



Council of the European Union
General Secretariat

Brussels, 10 May 2021

Interinstitutional files:
2013/0186(COD)

WK 6221/2021 INIT

**REDACTED DOCUMENT ACCESSIBLE TO
THE PUBLIC (28.05.2025). ONLY MARGINAL
PERSONAL DATA HAVE BEEN REDACTED.**

LIMITE

**AVIATION
CODEC**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Aviation
N° prev. doc.:	ST 8030/21 ADD1, WK 3835 2021 REV 1
N° Cion doc.:	ST 10840/20 + ADD1
Subject:	Amended proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky (recast) - Comments by Member States

Delegations will find, in annex, comments from Cyprus on the compromise text.

Brussels, 30 April 2021
(OR. en)

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

8030/21
ADD 1

LIMITE

AVIATION 90
CODEC 558
IA 64

REPORT

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 1)

No. prev. doc.: 8030/21 ADD 1

No. Cion doc.: ST 10840/20 + ADD1, ST 10841/21 + COR1, ST 11020/20

Subject: Amended proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky (recast)

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1139 as regards the capacity of the European Union Aviation Safety Agency to act as Performance Review Body of the Single European Sky

– Guidance for further work

Delegates will find in annex a document reflecting the changes in comparison to the Single European Sky Recast proposal. Deletions are reflected in ~~striketrough~~, whereas additions are reflected in **bold underlined**.

COMMENTS BY CYPRUS

General reflection:

We are concerned with the increasing complexity of the SES framework, which now seems to have the overriding goal of promoting and enabling “market-driven” air navigation services. Cyprus considers that, every additional service layer and every new entity we introduce in this system increases the need for additional implementing rules, more oversight, more formal agreements and more consultations. All this translates to more bureaucracy, higher administrative burden and higher costs. We fully agree that, in some instances, the SES needs to be reformed and even expanded to address industry developments (e.g., U-space - drones). In general, though, we consider that every effort should be made to simplify it in order to become more flexible and efficient. The ultimate goal for SES should be to keep the system safe and to achieve a required level of performance, with the understanding that all performance areas and their interdependencies are adequately addressed. In this respect, the main focus of SES should be the establishment of a comprehensive and transparent performance scheme, which allows the States and ANSPs to cooperate and interact so as to achieve commonly agreed targets.

Definitions:

Air traffic data services

In the Discussion Paper released by the previous presidency on 24 November 2020 (*ref No. Cion doc.: ST 10840/20 + ADD1; ST 10841/20 + COR1*) it was stated that: “*Even though Member States tend to support the idea of air traffic data services, there are questions regarding the scope of the services to be provided, the pricing and terms for its provision, the relation to and impact on the support service providers and, in particular, the protection of sensitive data.*” CY considers that these valid concerns have not been addressed in the period since the release of the above-mentioned paper. The scope and the added value of this new air navigation service has not been adequately explained or justified. CY supports digitalisation and even the introduction of a service-oriented architecture for data services, on the condition that such a technical solution fits the



COMMENTS BY CYPRUS – MAY 2021

operational needs of concerned ANSPs (*e.g., if the timing is right, cost savings can be achieved etc. etc.*) We question also the need for promoting the idea of specialised ADSPs. We understand the possible benefits of economies of scale, however, the EC itself has admitted, in its own presentations, that the introduction of ADSPs is likely to increase the complexity of the system. This “service” is not foreseen in ICAO standards, whilst the EC has declared that its impact assessment on ADS “...has its limitations, due to the very high level of uncertainty caused by the plethora of choices available for service providers, and also for policy makers”.

In conclusion, it is acknowledged that ADS may have potential benefits. Equally, it faces also numerous challenges, particularly with regards to its safety, security and liability aspects. In view of all these considerations, CY believes that there is no immediate need for a regulatory framework for ADS. It should remain as an optional technical solution to be implemented by interested ANSPs if and when it suits their operational needs.

Baseline value

The definition makes reference to “*an estimation of actual costs*”. CY considers this to be a contradiction in terms. In principle, actual figures are not “estimated”, they are “calculated”. It is acknowledged that, in practice and depending on when you do the calculation exercise, you may need to make some estimates. CY recommends to delete the word “estimation” and keep the text simpler.

Cooperative decision-making:

CY does not agree with the phrase “*aiming for consensus*”. One can always claim that he/she is “aiming for consensus” and another can simultaneously claim that he/she is not. Such ambiguous provisions can become the source of tensions during discussions. It is best to simply say that “*decisions are made by consensus*”.

NSA/NCAs and Article 4

CY maintains its reservations about the NSA/NCA concept. It is acknowledged that, according to the latest Presidency proposal (new Article 3, para. 4), it is possible for the national supervisory authority to be joined with the national national competent authority. Nevertheless, the option to have two distinct authorities remains. In this respect, CY recommends a rationalisation of the tasks assigned to these two entities: If the NSAs are to be engaged in economic oversight then CY recommends that the limited tasks assigned to them in the context of Article 4 should be expanded to include also all other financial oversight aspects. In other words, the NSA tasks should not be limited to the Performance Planning and monitoring aspects foreseen in Article 4 but to include also the relevant elements of (EU) 2017-373, namely those referring to Business Planning, Annual Planning, Annual reporting and the demonstration of financial strength. Consequently, CY does not agree with the inclusion of financial oversight aspects in the proposal to revise the EASA BR.

Article 4: national security and defence requirements

CY recommends the deletion of point (a). The NSA should not be burdened with the verification of national security and defence requirements by the service providers, especially considering that their primary responsibility (hence competence) will be the economic oversight.

Article 4: enforcement measures

CY has a lot of reservations on the enforcement aspects of this Article. It is very difficult to make a legal case against an entity for non-compliance with “performance planning” aspects. By comparison, (EU) 20217-373 contains very explicit provisions regarding findings (e.g. categorisation in Level 1 and Level 2), including specific examples for each category.

Article 10, Performance scheme

CY is noting the deletion of safety as a KPA. In principle we are not against this. However, the interdependency of the KPAs with safety should be explicit. The PCY proposal makes references and addresses this at a number of instances. CY is recommending to enhance this further with some additional references (see text for specific suggestions)

Article 13a, Assessment of performance targets and performance plans by the Commission

In point 5, the PCY proposal makes reference to a Decision to be taken by examination procedure. CY considers that this process is not appropriate. Experience has shown that States are often asked to “vote” in favour or against a Decision concerning another State, without actually having an insight on the issue in question. It is a politically “uncomfortable” process. Perhaps it is best that, where the Commission finds that the revised draft performance plan is not consistent with the required criteria and conditions, to simply raise it to a higher level and initiate legal proceedings.

Article 22 Establishment of charges

In point (5a) it is proposed that the Commission shall, in consultation with the Member States, air traffic service providers and airspace users conduct a study, including a feasibility study, on the impact of the modulation of charges on air traffic and on stakeholders. The text is confusing. A simpler text could be “*the Commission shall, in consultation with the Member States, air traffic service providers and airspace users **conduct a feasibility study** on the impact of the modulation of charges on air traffic and on stakeholders.*”

Article 33 Flexible use of airspace

In point 2 it is proposed that Member States and the Commission shall **report** annually the application, in the context of the common transport policy, of the concept of the flexible use of airspace in respect of the airspace under their responsibility. CY recommends not to burden the system with yet another mandatory reporting process. A **review** could be adequate – this review could optionally include the production of a report addressed to the Community.

Finally, CY has a number of minor (mainly editorial) comments on the proposal to amend the EASA BR. These appear within the text in track changes.

Suggestions for amendments follow, either in track changes or in comment boxes.

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union , and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

[recitals not reproduced]

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down rules for the creation and effective functioning of the Single European Sky in order to reinforce ~~current~~ air traffic safety standards, to contribute to the sustainable development of the air transport system and to improve the overall performance of air traffic management and air navigation services for general air traffic in Europe, with a view to meeting the requirements of all airspace users. The Single European Sky shall comprise a coherent pan-European network, a progressively more integrated airspace, network management and air traffic management systems based on safety, efficiency, interoperability and technological modernisation, for the benefit of all airspace users, citizens and the environment.

2. The application of this Regulation shall be without prejudice to Member States' sovereignty over their airspace and to the requirements of the Member States relating to public order, public security and defence matters, as set out in Article 44. This Regulation does not cover military operations and training. **The coordination with military authorities shall be ensured to identify and address potential impacts of the application of this Regulation on military activities.**

3. The application of this Regulation shall be without prejudice to the rights and duties of Member States under the 1944 Chicago Convention on International Civil Aviation (the Chicago Convention). In this context, this Regulation aims to assist, in the fields it covers, Member States in fulfilling their obligations under the Chicago Convention, by providing a basis for a common interpretation and uniform implementation of its provisions, and by ensuring that these provisions are duly taken into account in this Regulation and in the rules drawn up for its implementation.

Commented [REDACTED]: This looks out of place here. CYP does not think it has any added value.

COMMENTS BY CYPRUS – MAY 2021

4. This Regulation shall apply to the airspace within the ICAO EUR region where Member States are responsible for the provision of air traffic services-. Member States may also apply this Regulation to airspace under their responsibility within other ICAO regions, on the condition that they inform the Commission and the other Member States thereof.

~~5. [In the event the Regulation is adopted before the end of the transition period: This Regulation shall not apply to Gibraltar airport.]~~

~~6. Unless otherwise provided, where reference is made to the European Union Aviation Safety Agency (the Agency), such reference shall be understood as aimed at the Agency in its capacity as safety authority and not as authority in charge of performance review.~~

Article 2

Definitions

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

1. 'aerodrome control service' means an air traffic control (ATC) service for aerodrome traffic;

2. 'aeronautical information service' means a service, established within a defined area of coverage, responsible for the provision of aeronautical information and data necessary for the safety, regularity, and efficiency of air navigation;

2a. 'Agency' means the European Union Aviation Safety Agency established by Regulation (EU) 2018/1139;

3. 'air navigation service provider' means a public or private entity providing one or more air navigation services for general air traffic;

4. 'air navigation services (ANS)' means air traffic services; communication, navigation and surveillance services (CNS); ~~meteorological services~~ **including services which augment signals emitted by satellites of core constellations of GNSS for the purpose of air navigation; meteorological services for air navigation** (MET); aeronautical information services (AIS); and **air traffic data services (ADS)**;

Commented [REDACTED]: See our other comments re. ADS



5. 'air traffic control (ATC) service' means a service provided for the purpose of:

- (a) preventing collisions:
 - (i) between aircraft;
 - (ii) in the manoeuvring area between aircraft and obstructions;

(b) expediting and maintaining an orderly flow of air traffic;

6. 'air traffic data services' means services consisting in the collection, aggregation and integration of operational data from providers of surveillance services, from providers of MET and AIS and network functions and from other relevant entities, ~~or generating operational data, and~~ the provision of processed data for air traffic control and air traffic management purposes;

Commented [REDACTED]: CY maintains its reservations regarding the addition of this new service. Its scope and added value has not been adequately explained or justified. The safety, security and liability aspects need to be assessed in more detail.

