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### WORKING PAPER

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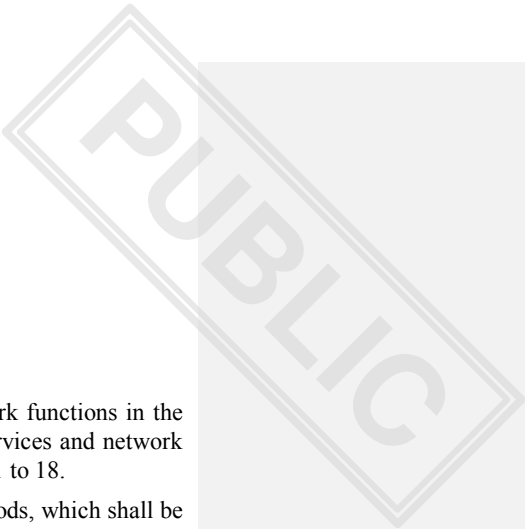
### **CONTRIBUTION**

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From:	General Secretariat of the Council
To:	Working Party on Aviation
N° Cion doc.:	ST 10840/20 + ADD 1
Subject:	Amended proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky (recast) - Chapter III Service Provision - articles 10 to 18 - Comments by Member States

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Delegates will find in annex comments by Belgium on the text proposed by the Presidency on the above mentioned proposal, as regards Chapter III Service Provision - articles 10 to 18.



## CHAPTER III

### SERVICE PROVISION

#### Article 10

##### Performance scheme

1. To improve the performance of air navigation services and network functions in the Single European Sky, a performance scheme for air navigation services and network functions shall apply in accordance with this Article and Articles 11 to 18.
2. The performance scheme shall be implemented over reference periods, which shall be a minimum of ~~three~~two years and a maximum of five years. The performance scheme shall include:

**Comment:** supported. According to experience, with a reference period of two years, the preparing steps for the next RP would take place with no feedback at all from the one just beginning and they would overlap with its approval steps, which is undesirable. A shorter period has the advantage of being based on more reliable traffic forecast. A reference period of 3 years implies that the current timeline for the drafting, adoption, assessing of the performance plans which is based on a 5-year reference period should be adjusted accordingly.

- (a) Union-wide performance targets **for en route air services** in the key performance areas of the environment, capacity and cost-efficiency for each reference period;

**Comment:** supported. EU Wide targets should be established only for en route services

- (b) performance plans including binding **local** performance targets **and incentive schemes adopted by the Member State(s)** in the key performance areas mentioned in point (a) for each reference period;

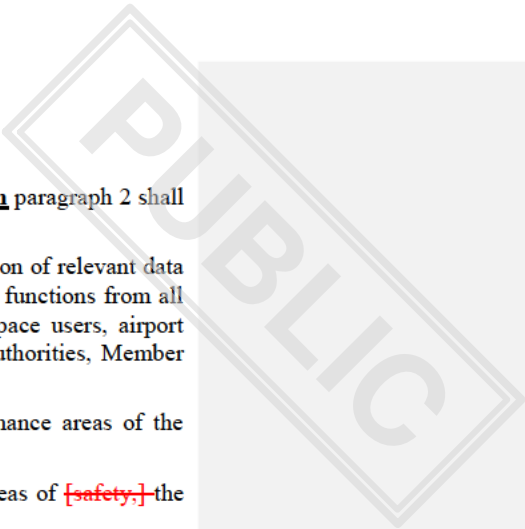
**Comment:** supported. The text is more clear.

- (c) periodic review, monitoring and benchmarking of performance in the key performance areas of ~~[safety.]~~ the environment, capacity and cost-efficiency.

- ◆ **Rationale for deleting safety:** In our view, safety level assessment and safety monitoring at EU level are already within the scope of the “basic” regulation EU 2018/1139. Setting objectives or monitoring safety level within this regulation would be overdue.

~~The Commission may add additional key performance areas for performance target setting or monitoring purposes, where necessary to improve performance.~~

**Comment:** supported. Additional KPAs should only be added by involving both co-legislators through changing this framework regulation; moreover, no other KPA has ever been contemplated since year 2000, hence such addition is improbable.



3. ~~Points (a), (b) and (c) of~~ **The performance scheme referred to in** paragraph 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 functions from all relevant parties, including air navigation service providers, airspace users, airport operators, national supervisory authorities, national competent authorities, Member States, the Agency, the Network Manager and Eurocontrol;
- (b) key performance indicators for target setting in the key performance areas of the environment, capacity and cost-efficiency;
- (c) indicators for monitoring performance in the key performance areas of ~~[safety.]~~ the environment, capacity and cost-efficiency;
- (d) ~~principles governing a methodology for the establishment~~ development of performance plans and of performance targets for air navigation services, and ~~methodology for the development of the performance plan and performance targets~~ for the network functions, **as well as the content of such plans**;
- (e) the assessment of the draft performance plans and targets for air navigation services and network functions;
- (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 *where relevant*;

