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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Aviation
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 ESTONIA on the above mentioned subject.

PUBLIC

Estonian comments for Chapter II

General comments:

We would like to thank the Presidency for compromise proposals on Chapter II of SES proposal (articles 3-4). However, in general, we find the General Approach of the Council as a balanced way for future of SES and kindly request the Presidency to defend the position in the negotiations with the European Parliament.

As a general remark, Estonia supports the enhancement of role and independence of NSAs in case ensuring that the activities and independence of NSAs will remain in the competence of the Member States and that the administrative burden on supervisory authorities and air navigation service providers will not increase significantly. The solution proposed by the EP has a very detailed approach (e.g staff requirements) and cannot be supported.

Also, we would like to emphasize that proposed regulation on economic certificate and establishment of two different independent authorities (Article 3 line 72 and Article 4 para 1 and 3) is a matter of concern to Estonia as we are not in favour of separation of financial supervision from aviation safety supervision or establishment of regulation of economic certification.

We also would like to note that several aspects of positions on NSA proposed regulation depend on the outcome of discussions on other subjects (e.g, PRB regulation).

More detailed comments are marked below.

**Amended proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the implementation of the Single European Sky
(recast)**

(Text with EEA relevance)

	Commission proposal COM(2020) 579 final	EP amendments (updated first reading) PE662.138v01-00	Council document 9616/21	Tentative compromise and questions
69.	CHAPTER II - NATIONAL SUPERVISORY AUTHORITIES Article 3 - Nomination, establishment and requirements regarding national supervisory authorities	CHAPTER II - NATIONAL SUPERVISORY AUTHORITIES Article 3 - Nomination, establishment and requirements regarding national supervisory authorities	CHAPTER II - NATIONAL SUPERVISORY AUTHORITIES Article 3 - Nomination, establishment and requirements regarding national supervisory authorities	CHAPTER II - NATIONAL SUPERVISORY AUTHORITIES Article 3 - Nomination, establishment and requirements regarding national supervisory authorities
70.	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.	1. Member States shall, jointly or individually, either nominate or establish a body [...] as their national supervisory authority in order to assume the tasks assigned to such authority by this Regulation.	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.	Tentative compromise by EP and PCY: 1. Member States shall, jointly or individually, either nominate or establish a body as their national supervisory authority in order to assume the tasks assigned to such authority by this Regulation.

	Commission proposal COM(2020) 579 final	EP amendments (updated first reading) PE662.138v01-00	Council document 9616/21	Tentative compromise and questions
71.	2. The national supervisory authorities shall exercise their powers impartially, independently and transparently.	2. The national supervisory authorities shall exercise their powers impartially, independently and transparently applying appropriate management and control mechanisms and shall be organised, staffed, managed and financed accordingly.	2. The national supervisory authority shall exercise [...] its powers impartially, independently and transparently and shall be organised, staffed, managed and financed accordingly.	Tentative compromise by EP and PCY: 2. The national supervisory authority shall exercise its powers impartially, independently and transparently and shall be organised, staffed, managed and financed accordingly.
72.	3. Without prejudice to paragraph 1, the national supervisory authorities shall be legally distinct and independent from any other public or private entity in terms of their organisation, functioning, legal structure and decision-making.	3. Without prejudice to paragraph 1, the national supervisory authorities shall be legally distinct and independent from any other public or private entity in terms of their organisation, functioning, budgeting, financing, legal structure and decision-making.	[...]	Compromise text proposed by EP: 3. Without prejudice to paragraph 1, the national supervisory authorities shall be legally distinct and independent from any other public or private entity, in particular from any air navigations service provider, in terms of their organisation, functioning, budgeting, financing, legal structure and decision-making.

Commented [REDACTED]:

Estonia supports General Approach and cannot support these requirements and compromise text proposed by EP as proposed text is too restrictive for Member States to organise their authorities and causing additional administrative burden for smaller Member States. It should be up to the Member States to decide the organization of its authorities, while respecting the requirement of independence between Service Providers and NSA.