~~7. 'air traffic flow and capacity management (ATFCM)' means a service aiming at protecting air traffic control from over delivery and optimising the use of the available capacity;~~

8. 'air traffic flow management (ATFM) ' means a function ~~or service~~ established with the objective of contributing to a safe, orderly and expeditious flow of air traffic covering the full trajectory by ensuring that ATC capacity is utilised to the maximum extent possible, and that the traffic volume is compatible with the capacities declared by the appropriate air traffic service providers;

9. 'air traffic management (ATM)' means the aggregation of the airborne and ground-based functions ~~and~~ services (air traffic services, airspace management and air traffic flow management, **including flight procedures design; and services consisting in the origination and processing of data and the formatting and delivering of data to general air traffic for the purpose of air navigation**) required to ensure the safe and efficient movement of aircraft during all phases of operations;

Commented [REDACTED]: Does this mean ADS ? Why not just say ADS ?

10. 'air traffic services' means the various flight information services, alerting services, air traffic advisory services and ATC services (area, approach and aerodrome control services);

COMMENTS BY CYPRUS – MAY 2021

11. 'airspace block' means an airspace of defined dimensions, in space and time, **consisting of one or more airspace structures**, within which air navigation services are provided;

12. 'airspace management' means a planning **and monitoring** function with the primary objective of ~~maximising~~ **optimising** the utilisation of available airspace by dynamic time-sharing and, at times, the segregation of airspace among various categories of airspace users on the basis of short-term needs;

Commented [12]: Airspace Management is not just planning – it includes tactical activities aiming to maximise the efficient and flexible use of airspace (e.g. to release an airspace block back to civil air traffic after a military activity was completed early).

13. 'airspace structure' means a specific volume of airspace defined with a view to ensuring the safe and optimal operation of aircraft **air traffic management**;

14. 'airspace users' means operators of aircraft operated in accordance with general air traffic rules;

15. 'alerting service' means a service provided to notify relevant organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required;

16. 'approach control service' means an ATC service for arriving or departing controlled flights;

17. 'area control service' means an ATC service for controlled flights in control areas;

18. 'baseline value' means a value defined ~~by way of estimation~~ for the purpose of setting performance targets ~~and concerning~~ **by considering determined** ~~an estimation of~~ **actual** costs or ~~determined~~ **actual** unit costs during the year preceding the start of the relevant reference period;

Commented [18]: In principle, one does not "estimate" actual figures – these are "calculated". It is true that in practice, depending when you do the calculation exercise, you may need to make some estimates. It is better to delete the word and keep the text simpler.

19. 'benchmark group' means a group of air traffic service providers with a similar operational and economic environment;

20. 'breakdown value' means the value obtained, for a given air traffic service provider, by breaking down a Union-wide performance target to the level of ~~each one or more~~ air traffic service ~~provider~~ **providers** and serving as a reference for assessing consistency of the performance target set in draft performance plan with the Union-wide performance target;

COMMENTS BY CYPRUS – MAY 2021

~~21. ‘certificate’ means a document issued by the Agency, by a national competent authority or by a national supervisory authority, in any form complying with national law, which confirms that an air traffic management and air navigation service provider meets the requirements for providing a specific service;~~

21. ‘certificate’ means a certificate as defined by Article 3(12) of Regulation (EU) 2018/1139;

22. ‘common information service (CIS)’ means a service consisting in the ~~collection~~**dissemination** of static and dynamic data ~~and their dissemination~~ to enable the provision of **U-space** services for the management of traffic of unmanned aircraft;

23. ‘communication services’ means aeronautical fixed and mobile services to enable ground-to-ground, air-to-ground and air-to-air communications for ATC purposes;

24. ‘constituents’ means tangible objects such as hardware and intangible objects such as software upon which the interoperability of the European Air Traffic management Network (EATMN) depends;

25. ‘control area’ means a controlled airspace extending upwards from a specified limit above the earth;

26. ‘cooperative decision-making’ means a process in which decisions ~~are made by consensus, are made on the basis of~~**based on** interactions and consultations with ~~the relevant Member States~~**State authorities**, operational stakeholders and other actors as appropriate ~~and aiming at consensus;~~

27. ‘cross-border services’ means air navigation services provided in one Member State by a service provider having its principal place of business ~~in~~ another Member State-;

28. ‘declaration’ means, for the purposes of air traffic management and air navigation services, a declaration as defined in Article 3(10) of Regulation (EU) 2018/1139;

~~29. ‘en route air navigation services’ means air traffic services related to control of an aircraft from the end of the take off and initial climb phase to the commencement of the approach and landing phase and the underlying air navigation services necessary to provide en route air traffic services.~~

COMMENTS BY CYPRUS – MAY 2021

30. 'en route charging zone' means a volume of airspace that extends from the ground up to, and including, upper airspace, where *en route* air navigation services are provided and for which a single cost base ~~is~~ **and a single unit rate are** established;

31. ~~Eurocontrol~~ **EUROCONTROL** is the European Organisation for the Safety of Air Navigation set up by the International Convention of 13 December 1960 relating to Cooperation for the Safety of Air Navigation;

32. 'European air traffic management network' (EATMN) means the collection of systems, ~~listed~~ **referred to** in point 3.1 of Annex VIII to Regulation (EU) 2018/1139-, enabling air navigation services in the Union to be provided, including the interfaces at boundaries with third countries;

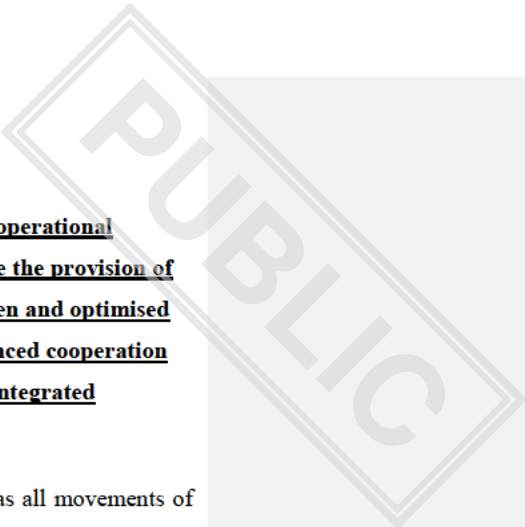
33. 'European ATM Master Plan' means the plan endorsed by Council Decision 2009/320/EC³, ~~in accordance with Article 1(2) of Council Regulation (EC) No 219/2007~~⁴ and as subsequently amended;

34. 'flexible use of airspace' means an airspace management concept, **as described by ICAO**, based on the fundamental principle that airspace should not be designated as either pure civil or military airspace, but rather be considered as a continuum in which all user requirements have to be accommodated to the extent possible ;

35. 'flight information service' means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights;

³ OJ L 95, 9.4.2009, p. 41.

⁴ ~~Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) (OJ L 064, 2.3.2007, p.1).~~



35b. ‘functional airspace block’ means an airspace block based on operational requirements and established regardless of State boundaries, where the provision of air navigation services and related functions are performance-driven and optimised with a view to introducing, in each functional airspace block, enhanced cooperation among air navigation service providers or, where appropriate, an integrated provider;

36. ‘general air traffic’ means all movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when those movements are carried out in conformity with the procedures of the International Civil Aviation Organisation (ICAO) as established by the ~~1944~~ Chicago Convention ~~on International Civil Aviation~~;

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

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

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

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

Commented [REDACTED]: CY maintains reservations about the NSA/NCA concept. If it is to be retained, then all financial oversight aspects need to be transferred to the NSAs

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

COMMENTS BY CYPRUS – MAY 2021

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

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

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

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

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

45. 'performance plan' means a plan ~~drafted or adopted, according to the case, by air traffic service providers and the Network Manager and~~ aimed at improving the performance of air navigation services and network functions;

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

47. 'route network' means a network of specified routes for channelling the flow of general air traffic as necessary for the provision of ATC services;

48. 'SESAR definition phase' means the phase comprising the establishment and updating of the long-term vision of the SESAR project, of the related concept of operations enabling improvements at every stage of flight, of the required essential operational changes within the EATMN and of the required development and deployment priorities;

COMMENTS BY CYPRUS – MAY 2021

49. ‘SESAR deployment phase’ means the successive phases of industrialisation and implementation, during which the following activities are conducted: standardisation, production and certification of ground and airborne equipment and processes necessary to implement SESAR solutions (industrialisation); and procurement, installation and putting into service of equipment and systems based on SESAR solutions, including associated operational procedures (implementation);

50. ‘SESAR development phase’ means the phase during which research, development and validation activities aiming to deliver mature SESAR solutions are conducted;

51. ‘SESAR project’ means the project to modernise air traffic management in Europe, aimed at providing the Union with a high performance, standardised and interoperable air traffic management infrastructure, and consisting in an innovation cycle that includes the SESAR definition phase, the SESAR development phase and the SESAR deployment phase;

52. ‘SESAR solution’ means a deployable output of the SESAR development phase introducing new or improved standardised and interoperable operational procedures or technologies;

53. ‘surveillance services’ means the facilities and services used to determine the respective positions of aircraft to allow safe separation;

54. ‘system’ means the aggregation of airborne and ground-based constituents, as well as space-based equipment, that provides support for air navigation services for all phases of flight;

~~55. ‘terminal air navigation services’ means aerodrome control services or aerodrome flight information services which include air traffic advisory services and alerting services; air traffic services related to the approach and departure of aircraft within a distance from the airport concerned necessary to meet operational requirements and the necessary underlying air navigation services;~~

56. 'terminal charging zone' means an airport or a group of airports, located within the territories of a Member State or Member States, where terminal air navigation services are provided and for which a single cost base ~~is~~ **and a single unit rate are** established;

57. 'upgrade' means any modification that changes the operational characteristics of a system.

Article 2a

Functional airspace blocks

1. Member States may establish a functional airspace block to develop better cooperation and coordination with a view to fostering the performance of the air traffic management network within the Single European Sky. Without prejudice to Article 5(3) to (5a) of this Regulation, Member States may jointly execute all or part of their obligations under Articles 3, 4, 5, 7, 7a, 7b, 8, 10, 13, 13a, 13b and 17 of this Regulation and of the implementing rules adopted on the basis thereof at the level of the functional airspace block.