**Rationale:** it should be avoided to compare peers and apples

(h) incentive schemes including **both** financial **positive incentives and** disincentives applicable where an air traffic service provider **goes beyond or** does not comply with the relevant binding performance targets **for en route and terminal air navigation services** during the reference period ~~or where it has not implemented the relevant common projects referred to in Article 35.~~

- **Support for adding incentives:** there should be a possibility to keep financial incentives mechanism symmetric, so that ANSPs working better than expected are rewarded whilst those working with bad performance are penalised. The details of the incentives scheme should be set in an implementing act adopted under the examination procedure.
- **Support for deleting text related to common projects:** with respect of disincentives due to not implementing a common project, this option should be debated but many Member States still have doubts about feasibility under fair, universally valid conditions. Some argue that such ANSPs would be penalised twice when failing to achieve a specific part of a common project and when it is the root cause of not meeting a performance target triggering a penalty under the related incentive/disincentive scheme.

Commented [redacted]: ATS ?

~~Such financial disincentives shall in particular take account of the deterioration in the level of service quality provided by that provider, as a result of not~~

~~complying with the performance targets or not implementing the common projects, and the impact thereof on the network;~~

**Comment:** supported. the details of the incentives scheme should be set in an implementing act adopted under the examination procedure.

- (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) ~~a methodology criteria~~ for the 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.

#### Article 11

##### Establishment of the Union-wide-performance targets

1. The Commission shall adopt the Union-wide performance targets for *en route* air navigation services ~~together with the duration of the reference period, and for terminal air navigation services in the key performance areas of environment, capacity and cost-efficiency for each reference period~~, in accordance with the ~~advisory examination~~ procedure referred to in Article 37(32) and with paragraphs 2 to 3 of this Article, in the key performance areas of environment, capacity and cost-efficiency for each reference period. In conjunction with ~~the those~~ Union-wide performance targets, the Commission may define complementary baseline values, breakdown values or benchmark groups ~~and, where appropriate, additional criteria, in order to take into account local circumstances~~, for the purpose of enabling the assessment and approval of draft performance plans in accordance with the criteria referred to in Article 13, paragraphs 3 and 3a, and with Article 13a.

**Comment:** support for deleting EU wide targets for terminal ANS: There should not be EU wide targets for Terminal ANS as it is the case now. The situation of the many terminal areas in the network is so diverse that the idea of setting EU-wide targets has proven to be not applicable.

**Comment:** support for examination procedure: Due to the sensitivity of the setting of Union-wide targets, which remain a top-down exercise, even though in principle fed by data provided in advance to the Commission, it is felt necessary to keep the existing examination procedure. In addition, paragraph 3 is modified according to the wide majority of Member States having expressed their opposition to a central economic regulator.

**Rationale for adding** “ ... where appropriate, additional criteria, in order to take into account local circumstances ” : the airspace and operational environment of each MS and ANSP is unique which could justify the necessity of taking local circumstances into account.

2. Union-wide performance targets referred to in paragraph 1 shall be defined on the basis of the following essential criteria:

(a) they shall drive gradual, **continuous** improvements in respect of the **environmental**, operational and economic performance of air navigation services; **Environmental improvements shall be continuous with a view to achieve climate neutrality goals of the European Green Deal.**

**Rationale:** improvements in European wide performance targets should be continuous in order to reach the goals that Europe has set for itself (-55% of CO<sub>2</sub> emissions in 2030 and climate neutrality in 2050)

(b) they shall be realistic and achievable during the reference period concerned, ~~while fostering longer term structural and technological developments~~ enabling the efficient, sustainable and resilient provision of air navigation services.

(c) **they shall take into account the economic and operational context of the reference period, including traffic forecast, as well as the interdependency between the key performance areas of capacity, environment and cost-efficiency, with the understanding that the performance target in the key performance area of environment should take precedence over the performance targets in the key performance area of capacity and cost-efficiency.**

**Rationale:** Taking into account the urgency and importance of improving environmental performance in order to achieve the climate neutrality objective of the European Green Deal, it is proposed to add “environmental” in point (a) and to add additional paragraph (b) to emphasize that environment should get priority above cost-efficiency and capacity. We need an aviation that focuses on the environmental programme. The maximisation of capacity should not be detrimental to environment. Since SES initiatives in 2004 no tangible objectives for environment have been set nor achieved. The focus has mainly been on costs reduction and capacity increase with a little attention to environmental performance. Now the focus should be to improve the current environmental performance and make sure that capacity increase is sustainable. It is not reasonable that you pay for some flights a fare which is far below the fare you pay for a taxi from one place to another. The unconditional maximisation of capacity has led to situations where flights have been obliged to fly at flight levels which are not optimal at all from the environmental point of view. This should stop. We should not allow the deterioration of environment anymore for the benefit of capacity. We should maximise environmental gains! So environment should come on the second place after safety. We should make sure that the airspace capacity is used by environmentally friendly aircraft.