Commented [REDACTED]: [REDACTED] selle kohta ei ole keegi midagi arvanud veel. Kuidas sulle tundub, kas see võib olla probleemiks?

Omavahel arutamiseks:

Præguses süsteemis, kus tasud lähevad üldisesse riigieelarvesse, ei ole see probleemiks, aga tulevikus rahastamismudelit munes ilmselt oleks see probleem?
Vt järgmist rida, seal on eelarvestamise kommentaar meil toodud

	Commission proposal COM(2020) 579 final	EP amendments (updated first reading) PE662.138v01-00	Council document 9616/21	Tentative compromise and questions
73.	The national supervisory authorities shall also be independent in terms of their organisation, funding decisions, legal structure and decision-making from any air navigation service provider.	The national supervisory authorities shall also be independent in terms of their organisation, functioning, budgeting, financing, legal structure and decision-making from any air navigation service provider or any other entity falling within the scope of their supervision.	The national supervisory authority shall [...] be independent [...] from any air navigation service providers, in organisational, hierarchical and decision-making terms, in particular by avoiding conflicts of interest with those service providers. That independence shall not prevent that authority and those service providers from being part of the same civil service, public entity or administration.	EP proposes to merge with line 72. <i>Options to explore in view of potential compromises for 72 and 73:</i> -Article 4(1) of DIRECTIVE (EU) 2019/1 (competition authorities) -Article 57(5) of DIRECTIVE (EU) 2019/944 (electricity)
74.	4. Member States may set up national supervisory authorities which are competent for several regulated sectors, if those integrated regulatory authorities fulfil the independence requirements set out in this Article. The national supervisory authority may also be joined	4. [...] The national supervisory authority may share its organisational structure with another regulatory authority or with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003, if the joint body fulfils the independence requirements	4. Member States may set up [...] authorities which are competent either for several regulated sectors [...] or for several areas of regulation within the transport sector provided that those integrated regulatory authorities fulfil the independence requirements set out in this Article. The national supervisory authority may be joined in respect	Tentative compromise by EP and PCY: 4. The national supervisory authority may also share its organisational structure with another regulatory authority or with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003 , if the joint body fulfils the independence requirements set out

Commented [REDACTED]: We are not against of merging this line with 72 but it is important to solve the budgeting and financing issue + NSA/NCA as one authority. It is important to keep the opportunity of financing of NSA(NCA) by service charges.

Moreover, we are not in favour for possible compromise texts based on directives which are binding in the view of a certain objective to be achieved but not directly applicable in their entirety. Therefore, provisions of a directive cannot be transferred into the text of a regulation

Commented [REDACTED]: The wording should permit NSA and NCA functioning in the same organisation. It means additionally to the organisational structure, also sharing of resources etc within the same organisation.

	Commission proposal COM(2020) 579 final	EP amendments (updated first reading) PE662.138v01-00	Council document 9616/21	Tentative compromise and questions
	<p>in respect of its organisational structure with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003²¹, if the joint body fulfils the independence requirements set out in this Article.</p> <p>_____</p> <p>²¹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).</p>	<p>set out in this Article.</p>	<p>of its organisational structure with other public authorities, in particular the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003²¹, the national competent authority, or, if applicable, with a national transport authority, provided that the joint body hereby set up fulfils the independence requirements set out in this Article.</p> <p>_____</p> <p>²¹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).</p>	<p>in this Article.</p>

	Commission proposal COM(2020) 579 final	EP amendments (updated first reading) PE662.138v01-00	Council document 9616/21	Tentative compromise and questions
75.	5. Staff of the national supervisory authorities shall comply with the following requirements:	5. Staff of the national supervisory authorities shall comply with the following requirements:	[...]	<i>Options to explore in view of potential compromises for lines 75-84:</i> <i>Article 57(4)(b) of DIRECTIVE (EU) 2019/944 (electricity)</i> <i>Article 4 of DIRECTIVE (EU) 2019/1 (competition authorities)</i> <i>Article 55 of Directive 2012/34 (railway)</i>
76.	(a) they shall be recruited under clear and transparent processes which ensure their independence;	(a) they shall be recruited under clear and transparent processes and criteria which ensure their independence;	[...]	
77.	(b) they shall be selected on the basis of their specific qualifications, including appropriate competence and relevant experience or they shall be subject to appropriate training.	(b) they shall be selected on the basis of their specific qualifications, including appropriate competence and relevant experience or they shall be subject to appropriate training.	[...]	