2. Where relevant, cooperation may also include third countries taking part in functional airspace blocks.

4. Functional airspace blocks shall be established by means of an international agreement concluded between the Member States concerned and, where relevant, the third countries concerned having responsibility for any part of the airspace covered by the functional airspace block. The agreement and the list of obligations that Member States intend to implement jointly shall be notified to the Commission.

CHAPTER II

NATIONAL SUPERVISORY AUTHORITIES

Article 3

Nomination, establishment and requirements regarding national supervisory authorities

1. Member States shall, jointly or individually, either nominate or establish a body or bodies as their national supervisory authority in order to assume the tasks assigned to such authority by this Regulation-

~~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.~~

2. The national supervisory authority shall exercise its powers impartially, independently and transparently and shall be organised, staffed, managed and financed accordingly.

3. The national supervisory authority shall be independent in terms of their organisation, funding decisions, legal structure and decision-making, from any air navigation service provider-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.

4. Member States may set up ~~national supervisory~~ authorities which are competent for several regulated sectors, ~~if provided that~~ those integrated regulatory authorities fulfil the independence requirements set out in this Article. ~~The~~ **In particular, the** national supervisory authority may ~~also~~ be joined in respect of its organisational structure with **other public authorities, in particular** the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003⁵, ~~if the joint body~~ **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.

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

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

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

~~6. 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 service providers. 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. 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.~~

~~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.~~

⁵ 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).

COMMENTS BY CYPRUS – MAY 2021

~~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.~~

~~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.~~

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

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

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.

Commented [REDACTED] Numbering error

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

Article 4

Tasks of the national supervisory authorities

1. The national supervisory authorities ~~referred shall, carry out the tasks assigned to it under this Regulation and the implementing acts adopted on the basis thereof, in Article 3 shall:~~ **particular the following tasks:**

~~(a) conduct verify the activities necessary for compliance with, and the issuance/fulfilment of the economic certificates, national security and defence requirements by the service providers referred to in Article 67(1a)b, Article 8(1) and Article 8(4)d);~~

(b) monitor compliance with the requirements set out in Article 8(3);

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

~~(d) tasks linked to the preparation of the draft performance plan, including the oversight of the holders of those economic certificates;~~

~~(b) oversee the correct application setting of criteria for allocation of procurement requirements in accordance with Article 8(6);~~

~~(e) apply costs and the setting of performance and targets, the monitoring of performance and to the charging schemes as set out, and within the limits of, in in Articles 10 to 13b, 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23, within the limits of their tasks defined in those articles and acts, and oversee the;~~

(e) oversee the application of the Regulation regarding the transparency of accounts of designated air traffic service providers in accordance with Article 25, audit or verify and approve the financial data referred to in Article 25(4).

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.~~

Commented [redacted] CY maintains its reservations regarding the NSA/NCA idea. It is proposed here to "create" a new entity which is solely concerned with performance planning aspects. However, there are a number of other, financial/economic type of requirements on ANSPs (within EU 2017-373) which are closely associated with the PP process i.e. Business Plans, Annual Plans, Annual Reports, financial strength etc. Who will oversee those? Under the current (but also with the proposed) framework this oversight is done by the NCAs (since 373 is an IR of the EASA BR). We need to decide where to place the financial oversight requirements. CYP prefers that they are all in this SES II+ Main Act and amend (EU) 2017-373 accordingly.

Commented [redacted]: There are no criteria for compliance and, in this respect, CYP considers that the NSAs cannot fulfil this task.

3. Each national supervisory authority shall ~~conduct the necessary, in cooperation with the national competent authority where it is a different entity, conduct the necessary monitoring activities, including, as appropriate,~~ inspections ~~and audits and other monitoring activities,~~ on the economic aspects of the EASA Basic Regulation and its implementing acts, including the requirements on Business Plans, Annual Plans, Annual Reports and financial strength to verify the compliance of ~~to the identify possible infringements non-compliance by the~~ entities subject to their oversight under this Regulation of the requirements set out in this Regulation ~~and the delegated and implementing acts adopted on the basis thereof.~~

Commented [REDACTED]: This text is proposed as mitigation, in case the financial oversight aspects are split between the NSAs/NCAs.

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

~~The air navigation service providers, airport operators and the common information service CIS providers concerned shall comply with the heavy enforcement measures taken by the national supervisory authorities to this effect, in that context. 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 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.~~

Commented [REDACTED]: CY has a lot of reservations on the enforcement aspects of this Article. There are no explicit criteria for verifying compliance with these aspects and no enforcement provisions. By comparison the EASA BR and its IRs contain very explicit provisions re findings (e.g. categorisation in Level 1 and Level 2, what to do in each case etc. etc)

Article 5

Co-operation between national supervisory authorities

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,~~ 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.

2. The national supervisory authorities shall cooperate, ~~where appropriate~~ **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.

~~3. National supervisory authorities shall facilitate the provision of cross border services by air navigation service providers for the purpose of improving network performance.~~ **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, 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.~~

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 ~~supervisory~~ tasks set out in this Regulation and of the results of the discharge of these tasks. They shall also specify which national supervisory authority shall be in charge of the ~~economic certification~~ **tasks** set out in Article ~~6-4(1)~~.

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

5a. Agreements referred to in this Article shall be notified to the Commission.

CHAPTER III

SERVICE PROVISION

Article 6

Economic certification and requirements for Provision of services by air navigation service providers

~~1. Air navigation service providers shall, in addition to the certificates they are required to hold pursuant to Article 41 of Regulation (EU) No 2018/1139, hold an economic certificate. This economic certificate shall be issued upon application, when the applicant has demonstrated sufficient financial robustness and has obtained appropriate liability and insurance cover.~~

~~The economic certificate referred to in this paragraph may be limited, suspended or revoked when the holder no longer~~ **2. Without prejudice to Articles 7 and 7a of this Regulation, an entity that** complies with the requirements ~~for issuing~~ **set out in Articles 40** and ~~maintaining such certificate.~~

~~2. An entity that holds an economic certificate referred to in paragraph 1 and a certificate referred to in Article 41 of Regulation (EU) No 2018/1139 and in the delegated acts and implementing acts adopted on the basis thereof shall be entitled to provide within the Union air navigation services for airspace users within the Union, under non-discriminatory conditions, without prejudice to Article 7(2);~~

~~3. The economic~~ **2a. In the case a Member States has granted to an air navigation service provider an exemption from the requirement to hold a** certificate referred to in paragraph 1 and the certificate referred to in ~~pursuant to~~ **Article 41(6)** of Regulation (EU) No 2018/1139 may be subject to one or several ~~2018/1139, that Member State may, notwithstanding paragraph 2,~~ **allow that service provider to provide air navigation services in the part of the airspace under its responsibility for which this exemption was granted and in compliance with the** conditions set out in ~~Annex I. Such conditions that Article,~~

Commented [REDACTED]: Where is 1 ?

3. Notwithstanding paragraph 2, Member States may allow the provision of air navigation services referred to in Article 2(3)c) of Regulation 2018/1139 in all or part of the airspace under their responsibility by the military without application of this Regulation. In such cases, the Member State concerned shall be objectively justified, non-discriminatory, proportionate and transparent. The Commission and the other Member States of its decision. The provision of those services shall be empowered to adopt delegated acts in accordance with Article 36 in order to amend the list set out in Annex I for the purposes of providing for an economic level playing field and resilience of service provision. the conditions laid down in Article 2(5) of Regulation 2018/1139.

~~4. — The national supervisory authorities of the Member State where the natural or legal person applying for the economic certificate has its principal place of business or, if that person has no principal place of business, where it has its place of residence or place of establishment, shall be responsible for the tasks set out in this Article in respect of the economic certificates. In the case of provision of air navigation services in an airspace falling under the responsibility of two or more Member States, the national supervisory authorities responsible shall be those specified in accordance with Article 5(4).~~

~~5. — For the purpose of paragraph 1, the national supervisory authorities shall:~~

~~(a) receive and assess the applications made to them, and, where applicable, issue or renew economic certificates;~~

~~(b) perform oversight of holders of economic certificates.~~

~~6. — The Commission shall adopt, in accordance with the examination procedure referred to in Article 37(3), implementing rules regarding detailed requirements on financial robustness, in particular financial strength and financial resilience, as well as in respect of liability and insurance cover. In order to ensure the uniform implementation of and compliance with paragraphs (1), (4) and (5) of this Article, the Commission shall adopt implementing acts, in accordance with the examination procedure referred to in Article 37(3), laying down detailed provisions concerning the rules and procedures for certification and for conducting the investigations, inspections, audits and other monitoring activities necessary to ensure effective oversight by the national supervisory authority of the entities subject to this Regulation.~~

Article 7

Designation of air traffic service providers

1. Member States shall ensure the provision of air traffic services on an exclusive basis within specific airspace blocks in respect of the airspace under their responsibility. For this purpose, Member States shall individually or collectively, designate one or more air traffic service provider(s). **Member States shall have discretionary powers in designating air traffic service provider(s), on the condition that the air traffic service provider(s) fulfills the requirements laid down in this Article.**

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

(a) they ~~shall hold a valid certificate or a valid declaration as referred to in~~ **pursuant to** Article 41 of Regulation (EU) 2018/1139 ~~and an economic certificate in accordance with~~ **or a valid declaration pursuant to Article 6(1)-41(5) of that Regulation (EU) 2018/1139;**

(b) they ~~shall~~ comply with the national security and defence requirements;

~~Each decision to designate an air traffic service provider shall be valid for a maximum of ten years. Member States may decide to renew the designation of an air traffic service provider.~~

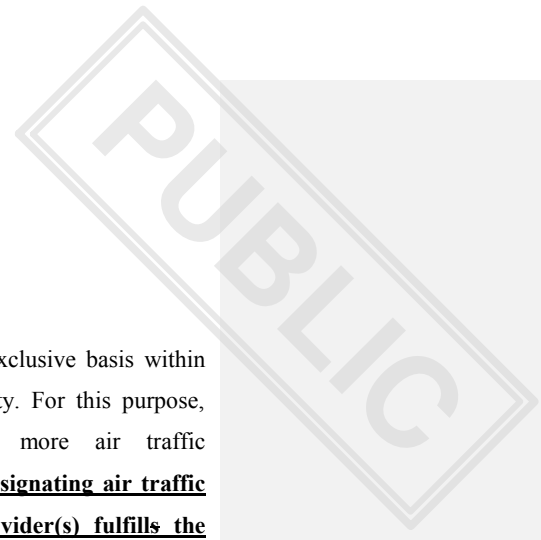
(c) their principal place of business is located in the territory of a Member State;

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

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

(a) be owned directly or through a majority holding by the designating Member State or its nationals;

(b) have their principal place of operation or registered office in the territory of the designating Member State;



(c) use only facilities in the designating Member State.