3. For the purposes of preparing its decisions on Union-wide performance targets, the Commission shall collect any necessary input from **Member States authorities** and stakeholders. Upon request of the Commission, the **Performance Review Body** ~~[Agency acting as PRB]~~ shall provide assistance to the Commission for the analysis and preparation of those decisions, by way of an opinion.

*Article 12*

### **Classification of *en route* and terminal air navigation services**

1. ~~Before the start of each reference period, each Member State shall notify to the Commission which air navigation services to be provided during that period in the airspace under their responsibility it intends to classify as *en route* air navigation services and as terminal air navigation services respectively. At the same time, each Member State shall notify the Commission of the designated air traffic service providers of those respective services.~~
2. ~~In due time before the start of the relevant reference period, the Commission, shall adopt implementing decisions addressed to each Member State as to whether the intended classification of the services concerned complies with the criteria set out in points (29) and (55) of Article 2. Upon request of the Commission, the Agency acting as PRB shall provide assistance to the Commission for the analysis and preparation of those decisions, by way of an opinion.~~
3. ~~Where a decision adopted under paragraph 2 finds that the intended classification does not comply with the criteria set out in points (29) and (55) of Article 2, the Member State concerned shall, having regard to that decision, submit a new notification whose terms comply with those criteria. The Commission shall take a decision on this notification in accordance with paragraph 2.~~
4. ~~The designated air traffic service providers concerned shall base their draft performance plans for *en route* and terminal air navigation services on the classifications the Commission has found to be in compliance with the criteria set out in points (29) and (55) of Article 2. The Agency acting as PRB shall base itself on those same classifications when assessing the allocation of costs between *en route* and terminal air navigation services under Article 13(4).~~

**Comment:** supported. The distinction organized by Article 12 is unrealistic, while entailing a pressure for increasing fragmentation, contrary to the principles of the Single European Sky. Indeed, many installations like VORs or DME, Flight-Plan processing systems, services like AIS, serve both for en-route and terminal phases of flight; air traffic controllers on approach working positions also provide services to flights in a cruise phase crossing the airspace they control. What is relevant for the performance and charging scheme is that costs are allocated to the cost-base of en-route and terminal charges through appropriate methodologies. Additionally, unnecessary administrative burden should be avoided.

### *Article 13*

#### **Performance plans and performance targets for *en route* air navigation services of designated air traffic service providers**

**Comment :** supported. In consistency with the rationale for deleting Article 12, there should be a single performance plan for en-route and terminal services.

1. ~~Each Member State The designated air traffic service providers for *en route* air traffic services shall, for each reference period, adopt draft performance plans, as drawn up by the national supervisory authority, or other national authorities concerned, and the air navigation service provider(s), in respect of all the *en route* air navigation services which they~~

the designated air traffic service providers provide in the airspace under its responsibility and, where applicable, procure from other providers.

**Comment:** supported. The adoption of the draft PP should remain the responsibility of the Member States as it is now. The draft should be drafted by the National Supervisory Authorities building on data and justifications to be provided by the air navigation services providers involved, and after consulting the interested stakeholders.

The draft performance plans may be adopted by the national supervisory authorities of one Member State or by several Member States jointly.

**Rationale:** The purpose of the added sentence is to allow States to submit a common performance plan, just like FABEC States did for RP3, while this drafting avoids requiring a legal definition of FABs and of their objectives. Thus, it leaves full flexibility to every State to decide about their cooperation for adopting joint performance plans with other Member States, in accordance with the level and geometry of cooperation between the ATSPS of these Member States. It does not require either to disband existing FAB agreements until the MS concerned so decide.

They shall be adopted after the setting of Union-wide performance targets and before the start of the reference period concerned.

**1a. Before the start of each reference period, each national supervisory authority shall lay down the criteria to allocate the costs between *en route* and terminal services and shall include this information in the draft performance plans. The national supervisory authority shall ensure that the cost bases for *en route* and terminal charges comply with those criteria and the requirements of Article 20.**

**Comment:** supported. The NSAs are best placed to know the local situation and to set criteria for the costs allocation between *en route* and terminal.

**1b. For each reference period, the national supervisory authority shall set and include in the draft performance plans, in the key performance areas of environment, capacity and cost-efficiency, performance targets for *en route* air navigation services ~~in the key performance areas of the environment, capacity and cost-efficiency~~, consistent with the Union-wide performance targets as well as local performance targets for terminal air navigation services, taking into consideration differences in the provision of those services due to local circumstances. Those draft performance plans shall take account of the European ATM Master Plan and the interdependency between the key performance areas of capacity, environment and cost-efficiency, with the understanding that the performance target in the key performance area of environment should take precedence over the performance targets in the key performance area of capacity and cost-efficiency. ~~The draft performance plans shall be made publicly available.~~**

**Rationale:** same as under article 11.2.c. concerning the importance of environment.

2. The draft performance plans ~~for *en route* air navigation services~~ referred to in paragraph 1 shall include relevant information provided by the Network Manager. Before adopting those draft plans, ~~Member States designated air traffic service providers~~ shall consult airspace users' representatives and, where relevant, military authorities, airport

operators and airport coordinators ~~and they. The designated air traffic service providers shall also consult submit those plans to the national competent authority responsible for their certification of the designated air traffic service providers, which shall verify the compliance of the draft performance plans with Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof.~~

**Rationale:** The deletion of the last sentence reflects the fact that in many States the NSA and the NCA will remain within the same organisation. And the way Member States ensure that they designate ATS providers holding a valid certificate or having made a declaration under regulation 2018/1139 should be left to subsidiarity.

