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Subject:	Amended proposal for a regulation of the European parliament and the Council on the implementation of the Single European Sky (recast) -Updated 1st reading position of the Parliament

Delegations will find in appendix I the updated 1st reading position of the European parliament, as voted by the TRAN Committee on 17 June 2021, on the recast proposal for a regulation on the Single European Sky regulation.

Appendix I

2013/0186 (COD)

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

REGULATION (EU) 2021/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

(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 Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

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* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

1 OJ C 241, 7.10.2002, p. 24. OJ C […], […], p. […].

2 OJ C 278, 14.11.2002, p. 13. OJ C […], […], p. […].

Whereas:

(1) Regulation (EC) No 549/2004 of the European Parliament and of the Council[3], Regulation (EC) No 550/2004 of the European Parliament and of the Council[4] and Regulation (EC) No 551/2004 of the European Parliament and of the Council[5] have been substantially amended. Since further amendments are to be made, ***in order to ensure that airspace policy is future-proof and promotes resilience, efficiency and competitiveness in the sector***, those Regulations should be recast in the interests of clarity.

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

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

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

(2) The adoption by the European Parliament and the Council of the first package of the single European sky legislation, namely, Regulation (EC) No 549/2004, Regulation (EC) No 550/2004, Regulation (EC) No 551/2004, and Regulation (EC) No 552/2004 of the European Parliament and of the Council[6], laid down a firm legal basis for a seamless, interoperable and safe air traffic management (ATM) system. The adoption of the second package, namely, Regulation (EC) No 1070/2009 of the European Parliament and of the Council[7], further strengthened the Single European Sky initiative by introducing the performance scheme and the Network Manager concepts to further improve the performance of the European ATM network. Regulation (EC) No 552/2004 has been repealed by Regulation (EU) 2018/1139 of the European Parliament and of the Council[8], as the rules necessary for interoperability of ATM systems, constituents and procedures have been incorporated in that Regulation.

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

(3a) In accordance with the 1944 Chicago Convention, States are responsible for managing and providing, whether directly or by delegation, air traffic services. The management of European airspace on the basis of the principles laid down in this Convention has always delivered the required levels of safety and allowed the right measures and policies to be adopted, whether in air traffic management at European level or in adopting measures to significantly reduce congestion and delays, thus cutting operating costs. It has never hampered the safety or fluidity of European air traffic nor impeded its efficiency.

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

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

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

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

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

(5a) In order to ensure that the expected increase in air traffic does not cause or exacerbate congestion in European airspace, with all the economic, environmental and security costs that that would entail, fragmentation of that airspace should be urgently remedied by implementing this Regulation as swiftly as possible.

(5b) The implementation of the Single European Sky would have a positive impact in terms of growth, employment and competitiveness in Europe, in particular by increasing demand for jobs requiring advanced qualifications.

(6) The simultaneous pursuit of the goals of augmentation of air traffic safety standards and improvement of the overall performance of ATM and air navigation services (ANS) for general air traffic in Europe requires that the human factor be taken into account. Therefore, the Member States should uphold 'just culture' principles. The opinions and recommendations of the Expert Group on the Human Dimension[9] of the Single European Sky should be considered and taken into account.

[9] C(2017) 7518 final

(6a) ***At Union level, a European Green Deal has been announced. It includes a climate neutrality goal to be achieved by 2050 and the environmental principle "do no significant harm". Regulation (EU) 2021/ ... of the European Parliament and of the Council[10] ('European Climate Law') has been adopted in parallel. It includes concrete emission reduction targets as milestones on a path towards climate neutrality, A "Sustainable and Smart Mobility Strategy" was presented on 9th December 2020, with a clear commitment to the urgent decarbonisation of the aviation sector, and the creation of zero-emission airports as one of its flagships.***

(6b) ***The design of future air traffic management needs comprehensive action in avoiding contrails and climate-impacting emissions.***

(6c) ***The Single European Sky is intended as a system that will continuously contribute to the climate neutrality goal with the goal of achieving a reduction of climate impacting emissions by up to 10% in accordance with the Sustainable and Smart Mobility Strategy, which should be understood on an aggregated basis. Given the important role that the transport sector, including aviation, is to play in fulfilling the climate targets established by the European Climate Law, achieving that reduction of climate impacting emissions should take precedence over the other possible benefits of a less fragmented airspace and a more integrated air traffic management.***

(6d) ***The increase in fuel efficiency and reduced emissions due to optimised routes for individual flights should be seen as an enabler of a more rational use of the air space, allowing for more options in terms of direct flights instead of emissions-boosting stop-overs. A more efficient use of the airspace would also provide an enhanced choice in terms of slot timing, and a generally reduced take-off and departure schedule, with benefits both to the working conditions of crews and airport staff, as well as to the quality of life of citizens living in the area impacted by the airport activity, for instance by its noise pollution.***

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[10] ***Regulation (EU) 2021/ ... of the European Parliament and of the Council ... establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ ...).***

(7) Improvements in the environmental ***and climate*** performance of ATM ***must be designed and combined to*** directly contribute ***in an aggregated manner*** to the achievement of the objectives contained in the Paris Agreement and in the Commission's European Green Deal, in particular through the reduction of aviation emissions. ***The European Commission should continuously monitor and report periodically on the overall impact of ATM performance in terms of CO2 and non-CO2 emissions' reduction. ANSPs have limited area for action on this topic, ATM efficiency cannot in itself ensure the environmental efficiency of the aviation sector. The impact of other aviation stakeholders on ATM performance should be also monitored.***

(8) In 2004, the Member States have adopted a general statement on military issues related to the Single European Sky. According to this statement, Member States should, in particular, enhance civil-military cooperation and, if and to the extent deemed necessary by all Member States concerned, facilitate cooperation between their armed forces in all matters of air traffic management.

(9) Decisions relating to the content, scope or carrying out of military operations and training do not fall within the sphere of competence of the Union under Article 100(2) of the Treaty on the Functioning of the European Union.

(9a) Airspace is a common resource for all categories of users and should be used flexibly by all of them in a fair and transparent manner, with due account being taken of Member States' security and defence needs and of the undertakings that they have made under the aegis of international organisations.

(10) To ensure the consistent and sound oversight of service provision across Europe, the national supervisory authorities should be guaranteed ***budgetary and financial*** independence and ***sufficient financial and human*** resources. This should not prevent a national supervisory authority from being part of a regulatory authority competent for several regulated sectors if that regulatory authority fulfils the independence requirements, or from being joined in terms of its organisation with the national competition authority.