3. Member States shall specify the rights and obligations to be met by the air traffic service providers; designated ~~individually or jointly~~. ~~The obligations shall include conditions for making available relevant data enabling all aircraft movements to be identified in the airspace under their responsibility~~ **in accordance with this Article.**

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

Article 7a

Designation of MET providers

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

2. Member States shall inform the Commission and other Member States without delay of any decision within the framework of this Article regarding the designation of a MET provider.

Article 7b

Relations between air traffic service providers

1. Air traffic service providers may avail themselves of the services of other service providers that hold a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 or a valid declaration pursuant to Article 41(5) of that Regulation. Such cooperation shall be made in accordance with Article 8 where applicable.

Such cooperation shall be subject to the authorisation of the Member States concerned.

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

Article 8

**Conditions regarding the provision of CNS, AIS, ADS, MET and ~~terminal~~ air traffic services
for approach and aerodrome control**

~~1. Where this enables cost efficiency gains to the benefit of airspace users,~~ **1. Without prejudice** to the benefit of airspace users, **rights and obligations defined by their designating State under Article 7(3), designated** air traffic service providers may decide to procure CNS, AIS, **or** ADS ~~or MET services under market conditions.~~

~~Where this enables cost efficiency gains to the benefit of airspace users, Member States shall allow airport operators to procure terminal air traffic services for aerodrome control under market conditions.~~

~~In addition,~~ **1a. Except in cases** where this enables cost efficiency gains to the benefit of airspace users **Member States have designated a MET providers in accordance with Article 7a,** Member States may allow **air traffic service providers to procure MET.**

1b. Member States may allow airport operators to procure air traffic services for aerodrome control and airport operators or the national supervisory authority concerned **a group of airport operators** to procure ~~terminal~~ air traffic services for approach control ~~under market conditions.~~

~~2. Procurement of services under market conditions shall be on the basis of equal, non-discriminatory and transparent conditions in accordance with Union law including Treaty rules on competition. The tender procedures for the procurement of the services concerned shall be designed so as to enable the effective participation of competing providers in these procedures including through regular reopening of competition.~~

~~3. Member States shall take all necessary measures to ensure that the provision of on route air traffic services is separated in terms of organisation from the provision of CNS, AIS, ADS, MET and terminal air traffic services and that Member States shall designate the service provider selected as a result of procurement referred to in the first subparagraph.~~

3. In addition to the requirement **on all air navigation service providers** concerning the separation of accounts referred to in Article 25(3) ~~is respected.~~

~~4. A provider), air navigation services providers which compete for, or engage in, the provision of CNS, AIS, ADS, MET or terminal air traffic services may only be selected in accordance with this Article under market conditions shall place activities related to those services in a business entity operating independently.~~

Commented [REDACTED]: CY requests more clarity regarding this issue

The national supervisory authority shall monitor the compliance with the requirements of this paragraph and, where it concludes that an air navigation service provider has failed to comply with those requirements, it shall impose-enforce appropriate remedial measures to be implemented by the service provider concerned.

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

~~(a) it is certified in accordance with Article 6(1) and 6(2);~~

(a) hold a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 or a valid declaration pursuant to Article 41(5) of that Regulation;

(b) its principal place of business is located in the territory of a Member State;

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

(d) the service provider ~~fulfils~~ **complies with** national security and defence requirements.

By way of derogation, a provider of global satellite services that was granted a certificate pursuant to Article 41 of Regulation (EU) 2018/1139 prior to the adoption of this Regulation may be selected to provide services in the Union even if it does not comply with the conditions set out in letters b) and c).

5. Articles 44, **13, 13a, 13b and** 17 and 49 to 22 **the implementing rules relating to those Articles adopted on the basis of Article 18** shall not apply to the ~~terminal~~ **MET providers selected or to the** air traffic service providers designated as a result of a procurement procedure **conducted** in accordance with ~~the second and third subparagraphs of paragraph 1.~~ **paragraphs 1a and 1b.** Those ~~terminal~~ air traffic service providers shall provide data on the performance of air navigation services in the key performance areas ~~of~~ **referred to in Article 10(2)a) and in** safety, **area to** the environment, capacity and cost efficiency to national supervisory authority and the Agency acting as ~~PRB~~ **Commission** for monitoring purposes.

6. National supervisory authorities shall ensure that procurement by air traffic service providers and airport operators as referred to in paragraph 1 complies with paragraph 2, and where necessary shall apply corrective measures. In the case of terminal air traffic services, they shall be responsible for approving tender specifications for terminal air traffic services, which shall include requirements on service quality. The national supervisory authorities shall refer to the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003 matters relating to the application of competition rules.

Article 9

Provision of common information services

1. Where ~~common information services~~ **CIS** are provided, the data disseminated shall present the integrity and quality necessary to enable the safe **and secure** provision of services for the management of traffic of unmanned aircraft.

2. The ~~price for common information services~~ **CIS provider** shall be based on **fulfill** the ~~fixed~~ **following requirements:**

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

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

(c) Member States or nationals of Member States own more than 50% of the service concerned provider and may, in addition, include a mark up reflecting effectively control it, whether directly or indirectly through one or more intermediate undertakings, except where otherwise as provided for in an appropriate risk return trade off agreement with a third country to which the Union is a party.

3. The costs referred to in the first subparagraph on the basis of which the price for CIS is based shall be set out in an account separate from the accounts for any other activities of the operator concerned and shall be made publicly available accessible by the national supervisory authority concerned.

3. The common information service provider shall set the price in accordance with paragraph 2. Where CIS are provided on an exclusive basis, Member States shall impose that the price for CIS is based on the fixed and variable costs of providing the service concerned and/or includes a mark-up reflecting an appropriate risk-return trade-off.

4. The price set by the CIS provider shall be subject to assessment and approval by the national supervisory authority concerned.

4. As far as operations in specific volumes of airspace designated by the Member States for unmanned aircraft operations are concerned, relevant operational data The price of such services shall be made available in real time by air navigation service providers. Common information service providers shall use those data only for operational purposes of the services they provide. publicly available.

5. Access to relevant operational data shall be granted to common information service CIS providers, on a non-discriminatory basis, without prejudice to national security or, public order and defence policy interests. CIS providers shall use those data only for operational purposes of the services they provide.

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

Article 9a

Availability of and access to operational data for general air traffic

1. With regard to general air traffic, relevant operational data shall be made available in real-time, on a non-discriminatory basis and without prejudice to national security or defence policy interests, by all air navigation service providers, airspace users, airports and the Network Manager, including on a cross-border and a Union-wide basis. Such availability shall be to the benefit of certified or declared-air navigation service providers, military entities in charge of security and defence activities, military air navigation service providers, airspace users and airports as well as the Network Manager. The data shall be used only for operational purposes.

3. Access to relevant operational data as referred to in paragraph 1 shall be granted free of charge to the authorities in charge of security, public order, and defence, to national supervisory authorities, to national competent authorities, to the Network Manager, and to the Agency in accordance with Regulation (EU) 2018/1139.

4. The Commission shall, in accordance with the examination procedure referred to in Article 37(3), determine the specific operational data covered by this Article and define the technicalities of such data provision, as well as the conditions for access to those data and the related costs.

Article 9b

Performance review body

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 group of experts to act as a 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 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.

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 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.

Article 10

Performance scheme

1. To improve the performance of air navigation services and ~~of network functions~~ **management** in the Single European Sky, a performance scheme for air navigation services and network ~~functions~~ **management** 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 ~~two~~three years and a maximum of five years. The performance scheme shall include:

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

(b) performance plans including binding performance targets and incentive schemes in the key performance areas mentioned in point (a) for each reference period as well as as adequate justifications regarding the safety of air navigation services;

Commented [REDACTED]: To enhance the interdependency with safety

(c) periodic review, monitoring and benchmarking of performance in the key performance areas mentioned in point (a) and relevant safety indicators defined in coordination with the environment, capacity and cost efficiency Agency.

~~3. The Commission may add additional key performance areas for performance target setting or monitoring purposes, where necessary, scheme referred to improve performance.~~

~~3. Points (a), (b) and (c) of paragraph in paragraphs 1 and 2 shall be based on:-~~

(a) the collection, validation, examination, evaluation and dissemination of relevant data related to the performance of air navigation services and network ~~functions~~management from all relevant parties, including air navigation service providers, airspace users, airport operators, national supervisory authorities, national competent authorities, ~~Member States and other national authorities,~~ the Agency, the Network Manager and ~~Eurocontrol~~EUROCONTROL;

(b) key performance indicators for target setting in the key performance areas ~~of the environment, capacity and cost efficiency;~~referred to in paragraph 2(a);

(c) indicators for monitoring performance in the key performance areas ~~of~~referred to in paragraph 2(a) and relevant safety, ~~the environment, capacity and cost efficiency~~ indicators defined in coordination with the Agency;

~~(d)~~ a methodology ~~for the development~~to calculate breakdown values;

- (d) principles governing the establishment** 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~~ **management, 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 **management;**
- (f) monitoring of performance plans, including appropriate alert mechanisms for revision of performance plans and targets and for the revision of Union-wide performance targets in the course of a reference period;
- (g) benchmarking of air navigation service providers, **where relevant;**
- (h) incentive schemes including ~~for 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 air navigation services** during the reference period ~~or where it has not implemented~~ **unless this under- or overachievement is due to reasons outside** the relevant common projects referred to in Article 35. ~~Such financial disincentives shall in particular take account of the deterioration in the level of air traffic 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~~ **provider's control;**
- (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 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.
- (m) assurances for the safety of the services, based on the indicators referred to in point (c) above.**

4. The setting of the performance targets included in the performance plans, the preparation and the assessment of draft performance plans, including the allocation of costs between services, as well as the monitoring and benchmarking of performance of the air navigation services and network management shall take into account the impact on safety, the impact of local circumstances as well as factors that fall outside the air navigation service providers' and the Network Manager's control.