~~3. Draft performance plans for en route air navigation services shall contain performance targets for en route air navigation services that are consistent with the respective Unionwide performance targets in all key performance areas and fulfil the additional conditions laid down in the third subparagraph.~~

Consistency of performance targets for *en route* air navigation service **to be included in the draft performance plan** with Union-wide performance targets shall be established according to **all or part of** the following criteria:

**Comment:** supported. The criteria should not cumulative.

- (a) where breakdown values have been established in conjunction with Union-wide performance targets, comparison of the performance targets contained in the draft performance plan with those breakdown values;
- (b) evaluation of performance improvements over time, for the reference period covered by the performance plan, and additionally for the overall period comprising both the preceding reference period and the reference period covered by the performance plan;
- (c) comparison of the planned level of performance of the air traffic service provider concerned with other air traffic service providers being part of the same benchmark group, **taking into account local circumstances.**

**Comment:** supported. Benchmarking should take into account local circumstances.

**The assessment of the consistency of performance targets in the key performance area of cost-efficiency shall exclude the costs referred to in point (a), (b) and (d) of Article 20(3).**

**Comment:** supported. This exemption is welcome as it concerns costs related to regulatory and supervisory authorities which are necessary to ensure safety and efficient service provision.

**3a.** In addition, the **adopted** draft performance plan must comply with the following conditions:

- (a) key assumptions applied as a basis for target setting and measures intended to achieve the targets during the reference period, including baseline values, traffic forecasts and economic assumptions used, must be accurate, adequate and coherent;
- (b) the **adopted** draft performance plan must be complete in terms of data and supporting material;

- (c) cost bases for charges must comply with Article 20.
- (d) When assessing targets of all key performance areas a deviation on either cost-efficiency/capacity targets from the EU wide targets can be allowed provided that this is necessary for the achievement of the environmental targets.

**Rationale:** same as under article 11.2.c. concerning the importance of environment.

**3b. The adopted draft performance plans shall be made publicly available.**

~~4. — The allocation of costs between *en route* and terminal air navigation services shall be assessed by the Agency acting as PRB on the basis of the methodology referred to in Article 10(3)(k) and the classification of the different services as assessed by the Commission pursuant to Article 12.~~

5. The **adopted** draft performance plans ~~for *en route* air navigation services referred to in paragraph 1, including where relevant the allocation of costs between *en route* and terminal air navigation services,~~ shall be submitted to the Commission ~~[Agency acting as PRB]~~ for assessment and approval **in accordance with Article 13a**.

**Rationale:** assessment of and a decision about the sufficient compliance of the draft Performance plan with the applicable Union-wide targets should remain with the Commission involving the Member States through the Single Sky Committee as of today. The wide majority of Member States clearly stated under German presidency that they could not accept to delegate decision powers for approving the content of local performance plans and of the local targets to the EASA Agency for en-route.

~~6. — In the case of a designated air traffic service provider providing both *en route* air navigation services and terminal air navigation services, the [Agency acting as PRB] shall first assess the allocation of costs between the respective services in accordance with paragraph 4.~~

~~Where the Agency acting as PRB finds that the allocation of costs does not comply with the methodology or with the classification referred to in paragraph 4, the designated air traffic service provider concerned shall present a new draft performance plan complying with that methodology and with that classification.~~

~~Where the Agency acting as PRB finds that the allocation of costs complies with that methodology and with that classification, it shall take a decision to that effect, notifying the designated air traffic service provider and national supervisory authority concerned. The national supervisory authority shall be bound by the conclusions of that decision in respect of the allocation of costs for the purposes of the assessment of the draft performance plan for terminal air navigation services referred to in Article 14.~~

**Article 13a**

**Assessment of performance targets and performance plans by the [Agency acting as PRB]**

**Rationale:** same as under article 13.3b. concerning the replacement of Agency acting as PRB by Commission under this article.

