accessible pursuant to Articles 9(3), 13(3a), 13a(6), 13b(2), 25(3) and 25(4) or reported pursuant to Article 19(6) in particular as regards determined costs and actual costs of designated air traffic service providers shall be publicly disclosed, subject to the protection of public security, defence and military matters or commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.

Article 42 - Penalties

Member States shall lay down rules on penalties applicable to infringements of this Regulation and of the implementing acts adopted on the basis thereof in particular by airspace users, airport operators and air navigation service providers, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 43 - Evaluation

1. The Commission shall conduct an evaluation to assess the legal, social, economic and environmental impacts of this Regulation and its added value both at national and European level

after the end of the fifth reference period and at the latest 3 years after the end of that reference period. When justified for this purpose, the Commission may request from the Member States, including military authorities, information relevant to the application of this Regulation.

2. The Commission shall submit its findings to the European Parliament and to the Council. The findings of the evaluation shall be made public.

Article 44 - Safeguards

This Regulation shall not prevent the application of measures by a Member State to the extent that these are needed to safeguard essential security or defence policy interests. Such measures are in particular those which are imperative:

- (a) for the surveillance of airspace that is under its responsibility in accordance with ICAO Regional Air Navigation agreements, including the capability to detect, identify and evaluate all aircraft using such airspace, with a view to seeking to safeguard safety of flights and to take action to ensure security and defence needs;
- (b) in the event of serious internal disturbances affecting the maintenance of law and order;
- (c) in the event of war or serious international tension constituting a threat of war;
- (d) for the fulfilment of a Member State's international obligations in relation to the maintenance of peace and international security;
- (e) in order to conduct military operations and training, including the necessary possibilities for exercises

Article 45 – Repeal

Regulations (EC) Nos 549/2004, 550/2004 and 551/2004 are repealed.

References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 45a – Amendments to Regulation (EU) 2018/1139

Regulation (EU) 2018/1139 is amended as follows:

(1) Article 2 is amended as follows:

(a) Subparagraph (h) of paragraph 1 is replaced by the following:

‘Without prejudice to Regulation [Amended SES2+] of the European Parliament and of the Council and the responsibilities of Member States with regard to airspace under their jurisdiction, the design of airspace structures in the Single European Sky airspace.’

(b) paragraph 5 is replaced by the following:

‘5. Without prejudice to national security and defence requirements, and Article [1(2)] of [Amended SES2+], Member States shall ensure that:

- (a) the facilities referred to in point (b) of the first subparagraph of paragraph 3 of this Article that are open to public use; and
- (b) the ATM/ANS referred to in point (c) of the first subparagraph of paragraph 3 of this Article that are provided to air traffic to which Regulation [Amended SES2+] applies, offer a level of safety and interoperability with civil systems that is as effective as that resulting from the application of the essential requirements set out in Annexes VII and VIII to this Regulation.’

(2) In Article 3, point 5, 33 and 34 are replaced by the following:

- ‘(5) ‘ATM/ANS’ means air traffic management as defined in point (9) of Article 2 of [Amended SES2+] and air navigation services as defined in point (4) of Article 2 of that Regulation, as well as the network functions referred to in Article 26 of that Regulation and services consisting in the origination and processing of data and in the formatting and delivering of data to general air traffic for the purpose of air navigation;’
- (33) ‘Single European Sky airspace’ means airspace above the territory to which the Treaties apply, as well as any other airspace where Member States apply Regulation [Amended SES2+] in accordance with Article 1(4) of that Regulation;
- (34) ‘national competent authority’ means one or more entities designated by a Member State and having the necessary powers and allocated responsibilities for performing the tasks related to certification, oversight and enforcement in accordance with this Regulation and with the delegated and implementing acts adopted on the basis thereof;’
- (3) In Article 41 the following paragraph 3a is added:
‘3a. The certificate referred to in paragraph 1 of this Article may be subject to objectively justified, non-discriminatory, proportionate and transparent conditions. These conditions may, as appropriate, be related to:
- (a) ring-fencing or restriction of operations of services other than those related to the provision of air navigations services;
 - (b) contracts, agreements or other arrangements between the service provider and a third party and which concern the service(s);
 - (c) the provision of information reasonably required for the verification of the requirements of the certificate in Article 41, and
 - (d) any other legal conditions which are not specific to air navigation services, such as conditions relating to the suspension or revocation of the certificate.’
- (4) Article 43 is replaced by the following:
‘1. In order to ensure the uniform implementation of and compliance with the essential requirements referred to in Article 40 for the provision of ATM/ANS referred to in point (g) of Article 2(1), the Commission shall, on the basis of the principles set out in Article 4 and with a view to achieving the objectives set out in Article 1, adopt implementing acts laying down detailed provisions concerning:
- (a) the specific rules and procedures for the provision of ATM/ANS in compliance with the essential requirements referred to in Article 40, including the establishment and implementation of the contingency plan in accordance with point 5.1(f) of Annex VIII;
 - (b) the rules and procedures for issuing, maintaining, amending, limiting, suspending or revoking the certificates referred to in Article 41(1);
 - (bb) the conditions referred to in Article 41(3a);
 - (c) the rules and procedures for the declaration by providers of flight information services referred to in Article 41(5), and for the situations in which such declarations are to be permitted;
 - (d) the rules and procedures for issuing, maintaining, amending, limiting, suspending or revoking the certificates referred to in point (b) of Article 42(1), and for the situations in which such certificates are to be required;

- (e) the rules and procedures for the declaration by organisations referred to in point (a) of Article 42(1), and for the situations in which such declarations are to be required;
- (f) the privileges and responsibilities of the holders of certificates referred to in Article 41(1) and point (b) of 42(1) and of organisations making declarations in accordance with Article 41(5) and point (a) of Article 42(1).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 127(3).