Commented [REDACTED]: Lines 75-84 Estonia supports General Approach. Proposed requirements are disproportional, unjustified and will have unwanted impact on recruitment policy for smaller Member States. We agree with requirements for avoiding conflict of interests but it should be done on national level. Even if the harmonization can be understood, it should always be compatible with national law regarding administrative, managing and recruitment procedures in order not to create any additional administrative burden and respect the principles of subsidiarity and proportionality.

Comments about directive: see above.

DE compromise proposal can be supported (MS shall guarantee clear and transparent recruitment processes, which avoid conflicts of interests, ensure independence and appropriate qualification of staff of the national supervisory authority. MS shall ensure appropriate training of staff)

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78.		(ba) they shall not be seconded from air navigation service providers or companies under the control of an air navigation service provider.		
79.	Staff of national supervisory authorities shall act independently, in particular by avoiding conflicts of interest between air navigation service provision and the execution of their tasks.	Staff of national supervisory authorities shall act independently, and not seek or take instructions from any government or other public or private entity when carrying out its functions.	[...]	
80.	6. In addition to the requirements set out in paragraph 5, persons in charge of strategic decisions shall be appointed by an entity of the Member State concerned which does not directly exert ownership rights over air navigation	6. In addition to the requirements set out in paragraph 5, persons in charge of strategic decisions shall be appointed in accordance with a clear and transparent procedure by an entity of the Member State concerned which does not	[...]	

	Commission proposal COM(2020) 579 final	EP amendments (updated first reading) PE662.138v01-00	Council document 9616/21	Tentative compromise and questions
	service providers.	directly exert ownership rights over air navigation service providers. Persons appointed shall not have held a professional position in, or had responsibility in connection with any air navigation service provider during the previous year.		
81.	Member States shall decide whether these persons are appointed for a fixed and renewable term, or on a permanent basis which only allows dismissal for reasons not related to their decision-making.	Member States shall decide whether [...] persons in charge of strategic decisions are appointed for a fixed and renewable term, or on a permanent basis which only allows dismissal for reasons not related to their decision-making.	[...]	

	Commission proposal COM(2020) 579 final	EP amendments (updated first reading) PE662.138v01-00	Council document 9616/21	Tentative compromise and questions
82.	Persons in charge of strategic decisions shall not seek or take instructions from any government or other public or private entity when carrying out their functions for the national supervisory authority and shall have full authority over the recruitment and management of its staff.		[...]	
83.	They shall refrain from any direct or indirect interest that may be considered prejudicial to their independence and which may influence the performance of their functions. To that effect, they shall make an annual declaration of commitment and declaration of interests indicating any direct or indirect interests.	They shall refrain from any direct or indirect interest that may be considered prejudicial to their independence and which may influence the performance of their functions. To that effect, they shall make [...] a declaration of commitment and declaration of interests indicating any direct or indirect interests.	[...]	

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84.	Persons in charge of strategic decisions, audits or other functions directly linked to performance targets or oversight of air navigation service providers, shall not hold any professional position or responsibility with any air navigation service provider after their term in the national supervisory authority, for at least a period of two years.	Where a person has been in charge of the strategic decisions, audits or other functions directly linked to performance targets or oversight of an air navigation service provider for a term of six months or more, they shall not hold any professional position in , or have responsibility in connection with, any air navigation service provider until a minimum period after their term in that national supervisory authority <i>has elapsed. That minimum period shall be:</i> (i) at least 12 months, for staff in managerial positions; (ii) at least 6 months for staff, for staff in non-managerial positions.	[...]	