**7.1.** The Commission ~~[Agency acting as PRB]~~ shall assess the performance targets for *en route* air navigation services and the **adopted draft** performance plans **referred to in Article 13**

according to the criteria and conditions set out in **Article 13** paragraphs 3 and 3a. ~~Where paragraph 6 applies, this assessment shall take place after a decision on the allocation of costs has been taken in accordance with the fourth subparagraph of paragraph 6.~~

Where the **Commission** ~~[Agency acting as PRB]~~ finds that the **adopted** draft performance plan meets those criteria and conditions, it shall approve it **and adopt a decision notifying the Member State concerned thereof.**

Where the **Commission** ~~[Agency acting as PRB]~~ finds that one or several performance targets for *en route* air navigation services are not consistent with the Union-wide performance targets or the **adopted draft** performance plan does not **otherwise** meet the ~~additional~~ conditions set out in **Article 13** paragraphs 3 and 3a, it shall deny the approval and **the Member State concerned shall adopt and present a revised draft performance plan, including where necessary revised targets.**

~~8. Where the [Agency acting as PRB] has denied approval of a draft performance plan in accordance with paragraph 7, a revised draft performance plan shall be presented by the designated air traffic service provider concerned, including where necessary revised targets.~~

~~9 2.~~ The **Commission** ~~[Agency acting as PRB]~~ shall assess the revised draft performance plan referred to in paragraph ~~8-1, third subparagraph~~, in accordance with the criteria and conditions set out in **Article 13** paragraphs 3 and 3a. Where a revised draft performance plan meets those criteria and conditions, the **Commission** ~~[Agency acting as PRB]~~ shall approve **it the revised draft Performance Plan and adopt a decision notifying the Member State concerned thereof.**

**Where the Commission** ~~[Agency acting as PRB]~~ **finds that there are doubts about the compliance of the revised draft performance plan with the criteria and conditions set out in Article 13 paragraphs 3 and 3a, the Commission** ~~[Agency acting as PRB]~~ **shall initiate a detailed examination of that revised draft performance plan and of the relevant local circumstances, requesting additional information from the Member State concerned.**

**Where, after having carried out that detailed examination, the Commission** ~~[Agency acting as PRB]~~ **finds that the revised draft performance plan complies with the criteria and conditions set out in Article 13 paragraphs 3 and 3a, the Commission** ~~[Agency acting as PRB]~~ **shall approve this revised draft performance plan and adopt a decision notifying the Member State concerned thereof.**

**Where, having carried out that detailed examination, the Commission** ~~[Agency acting as PRB]~~ **finds that the revised draft performance plan does not comply with the criteria and conditions set out in Article 13 paragraphs 3 and 3a, the Commission** ~~[Agency acting as PRB]~~ **shall adopt a decision setting out the corrective measures which the Member State concerned is to take. The Member State concerned shall** ~~within three months from the date of the adoption of that decision,~~ **communicate to the Commission** ~~[Agency acting as PRB]~~ **the measures that it has taken pursuant to that decision, as well as information demonstrating that those measures comply with that decision. On the basis of that information, the Commission** ~~[Agency acting as PRB]~~ **shall assess whether the measures taken by the Member State concerned are sufficient to ensure compliance with its decision. Where the Commission** ~~[Agency acting as PRB]~~ **finds that those measures are sufficient to ensure compliance with its decision, it shall notify the Member State concerned thereof. Where the Commission** ~~[Agency acting as PRB]~~ **finds that those measures are not sufficient to ensure compliance with the decision, it shall notify the Member State concerned and the Commission accordingly. 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.

~~Where a revised draft performance plan does not meet those criteria and conditions, the [Agency acting as PRB] shall deny its approval and shall require the designated air traffic service provider to present a final draft performance plan.~~

~~Where the revised draft performance plan submitted in accordance with paragraph 8 is denied because it contains performance targets for *en route* air navigation services that are not consistent with the Union wide performance targets, the [Agency acting as PRB] shall establish performance targets in consistency with the Union wide performance targets for the designated air traffic service provider concerned, taking into account the findings made in the decision referred to in paragraph 7. The final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets thus established by the [Agency acting as PRB], as well as the measures to achieve those targets.~~

~~Where approval of the revised draft performance plan submitted in accordance with paragraph 8 is denied only because it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets contained in the draft performance plan and found to be consistent with the Union wide performance targets by the [Agency acting as PRB], and shall contain the amendments necessary in view of the conditions the [Agency acting as PRB] has found not being met.~~

~~Where approval of the revised draft performance plan submitted in accordance with paragraph 8 is denied because it contains performance targets for *en route* air navigation services that are not consistent with the Union wide performance targets and because, in addition, it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets established by the [Agency acting as PRB] in accordance with the third subparagraph and the measures to achieve those targets and shall and shall contain the amendments necessary in view of the conditions the [Agency acting as PRB] has found not being met.~~

40. ~~3.~~ Draft performance plans approved by the Commission ~~[Agency acting as PRB]~~ in accordance with paragraphs 1 and 2 shall be adopted by the ~~designated air traffic service providers~~ Member States concerned as definitive plans, and shall be made publicly available.

#### *Article 13b*

##### *Performance monitoring*

1. The national supervisory authorities shall assess whether the air navigation services provided in the airspace under their responsibility meet the performance targets contained in the performance plans with a view to implementing incentive schemes referred to in Article 13(3)h). Any detrimental effect of measures adopted in order to improve the overall functioning of the network on the actual performance of the air traffic service provider shall be duly taken into account when assessing that performance and determining whether the air traffic service provider should be subject to financial disincentives. Such disincentives shall not be such as to affect significantly the financial viability of the air traffic service provider concerned and the safety and quality of the services provision.