(11) The ***public*** financing of the national supervisory authorities should guarantee their independence, and should allow them to operate in accordance with the principles of fairness, transparency, non-discrimination and proportionality. Appropriate procedures ***and criteria*** for appointing ***competent*** staff should contribute to guaranteeing the independence of the national supervisory authorities, ensuring in particular that the appointment of persons in charge of strategic decisions is made by a public authority which does not directly exert ownership rights over air navigation service providers ***and which ensures transparency of the decision-making process***.

(12) National supervisory authorities have a key role to play in the implementation of the Single European Sky and they should therefore cooperate with each other in order to enable the exchange of information on their work and decision-making principles, best practices and procedures as well as with regard to the application of this Regulation and to develop a common approach, including through enhanced cooperation at regional level. This cooperation should take place on a regular basis ***through the European Central Repository referred to in Article 8 of Regulation (EU) No 376/2014 of the European Parliament and of the Council***[11]***.***

(13) The cooperation between air traffic service providers is an important tool for improving the performance of the European ATM system and should be encouraged. Member States should be able to set up cooperation mechanisms not limited to predefined forms of cooperation and geographical areas.

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[11] ***Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (OJ L 122, 24.4.2014, p. 18).***

(14) The safety certification and safety oversight of air navigation service providers are conducted by the national competent authorities or by the European Union Aviation Safety Agency (the Agency), in accordance with the requirements and processes laid down in Regulation (EU) 2018/1139. Additional requirements related to financial robustness, liability and insurance cover are necessary for the provision of air navigation services and should be subject to an economic certificate. An air navigation service provider should only be able to offer services in the Union where it holds both a safety certificate and the economic certificate. ***This requirement should not apply to military providers, but Member States should ensure that such providers comply with the common requirements to the maximum extent possible.***

(15) There should be no discrimination between airspace users as to the provision of equivalent air navigation services.

(15a) Specific mechanisms should be put in place in order to ensure that air-based and ground-based investment projects relating to the ATM Master Plan are delivered in a coordinated manner, making it possible for SESAR technologies to be deployed effectively and on time.

(16) Air traffic services, provided on an exclusive basis, should be subject to designation and minimum public interest requirements.

(17) Air traffic service providers or airport operators should ▌procure communication, navigation and surveillance services (CNS), aeronautical information services (AIS), air traffic data services (ADS), meteorological services (MET) or terminal air traffic services under market conditions, without prejudice to safety requirements, ***unless they prove*** that such procurement ***is to the detriment of*** cost-efficiency gains, ***working conditions and climate or environmental performance*** The ▌procurement is expected to allow for more flexibility and to promote innovation in services, without affecting the specific needs of the military regarding confidentiality, interoperability, system resilience, data access, and ATM security.

(18) ***Procured*** terminal air traffic services ▌should not be subject to the charging scheme set out in this Regulation, nor to, Article 1(4) of Directive 2009/12/EC of the European Parliament and of the Council[12], linked to the applicability of that scheme.

(19) The provision of *en route* air traffic services should be organisationally ***and functionally*** separated from the provision of CNS, AIS, ADS, MET and terminal air traffic services, including through the separation of accounts, in order to ensure transparency and avoid discrimination, cross-subsidisation and distortion of competition.

(20) ▌The procurement of air navigation services should be carried out in accordance with Directive 2014/24/EU of the European Parliament and of the Council[13] and Directive 2014/25/EU of the European Parliament and of the Council[14]. National supervisory authorities should ensure that procurement requirements for air navigation services are fulfilled.

(21) ***It is essential that unmanned aircraft operations are integrated in a way that ensures the safe and shared use of the European airspace by both unmanned and traditional aircraft operations.*** The traffic management of unmanned aircraft ***in an integrated manner*** requires the availability of common information services ***in order to create a common understanding of airspace activity in a given piece of airspace***. In order to contain the costs of such traffic management, prices for common information services should be based on cost and a reasonable mark-up for profit, and should be subject to approval by national supervisory authorities. To enable the provision of the service, the required data should be made available by air navigation service providers.

(21a) The traffic management of unmanned aircraft is dependent on the availability of U-space services. Considering the vulnerability of the counterparty in the provision of U-space services, charging schemes should pay utmost attention to safeguarding the affordability principle.

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12 Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009, p. 11).

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

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

(22) The performance and charging schemes are intended to make air navigation services provided under conditions other than market conditions ▌cost-efficient and to promote better service quality ***as well as a lower impact of aviation on climate and the environment. Those performance and charging schemes*** should, to this end, include relevant and appropriate incentives. In view of this objective, the performance and charging schemes should not cover services supplied under market conditions.

(22a) In order to promote better service quality, those performance and charging schemes should include relevant and appropriate outcome-based incentives. Financial incentives should be set with a view to encouraging better air navigation service performance in a balanced and symmetrical manner by rewarding or penalising actual performance in relation to binding performance targets. The evaluation of financial incentives should clearly focus on the effects attributable to air navigation service providers and should take due account of impacts stemming from the actions of other stakeholders.

(23) To be most effective, the necessary oversight regarding the performance and charging schemes should be directed at designated air traffic service providers as such.

(24) The responsibilities for the oversight in respect of the performance and charging schemes should be appropriately divided.

(25) Given the cross border and network elements inherent in the provision of *en route* air navigation services and the fact that, as a consequence, performance is notably to be assessed against Union-wide performance targets, a Union body should be in charge of the assessment and approval of the performance plans and performance targets for *en route* air navigation services, subject to judicial review by an appeal body and eventually by the Court of Justice. In order to ensure that the tasks be carried out with a high level of expertise and necessary independence, that Union body should be the Agency acting as Performance Review Body (PRB), functioning in accordance with the dedicated governance rules set out in ***this*** Regulation ▌**.** Given their knowledge of the local circumstances, necessary to assess terminal air navigation services, national supervisory authorities should be in charge of the assessment and approval of the performance plans and performance targets for terminal air navigation services. The allocation of costs between *en route* and terminal air navigation services constitutes a single operation, relevant to both types of services, and should therefore be subject to the oversight of the Agency acting as PRB.

(25a) The European Union Aviation Safety Agency acting as Performance Review Body (the "Agency acting as PRB") should have a permanent structure, in order to guarantee that the tasks conferred upon the Agency acting as PRB are carried out with the required expertise and independence from public or private interests, and be able to rely on dedicated resources. A Regulatory Board for Performance Review should be established and a Director for Performance Review should be appointed specifically in order to carry out the functions of the Agency acting as PRB. The Regulatory Board for Performance Review should act independently and should not seek, or follow, instructions or accept recommendations from a government of a Member State, from the Commission or from any other public or private entity.

(25b) The Director for Performance Review should be the legal representative of the Agency in matters of performance review and be in charge of the day-to-day administration in respect of this matter, as well as of various preparatory tasks. The Director for Performance Review should also be responsible for drafting and submitting the section on performance review in the programming document, the annual work programme and the annual activity report of the Agency. The Regulatory Board for Performance Review, as an independent body, should be involved in those activities.