Article 11

Establishment of the Union-wide performance targets

1. The Commission shall, **in accordance with the examination procedure referred to in Article 37(3) and with paragraphs 2 to 3 of this Article,** adopt the Union-wide performance targets for *en route* air navigation services ~~and for terminal air navigation services~~, in the key performance areas of ~~environment, capacity and cost efficiency~~ **referred to in Article 10(2)a)** for each reference period, ~~in accordance with the advisory procedure referred to in Article 37(2) and with paragraphs 2 to 3 of this Article.~~ **and define the duration of that period.** In conjunction with ~~the~~ **those** Union-wide performance targets, the Commission may define complementary baseline values, **alert thresholds,** breakdown values ~~or~~ **and** benchmark groups, for the purpose of enabling the assessment and approval of draft performance plans in accordance with the criteria referred to in Article 13(3), **paragraphs 3 and 3a, and with Article 13a.**

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~~ **strive aim to** gradual, ~~continuous~~ improvements in respect of the **environmental,** operational and economic performance of air navigation services;

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

(c) they shall take into account the economic and operational context of the reference period, including traffic forecast and operational data, as well as the interdependencies between the key performance areas referred to in Article 10(2)a) and the need to fulfill the relevant EU safety requirements and EU environmental objectives.

3. For the purposes of preparing its decisions on Union-wide performance targets, the Commission shall **consult and** collect any necessary input from **national authorities, EUROCONTROL, and operational** stakeholders. ~~Upon~~ **and may** request **the opinion** 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~~ **where a PRB has been designated in accordance with Article 9b.**

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 (28) 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 (28) 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 (28) 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(3).

Article 13

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

1. The designated air traffic service providers for *en route* air traffic services Member States shall, for each reference period, **individually or collectively at functional airspace block level**, adopt a draft performance ~~plans~~**plan, as prepared by the national supervisory authority, with inputs from other national authorities if relevant, based in particular on the input of the designated air traffic service provider(s) and of the designated MET providers in** respect of all the *en route* air navigation services which they provide **that service provider provides** and, where applicable, ~~procure~~**procures** 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. ~~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~~

1a. Before the start of each reference period, each national supervisory authority shall lay down the criteria to allocate the costs common to en route and terminal air navigation services between the two categories of services taking into account the principle of cost-relatedness. It shall include this information in the draft performance plans. The national supervisory authority shall ensure that the cost bases for charges comply with those criteria and the requirements of Article 20.

1b. For each reference period, the national supervisory authority shall set and include in the draft performance plan, in the key performance areas referred to in Article 10(2)a), 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, and performance targets for terminal air navigation services. Those draft performance plans shall take account of the European ATM Master Plan. ~~The draft performance plans shall be made publicly available, and the interdependencies between the key performance areas referred to in Article 10(2)a) and the need to fulfill the relevant EU safety requirements and EU environmental objectives.~~

2. The draft performance plans for ~~en route air navigation services~~ referred to in paragraph 1 shall include relevant information, **in particular traffic forecasts and operational data,** provided by **EUROCONTROL and** the Network Manager. ~~Before adopting those~~

~~In preparing the draft plans, designated air traffic service providers~~ **performance plan the national supervisory authority** 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 as well as the national competent authority responsible for their certification, which shall verify in case the compliance with Regulation (EU) 2018/1139 national supervisory authority and the delegated and implementing acts adopted on the basis thereof national competent authority are two different entities.~~

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 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 ~~en route air navigation services~~ **services relevant for, to be included in the draft performance plan,** with Union-wide performance targets shall be established **taking into account local circumstances and** according to **all or part of** 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;

COMMENTS BY CYPRUS – MAY 2021

(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

~~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 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 Agency acting as PRB for assessment and approval.~~

~~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.~~

COMMENTS BY CYPRUS – MAY 2021

~~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.~~

~~7. The Agency acting as PRB shall assess the performance targets for *en route* air navigation services and the performance plans according to the criteria and conditions set out in paragraph 3. 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 Agency acting as PRB finds that the draft performance plan meets those criteria and conditions, it shall approve it.~~

~~Where the 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 performance plan does not meet the additional conditions set out in paragraph 3, it shall deny the approval.~~

~~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. The Agency acting as PRB shall assess the revised draft performance plan referred to in paragraph 8 in accordance with the criteria and conditions set out in paragraph 3. Where a revised draft performance plan meets those criteria and conditions, the Agency acting as PRB shall approve it.~~

~~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.~~

COMMENTS BY CYPRUS – MAY 2021

~~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.~~

~~10. Draft performance plans approved by the Agency acting as PRB shall be adopted by the designated air traffic service providers concerned as definitive plans, and shall be made publicly available.~~

~~11. The 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 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 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. 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 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~~

~~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.~~

~~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.~~

COMMENTS BY CYPRUS – MAY 2021

~~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.~~

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

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.

43b. The **adopted** draft performance plans ~~for terminal air navigation services referred to in paragraph 1,~~ **shall be made publicly available, without prejudice to confidentiality of sensitive information.**

5. The adopted draft performance plans shall be submitted to the ~~national supervisory authority~~ **Commission** for assessment and approval **in accordance with Article 13a.**

~~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).~~

Article 13a

Assessment of performance targets and performance plans by the Commission

1. The ~~national supervisory authority~~ **Commission** shall assess the performance targets for ~~terminal~~ **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 ~~paragraph~~ **Article 13, paragraphs 3 and 3a.**

2. 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. **consistency of performance targets for en route air navigation services with Union-wide targets cannot be established on the basis of the criteria laid down in Article 13(3), the Commission shall assess whether the divergence from these criteria can be justified by local circumstances and/or interdependencies between key performance areas, in the light of the information provided in the draft performance plans and by safety considerations. If that is the case, performance targets for en route air navigation services shall be considered consistent with Union-wide targets.**

A deviation of performance targets for en route air navigation services from Union-wide performance targets with respect to cost-efficiency or capacity key performance areas may be allowed where necessary to ensure consistency of performance targets for those services with Union-wide performance targets with respect to environment key performance areas.

3. Where the national supervisory authority **Commission** finds that the **adopted** draft performance plan meets ~~those~~ **the** criteria and conditions **set out in Article 13(3) and (3a) read in combination with paragraph 2 of this Article**, it shall approve it: **by means of an implementing act adopted in accordance with the examination procedure referred to in Article 37(3).**

Where the national supervisory authority **Commission** finds that ~~one or several performance targets for terminal air navigation services are not consistent with the Union wide performance targets or the **adopted draft** performance plan does not meet the additional~~ **those criteria and** conditions ~~set out in paragraph 3~~, it shall ~~deny~~ **by means of an implementing act adopted in accordance with the examination procedure referred to in Article 37(3), request** the approval.

7. Where the national supervisory authority has denied approval of **Member State(s) concerned to submit a revised** draft performance plan ~~in accordance with paragraph 6~~, **The Member State(s) concerned shall adopt and submit** a revised draft performance plan ~~shall be presented by the designated air traffic service provider concerned, including where necessary revised targets~~ **to the Commission for assessment.**

8. The national supervisory authority shall assess ~~4. Where the Commission finds that~~ the revised draft performance plan referred to in paragraph 7 in accordance with the ~~meets the~~ criteria and conditions set out in paragraph 3. Where a revised draft performance plan meets those criteria and conditions, the national supervisory authority ~~Article 13(3) and (3a) read in combination with paragraph 2 of this Article, it~~ shall approve it ~~by means of an implementing act adopted in accordance with the examination procedure referred to in Article 37(3).~~

Where ~~at~~ the Commission finds that there are doubts about the compliance of the revised draft performance plan ~~does not meet~~ with those criteria and conditions, ~~the national supervisory authority~~ it shall deny its approval and shall require the designated air traffic service provider to present a final draft performance plan.

Where ~~the~~ initiate a detailed examination of that 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 and of the relevant local circumstances, requesting additional information from the Member State concerned if necessary.

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.~~

95. Where, having carried out the detailed examination, the Commission finds that the revised draft performance plan meets the criteria and conditions set out in Article 13(3) and (3a) read in combination with paragraph 2 of this Article, it shall approve it by means of an implementing act adopted in accordance with the examination procedure referred to in Article 37(3).

Where however the Commission finds that the revised draft performance plan is not consistent with those criteria and conditions, the Commission shall adopt a decision setting out the corrective measures which the Member State(s) concerned is to take, in accordance with the examination procedure referred to in Article 37(3).

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

Where the Commission finds that those measures are sufficient to ensure compliance with its decision, it shall notify the Member State(s) concerned thereof and approve the revised draft performance plan by means of an implementing act adopted in accordance with the examination procedure referred to in Article 37(3).

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

Commented [REDACTED]: The examination procedure may not be the best option for such cases. Experience has shown that States are asked to "vote" in favour or against a Decision regarding another State without knowing anything on the subject. It is an uncomfortable process. Perhaps it is best that where the Commission finds that the revised draft performance plan is not consistent with those criteria and conditions they raise it to a higher level and initiate legal proceedings.

~~6. Draft performance plans~~ **and revised draft performance plans** approved by the ~~national supervisory authority~~ **Commission in accordance with this Article** shall be adopted by the ~~designated air traffic service providers~~ **Member States** concerned as definitive plans, and shall be made publicly available, **without prejudice to confidentiality of sensitive information.**

~~10. The national supervisory authority concerned~~

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 approved in accordance with Article 13a, whether those plans are implemented correctly and whether it shall implement the incentive schemes referred to in Article 10(3h).

2. The national supervisory authorities shall issue regular reports on the monitoring of performance of ~~terminal~~ air navigation services, ~~including regular assessments of~~ **provided by** the achievement of the performance targets for terminal air navigation services for **designated** air traffic service providers and ~~making~~ **make** the results of those assessments publicly available, **without prejudice to confidentiality of sensitive information.**

The designated air traffic service ~~provider~~ **providers** shall provide the information and data necessary for ~~the~~ **such** 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.**

2a. Where performance targets contained in the performance plans 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, assess whether this is due to safety considerations or where the performance plan continues to be incorrectly implemented, or where corrective measures imposed are not or not properly applied external factors beyond the air traffic service provider's control. In particular, 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).~~ assess the impact of 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. In case the underperformance cannot be justified by reference is not due to safety considerations or external factors, the national supervisory authority may require corrective measures to be implemented by the air traffic service providers.

11. Member States **2b. Financial incentives and disincentives** shall ensure that decisions taken by take into account the national supervisory authority pursuant to deterioration of service and be proportionate 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), magnitude of the variation between the draft achieved performances and the performance targets set in the approved 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 Financial incentives and disincentives may only be applied where the over or under performance is attributable to the air traffic service provider concerned. Such disincentives shall not be such as to affect the financial viability of that air traffic service provider and the safety and quality of the services provision.

3. The Commission shall carry out regular assessments of the overall achievement of the Agency acting as PRB as regards the monitoring of Union-wide performance targets for terminal air navigation services and present the results to the committee referred to in Article 37(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.~~

Article 16

Network Performance Plan

1. The Network Manager shall, for each reference period, draw up, **in accordance with the cooperative decision-making process referred to in Article 26(7)**, a draft Network Performance Plan in respect of all the network functions which it delivers.