**Comment:** support for the idea of taking into account any detrimental effect of measures adopted in order to improve the overall functioning of the network on the actual performance of the air traffic service provider when assessing that performance and determining whether the air traffic service provider should be subject to financial disincentives.

**2. The national supervisory authorities shall issue regular reports on the monitoring of performance of air navigation services, by air traffic service providers and making the results of those assessments publicly available.**

**The designated air traffic service provider shall provide the information and data necessary for the monitoring of the performance of air navigation services. This shall include information and data related to actual costs ~~and revenues~~ of the services provided and, where applicable, of the services procured from other service providers.**

**Rationale for deleting revenues:** The performance and charging scheme focuses on regulating the level of chargeable costs. Revenues should not be included into the reporting requirements. Besides, the financial information on determined and actual costs might include sensitive elements. Due account must be taken as concerns protection of confidential and commercial sensitive data.

**Where performance targets are not reached or the performance plan is not correctly implemented, the national supervisory authority shall issue decisions requiring corrective measures to be implemented by the air traffic service providers. Member States shall ensure that decisions taken by the national supervisory authority pursuant to this paragraph are subject to judicial review.**

[44- ~~3.~~ The Commission ~~{Agency acting as PRB}~~ shall issue regular reports, within the time limits referred to in the implementing acts to be adopted in accordance with Article 18, on the monitoring of performance of *en route* air navigation services and network functions, including regular assessments of the achievement of the *en route* Union-wide performance targets and of performance targets for *en route* air navigation services for air traffic service providers and making the results of those assessments publicly available.

The designated air traffic service provider shall provide **the Commission** ~~{Agency acting as PRB}~~ **with** the information and data necessary for the monitoring of the performance of *en route* air navigation services. This shall include information and data related to actual costs ~~and revenues of the services provided and, where applicable, of the services procured from other service providers.~~

**Rationale for deleting revenues:** see previous rationale.

Where performance targets are not reached or the performance plan is not correctly implemented, the Commission ~~{Agency acting as PRB}~~ shall issue decisions requiring corrective measures to be implemented by the air traffic service providers. ~~These corrective measures may include, where objectively necessary, a requirement for an air traffic service provider to delegate the provision of the relevant services to another air traffic service provider.~~

**Rationale:** Majority of Member States do not support corrective measures such as deciding that an ANSP shall delegate services to another one. Approving the delegation of ATS service provision between two ANSPs is the prerogative of the MS concerned, as it *de facto* alters the effects of the geographic area where they have designated the said ANSPs. In this respect, services delegations are usually meant to optimally adjust the services to traffic flows, not as a silver bullet for solving capacity issues. And such delegations also imply a full agreement of both ANSPs, and require many years of preparation.

Where the performance targets continue to be missed, or where the performance plan continues to be incorrectly implemented or where corrective measures imposed are not or not properly applied, the Commission [~~Agency acting as PRB~~] shall conduct an investigation ~~and provide an opinion to the Commission in accordance with Article 24(2)~~. The Commission may take action in accordance with Article 24(3).]

#### *Article 14*

#### **~~Performance plans and performance targets for terminal air navigation services of designated air traffic service providers~~**

**Comment :** supported. In consistency with the rationale for deleting Article 12, there should be a single performance plan for en-route and terminal services, by merging the content of this article into article 13.

~~1. — The designated air traffic service providers for terminal air traffic services shall, for each reference period, adopt draft performance plans in respect of all the terminal air navigation services which they provide and, where applicable, procure from other providers.~~

~~The draft performance plans shall be adopted after the setting of Union wide performance targets and before the start of the reference period concerned. They shall contain performance targets for terminal air navigation services in the key performance areas of environment, capacity and cost efficiency, consistent with the Union wide performance targets. Those draft performance plans shall take account of the European ATM Master Plan. The draft performance plans shall be made publicly available.~~

~~2. — The draft performance plans for terminal air navigation services referred to in paragraph 1 shall include relevant information provided by the Network Manager. Before adopting those draft plans, designated air traffic service providers shall consult airspace users' representatives and, where relevant, military authorities, airport operators and airport coordinators. The designated air traffic service providers shall also submit those plans to the national competent authority responsible for their certification, which shall verify the compliance with Regulation (EU) 2018/1139 and the delegated and implementing acts adopted on the basis thereof.~~

~~3. — Draft performance plans for terminal air navigation services shall contain performance targets for terminal air navigation services that are consistent with the respective Union wide performance targets in all key performance areas and fulfil the additional conditions laid down in the third subparagraph.~~

~~Consistency of performance targets for terminal air navigation service with Union wide performance targets shall be established according to the following criteria:~~

~~(a) — where breakdown values have been established in conjunction with Union-wide performance targets, comparison of the performance targets contained in the draft performance plan with those breakdown values;~~