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85.	7. Member States shall ensure that national supervisory authorities have the necessary financial resources and capabilities to carry out the tasks assigned to them under this Regulation in an efficient and timely manner. The national supervisory authorities shall manage their staff based on their own appropriations, to be set in proportion to the tasks to be fulfilled by the authority in accordance with Article 4.	7. Member States shall ensure that national supervisory authorities have the necessary public financial resources and capabilities to carry out the tasks assigned to them under this Regulation in an efficient and timely manner. The national supervisory authorities shall manage their staff based on their own appropriations, in accordance with relevant national law and procedures , to be set in depending on the tasks to be fulfilled by the authority in accordance with Article 4.	[...]	<i>Does this provision as amended by the EP prevent MS which wish to do so to fund the NSAs through charges?</i>
86.	8. A Member State may request the Agency acting as Performance Review Body (PRB), to carry out the tasks related to the implementation of the performance and charging schemes laid down	8. A Member State may request the Agency acting as Performance Review Body (PRB), to carry out the tasks related to the implementation of the performance and charging schemes laid down	[...]	<i>Would this possibility (lines 86 and 87) be acceptable provided that the conditions for revocation of transfer are deleted or amended (lines 88-90)?</i>

Commented [REDACTED]: Estonia cannot support the changes proposed by the EP. We support General Approach where it is stated that NSAs shall be financed according to its tasks.

It is important to guarantee financing of NSA/NCA by service charges.

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	in Articles 14, 17, 19, 20, 21, 22 and 25, and in the implementing acts referred to in Articles 18 and 23 and for which the national supervisory authority of that Member State is responsible under this Regulation and the delegated and implementing acts adopted on the basis thereof.	in Articles 14, 17, 19, 20, 21, 22 and 25, and in the implementing acts referred to in Articles 18 and delegated acts referred to in Article 23 and for which the national supervisory authority of that Member State is responsible under this Regulation and the delegated and implementing acts adopted on the basis thereof.		
87.	Once the Agency acting as PRB accepts such a request, it shall become the supervisory authority responsible for the tasks covered by that request and the national supervisory authority of the requesting Member State shall be relieved of the responsibility for those tasks. The rules contained in Regulation (EU) 2018/1139 and pertaining to	Once the Agency acting as PRB accepts such a request, it shall become the supervisory authority responsible for the tasks covered by that request and the national supervisory authority of the requesting Member State shall be relieved of the responsibility for those tasks. The rules contained in Regulation (EU) 2018/1139 and pertaining to the Agency acting as PRB shall apply to the	[...]	

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	the Agency acting as PRB shall apply to the performance of these tasks, including as regards the levying of fees and charges.	performance of these tasks, including as regards the levying of fees and charges.		
88.		A Member State which has reallocated the responsibility for the tasks to the Agency acting as PRB pursuant to paragraph 1 and 2, may, at any time, decide to revoke the reallocation, if:		
89.		(i) the Member State concerned demonstrates that it has the necessary resources and can effectively exercise the responsibility for the tasks concerned;		

Commented [REDACTED]: The role of the PRB will be discussed separately

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90.		(ii) the Member State agrees with the Agency's acting as PRB detailed arrangements concerning the reallocation of responsibility for the tasks in question, including the date of that reallocation.		
91.	9. 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.		9. 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.	No change compared to COM proposal.
92.	10. The Commission shall establish detailed rules laying down the modalities of recruitment and selection procedures referred to in paragraph 5, points (a) and (b). Those implementing acts	10. The Commission shall establish detailed rules laying down the modalities of recruitment criteria and selection procedures referred to in paragraph 5, points (a), (b) and (ba) .	[...]	

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	shall be adopted in accordance with the examination procedure referred to in Article 37(3).	Those implementing acts shall specify:		
93.		(a) the level of separation required by the appointing entity from any company, organisation, public or private entity or staff falling within the scope of national supervisory authorities or having an interest in the activities of such entities, with a view to maintaining a balance between avoiding conflicts of interest and administrative efficiency;		