(25c) Where the Agency acting as PRB has decision-making powers, interested parties should, for reasons of procedural economy, be granted a right of appeal to an Appeal Board for Performance Review, which should be part of the Agency acting as PRB, but independent from its administrative and regulatory structure. Cooperation between national supervisory authorities in the area of performance review is important to ensure the smooth application of Union law in this area and should thus be facilitated, namely through the establishment of an Advisory Board for Performance Review.

(25d) Designated air traffic service providers hold natural monopolies in respect of the services concerned, and those services are remunerated by airspace users. Because of this specific feature, it is necessary for the performance and charging schemes to be applied to them, so as to optimise the provision of the services concerned on a number of points. The principal role of the Agency acting as PRB consists of the application of those schemes, and the funds necessary for its setting up can therefore be considered to be necessary for reasons linked to the peculiar features and the peculiar position of the providers of the services concerned.

(25e) No revenue received by it, from whatever source, should compromise the Agency's and impartiality. The Agency acting as PRB should also establish a reserve fund covering one year of its operational expenditure to ensure the continuity of its operations and the execution of its tasks.

(25f) The Agency acting as PRB should be open to the participation of third countries which have concluded agreements with the Union and which have adopted and are applying the relevant rules of Union law.

(26) Draft performance plans in the area of *en route* and terminal navigation services should be consistent with respective Union-wide performance targets and conform to certain qualitative criteria, so as to ensure as much as possible that the targets set are effectively met. The assessment procedure should ensure that shortcomings are swiftly corrected.

(27) The performance of the network functions should be subject to criteria specific to them, having regard to the peculiar nature of these functions. The network functions should be subject to ***specific*** performance targets in the key performance areas of ***climate and the*** environment, capacity and cost-efficiency.

(28) ***Article 15 of the 1944 Chicago Convention on Civil Aviation recognises that a contracting State is permitted to impose charges for the use of air navigation facilities.*** The charging scheme should be based on the principle that airspace users should pay for the cost incurred for the ***necessary use*** of the services received but that only cost imputable to ***the use of*** such service and not covered otherwise should be taken into account. The costs related to the Network Manager should be included in the determined costs eligible to be charged to airspace users. Charges should encourage the safe, efficient, effective and sustainable provision of air navigation services with a view to achieving a high level of safety and cost-efficiency and meeting the performance targets and they should stimulate integrated service provision, whilst reducing the environmental impact of aviation.

(29) Mechanisms for modulation of charges to improve ***climate and*** environmental performance and service quality, notably through increased use of sustainable alternative fuels, ***alternative clean propulsion technologies, more direct-routing,*** increased capacity and reduced delays, while maintaining an optimum safety level, should be set up at Union-wide level given the cross-border nature of aviation. National supervisory authorities should also have the possibility to establish mechanisms at local level regarding terminal services.

(30) In order to incentivise airspace users to fly the shortest route, in particular in times of congestion, it should be possible to establish a common unit rate for *en route* services across the Single European Sky airspace. The establishment of any such common unit rate should be revenue neutral for air traffic service providers.

(31) Provision should be made for the transparency of the accounts of air navigation service providers, as one means to prevent cross-subsidisation and ensuing distortions.

(32) ATM network functions should contribute to the sustainable development of the air transport system and support the achievement of Union-wide performance targets***, including those regarding climate and the environment, in order to ensure timely sectorial compliance with the emission reductions established in Union law.*** They should ensure the sustainable, efficient and environmentally optimal use of airspace and of scarce resources, reflect operational needs in the deployment of the European ATM network infrastructure and should provide support in case of network crises. A number of tasks contributing to the execution of these functions should be carried out by a Network Manager, whose action should involve all operational stakeholders concerned.

(32a) The Member States are parties to the EUROCONTROL International Convention Relating to Co-operation for the Safety of Air Navigation, according to which EUROCONTROL is to develop and operate a common European air traffic flow management system at a common international centre. The Union has signed an Accession Protocol to the EUROCONTROL Convention.

(33) In the cooperative decision making process for the decisions to be taken by the Network Manager, the interest of the network should prevail***, except in cases where national security demands otherwise.*** Parties to the cooperative decision-making process should therefore act to the maximum extent possible with a view to improving the functioning and performance of the network***, including with regard to climate and the environment, as well as taking into consideration local safety concerns.*** The procedures for the cooperative decision-making process should promote the interest of the network, and be such that issues are resolved and consensus found wherever possible. ***The decision-making power and final responsibility for the decisions taken in the cooperative decision-making process belongs to the Network Manager.***

(34) To enhance the customer focus of air traffic service providers ▌ the consultation and participation of stakeholders in major operational decisions of the air traffic service providers should be made more effective.

(35) ***The a***vailability of relevant operational data ***in an interoperable format*** is essential for enabling the flexible provision of air traffic data services, on cross-border and on Union-wide bases. Therefore, such data should be made available to relevant stakeholders, including to prospective new providers of air traffic data services. Accuracy of information including on airspace status and on specific air traffic situations and timely distribution of this information to civil and military controllers has a direct impact on the safety and efficiency of operations. Timely access to up-to-date information on airspace status is essential for all parties wishing to take advantage of airspace structures made available when filing or re-filing their flight plans.

(36) The provision of complete, high-quality and timely aeronautical information has a significant impact on safety and on facilitating access to Union airspace and the possibilities of moving within it. Access to those data should be facilitated through an appropriate information infrastructure.

(37) The safe and efficient use of airspace can only be achieved through close cooperation between civil and military airspace users, which in practice is mainly based on the concept of flexible use of airspace and effective civil-military coordination as established by ICAO. Rules should be established with a view to ensuring the application of this concept, and the Commission should be empowered to provide for measures ensuring greater harmonisation.

(37a) This Regulation is without prejudice to the power of Member States' to adopt provisions concerning the organisation of their armed forces. That power may require Member States to take measures to ensure that their armed forces have sufficient airspace to ensure a suitable level of training. Provision should therefore be made for a safeguards clause to enable this power to be exercised.

(38) The SESAR project is aimed at enabling the safe, efficient and environmentally sustainable development of air transport by modernising the European and global ATM system. In order to contribute to its full effectiveness, proper coordination between the phases of the project should be ensured. The European ATM Master Plan should result from the SESAR definition phase, and should contribute to achieving the Union-wide performance targets, ***including those regarding climate and the environment.***

(39) The concept of common projects should aim at implementing, in a timely, coordinated and synchronised manner, the essential operational changes identified in the European ATM Master Plan which have a network-wide impact. ***In particular the common projects should promote and accelerate the update of new digital technologies that are essential for the future scalability, resilience and sustainability of the ATM system in Europe.*** The Commission should be charged with carrying out a cost-benefit analysis in respect of the funding with a view to ***speeding*** up the deployment of the SESAR project.