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 cost efficiency **referred to in Article 10(2)a)**.

2. The draft Network Performance Plan shall be submitted to the Agency acting as PRB and to the Commission **for assessment and adoption**.

COMMENTS BY CYPRUS – MAY 2021

The Agency acting as PRB shall, upon request from the Commission, deliver an opinion to the Commission on **2a. The Commission shall assess** the draft Network Performance Plan based on the following essential criteria:

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

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

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

Article 17

Revision of performance targets and performance plans during a reference period

1. Where, during a reference period, Union-wide performance targets are no longer adequate, in light of significantly changed circumstances **or safety considerations**, and where the revision of **one or several** targets is necessary and proportionate, the Commission shall revise those Union-wide performance targets. ~~Article 11 shall apply to such decision. Subsequent to such revision, designated air traffic service providers shall adopt new draft performance plans, to which Articles 13 and 14 shall apply. The Network Manager shall draw up a new draft Network Performance Plan, to which Article 16 shall apply.~~ **Article 11 shall apply to such decision.**

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

Following the revision referred to in the first subparagraph, the Network Manager shall draw up a new draft Network Performance Plan. Article 16 shall apply to the adoption of that new 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 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, during a reference period. ~~Such a request can be made~~ where alert thresholds are reached, or where ~~the designated air traffic service providers demonstrate~~**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.

4. The Agency acting as PRB as regards *en route* air navigation services, or the national supervisory authority concerned as regards terminal air navigation services, shall authorise the designated air traffic service provider concerned to proceed with the intended revision 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, designated air traffic service providers shall adopt new draft performance plans, in accordance with the procedures set out in Articles 13 and 14. **In such a case, Member States shall revise the performance plans with respect to the targets concerned, in accordance with the procedures set out in Articles 13 and 13a. The consultation referred to in Article 13(2) may be limited, for the purpose of this paragraph, to the performance targets and parts of the performance plans which are directly or indirectly affected by the revision.**

Article 18

Implementation of the performance scheme

For the implementation of the performance scheme, the Commission shall, **by means of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3)**, adopt detailed requirements and procedures in respect of Articles 10(3), 11, ~~12~~, 13, ~~14~~, ~~15~~ **13a, 13b**, 16 as well as ~~as~~ **and** 17, in particular as regards the ~~development~~ **preparation, assessment, approval and revision** 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~~, **the incentive schemes, the** 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 procedure referred to in Article 37(2).~~

Article 19

Principles for the charging scheme

1. Without prejudice to the possibility for Member States to finance the provision of air ~~traffic~~navigation services covered in this Article through public funds, charges for air navigation services shall be determined, imposed and enforced on airspace users ~~in accordance with Article 15 of the Chicago Convention and with this Article as well as Articles 20 to 22 and the implementing acts adopted on the basis thereof. The charging scheme set up under this Article as well as Articles 20 to 22 shall be consistent with the EUROCONTROL Charging System for en route charges.~~

2. Charges shall be based on the costs of air ~~traffic~~navigation service providers incurred in ~~respect~~relation to the provision of services and functions ~~delivered~~made available to, or for the benefit of, airspace users over fixed reference periods as defined in Article 10(2). Those costs may include a reasonable return on assets ~~to contribute towards necessary capital improvements.~~

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

4. ~~Revenues from charges imposed on airspace users may result in financial surpluses or losses for air traffic service providers due to the application of the incentive schemes referred to in point (h) of Article 10(3) and the risk sharing mechanisms referred to in point (i) of Article 10(3).~~

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

6. Financial data on determined ~~costs~~and actual costs ~~and revenues~~ of designated air traffic service providers shall be reported to national supervisory authorities ~~and the Agency acting as PRB and shall be made publicly available.~~

Article 20

Cost bases for charges

1. The cost bases for charges for ~~en route air navigation services and charges for terminal air navigation services~~ shall consist of the determined costs, **as established in the performance plans adopted in accordance with Article 13a(6)**, related to the provision of those services in the en route charging zone and terminal charging zone concerned, ~~as established in the performance plans adopted in accordance with Articles 13 and 14.~~

2. The determined costs referred to in paragraph 1 shall include the costs of relevant facilities and services, ~~appropriate amounts for interest on~~ **cost of capital investment** and depreciation of assets, as well as the costs of maintenance, operation, management and administration: **and other staff costs.**

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

(a) ~~costs incurred by the air traffic service providers for fees and charges paid to the Agency acting as PRB;~~

(b) ~~costs or parts thereof incurred by the air traffic service providers, in relation to their~~ **related to the oversight and certification by of air navigation services incurred by** national supervisory authorities, **national competent authorities, and other national authorities** unless other financial resources are used by Member States to cover such costs;

(c) costs incurred by the air ~~traffic~~ **navigation** service providers in relation to the provision of air navigation services ~~and network functions, including the tasks entrusted to the Network Manager,~~ unless other financial resources are used by Member States to cover such costs;

(d) costs incurred in relation to network functions, in particular in relation to the tasks entrusted to the Network Manager;

(e) costs stemming from the EUROCONTROL International Convention relating to cooperation for the safety of air navigation of 13 December 1960 as last amended, unless other financial resources are used by Member States to cover such costs.

4. Determined costs shall not include the costs of penalties imposed by Member States ~~referred to in~~ **accordance with** Article 42 ~~nor the costs of any corrective measures referred to in Article 13(11) and Article 14(10).~~

~~5. Cross-subsidy shall not be allowed between en route air navigation services and terminal air navigation services.~~ **5.** Costs that pertain to both en route air navigation services and terminal air navigation services shall be allocated in ~~a proportional way~~ **compliance with the criteria laid down by the national supervisory authority in accordance with Article 13(1a).**

Cross-subsidy between en route air navigation services and terminal air navigation services ~~on the basis of a transparent methodology~~ **shall not be allowed.** Cross-subsidy shall be allowed between different air navigation services ~~in~~ **within** either one of those two categories-only when justified for objective reasons, subject to transparent identification in accordance with Article 25(3).

6. Designated air traffic service providers shall provide details of their cost base to the ~~Agency acting as PRB, the~~ national supervisory ~~authorities~~ **authority** and the Commission. To this end, costs shall be broken down ~~in line with the separation of accounts referred to in Article 25(3), and~~ by distinguishing staff costs, operating costs other than staff costs, depreciation costs, cost of capital, costs ~~incurred for fees and charges paid to the Agency acting as PRB,~~ **referred to in Article 20(3)**, and exceptional costs.

Article 21

Setting of Charging zone and unit rates

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

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

2. Unit rates shall be set by Member States, and be subject to verification by the Agency acting as PRB Commission that they comply with Article 19, Article 20 and with this Article. Where the Agency acting as PRB Commission finds that a unit rate does not fulfill those requirements, the unit rate shall be reviewed accordingly by the national supervisory authority concerned. ~~Where a unit rate continues to not fulfill those requirements, the Agency acting as PRB shall conduct an investigation and provide an opinion to the Commission in accordance with Article 24(2), and the Commission may take action in accordance with Article 24(3).~~

~~For charging purposes, and when congestion causes significant network problems including deterioration of environmental performance, the Commission may define, by way of an Implementing Regulation adopted in accordance with the examination procedure referred to in Article 37(3), a common unit rate for en route air navigation services across the Single European Sky airspace, and detailed rules and procedures for its application. The common unit rate referred to in the first subparagraph shall be calculated on the basis of a weighted average of the different unit rates of the air navigation service providers concerned. The proceeds of the common unit rate shall be reallocated so as to achieve revenue neutrality for those air traffic service providers concerned.~~ Member State concerned, and amended as appropriate.

Article 22

Establishment of charges

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

COMMENTS BY CYPRUS – MAY 2021

2. The **en route** charge for ~~en route~~ air navigation services for a given flight in a given *en route* charging zone shall be calculated on the basis of the unit rate established for that *en route* charging zone and the *en route* service units for that flight. ~~The charge shall be made out of one or more variable components, each based on objective factors.~~

3. The **terminal** charge for ~~terminal~~ air navigation services for a given flight in a given terminal charging zone shall be calculated on the basis of the unit rate established for that terminal charging zone and the terminal service units for that flight. For the purpose of calculating the ~~charge for terminal air navigation services~~ **charge**, the approach and departure of a flight shall count as a single flight. ~~The charge shall be made out of one or more variable components, each based on objective factors.~~

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

5. Charges ~~shall~~ **may** be modulated to encourage air navigation **traffic** service providers, ~~airports~~ and airspace users to support improvements in environmental performance, or service quality such as **the use of the most fuel-efficient available routing**, increased use of sustainable alternative fuels, increased capacity, reduced delays and sustainable development, while maintaining an optimum safety level, in particular for implementing the European ATM Master Plan. The modulation shall consist of financial advantages or disadvantages and shall be revenue neutral for air traffic service providers.

5a. The Commission shall, in consultation with the Member States, air traffic service providers and airspace users conduct a study, including a feasibility study, on the impact of the modulation of charges on air traffic and on stakeholders, including on flight paths, capacity, fleet composition and costs of airspace users, as well as on mechanisms to ensure revenue neutrality of air traffic service providers. This study shall also cover the contribution of that modulation to achievement of the Single European Sky objectives referred to in Article 1(1) and in the Commission's communication on the European Green Deal, taking into consideration competitiveness aspects and other known alternatives. On the basis of that study, the Commission may adopt guidelines to enable Member States to implement modulation of charges on a voluntary basis.

Article 23

Implementation of the charging scheme

For the implementation of the charging scheme, the Commission shall, **by means of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3)**, adopt detailed requirements and procedures in respect of Articles 19, 20, 21 and 22 in particular regarding the cost bases and determined costs, the setting of unit rates, ~~the incentives schemes~~ and risk sharing mechanisms and the modulation of charges. ~~Those requirements and procedures shall be set out in an implementing act adopted in accordance with the advisory procedure referred to in Article 37(2).~~

Article 24

Review of compliance with the performance and charging schemes

~~1. The~~ **1. Without prejudice to the tasks of the national supervisory authorities the** Commission shall regularly review the compliance with Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23, by the air traffic service providers and the Member States, as the case may be. The Commission shall act in consultation with the ~~Agency acting as PRB~~ **PRB, where a PRB has been designated in accordance with Article 9b**, and with national supervisory authorities.

2. At the request of one or more Member States, of a national supervisory authority or ~~of~~ **on its own initiative**, the Commission, ~~the Agency acting as PRB~~ shall carry out an investigation into any **substantiated** allegation of non-compliance as referred to in paragraph 1. ~~Where it has indications of such non-compliance, the Agency acting as PRB may initiate an investigation on its own initiative.~~ It shall conclude the investigation within four months of receipt of a request **if any**, after having heard the Member State, the national supervisory authority ~~concerned~~ and the designated air traffic service provider concerned.