~~(b) — evaluation of performance improvements over time, for the reference period covered by the performance plan, and additionally for the overall period comprising both the preceding reference period and the reference period covered by the performance plan;~~

~~(c) — comparison of the planned level of performance of the air traffic service provider concerned with other air traffic service providers being part of the same benchmark group. In addition, the draft performance plan must comply with the following conditions:~~

~~(a) — key assumptions applied as a basis for target setting and measures intended to achieve the targets during the reference period, including baseline values, traffic forecasts and economic assumptions used, must be accurate, adequate and coherent;~~

~~(b) — the draft performance plan must be complete in terms of data and supporting material;~~

~~(c) cost bases for charges must comply with Article 20.~~

~~4. — The draft performance plans for terminal air navigation services referred to in paragraph 1, shall be submitted to the national supervisory authority for assessment and approval.~~

~~5. — In the case of a designated air traffic service provider providing both *en route* air navigation services and terminal air navigation services, the draft performance plan for terminal air navigation services to be submitted to the national supervisory authority shall be the plan subject to a positive decision on the allocation of costs taken by the [Agency acting as PRB] in accordance with the third subparagraph of Article 13(6).~~

~~6. — The national supervisory authority shall assess the performance targets for terminal air navigation services and the performance plans according to the criteria and conditions set out in paragraph 3. Where paragraph 5 applies, the national supervisory authority shall base its assessment on the conclusions of the decision taken by the [Agency acting as PRB] in respect of the allocation of costs.~~

~~Where the national supervisory authority finds that the draft performance plan meets those criteria and conditions, it shall approve it.~~

~~Where the national supervisory authority finds that one or several performance targets for terminal air navigation services are not consistent with the Union-wide performance targets or the performance plan does not meet the additional conditions set out in paragraph 3, it shall deny the approval.~~

~~7. — Where the national supervisory authority has denied approval of a draft performance plan in accordance with paragraph 6, a revised draft performance plan shall be presented by the designated air traffic service provider concerned, including where necessary revised targets.~~

~~8. — The national supervisory authority shall assess the revised draft performance plan referred to in paragraph 7 in accordance with the criteria and conditions set out in paragraph 3. Where a revised draft performance plan meets those criteria and conditions, the national supervisory authority shall approve it.~~

~~Where a revised draft performance plan does not meet those criteria and conditions, the national supervisory authority shall deny its approval and shall require the designated air traffic service provider to present a final draft performance plan.~~

~~Where the revised draft performance plan submitted in accordance with paragraph 7 is denied because it contains performance targets for terminal air navigation services that are not consistent with the Union-wide performance targets, the national supervisory authority shall~~

~~establish performance targets in consistency with the Union wide performance targets for the designated air traffic service provider concerned, taking into account the findings made in the decision referred to in paragraph 6. The final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets thus established by the national supervisory authority as well as the measures to achieve those targets.~~

~~Where approval of the revised draft performance plan submitted in accordance with paragraph 7 is denied only because it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets contained in the draft performance plan and found to be consistent with the Union wide performance targets by the national supervisory authority, and shall contain the amendments necessary in view of the conditions the national supervisory authority has found not being met.~~

~~Where approval of the revised draft performance plan submitted in accordance with paragraph 7 is denied because it contains performance targets for terminal air navigation services that are not consistent with the Union wide performance targets and because, in addition, it does not comply with the conditions set out in the third subparagraph of paragraph 3, the final draft performance plan to be presented by the designated air traffic service provider concerned shall include the performance targets established by the national supervisory authority in accordance with the third subparagraph and the measures to achieve those targets and shall contain the amendments necessary in view of the conditions the national supervisory authority has found not being met.~~

~~9. Draft performance plans approved by the national supervisory authority shall be adopted by the designated air traffic service providers concerned as definitive plans, and shall be made publicly available.~~

~~10. The national supervisory authority concerned shall issue regular reports on the monitoring of performance of terminal air navigation services, including regular assessments of the achievement of the performance targets for terminal air navigation services for air traffic service providers and making the results of those assessments publicly available.~~

~~The designated air traffic service provider shall provide the information and data necessary for the monitoring of the performance of air navigation services. This shall include information and data related to actual costs and revenues.~~

~~Where performance targets are not reached or the performance plan is not correctly implemented, the national supervisory authority shall issue decisions requiring corrective measures to be implemented by the air traffic service providers. These corrective measures may include, where objectively necessary, a requirement for an air traffic service provider to delegate the provision of the relevant services to another air traffic service provider~~

~~Where the performance targets continue to be missed, or where the performance plan continues to be incorrectly implemented, or where corrective measures imposed are not or not properly applied, the national supervisory authority shall request the [Agency acting as PRB] to conduct an investigation in accordance with Article 24(2), and the Commission may take action in accordance with Article 24(3).~~

~~11. Member States shall ensure that decisions taken by the national supervisory authority pursuant to this Article are subject to judicial review.~~

~~12. Where the [Agency acting as PRB] carries out the tasks of a national supervisory authority in accordance with Article 3(8), the draft performance plans for terminal air navigation services shall be submitted to the [Agency acting as PRB] together with the draft~~

performance plans for *en route* air navigation services. Where the Agency has taken a decision in respect of the allocation of costs as referred to in the third subparagraph of Article 13(6), this decision shall be binding on it for the purposes of the assessment of the draft performance plans for terminal air navigation services.