(39a) In order to streamline the SESAR deployment phase, an enhanced coordination of standardisation activities should ensure the timely availability of standards required to deploy SESAR solutions. A reformed and integrated European Aviation Standards Coordination Group (EASCG) should contribute to a further customer-focused standardisation process, making sure that the needs of operational stakeholders are appropriately prioritised.

(40) Compliance with the requirements for ATM systems and constituents established by Regulation (EU) 2018/1139 should ensure the interoperability of those systems and constituents, to the benefit of the Single European Sky.

(41) In order to take into account technical or operational developments, ▌the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. The content and scope of each delegation is set out in detail in the relevant Articles. When adopting delegated acts under this Regulation, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, ***through an expert group on the human dimension of the Single European Sky***, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[15]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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[15] OJ L 123, 12.5.2016, p. 1.

(42) In order to ensure uniform conditions for the implementation of this Regulation, ▌implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[16].

(43) The social partners should be better informed and consulted on all measures having significant social implications. At Union level, the Sectoral Dialogue Committee set up under Commission Decision 98/500/EC[17] should also be consulted.

(44) The penalties provided for with respect to infringements of this Regulation should be effective, proportional and dissuasive, without reducing safety.

(45) ▌

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

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[16] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

[17] OJ L 225, 12.8.1998, p. 27.

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 ***and enabling the air transport sector duly to contribute to the achievement of the climate and environment objectives laid down in Union law***. The Single European Sky shall comprise a coherent pan-European network, ▌ ***an*** integrated airspace, network management and air traffic management systems based on safety, efficiency, interoperability and technological modernisation, for the benefit of ***citizens,*** all airspace users ▌ 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 ***and national*** public security and defence matters, as set out in Article 44. ▌ ***Coordination with the military authorities shall be ensured in order to address the potential impacts of the application of this Regulation on military operations and training, which are outside its scope.***

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.

new4. 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. ▌

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;

(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 (MET); aeronautical information services (AIS); and air traffic data services (ADS);

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

(a) preventing collisions:

(i) between aircraft;

(ii) in the manoeuvring area between aircraft and obstructions;

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

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

(7) ▌

(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 ***as well as space-based*** functions or services (air traffic services, airspace management and air traffic flow management) required to ensure the safe and efficient movement of aircraft during all phases of operations;

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

(10a) ‘air traffic service contract’ means one or more legally binding contracts, following a competitive tendering procedure, that confirm the agreement between the Member States concerned and an air traffic service provider, conferring on the latter a right to provide air traffic services;

(10b) “designated air traffic service provider” means an air traffic service provider designated to provide air traffic services based on an air traffic service contract;

(11) ‘airspace block’ means an airspace of defined dimensions, in space and time, within which air navigation services are provided;

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

(13) ‘airspace structure’ means a specific volume of airspace defined with a view to ensuring the safe and optimal operation of aircraft;

(14) ‘airspace users’ means operators of aircraft operated in accordance with general air traffic rules;

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

(16) ‘approach control service’ means an ATC service for arriving or departing controlled flights;

(17) ‘area control service’ means an ATC service for controlled flights in control areas;

(18) ‘baseline value’ means ***a*** value ▌***that has been estimated*** for the purpose of setting performance targets and concerning determined costs or determined unit costs during the year preceding the start of the relevant reference period;

(19) ‘benchmark group’ means a group of air traffic service providers with a similar operational and economic environment;

(20) ‘breakdown value’ means the value obtained, for a given air traffic service provider, by breaking down a Union-wide performance target to the level of each air traffic service provider and serving as a reference for assessing consistency of the performance target set in draft performance plan with the Union-wide performance target;

(21) ‘certificate’ means a document issued ***as the result of a certification procedure and attesting compliance with the applicable*** requirements; ▌

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

(22a) "U-space airspace" means a UAS geographical zone designated by Member States, in which UAS operations are only allowed to take place with the support of U-space services;

(22b) "U-space service" means a service relying on a high level of digitalisation and automation of functions designed to support safe, efficient and secure access to U-space airspace for a large numbers of UAS;

(22c) "U-space service provider" means any legal or natural person providing, or intending to provide, U-space services;

(23) 'communication services' means aeronautical fixed and mobile services to enable ground-to-ground, air-to-ground and air-to-air communications for ATC purposes;

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

(25) 'control area' means a controlled airspace extending upwards from a specified limit above the earth;

(26) 'cooperative decision-making' means a process in which decisions ***by the Network Manager*** are made based on interaction and consultation with Member States, operational stakeholders ***and with Member States*** and other actors as appropriate;

(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.

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

(31) ‘Eurocontrol’ is the European Organisation for the Safety of Air Navigation set up by the International Convention of 13 December 1960 relating to Cooperation for the Safety of Air Navigation;

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

(33) ‘European ATM Master Plan’ means the plan endorsed by Council Decision 2009/320/EC[18], in accordance with Article 1(2) of Council Regulation (EC) No 219/2007 and as subsequently amended;

(34) ‘flexible use of airspace’ means an airspace management concept based on the fundamental principle that airspace should not be designated as either pure civil or military airspace, but ▌as ***one*** 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;

(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;

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[18] OJ L 95, 9.4.2009, p. 41.

(38) ‘meteorological services’ 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; ▌

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

(42) ‘network crisis’ means a state of inability to provide air traffic management and 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 in one or several parts of the network following an unusual and unforeseen situation;

(42a) ‘network functions’ means air traffic management network functions delivered and executed by all operational stakeholders and States and by the Network Manager in order to achieve objectives defined in this regulation;

(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;

(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;

(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;

(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;

(52a) ‘standards development organisation’ means any organisation the main purpose of which is developing, coordinating or issuing technical standards, including the European standardisation organisations listed in Annex I to Regulation (EU) 1025/2012[19];

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[19] ***Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council***

(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, where terminal air navigation services are provided and for which a single cost base is established;

(57) ‘upgrade’ means any modification that changes the operational characteristics of a system.

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 ▌ as their national supervisory authority in order to assume the tasks assigned to such authority by this Regulation.

new2. The national supervisory authorities shall exercise their powers impartially, independently and transparently ***applying appropriate management and control mechanisms*** and shall be organised, staffed, managed and financed accordingly.

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and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316 14.11.2012, p. 12).

3. Without prejudice to paragraph 1, the national supervisory authorities shall be legally distinct and independent from any other public or private entity in terms of their organisation, functioning, ***budgeting, financing,*** legal structure and decision-making.