~~3.~~ **3.** Without prejudice to Article 41(1), the ~~Agency acting as PRB~~ **Commission** shall share the results of the investigation with the Member States ~~concerned, the air traffic service providers concerned~~ **State** and the ~~Commission~~.

3. ~~The Commission~~ **air traffic service provider concerned and** may issue an opinion on whether Articles 10 to 17 and 19 to 22 and the implementing acts referred to in Articles 18 and 23 have been complied with by ~~that~~ Member States ~~and/or that~~ air traffic service ~~providers and~~ **provider. It** shall notify this opinion to the Member State ~~or Member States~~ and the air traffic service provider concerned.

Article 25

Transparency of accounts of air navigation service providers

1. Air navigation service providers, independently of their system of ownership or legal structures, shall annually draw up and publish their financial accounts. These accounts shall comply with the international accounting standards adopted by the Union. Where, owing to the legal status of the air navigation service provider, full compliance with the international accounting standards is not possible, the provider shall achieve such compliance to the maximum possible extent. Air navigation service providers shall publish an annual report and regularly undergo an independent audit for the accounts referred to in this paragraph.

2. National supervisory authorities ~~and the Agency acting as PRB~~ shall have the right to access the accounts of the air navigation service providers under their supervision. Member States may decide to grant access to these accounts to ~~other~~ **national** supervisory authorities **of other Member States**.

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

- (a) it provides air navigation services procured in accordance with Article 8(1) and air navigation services not covered by that provision;
- (b) it provides air navigation services and carries out other activities, of whatever kind, including ~~common information services~~ **CIS**;
- (c) it provides air navigation services in the Union and in third countries.

The determined ~~costs, and~~ actual costs ~~and revenues~~ deriving from air navigation services shall be broken down into ~~staff costs, operating costs other than staff costs, depreciation costs, cost of capital, costs incurred for fees and charges paid to Agency acting as PRB, and exceptional costs~~ **costs categories in accordance with article 20(6)** and they shall be made publicly available, subject to the protection of confidential information.

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

CHAPTER IV

NETWORK MANAGEMENT

Article 26

Network functions⁶

1. The air traffic management network functions shall ~~ensure~~ **contribute to** the sustainable and efficient use of the airspace and of scarce resources. They shall also ensure that airspace users can operate environmentally ~~optimal~~ **optimised** trajectories **and profiles**, while allowing ~~maximum~~ **fair and reasonable** access to airspace and air navigation services ~~and minimizing congestion~~. Those network functions, enumerated in paragraphs 2 ~~and 3~~, shall support **seamless access to air navigation services by airspace users as well as** the achievement of the ~~Union-wide~~ performance targets **while supporting initiatives at regional and local level** and shall be based on operational requirements ~~–. They shall be without prejudice to Member States' sovereignty over their airspace and to their responsibilities relating to public order, public security and defence matters.~~

⁶ **This article is still under consideration following latest MS comments.**

1a. Member States shall retain the complete and exclusive competence for the design and management of their airspace structures and of their route network. In this regard, Member States shall take into account environmental aspects, air traffic demands, seasonality and complexity of air traffic and of performance plans. Before deciding on those aspects, they shall consult airspace users concerned or groups representing such airspace users and military authorities as appropriate.

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

~~(a) the design and management of the European airspace structures;~~

(a) design of an airspace structure offering the required level of safety, capacity, flexibility, responsiveness, environmental performance and seamless provision of expeditious air navigation services, with due regard to security and defence needs;

~~(b) air traffic flow management~~**ATFM**;

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

3. The network functions referred to in paragraph 1 also include the following:

~~(a) optimisation of airspace design for the network and facilitation of delegation of air traffic services provision through co-operation with the air traffic service providers and Member State authorities;~~

~~(b) management of the~~

(d) delivery of air traffic control capacity in the network ~~as~~**in accordance with commitments** set out in the ~~binding Network Operations Plan (NOP);~~

~~(e) function for coordination and support in case of~~

(e) management of network crisis~~;~~

~~(d) air traffic flow and capacity management;~~

~~(e) the management of the~~

(f) ATFM delay attribution:

~~(g) planning, monitoring and coordination of implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, taking into account.~~

3. Member States and all relevant operational needs and associated operational procedures;

~~(f) the monitoring of the functioning of the European ATM network infrastructure.~~

stakeholders shall execute network functions with the support of the Network Manager which shall execute the tasks specified in Article 27(4).

4. The network functions listed in paragraphs paragraph 2 and 3 shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. They shall take into account of the specificities of the Member States and of proposals established at local level. They shall be performed in coordination with civil and military authorities, in particular in accordance with agreed procedures concerning the flexible use of airspace.

~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 36 to amend this Regulation in order to add functions to the ones listed in paragraphs 2 and 3, where necessary for the functioning and performance of the network.~~

Article 27

The Network Manager⁷

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

⁷ **This article is still under consideration following latest MS comments.**

2. The Commission ~~may~~**shall** appoint ~~an~~**EUROCONTROL or another** impartial and competent body to carry out the tasks of the Network Manager. To this end, the Commission shall adopt an implementing act in accordance with the examination procedure referred to in Article 37(3). This appointment Decision shall include the terms and conditions of the appointment, including the financing of the Network Manager, **and detailed the specific tasks of the Network Manager in line with, and within the limits of, this Article and Articles 16 and 26 and the implementing acts adopted on the basis thereof. The list of tasks of the Network Manager shall be accompanied by clear specification of the required services and performance, against which the performance of the Network Manager shall be measured, and, where appropriate, by appropriate agreements to be concluded between the Commission and the Network Manager, such as service level agreements.**

3. The ~~tasks of the~~ Network Manager shall ~~be executed~~**execute its tasks** in an independent, impartial and cost efficient manner. ~~They~~**and** shall be subject to appropriate governance, ~~which shall recognise separate accountabilities for service provision and regulation where~~ **and independence. If** the competent body ~~designated~~**appointed** as the Network Manager **has** also ~~has~~ regulatory functions, **organisational separation with such functions shall be ensured.** In the execution of its tasks, the Network Manager shall take into consideration the needs of the whole ATM network ~~and~~ **while safeguarding defence capabilities.**

4. The Network Manager shall fully involve execute the following tasks in support of the network-functions referred to in Article 26(2):

(a) support the development of an airspace users, structure, offering the required level of safety, capacity, flexibility, responsiveness, environmental performance and seamless provision of expeditious air navigation services, with due regard to security and defence needs;

(b) coordination of ATFM ;

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

(d) facilitation of delegation of air traffic services provision where approved by the concerned Member State taking into account the necessary agreements for the coordination of general and operational air traffic and the need to maintain adequate coordination in the relevant airspace structures;

(e) coordination and support in the delivery of air traffic control capacity in the network in accordance with commitments by operational stakeholders as set out in the NOP;

(f) coordination and support in the management of network crisis;

(g) support to ATFM delay attribution including the post operations adjustment process involving air navigation service providers, aerodrome operators and the airports and national competent authorities to address issues that relate to ATFM delay measurement, classification and attribution;

(h) coordination and support in the planning and implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, through active participation of operational stakeholders in management and governance, and taking into account military- and operational needs and associated operational procedures, where appropriate;

4(i) the monitoring of the functioning of the European ATM network infrastructure;

(i) the provision of Union-wide aeronautical information infrastructure in accordance with Article 32.

4a. The Network Manager shall ~~contribute to the execution of the network functions through~~ **propose** support measures **on operational matters** aimed at safe and efficient planning and operations of the network under normal and **network** crisis conditions and ~~through~~ measures aimed at the continuous improvement of network operations in the Single European Sky and the overall performance of the network, especially regarding the implementation of the performance scheme. The action taken by the Network Manager shall ~~take account of the need to~~ fully integrate the airports in the network.

5. The Network Manager shall ~~cooperate closely with the Agency acting as PRB-~~ **propose measures** in order to ensure that ~~case~~ the performance targets referred to in Article 10 are **not** adequately reflected in the capacity to be delivered by individual air ~~navigation~~ **traffic** service providers and agreed between the Network Manager and those air ~~navigation~~ **traffic** service providers in the Network Operations Plan **NOP**.

6. The Network Manager shall:

~~(a) decide on individual measures to implement the network functions and to support the effective implementation of the binding Network Operations Plan and the achievement of the binding performance targets;~~

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

~~7. The Network Manager shall take decisions through a cooperative decision-making process.~~ **7. All measures taken by the the Network Manager in the execution of its tasks shall be taken through a cooperative decision making process which shall involve relevant operational stakeholders, in particular air navigation services providers, including air traffic service providers, and, where appropriate, airport operators and airspace users. Member States shall be fully involved in strategic matters concerning the network and the tasks of the Network Manager and the Network Manager shall, for the purpose of the adopting of strategic decisions, ensure the involvement of all Member States and consensus among them.**

Parties to the cooperative decision-making process shall act to the maximum extent possible with a view to improving the functioning and performance of the network. ~~The cooperative decision-making process shall promote the interest of the network.~~ **, in particular as regards the achievement of the Union wide targets in the key performance area of environment, taking into account essential security interests and regional and local circumstances.**

8. By way of implementing acts adopted in accordance with the examination procedure referred to in Article 37(3), the Commission shall establish detailed rules for the **implementation of Articles 26 to 27a. In particular, the Commission shall establish detailed rules for the** execution of the network functions, the tasks of the Network Manager, governance mechanisms including decision-making processes, and crisis management.

