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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Aviation
N° prev. doc.:	ST 11637/21 REV2
Subject:	Amended proposal for a Regulation of the European Parliament and the Council on the implementation of the Single European Sky (recast) - Comments from Member States on the outcome of technical meetings with the EP for Chapter II

Delegations will find, attached, comments from AUSTRIA on the above mentioned subject.

AT comments on Chapter II (ST11637/21 REV2)

Article 3

In general, AT does not understand why EP insists on setting up two distinct bodies for NSA and NCA. In AT like in many other MS the NSA and the NCA are established as one common body without any issues. We would appreciate if EP could explain what their concerns with this setup are.

70	AT cannot accept the EP opinion and supports the PCY. Member States shall decide on structure of authorities and thus whether one or more bodies are used.
72 & 73	AT supports the PCY compromise. EU legislation shall stick to the principle of subsidiarity and must not dictate the setup of the administration of Member States. Text should be purpose-driven regarding the independence of NSA from ANSP under supervision. The EP counterproposal goes too far in that it requires to create a totally separate body including being separate from public entities (<i>"legally distinct and independent from any other public or private entity"</i>)
74	AT prefers the General Approach, but can accept the PCY compromise. EU legislation shall stick to the principle of subsidiarity and must not dictate the setup of the administration of Member States. It is important to ensure that NSA and NCA can be one entity as it current practice in several MS including AT. The EP's counterproposal (<i>"In duly justified circumstances and by way of exception, the NSA may be set up as a permanent and distinct structure within the NCA "</i>) makes setting up the NSA jointly with the NCA practically impossible and contradicts the above principle of subsidiarity. For this reason AT cannot accept the EP counterproposal. Refer also to the general statement above.
75-77	At supports the PCY proposal for lines 75-78. AT can be flexible on the EP proposal for lines 75-77 with some wording changes, but line 78 is a no-go (see below).
78	The EP proposal for line 78 <i>"they shall not be seconded from operational stakeholders"</i> is a red line for AT. The provision would substantially hamper the possibility to recruit qualified staff for the NSA. If independence of the NSA is ensured as laid down in paragraphs 2 and 3 the purpose is met in AT's opinion.
79	AT cannot accept the EP proposal. Detailed staffing requirements are no Union competence and must be left to Member States.
80	AT prefers to stick to the General Approach and cannot accept the EP proposal (<i>"shall be appointed by an entity of the Member State concerned which does not directly exert ownership rights over air navigation service providers"</i>).

	The purpose of this provision remains unclear. A conflict of interest could only arise if the ANSP had a say on the recruitment.
85	AT can accept the EP counterproposal.
92-94a	Detailed staffing requirements are no Union competence and must be left to Member States. Hence AT cannot accept the EP text.

Article 4

97	AT supports the PCY proposal if the use of only one certificate is ensured (as set out in the General Approach)
98	AT support the PCY text, because it is unambiguous with regard to the role of the NSA in the procurement process.
99	EP refers to delegated acts and thus the proposal cannot be accepted by AT - even if the rest of the text seems okay.
100	AT accepts the compromise
102	EP counterproposal cannot be accepted, because in AT's interpretation the phrasing "when appropriate" does not comprise the case of a combined NSA/NCA as the PCY compromise "where appropriate" does.
103	EP counterproposal is not acceptable as it again alludes to 2 distinct certificates issued by 2 different entities.
104	AT accepts the compromise
105	Scrutiny reservation with regard to the legal implications.

Article 5

107	EP proposal would be acceptable without the reference to the Advisory Board for Performance Review
108	AT can accept the EP counterproposal.
109a	AT has a clear preference for a non-mandatory cooperation plan and thus supports the PCY compromise text. There are cases where a full-fledged mandatory plan would be an unnecessary burden.
110	AT is flexible and can accept both, the PCY compromise and the EP counterproposal.
111	AT supports the General Approach to avoid the burden of mandatory agreements that might not be needed.