The national supervisory authorities shall also be independent in terms of their organisation, ***functioning, budgeting, financing,*** legal structure and decision-making from any air navigation service provider ***or any other entity falling within the scope of their supervision.***

4. ***The*** national supervisory authority may also ***share*** its organisational structure ***with another regulatory authority or*** with the national competition authority referred to in Article 11 of Council Regulation (EC) No 1/2003[20], if the joint body 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 ***and criteria*** 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.

(ba) they shall not be seconded from air navigation service providers or companies under the control of an air navigation service provider.

Staff of national supervisory authorities shall act independently, ***and not seek or take instructions from any government or other public or private entity when carrying out its functions***.

[20] 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).

6. In addition to the requirements set out in paragraph 5, persons in charge of strategic decisions shall be appointed ***in accordance with a clear and transparent procedure*** by an entity of the Member State concerned which does not directly exert ownership rights over air navigation service providers. ***Persons appointed shall not have held a professional position in, or had responsibility in connection with any air navigation service provider during the previous year.*** Member States shall decide whether ▌ persons ***in charge of strategic decisions*** are appointed for a fixed and renewable term, or on a permanent basis which only allows dismissal for reasons not related to their decision-making. 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 ▌ ***a*** declaration of commitment and declaration of interests indicating any direct or indirect interests.

Where a person has been in charge of the strategic decisions, audits or other functions directly linked to performance targets or oversight of an air navigation service provider for a term of six months or more, they shall not hold any professional position ***in,*** or ***have*** responsibility ***in connection*** with, any air navigation service provider until a minimum period after their term in that national supervisory authority ***has elapsed.***

That minimum period shall be:

(i) at least 12 months, for staff in managerial positions;

(ii) at least 6 months for staff, for staff in non-managerial positions.

7. Member States shall ensure that national supervisory authorities have the necessary ***public*** financial resources and capabilities to carry out the tasks assigned to them under this Regulation in an efficient and timely manner. The national supervisory authorities shall manage their staff based on their own appropriations, ***in accordance with relevant national law and procedures*** to be set in ***depending on*** the tasks to be fulfilled by the authority in accordance with Article 4.

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 ***delegated acts referred to in Article*** 23 and for which the national supervisory authority of that Member State is responsible under this Regulation and the delegated and implementing acts adopted on the basis thereof.

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.

A Member State which has reallocated the responsibility for the tasks to the Agency acting as PRB pursuant to paragraph 1 and 2, may, at any time, decide to revoke the reallocation, if:

(i) the Member State concerned demonstrates that it has the necessary resources and can effectively exercise the responsibility for the tasks concerned;

(ii) the Member State agrees with the Agency's acting as PRB detailed arrangements concerning the reallocation of responsibility for the tasks in question, including the date of that reallocation.

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.

10. The Commission shall establish detailed rules laying down the modalities of recruitment ***criteria*** and selection procedures referred to in paragraph 5, points (a) and (b) ***and (ba).***

Those implementing acts shall specify:

(a) the level of separation required by the appointing entity from any company, organisation, public or private entity or staff falling within the scope of national supervisory authorities or having an interest in the activities of such entities, with a view to maintaining a balance between avoiding conflicts of interest and administrative efficiency;

(b) relevant technical qualifications of staff involved in audits.

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

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Article 4

Tasks of the national supervisory authorities

1. The national supervisory authorities referred to in Article 3 shall:

(a) conduct the activities necessary for the issuance of the economic certificates referred to in Article 6, including the oversight of the holders of those economic certificates;

(b) oversee the correct application of procurement requirements in accordance with Article 8(6);

(c) ▌***implement*** the performance and charging schemes set out in in Articles 10 to 17 and 19 to 22***, including the delegated acts referred to in Article 23 adopted to supplement those articles,*** and the implementing acts referred to in Articles 18, within the limits of their tasks defined in those articles and acts, and oversee the application of the Regulation regarding the transparency of accounts of▌ air ***navigation*** traffic service providers in accordance with Article 25.

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.

3. Each national supervisory authority shall conduct the necessary inspections, audits and other monitoring activities to identify possible infringements by entities subject to their oversight under this Regulation of the requirements set out in this Regulation and the delegated and implementing acts adopted on the basis thereof.

It shall take all necessary enforcement measures which may, where appropriate, include the amendment, limitation, suspension or revocation of economic certificates issued by them in accordance with Article 6 ***and fines or periodic penalties imposed in accordance with Article 42a.***

The air navigation service providers, airport operators and the common information service providers concerned shall comply with the measures taken by the national supervisory authorities to this effect.

3a. ***Member States shall ensure that the decisions taken by the national supervisory authority pursuant to this Article are subject to judicial review.***

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.

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

3. National supervisory authorities shall facilitate the provision of cross-border services by air navigation service providers for the purpose of improving network performance. In the case of provision of air navigation services in an airspace falling under the responsibility of two or more Member States, the Member States concerned shall conclude an agreement on the supervision to be carried out by them under this Regulation, of the air navigation service providers concerned. The national supervisory authorities concerned ***shall*** establish a plan specifying the implementation of their co-operation with a view to giving effect to that agreement.

4. In the case of provision of air navigation services in an airspace falling under the responsibility of another Member State, the agreements referred to in paragraph 3 shall provide for the mutual recognition of the discharge, by each of the authorities, of the supervisory tasks set out in this Regulation and of the results of the discharge of these tasks. They shall also specify which national supervisory authority shall be in charge of the economic certification set out in Article 6.

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

Article 5a

Agency acting as Performance Review Body

1. A Performance Review Body (PRB) shall be established with the competence to implement various tasks notably in respect of the performance and charging schemes. A permanent structure shall be established with the European Union Aviation Safety Agency (EASA) in a manner that separates, functionally and hierarchically, the discharge of the PRB's tasks regarding the performance and charging schemes of the Single European Sky, from the Agency's activity as a safety authority.

2. To carry out its tasks, the Agency acting as PRB shall have the required expertise. It shall be independent from public or private interests and shall be provided with its own dedicated resources. Its integration within the existing structure of the Agency shall be governed by the [Regulation (EU) 2018/1139 as amended by Regulation PRB].

Article 5b

Structure of the Agency acting as PRB

For carrying out its tasks on performance review, the Agency acting as PRB shall have:

(a) A Regulatory Board for Performance Review;

(b) A Director for Performance Review;

(c) An Advisory Board for Performance Review;

(d) An Appeal Board for Performance Review, independent from the bodies and function holders listed in points (a) to (c).