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94.		b) relevant technical qualifications of staff involved in audits.		
94a.		Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).		
95.	Article 4 - Tasks of the national supervisory authorities	Article 4 - Tasks of the national supervisory authorities	Article 4 - Tasks of the national supervisory authorities	
96.	1. The national supervisory authorities referred to in Article 3 shall:		1. The national supervisory authority [...] shall carry out the tasks assigned to it under this Regulation and the implementing acts adopted on the basis thereof, in particular the following tasks:	Tentative compromise by EP and PCY: 1. The national supervisory authority shall carry out the tasks assigned to it under this Regulation and the [delegated and] implementing acts adopted on the basis thereof, in particular the following tasks:

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97.	(a) conduct the activities necessary for the issuance of the economic certificates referred to in Article 6, including the oversight of the holders of those economic certificates;		(a) [...] 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);	EP insists on NSAs issuing a separate economic certificate. <i>Could there be a role for NSAs in the certificate issuance process under EASA BR (e.g. input to NCAs) with respect to the fulfilment of economic requirements?</i>
97.a				Tentative compromise by EP and PCY: (a) 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);
98.	(b) oversee the correct application of procurement requirements in accordance with Article 8(6);		[...]	<i>Could a role be envisaged for NSAs in the procurement process for air navigation services under Article 8(6) alongside the public procurement authorities under Directive 2014/25/EU and Directive 2014/24/EU?</i>

Commented [REDACTED]: Estonia supports General Approach and cannot support separate economic certification which would lead into additional administrative burden. Financial requirements need attention but should be incorporated into the operational certificate and be under the oversight of NSA/NCA. It is important that Member States can join functions of NCA and NSA.

Commented [REDACTED]: We cannot support it as it is difficult to provide the adequate compliance verification in real life.

Commented [REDACTED]: We do not consider it well justified that NSA should deal with the procurement evaluation if this is in the responsibility of other authorities.

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98a.			(c) assess and approve the price setting for the provision of the CIS, in accordance with Article 9; (moved from Article 4(2))	Tentative compromise by EP and PCY: (c) assess and approve the price setting for the provision of the CIS, in accordance with Article 9;
99.	(c) apply the performance and charging schemes set out in in Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23, within the limits of their tasks defined in those articles and acts,	(c)[...] implement the performance and charging schemes set out in in Articles 10 to 17 and 19 to 22, including the delegated acts referred to in Article 23 adopted to supplement those articles , and the implementing acts referred to in Articles 18 [...], within the limits of their tasks defined in those articles and acts,	(d) preparation of the draft performance plan, including the setting of criteria for allocation of costs and the setting of performance targets, the monitoring of performance and the charging schemes as set out, and within the limits of, in Articles 10 to 13b, 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23;	

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100.	and oversee the application of the Regulation regarding the transparency of accounts of designated air traffic service providers in accordance with Article 25.	and oversee the application of the Regulation regarding the transparency of accounts of [...] air navigation service providers in accordance with Article 25.	(e)oversee the application of the Regulation regarding the transparency of accounts in accordance with Article 25 , audit or verify and approve the financial data referred to in Article 25(4).	Tentative compromise by EP and PCY: (e) oversee the application of the Regulation regarding the accounts of air navigation service providers in accordance with Article 25.
101.	2. The national supervisory authorities shall be responsible for assessing and approving the price setting for the provision of the common information service, in accordance with Article 9.		[...] <i>(moved to Article 4(1)(c))</i>	moved to Article 4(1)
102.	3. Each national supervisory authority shall conduct the necessary inspections , audits and other monitoring activities to identify possible infringements by entities subject to their oversight under this Regulation of the requirements set out in this Regulation and the delegated and implementing acts		3. Each national supervisory authority shall, in cooperation with the national competent authority where it is a different entity , 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 of the	Compromise text proposed by EP: 3. Each national supervisory authority shall, in cooperation with the national competent authority, conduct the necessary monitoring activities, including, as appropriate, inspections and audits, to identify possible [...] non-compliance by entities subject to their oversight