2. The rules referred to in paragraph 1 shall take due account of the ATM Master Plan.

3. When adopting those implementing acts, the Commission shall ensure compliance with the essential requirements referred to in Article 40(1), first subparagraph and the requirements referred to in Article 40(1), second subparagraph, a), b) and c) of this Regulation and shall take due account of the international standards and recommended practices, in particular those set out in Annexes 2 to 4, 10, 11 and 15 to the Chicago Convention.’

(5) Article 62 is amended as follows:

(a) The following paragraph 2a is added:

‘2a. Without prejudice to Article 4(1)(a), second subparagraph, of [SES2+ Recast], for the purpose of performing their tasks of certification, oversight and enforcement in relation with the essential requirements listed in point 7 of Annex VIII, the competent authorities shall rely on the assessments made by the national supervisory authority referred to in Article 3 of [SES2+ Recast] when carrying out its tasks under Article 6(3) of [SES II + Recast].’

(b) Point (a) of paragraph 14 is replaced by the following:

‘the rules and procedures for conducting certification and for conducting the investigations, inspections, audits and other monitoring activities necessary to ensure effective oversight by the national competent authority of the natural and legal persons, products, parts, equipment, ATM/ANS systems and ATM/ANS constituents, flight simulation training devices and aerodromes subject to this Regulation and the rules and procedures for the assessment and the oversight of compliance of the providers of ATM/ANS with the essential requirements listed in point 7 of Annex VIII by the national supervisory authority referred to in Article 3 of [amended SES2+] without prejudice to Article 4(1)(a) of [amended SES2+ Recast] ;’

(6) Article 93 is replaced by the following:

‘Article 93

Implementation of Single European Sky

The Agency shall, where it has the relevant expertise and upon request, provide technical assistance to the Commission, in the implementation of the Single European Sky, in particular by:

- (a) conducting technical inspections, technical investigations, and studies;
- (b) contributing in matters covered by this Regulation, in cooperation with the Performance Review Board (PRB) referred to in Article [9b] of [Amended SES2+], to the implementation of a performance scheme for air navigation services and network functions;

(c) contributing to the implementation of the ATM Master Plan, including the development and deployment of the SESAR programme.’

(7) Annex VIII is amended as follows:

(a) the following point 2.3a is inserted:

‘2.3a. Air traffic data services

2.3a.1. The air traffic data collected shall be of sufficient quality, complete, current, from a legitimate source and provided in a timely manner.

2.3a.2. The air traffic data services shall achieve and maintain sufficient performance with regard to their availability, integrity, continuity and timeliness to meet the user’s needs.

2.3a.3 The systems and tools providing air traffic data services shall be properly designed, produced and maintained to ensure that they are fit for their intended purpose.

2.3a.4. The dissemination of such data shall be timely and use sufficiently reliable and expeditious means of communication protected from intentional and unintentional interference and corruption.’

(b) point 2.8 is replaced by the following:

‘2.8. Airspace management

The designation of specific volumes of airspace for a certain use shall be monitored, coordinated and promulgated in a timely manner in order to reduce the risk of loss of separation between aircraft in all circumstances. Taking into account the organisation of military activities and related aspects under the responsibility of the Member States, airspace management shall also support the uniform application of the concept of the flexible use of airspace as described by the ICAO and as implemented under Regulation [Amended SES2+], in order to facilitate airspace management and air traffic management in the context of the common transport policy.’

(c) Point (c) of point 5.1 is amended as follows:

‘(c) as appropriate for the type of activity undertaken and the size of the organisation, the service provider shall implement and maintain a management system to ensure compliance with the essential requirements set out in this Annex, manage safety and security risks and aim for continuous improvement of this system;’

(d) A new point 7 is added:

‘7. FINANCIAL ROBUSTNESS, LIABILITY, INSURANCE COVER

REQUIREMENTS, OWNERSHIP AND ORGANISATIONAL STRUCTURE

Providers of ATM/ANS shall, in view of ensuring a safe and continuous service provision:

a) demonstrate sufficient financial robustness and

b) have obtained appropriate liability and insurance cover, taking into account their legal status and the level of commercial insurance cover available;

c) comply with applicable requirements on ownership and organisational structure in view of preventing of conflicts of interest to ensure a non-discriminatory service provision.’

Article 46 - Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. Articles 3(3), 3(4) and 25(3) shall apply from 24 months after the entry into force of this Regulation.

Article 4(2) of Regulation (EC) No 549/2004 and Article 12(3) of Regulation (EC) No 550/2004 shall continue to apply for 24 months after the entry into force of this Regulation.

Articles 9a to 9d shall apply from 6 months after the entry into force of this Regulation. The Performance Review Body designated under Article 11(2) of Regulation 549/2004 shall continue to exercise its functions until that date.

Articles 10 to 24 shall apply as from the date of entry into force of this Regulation, for the purposes of the implementation of the performance and charging schemes pertaining to the fifth and subsequent reference periods.

However, Article 11 of Regulation (EC) No 549/2004, except paragraph 2 of that Article, and Article 15 of Regulation (EC) No 550/2004, and the implementing acts adopted on the basis thereof, shall continue to apply for the purposes of the implementation of the performance and charging schemes pertaining to the third and fourth reference period.

Commission Implementing Decision (EU) 2019/709, as adopted on 6 May 2019, shall continue to apply until the end of the fourth reference period or until it is amended, whichever is the earliest.

Article 27(4) and Article 32 shall apply to the Network Manager from the day on which an appointment decision, adopted in accordance with Article 27(2) becomes applicable.

Article 42 shall apply from 24 months after the entry into force of that Regulation. Until that date, Article 9 of Regulation 549/2004 shall continue to apply.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