Article 5c

Functions of the Regulatory Board for Performance Review

1. The Regulatory Board for Performance Review shall:

(a) provide opinions and, where appropriate, comments on and amendments to the text of the Director for Performance Review's proposals for draft opinions, recommendations and decisions related to its tasks under this Regulation, including when they are carried out pursuant to a cooperation agreement under Article 5z which are considered for adoption;

(b) within its field of competence, provide guidance to the Director for Performance Review in the execution of his or her tasks;

(c) appoint the Director for Performance Review in accordance Article 5h(2), and where applicable decide on his or her removal from office in accordance with Article 5h(6);

(d) approve the section on performance review activities of the programming document to be submitted by the Director for Performance Review to the Executive Director in accordance with point (g) of Article 5i(3) and Article 117a of the [Regulation (EU) 2018/1139 as amended by Regulation PRB];

(e) decide, after obtaining the agreement of the Commission, and as regards the revenue and expenditure in respect of performance review, whether to accept any legacies, donations or grants from other Union sources or any voluntary contribution from the Member States or from the national supervisory authorities referred to in Article 3 of this Regulation;

(f) approve the independent section on regulatory activities of the section on performance review of the consolidated annual activity report to be submitted by the Director for Performance Review to the Executive Director of the Agency in accordance with point (i) of Article 5i(3)and Article 118a of the [Regulation (EU) 2018/1139 as amended by Regulation PRB];

(g) elaborate and approve the procedures for issuing opinions, recommendations and decisions by the Agency acting as PRB in accordance with Article 5v(4);

(h) on the basis of a proposal by the Director for Performance Review, adopt and regularly update the communication and dissemination plans on performance review referred to in Article 5v(5);

(i) on the basis of a proposal by the Director for Performance Review, establish or modify the internal structures concerning performance review;

(j) authorise the conclusion of working arrangements in accordance with Article 5z(4).

(k) exercise disciplinary authority over the Director for Performance Review;

(l) on the basis of a proposal by the Director for Performance Review, establish mechanisms and procedures for consultation of stakeholders referred to in Article 38 and Article 5v of this Regulation.

(m) provide an opinion to the Commission on the candidates to be appointed as members of the Appeal Board for Performance Review in accordance with Article 5m. That opinion shall not be binding.

Article 5d

Composition and independence of the Regulatory Board for Performance Review

1. *The Regulatory Board for Performance Review shall be composed of 9 voting members and one non-voting representative of the Commission. Each member shall have an alternate. One of the members shall be the Chairperson of the Advisory Board for Performance Review. A member of the Management Board of the Agency shall not be a member of the Regulatory Board for Performance Review. The term of office for members and their alternates shall be five years, and that term shall be extendable.*

2. *The members of the Regulatory Board for Performance Review and their alternates shall be formally appointed by the Commission, following a public call for expression of interest. The members of the Regulatory Board for Performance Review shall be appointed on the basis of merit as well as to ensure a mix of skills, and experience relevant to the air traffic management or economic regulation of network industries, together with scientific knowledge and expertise about the environmental and climate impacts of the aviation sector. Gender and geographical balance shall be taken into account;*

3. *When carrying out the tasks conferred upon it by this Regulation, the Regulatory Board for Performance Review shall be independent and shall not seek or follow instructions from any government of a Member State, from the Commission, from EASA or any another public or private entity.*

Article 5e

Chairperson of the Regulatory Board for Performance Review

1. *The Regulatory Board for Performance Review shall elect a Chairperson and a Deputy Chairperson from among its members with voting rights by a two-thirds majority. The Deputy Chairperson shall replace the Chairperson if the latter is not in a position to perform his or her duties.*

2. *The term of office of the Chairperson and of the Deputy Chairperson shall be two-and-a-half years and shall be renewable. If their membership of the Regulatory Board for Performance Review ceases at any time during their term of office, their term of office shall automatically expire on that date.*

Article 5f

Meetings of the Regulatory Board for Performance Review

1. *Meetings of the Regulatory Board for Performance Review shall be convened by its Chairperson.*

2. *The Regulatory Board for Performance Review shall hold at least two ordinary meetings a year. In addition, it shall meet at the request of the Chairperson, of the Commission or of at least one third of its members.*

3. *The Director for Performance Review shall take part in the deliberations, without the right to vote.*

4. *The Regulatory Board for Performance Review may invite any person whose opinion might be of interest, such as scientific experts in the domain of climate and environmental performance, to attend its meetings with observer status.*

5. *The Agency shall provide the secretariat for the Regulatory Board for Performance Review.*

Article 5g

Voting rules of the Regulatory Board for Performance Review

1. *Unless otherwise specified in this Regulation, the Regulatory Board for Performance Review shall take decisions by a simple majority of the members with voting rights.*

2. *Each member with voting rights appointed pursuant to Article 5d(2) shall have one vote. In the absence of a member, his or her alternate shall be entitled to exercise his or her right to vote. Neither observers nor the Director for Performance Review shall have the right to vote.*

3. The Regulatory Board for Performance Review shall adopt its rules of procedure, which shall set out in greater detail the arrangements governing voting.

Article 5h

Director for Performance Review

1. The Director for Performance Review shall be engaged as a temporary agent of the Agency under Article 2, point (a) of the Conditions of Employment of Other Servants.

2. The Director for Performance Review shall be appointed by the Regulatory Board for Performance Review, on the basis of merit as well as skills and experience relevant to the aeronautical industry or economic regulation of network industries, from a list of at least three candidates proposed by the Commission and following an open and transparent selection procedure. The Director for Performance Review shall not have held any professional position or responsibility with any air navigation service provider or airline company for the one year prior to the appointment.

3. The Director for Performance Review's term of office shall be five years. In the course of the nine months preceding the end of that period, the Commission shall undertake an assessment. In the assessment, the Commission shall examine in particular:

(a) the performance of the Director for Performance Review;

(b) the duties and requirements concerning performance review in the following years.

4. The Regulatory Board for Performance Review acting on a proposal from the Commission and giving the utmost consideration to the assessment referred to in paragraph 3 may extend the term of office of the Director for Performance Review once by no more than five years. A Director for Performance Review whose term of office has been extended shall not participate in another selection procedure for the same post at the end of the extended period.

5. If his or her term of office is not extended, the Director for Performance Review shall remain in office until the appointment of his or her successor.

6. The Director for Performance Review may be removed from office only by a decision of the Regulatory Board for Performance Review, acting on a proposal from the Commission.

7. The Regulatory Board for Performance Review shall reach decisions on appointment, extension of the term of office or removal from office of the Director for Performance Review on the basis of a two-thirds majority of its members with voting rights. The Director for Performance Review shall not hold any professional position or responsibility with any air navigation service provider, or with any other entity which could give rise to a conflict of interests, after his or her term as Director for Performance Review, for at least a period of two years.

Article 5i

Responsibilities of the Director for Performance Review

1. The Director for Performance Review shall be accountable to the Regulatory Board for Performance Review with respect to administrative, budgetary and managerial matters, but shall remain fully independent concerning his or her tasks under paragraph 3. Without prejudice to the role of the Regulatory Board for Performance Review in relation to the tasks of the Director for Performance Review, the Director for Performance Review shall neither seek nor follow any instruction from any government, from the Union institutions, from EASA or from any other public or private entity or person.