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	adopted on the basis thereof.		requirements set out in this Regulation and [...] the implementing acts adopted on the basis thereof.	under this Regulation of the requirements set out in this Regulation and the [delegated and] implementing acts adopted on the basis thereof. <i>Legal services to consider whether “non-compliance” is the appropriate term.</i>
103.	It shall take all necessary enforcement measures which may, where appropriate, include the amendment, limitation, suspension or revocation of economic certificates issued by them in accordance with Article 6.	It shall take all necessary enforcement measures which may, where appropriate, include the amendment, limitation, suspension or revocation of economic certificates issued by them in accordance with Article 6 and fines or periodic penalties imposed in accordance with Article 42a.	[...] In case of non-compliance, national supervisory authorities shall decide on and enforce corrective measures.	
104.	The air navigation service providers, airport operators and the common information service providers concerned shall comply with the		The air navigation service providers, airport operators and the [...] CIS providers concerned shall comply with [...] any enforcement measures taken by	Tentative compromise by EP and PCY: The air navigation service providers, airport operators and the CIS providers concerned shall

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	measures taken by the national supervisory authorities to this effect.		the national supervisory authorities [...] in that context.	comply with any enforcement measures taken by the national supervisory authorities in that context. <i>Legal services to consider whether “enforcement” is the appropriate term.</i>
104 a.			In case of cross-border services, the Member State concerned, or its national supervisory authority, may request the Member State where the service provider is established or has its principal place of business, or the national supervisory authority of that Member State, to provide him with support to overcome any enforcement difficulties. Both Member States, or their national supervisory authorities, shall endeavour to cooperate to that end.	

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105.		3 a. Member States shall ensure that the decisions taken by the national supervisory authority pursuant to this Article are subject to judicial review.		
106.	Article 5 - Co-operation between national supervisory authorities	Article 5 - Co-operation between national supervisory authorities	Article 5 - Co-operation between national supervisory authorities	Article 5 - Co-operation between national supervisory authorities
107.	1. The national supervisory authorities shall exchange information and work together in a network in the context of the Advisory Board for Performance Review referred to in Article 114a of Regulation (EU) 2018/1139.		1. The national supervisory authorities shall exchange information [...] as appropriate, in particular information relating to their work and decision-making process, best practices and procedures, as well as to the application of this Regulation. To this end, the national supervisory authorities may participate and work together in a network that convenes at regular intervals.	Compromise text proposed by EP: 1. The national supervisory authorities shall exchange information, in particular information relating to their work and decision-making process, best practices and procedures, as well as to the application of this Regulation. To this end, the national supervisory authorities shall participate and work together in a network in the context of the Advisory Board for Performance Review referred to in Article 114a of Regulation (EU) 2018/1139.

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108.	2. The national supervisory authorities shall cooperate, where appropriate through working arrangements, for the purposes of mutual assistance in their monitoring and supervisory tasks and handling of investigations and surveys.		2. The national supervisory authorities shall cooperate, in particular in the case of the provision of cross-border services and of provision of air navigation services in an airspace falling under the responsibility of another Member State , through working arrangements, for the purposes of mutual assistance in their monitoring and supervisory tasks and handling of investigations and surveys.	Tentative compromise by EP and PCY: 2. The national supervisory authorities shall cooperate, through working arrangements, for the purposes of mutual assistance in their monitoring and supervisory tasks and handling of investigations and surveys.
109.	3. National supervisory authorities shall facilitate the provision of cross-border services by air navigation service providers for the purpose of improving network performance. In the case of provision of air navigation services in an airspace falling under the responsibility of two or more	3. National supervisory authorities shall facilitate the provision of cross-border services by air navigation service providers for the purpose of improving network performance. In the case of provision of air navigation services in an airspace falling under the responsibility of two or more	3. [...] In the case of provision of air navigation services in an airspace falling under the responsibility of two or more Member States, in particular with respect to functional airspace blocks , the Member States concerned shall conclude, if appropriate , an agreement on the supervision to be carried out by them or their authorities under this Regulation,	Compromise text proposed by EP: 3. National supervisory authorities shall facilitate the provision of cross-border services by air navigation service providers for the purpose of improving network performance. In the case of provision of air navigation services in an airspace falling under the responsibility of two or