#### *Article 15*

##### **~~Role of the [Agency acting as PRB] as regards the monitoring of Union-wide performance targets for terminal air navigation services~~**

1. ~~The [Agency acting as PRB] shall on a regular basis establish a Union wide overview of the performance of terminal air navigation services and of how it relates to Union-wide performance targets.~~

2. ~~For the purpose of the preparation of the overview referred to in point 1, the national supervisory authorities shall notify their reports referred to in Article 14(10) to the [Agency acting as PRB] and shall provide any other information the [Agency acting as PRB] may request for those purposes.~~

**Rationale:** The deletion of this article 15 is consistent with the deletion of EU-wide targets for Terminal services). The definition of EU-wide targets at Terminal level is not supported in view of the diversity of service provision at terminal level across Europe.

#### *Article 16*

##### **Network Performance Plan**

1. The Network Manager shall, for each reference period, draw up, **in accordance with the decision-making process referred to in Article 27(7)**, a draft Network Performance Plan in respect of all the network ~~functions~~ **tasks** which it ~~delivers~~ **executes**.

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 of the environment, capacity and costefficiency.

2. The draft Network Performance Plan shall be submitted to ~~the [Agency acting as PRB]~~ **and to** the Commission.

~~The [Agency acting as PRB] shall, upon request from the Commission, deliver an opinion to the Commission shall assess on~~ 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 additionally for the timeframe comprising both the preceding reference period and the reference period covered by the performance plan;

(b) completeness of the draft Network Performance Plan in terms of data and supporting materials.

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 may request the Network Manager to submit a

revised draft Network Performance Plan.

**Rationale:** The Commission should remain the regulator, and of course, just like proposed for Article 11, may be assisted by a PRB – no need to specify it.

#### 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, 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 plan adopted pursuant to Article 13a no longer comply with the Union-wide performance targets. Subsequent to such revision, designated air traffic service providers Member States shall adopt new draft revise the performance plans with respect to the performance targets concerned, to which Articles 13 and 14 shall apply. Articles 13 and 13a shall apply to the revision of the performance plan. 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.**

**Comment:** supported. The consultation may be limited to the performance targets and parts of the draft performance plans which are directly or indirectly affected by the revision.

**Where, following the revision referred in the first subparagraph, the performance targets contained in the performance plan adopted pursuant to Article 16 no longer comply with the Union-wide performance targets, (The Network Manager shall revise draw up a new draft Network Performance Plan, to which, Article 16 shall apply to the revision of the Network Performance Plan.**

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 ~~adopted pursuant to Article 13(6) and Article 14(6)~~ become applicable.

3. ~~Designated air traffic service providers~~ **Member States** may **propose request permission from the [Agency acting as PRB] as regards en route air navigation services, or from national supervisory authority concerned as regards terminal air navigation services,** to revise one or several performance targets **as regards en route air navigation services**, during a reference period. Such a **request proposal** can be made where alert thresholds are reached, or **where it is demonstrated the designated air traffic service providers demonstrate** 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.

4. The Commission [~~Agency acting as PRB~~] ~~as regards en route air navigation services, or the national supervisory authority concerned as regards terminal air navigation services,~~ shall accept the proposed revision ~~authorise the designated air traffic service provider concerned to proceed with the intended revision as regards en route air navigation services,~~ only if it is necessary and proportionate, ~~and where the revised performance targets ensure that consistency with the Union wide performance targets is maintained.~~ Where the revision has been ~~authorised~~accepted, ~~designated air traffic service providers~~ Member States shall ~~revise the adopt new draft~~ performance plans with respect to the targets concerned, in accordance with the procedures set out in Articles 13 and ~~13a~~ 14. The consultation referred to in Articles 13(2) may be limited, for the purpose of this paragraph, to the performance targets and parts of the draft performance plans which are directly or indirectly affected by the revision.

4a. Member States may revise one or several performance targets as regards terminal air navigation services, during a reference period. Such a revision can be made only if it is necessary and proportionate, 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. 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 Articles 13(2) may be limited, for the purpose of this paragraph, to the performance targets and parts of the draft 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 adopt detailed requirements and procedures in respect of Articles 10(3), 11, 12, 13, ~~13a and 13b~~ 14, 15, 16 as well as 17, in particular as regards the development of draft performance plans, the setting of performance targets, the criteria and conditions for their assessment, ~~the methodology for allocation of costs between en route and terminal air navigation services,~~ the monitoring of performance and issuance of corrective measures, and the timetables for all procedures. Those requirements and procedures shall be set out in an implementing act adopted in accordance with the ~~advisory examination~~ procedure referred to in Article 37(~~32~~).