2. The Director for Performance Review may attend the meetings of the Regulatory Board for Performance Review as an observer.

3. The Director for Performance Review shall be responsible for the implementation of the tasks regarding performance review carried out in accordance with this Regulation. The Director for Performance Review shall take account of the guidance referred to in Article 5c(1), point (b) and, where provided for in this Regulation, the opinions of the Regulatory Board for Performance Review. In particular, the Director for Performance Review shall be responsible for:

(a) ensuring the legal representation of the Agency in matters of performance review;

(b) carrying out the day-to-day administration of the work on performance review, including exercising appointing authority powers as regard members of the staff whose posts are attributed to the function of the Agency acting as PRB;

(c) with respect to areas directly or indirectly linked to the work on performance review, preparing the work of the Management Board, participating, without having the right to vote, in the work of the Management Board and implementing the decisions adopted by the Management Board on areas related to the function of the Agency acting as PRB;

(d) drafting, consulting, adopting and publishing opinions, recommendations and decisions in respect of the its tasks under this Regulation, including when they are carried pursuant to a cooperation agreement under Article 5z;

(e) implementing the section on performance review activities of the programming document referred to in Article 117a of the [Regulation (EU) 2018/1139 as amended by Regulation PRB];

(f) taking the necessary measures, in particular as regards adopting internal administrative instructions and publishing notices, to ensure the functioning of the Agency's work on performance review in accordance with this Regulation.

(g) each year, preparing the section on performance review activities of the programming document referred to in Article 117a of the [Regulation (EU) 2018/1139 as amended by Regulation PRB] which shall be submitted to the Executive Director of the Agency and integrated in the Agency's draft programming document. Any change to the input related to performance review shall only be made upon approval of the Director for Performance Review;

(i) drawing up a provisional draft estimate of the revenue and expenditure in respect of performance review in accordance with Article 120a(7) of the [Regulation (EU) 2018/1139 as amended by Regulation PRB] and submitting it to the Executive Director of the Agency for the purpose of Article 104(3), point (h) of the [Regulation (EU) 2018/1139 as amended by Regulation PRB] and implementing the revenue and expenditure in respect of performance review in accordance with Article 121 of the [Regulation (EU) 2018/1139 as amended by Regulation PRB]. Any change to the input related to performance review shall only be made upon approval of the Director for Performance Review;

(j) preparing annually the draft section on performance review of the consolidated annual activity report including an independent section on the regulatory activities related to performance review and a section on financial and administrative matters, and submitting it to the Executive Director of the Agency for its integration in the consolidated annual activity report. Any change to the input on performance review shall only be made upon approval of the Director for Performance Review;

(k) where activities of the Agency acting as PRB are concerned, preparing, in coordination with the Executive Director of the Agency, an action plan following up on the conclusions of internal or external audit reports and evaluations, as well as on investigations by OLAF, and reporting on progress twice a year to the Commission and reporting regularly on progress to the Management Board;

(l) preparing a proposal for mechanisms and procedures for consultation of stakeholders referred to in Article 38 of this Regulation to be submitted to the Regulatory Board for Performance Review for adoption;

(m) requesting the Regulatory Board for Performance Review to establish or modify the internal structures concerning performance review;

(n) preparing the draft communication and dissemination plans concerning performance review referred to in Article 5v(5) to be submitted to the Regulatory Board for Performance Review;

(o) deciding whether in order for the Agency acting as PRB to be able carry out its work in an efficient and effective manner it is necessary to establish one or more local offices in one or more Member States. The decisions referred to in the first subparagraphs require the prior consent of the Regulatory Board for Performance Review and, where applicable, the Member State where the local office is to be established. Those decisions shall specify the scope of the activities to be carried out at that local office or by that co-located staff in a manner that avoids unnecessary costs and duplication of administrative functions of the Agency.

4. The section of the annual work programme on performance review in the programming document shall:

(i) comprise detailed objectives and expected results, including performance indicators, including for climate and environment areas;

(ii) contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management;

(iv) be coherent with the section on performance review of the multi-annual work programme referred to in Article 117a(4) of the [Regulation (EU) 2018/1139 as amended by Regulation PRB]; and

(iv) clearly indicate the tasks that have been added, changed or deleted in comparison with the previous financial year.

5. The section of the consolidated annual activity report on performance review shall include an independent section on regulatory activities, including levels of performance targets fulfilment, and a section on financial and administrative matters. The Regulatory Board for Performance Review shall approve the independent section on regulatory activities prior to the submission to the Executive Director of the Agency, in accordance with Article 5c(1), point (d).

6. For the purposes of paragraph 3, point (d), opinions, recommendations and decisions of the Agency acting as PRB under Regulation including when carried out pursuant to a cooperation agreement under Article 5z shall be adopted only after having obtained the favourable opinion of the Regulatory Board for Performance Review.

Before submitting draft opinions, recommendations or decisions to a vote by the Regulatory Board for Performance Review, the Director for Performance Review shall submit proposals for the draft opinions, recommendations or decisions to the relevant working group for consultation sufficiently in advance.

The Director for Performance Review shall take the comments and amendments of the Regulatory Board for Performance Review into account and shall resubmit the revised draft opinion, recommendation or decision to the Regulatory Board for Performance Review for a favourable opinion. Where the Director for Performance Review deviates from or rejects the comments and amendments received from the Regulatory Board for Performance Review, the Director for Performance Review shall also provide a duly justified written explanation.

The Director for Performance Review may withdraw submitted draft opinions, recommendations or decisions provided that he/she submits a duly justified written explanation where he/she disagrees with the amendments submitted by the Regulatory Board for Performance Review. In the case of a withdrawal of a draft opinion, recommendation or decision, the Director for Performance Review may issue a new draft opinion, recommendation or decision following the procedure set out in Article 5c(1), point (a) and in the second subparagraph of this paragraph.

If the Regulatory Board for Performance Review does not give a favourable opinion on the resubmitted text of the draft opinion, recommendation or decision because its comments and amendments were not adequately reflected in the resubmitted text, the Director for Performance Review may revise the text of the draft opinion, recommendation or decision further in accordance with the amendments and comments proposed by the Regulatory Board for Performance Review in order to obtain its favourable opinion, without having to provide additional written reasons.

Article 5j

Functions and operations of the Advisory Board for Performance Review

1. The Advisory Board for Performance Review shall:

(a) exchange information about the work of national supervisory authorities and decision-making principles, best practices and procedures as well as with regard to the application of this Regulation.