~~9. Aspects of design of airspace structures other than those referred to in paragraphs 2 and 3 of Article 26 shall be addressed by Member States. In this regard, Member States shall take into account~~

Article 28

Transparency of accounts of the Network Manager and Annual Report

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

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

Article 29

~~Relations with stakeholders~~

~~The air traffic service providers shall establish consultation mechanisms to consult the relevant airspace users and aerodrome operators on all major issues related to services provided, including relevant changes to airspace configurations, or strategic investments which have a relevant impact on air traffic management and air navigation service provision and/or charges. The airspace users shall also be involved in the process of approving strategic investment plans. The Commission shall adopt measures detailing the modalities of the consultation and of the involvement of airspace users in approving investment plans. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37 (3).~~

Article 30

Relations with military authorities

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

Article 31

~~With regard to general air traffic, relevant operational data shall be made available in real time, on a non-discriminatory basis and without prejudice to security or defence policy interests, by all air navigation service providers, airspace users, airports, and the Network Manager, including on cross-border basis and on a Union-wide basis. Such availability shall be to the benefit of certified or declared air traffic service providers, entities having a proven interest in considering the provision of air navigation services, airspace users and airports as well as the Network Manager.~~

~~2. Prices for the service referred to in paragraph 1 shall be based on the marginal cost of making the data available.~~

~~3. Access to relevant operational data as referred to in paragraph 1 shall be granted to the authorities in charge of safety oversight, performance oversight and network oversight, including the Agency.~~

~~4. The Commission may lay down the detailed requirements for the making available of and the access to data in accordance with paragraphs 1 and 3 and the methodology to set the prices as referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).~~

CHAPTER V

AIRSPACE-, INTEROPERABILITY AND TECHNOLOGICAL INNOVATION

Article 32

Electronic aeronautical information

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

Article 32a

Rules of the air and airspace classification

The Commission shall, in accordance with the examination procedure referred to in Article 37(3):

a) adopt appropriate provisions on rules of the air based on ICAO standards and recommended practices;

b) adopt appropriate provisions to ensure uniform implementation of the ICAO airspace classification with appropriate adaptation, with a view to ensure the seamless provision of safe and efficient air traffic services within the Single European sky.

Article 33

Flexible use of airspace

1. Taking into account **the characteristics and nature of military activity in each Member State as well as** the organisation of military aspects under their responsibility, Member States shall ensure the application within the single European sky of the concept of the flexible use of airspace ~~as described by ICAO and as developed by Eurocontrol~~, in order to facilitate airspace management and air traffic management in the context of the common transport policy ~~and in consistency with the European ATM Master Plan~~.

2. ~~Member States and the Commission shall review report annually to the Commission on~~ the application, in the context of the common transport policy, of the concept of the flexible use of airspace in respect of the airspace under their responsibility.

3. Where, in particular ~~following~~ **in the light of the** reports submitted by Member States, ~~it becomes necessary to reinforce and harmonise~~ **uniform conditions for** the application of the concept of the flexible use of airspace within the single European sky **are needed**, the Commission shall ~~adopt measures,~~ within the ~~context~~ **limits** of the common transport policy. ~~Those~~ **and without prejudice to Member States' responsibilities over their airspace, adopt** implementing acts ~~shall be adopted~~ in accordance with the examination procedure referred to in Article 37(3).

4. In cases where the application of this Article gives rise to significant operational difficulties, Member States may temporarily suspend such application on condition that they inform without delay the Commission and the other Member States thereof. Following the introduction of a temporary suspension, adjustments to the rules adopted under paragraph 3 may be worked out for the airspace under the responsibility of the Member State(s) concerned.

Commented [REDACTED]: It is preferable not to burden the system with yet another mandatory reporting process. A review could be adequate – it could optionally include the production of a report addressed to the Community.

Article 34

SESAR coordination

The entities in charge of tasks established in Union law in the areas of coordination of the SESAR definition phase, the SESAR development phase and the SESAR deployment phase, as the case may be, shall ~~cooperate to~~ ensure effective coordination between those three phases so as to achieve a seamless and timely transition between them, **focussing in particular on the industrialisation phase.**

All relevant civil and military stakeholders shall be involved to the widest possible extent.

The Commission shall put in place mechanisms for monitoring the effectiveness of SESAR coordination.

Article 35

Common projects

1. The Commission may set up common projects, **based on the needs for synchronisation amongst stakeholders,** for implementing the essential operational changes identified in the European ATM Master Plan having **reached sufficient maturity in order to enable interoperable capabilities in all Member States with a network wide impact-view to improving the performance of the Single European Sky.**

2. The Commission may also establish governance mechanisms for common projects and their implementation. **All relevant civil and military stakeholders shall be involved in these mechanisms to the widest possible extent and, where possible and as appropriate, have a leading role.**

3. Common projects may be eligible for Union funding **within the multiannual financial framework.** To this end, and without prejudice to Member States' competence to decide on the use of their financial resources, the Commission shall carry out an independent cost-benefit analysis and appropriate consultations with Member States and with relevant stakeholders in accordance with Article ~~40~~**38,** exploring **prioritisation and** all appropriate means for financing the implementation thereof.

4. The Commission shall establish the common projects and governance mechanisms referred to in paragraphs 1 and 2 through implementing acts adopted in accordance with the examination procedure referred to in Article 37(3).

CHAPTER VI

FINAL PROVISIONS

Article 36

Exercise of the delegation

~~1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~

~~2. The delegation of power referred to in Articles 6 and 26 shall be conferred on the Commission for a period of seven years from [the date of the publication of this Regulation]. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.~~

~~3. The delegation of power referred to in Articles 6 and 26 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~

~~4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.~~

~~5. A delegated act adopted pursuant to Articles 6 and 26 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.~~

Article 37

Committee procedure

1. The Commission shall be assisted by the Single Sky Committee, hereinafter referred to as ‘the Committee’, composed of two representatives of each Member State and chaired by the Commission. The Committee shall ensure an appropriate consideration of the interests of all categories of users. The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

~~2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.~~

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 38

Consultation of stakeholders

1. Member States, national supervisory authorities, the ~~Agency whether or not it is acting as PRB~~**PRB, where a PRB has been designated in accordance with Article 9b**, and the Network Manager shall establish consultation mechanisms for appropriate consultation of stakeholders for the exercise of their tasks in the implementation of this Regulation.

2. The Commission shall establish ~~such a~~ mechanism at Union level to consult **the relevant stakeholders** on matters related to the implementation of this Regulation ~~where appropriate~~. The specific Sectoral Dialogue Committee set up under Commission Decision 98/500/EC shall be involved in the consultation. For the purpose of point (e) of paragraph 3, when consultation relating to military aspects is required, the Commission shall, in addition to Member States, consult the European Defence Agency and ~~other competent~~ **national** military experts designated by the Member States **authorities**.

~~3. The stakeholders may include:~~

3. For the purposes of paragraphs 1 and 2, at least the following operational and non-operational stakeholders shall be consulted if relevant:

- (a) air navigation service providers or ~~relevant~~ groups representing them;
- ~~(b)~~ the Network Manager;
- ~~(c)~~ airport operators or ~~relevant~~ groups representing them;
- (d) airspace users or ~~relevant~~ groups representing them;
- (f) the manufacturing industry;
- (g) professional staff representative bodies;
- ~~(e)~~ ~~the military~~;
- ~~(h)~~ ~~relevant~~ **(h) national authorities, including competent national military authorities;**
- (i) airport slot coordinators.**
- (i) non-governmental organisations with an interest in aviation or ATM.**

Article 38a

Relations with stakeholders

The air traffic service providers shall establish consultation mechanisms to consult the relevant airspace users, aerodrome operators and military authorities on all major issues related to services provided, including relevant changes to airspace configurations, or major investments which have a relevant impact on air traffic management and air navigation service provision and/or charges.

Article 39

Relations with third countries

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

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

Article 40

Support by other bodies

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

Article 41

Confidentiality

1. Neither the national supervisory authorities, acting in accordance with their national legislation, nor the Commission, nor the Agency, ~~whether or not it is acting as PRB~~, nor the Network Manager shall disclose information of a confidential nature, in particular information about air navigation service providers, their business relations or their cost **and revenues** components.

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

3. Information and data ~~provided~~ **made accessible** pursuant to ~~the charging scheme laid down in Articles 13(3b), 13a(46), 13b(2), 21, 25(3) and 25(4) or reported pursuant to~~ Articles 19 ~~to 24(6)~~ in particular as regards determined costs, **and** actual costs ~~and revenues~~ of designated air traffic service providers shall be publicly disclosed, **subject to the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.**

Article 42

Penalties

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

Article 43

Evaluation

1. The Commission shall conduct an evaluation to assess the ~~application~~ **legal, social, economic and environmental impacts** of this Regulation ~~by 2030~~ **and its added value both at national and European level 5 to 8 years after its entry into force.** When justified for this purpose, the Commission may request from the Member States, **including military authorities,** information relevant to the application of this Regulation.

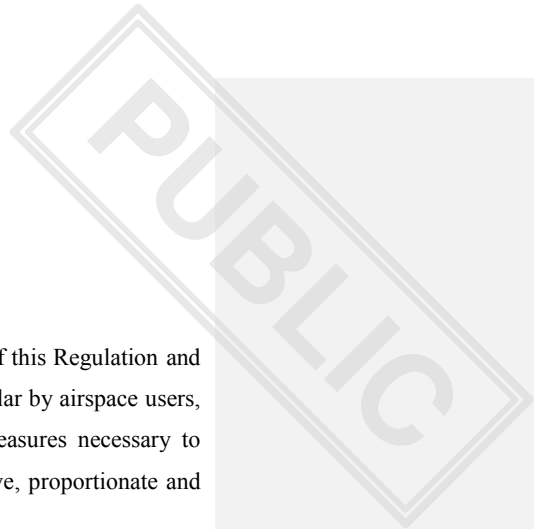
2. The Commission shall ~~forward~~ **submit** its findings to the European Parliament and to the Council. The findings of the evaluation shall be made public.

Article 44

Safeguards

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

- (a) for the surveillance of airspace that is under its responsibility in accordance with ICAO Regional Air Navigation agreements, including the capability to detect, identify and evaluate all aircraft using such airspace, with a view to seeking to safeguard safety of flights and to take action to ensure security and defence needs;



COMMENTS BY CYPRUS – MAY 2021

- (b) in the event of serious internal disturbances affecting the maintenance of law and order;
- (c) in the event of war or serious international tension constituting a threat of war;
- (d) for the fulfilment of a Member State's international obligations in relation to the maintenance of peace and international security;
- (e) in order to conduct military operations and training, including the necessary possibilities for exercises.

Article 45

Repeal

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

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

Article 46

Entry into force and application

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

2. Article 3(3), **Article 8(3) and Article 25(3)** shall apply from [*OP please insert the date - ~~48-72~~ months after the entry into force of this Regulation*].

COMMENTS BY CYPRUS – MAY 2021

Articles 10 to 24 shall apply as from ~~1 July 2023~~ **one year after its adoption**. However, Article 11 of Regulation (EC) No 549/2004 and Article 15 of Regulation (EC) No 550/2004, and the implementing acts adopted on the basis thereof, shall continue to apply for the purposes of the implementation of the performance and charging schemes pertaining to the third reference period.

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

Article ~~26(3)~~**27(4)** and Article 32 shall apply to the Network Manager from the day on which an appointment decision, adopted in accordance with Article 27(2) ~~after the entry into force of this Regulation and encompassing those provisions,~~ becomes applicable.

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

Done at Brussels,

For the European Parliament

For the Council

THE PRESIDENT

THE PRESIDENT