	Commission proposal COM(2020) 579 final	EP amendments (updated first reading) PE662.138v01-00	Council document 9616/21	Tentative compromise and questions
	Member States, the Member States concerned shall conclude an agreement on the supervision to be carried out by them under this Regulation, of the air navigation service providers concerned . The national supervisory authorities concerned may establish a plan specifying the implementation of their co-operation with a view to giving effect to that agreement.	Member States , the Member States concerned shall conclude an agreement on the supervision to be carried out by them under this Regulation, of the air navigation service providers concerned . The national supervisory authorities concerned shall establish a plan specifying the implementation of their co-operation with a view to giving effect to that agreement.	of the air navigation service providers concerned [...].	more Member States, the Member States concerned shall conclude an agreement on the supervision to be carried out by them or their authorities under this Regulation, of the air navigation service providers concerned . The national supervisory authorities concerned shall establish a plan specifying the implementation of their co-operation with a view to giving effect to that agreement.
110.	4. In the case of provision of air navigation services in an airspace falling under the responsibility of another Member State, the agreements referred to in paragraph 3 shall provide for the mutual recognition of the discharge, by each of the authorities, of the supervisory		4. In the case of provision of air navigation services in an airspace falling under the responsibility of another Member State, the agreements referred to in paragraph 3 shall provide for the mutual recognition of the discharge, by each of the[...] Member States or their authorities, of the [...] tasks set	Tentative compromise by EP and PCY: 4. In the case of provision of air navigation services in an airspace falling under the responsibility of another Member State, the agreements referred to in paragraph 3 shall provide for the mutual recognition of the discharge, by each of the Member States or their

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	tasks set out in this Regulation and of the results of the discharge of these tasks. They shall also specify which national supervisory authority shall be in charge of the economic certification set out in Article 6.		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).	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).
111.	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. They shall notify the Commission of these agreements.	5. Where permitted by national law and with a view to regional cooperation, national supervisory authorities shall also conclude agreements on the division of responsibilities regarding the supervisory tasks. They shall notify the Commission of these agreements.	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. [...]	
112.			5a. Agreements referred to in this Article shall be notified to the Commission.	Tentative compromise by EP and PCY: 5a. Agreements referred to in this Article shall be notified by the Member States concerned to the Commission.

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113.		Article 5a (new)- Agency acting as Performance Review Body	Article 9b - Performance review body	
114.		1. A Performance Review Body (PRB) shall be established with the competence to implement various tasks notably in respect of the performance and charging schemes. A permanent structure shall be established with the European Union Aviation Safety Agency (EASA) in a manner that separates, functionally and hierarchically, the discharge of the PRB's tasks regarding the performance and charging schemes of the Single European Sky, from the Agency's activity as a safety authority.	1. In accordance with the examination procedure referred to in Article 37(3), the Commission may, by means of an implementing act, designate an independent and impartial Performance Review Body (PRB). The PRB shall have no regulatory function or other decision- making power. The role of the PRB shall be limited to providing advice and assistance to the Commission and the national supervisory authorities on request in particular as regard the collection, examination, validation and dissemination of relevant data as well as the implementation of the performance scheme set out in	

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			Articles 10 to 18 and of the charging scheme set out in Articles 19 to 23. The Commission and the national supervisory authorities shall remain responsible for the implementation of their tasks and obligations under this Regulation. The Commission shall supervise the proper execution of the PRB tasks.	
115.		2. To carry out its tasks, the Agency acting as PRB shall have the required expertise. It shall be independent from public or private interests and shall be provided with its own dedicated resources. Its integration within the existing structure of the Agency shall be governed by the [Regulation (EU) 2018/1139 as amended by Regulation PRB].	2. In case the Commission decides to designate a PRB pursuant to paragraph 1, it shall, in accordance with the examination procedure referred to in Article 37(3), adopt detailed rules regarding in particular the period of designation of the PRB, the composition of the PRB, the selection and appointment procedure as well as term of office of the PRB members, including, where relevant, of	

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			the PRB chair, the allowances, expenses and remuneration of the PRB members, the tasks of the PRB in accordance and within the limits of this Regulation as well as the specific financing modalities of the PRB activities.	
116.		Article 5aa - PRB See Articles 5b-5z of EP Resolution on the proposal to amend EASA BR regulation		see document 11735/21