(b) provide opinions and recommendations on guidance material to be issued by the Agency acting as PRB. The opinions and recommendations of the Advisory Board for Performance Review shall not be binding

2. The Advisory Board for Performance Review shall meet at regular intervals, in order to ensure that national supervisory authorities consult and work together in a network, in synergy with stakeholders.

3. The Chairperson of the Regulatory Board for Performance Review and the Director for Performance Review may participate in meetings of the Advisory Board for Performance Review and may make recommendations to national supervisory authorities convened as the Advisory Board for Performance Review, as appropriate, on matters related to their expertise on the performance and charging scheme referred to in this Regulation.

4. Subject to the rules on data provided for in Article 31 of this Regulation and in Regulation (EU) 2018/1725 of the European Parliament and of the Council[21], the Agency shall provide the secretariat to the Advisory Board for Performance Review and shall support the exchange of the information referred to in paragraph 1 among the members of the Advisory Board for Performance Review, respecting the confidentiality of commercially sensitive information of air navigation service providers.

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[21] *Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).*

Article 5k

Composition of the Advisory Board for Performance Review

1. The Advisory Board for Performance Review shall be composed of:

(a) one senior representative per Member State from the national supervisory authorities referred to in Article 3 of this Regulation and one alternate per Member State from the current senior staff of those authorities, both nominated by the national supervisory authority;

(b) one non-voting representative of the Commission, and one alternate, both with sufficient expertise and knowledge on the environmental and climate impacts of aviation;

(c) three non-voting representative of Air Navigation Services Providers, commercial and non-commercial civil airspace users and of the airport operators;

(d) one non-voting professional staff organisation representative.

2. The Advisory Board for Performance Review shall elect a Chairperson and a Deputy-Chairperson from among its members. The Deputy-Chairperson shall replace the Chairperson if the latter is not in a position to perform his or her duties. The term of office of the Chairperson and of the Deputy-Chairperson shall be two-and-a-half years and shall be renewable. If their membership of the Advisory Board for Performance Review ceases at any time during their term of office, their term of office shall automatically expire on that date.

Article 5l

Powers of the Appeal Board for Performance Review

1. The Appeal Board for Performance Review shall be responsible for deciding on appeals against the decisions referred to in this Regulation. The Appeal Board for Performance Review shall be convened as necessary.

2. The Appeal Board for Performance Review shall be independent from the Regulatory Board for Performance Review, the Advisory Board for Performance Review and from the Director for Performance Review.

3. The decisions of the Appeal Board for Performance Review shall be adopted by a majority of at least four of its six members.

Article 5m

Members of the Appeal Board for Performance Review

1. The Appeal Board for Performance Review shall be composed of six members and six alternates selected from among current or former senior staff of the national supervisory authorities referred to in Article 3 of this Regulation competition authorities or other Union or national institutions with relevant experience in the aviation sector. The Appeal Board for Performance Review shall designate its Chairperson.

2. The members of the Appeal Board for Performance Review shall be formally appointed by the Commission, following a public call for expression of interest, after consulting the Regulatory Board for Performance Review.

3. The members of the Appeal Board for Performance Review shall undertake to act independently and in the public interest. For that purpose, they shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which might be considered prejudicial to their independence or indicating any direct or indirect interest which might be considered prejudicial to their independence. Those declarations shall be made public annually.

4. The term of office of the members of the Appeal Board for Performance Review shall be five years. That term shall be renewable once.

5. In taking their decisions the members of the Appeal Board for Performance Review shall act independently. They shall not be bound by any instructions. They shall not perform any duties in the Agency, in its Management Board, in the Regulatory Board for Performance Review or in the Advisory Board for Performance Review. A member of the Appeal Board for Performance Review shall not be removed during his or her term of office, unless he or she has been found guilty of serious misconduct, and the Commission has taken a decision to that effect.

6. The Appeal Board for Performance Review shall adopt and publish its rules of procedure. Those rules shall set out in detail the arrangements governing the organisation and functioning of the Appeal Board for Performance Review and the rules applicable to appeals before the Appeal Board for Performance Review pursuant to Articles 5l to 5t. The Appeal Board for Performance Review shall notify the Commission of its draft rules of procedure as well as any significant change to those rules. The Commission may provide an opinion on those rules within three months of the date of receipt of the notification.

Article 5n

Exclusion and objection in the Appeal Board for Performance Review

1. The members of the Appeal Board for Performance Review shall not take part in any appeal proceedings if they have any personal interest therein, if they have previously been involved as representatives of one of the parties to the proceedings or if they participated in the adoption of the decision under appeal.

2. If, for one of the reasons listed in paragraph 1 or for any other reason, a member of the Appeal Board for Performance Review considers that he or she should not take part in any appeal proceeding, he or she shall inform the Appeal Board for Performance Review accordingly.

3. Any party to the appeal proceedings may object to any member of the Appeal Board for Performance Review on any of the grounds given in paragraph 1, or if the member is suspected of partiality. Any such objection shall not be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step. No objection may be based on the nationality of members.

4. The Appeal Board for Performance Review shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision, the member concerned shall be replaced on the Appeal Board for Performance Review by his or her alternate. If the alternate finds him or herself in a similar situation to that of the member, the Chairperson shall designate a replacement from among the available alternates.

Article 5o

Decisions issued by the Agency acting as PRB subject to appeal

1. An appeal may be brought against decisions of the Agency acting as PRB taken pursuant to this Regulation.

2. An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Appeal Board for Performance Review may, however, if it considers that circumstances so require, suspend the application of the contested decision.

3. The Agency acting as PRB shall publish the decisions taken by the Appeal Board for Performance Review.

Article 5p

Persons entitled to appeal

Any natural or legal person may appeal against a decision issued by the Agency acting as PRB addressed to that person, or against a decision issued by the Agency acting as PRB which, although in the form of a decision addressed to another person, is of direct and individual concern to the former. The parties to proceedings may be party to the appeal proceedings.

Article 5q

Time limit and form

The appeal shall include a statement of the grounds for appeal and shall be filed in writing to the Agency acting as PRB within two months of the notification of the decision to the person concerned, or, in the absence thereof, within two months of the date on which the Agency acting as PRB published its decision. The Appeal Board for Performance Review shall decide upon the appeal within four months of the lodging of the appeal.

Article 5r

Interlocutory revision

1. Before examining the appeal, the Appeal Board for Performance Review shall give the Agency acting as PRB the opportunity to review its decision. If the Director for Performance Review considers the appeal to be well founded, he or she shall rectify the decision within two months from being notified by the Appeal Board for Performance Review. That shall not apply where the appellant is opposed to another party to the appeal proceedings.

2. If the decision is not rectified, the Appeal Board for Performance Review shall forthwith decide whether or not to suspend the application of the decision pursuant to Article 5o(2).

Article 5s

Examination of appeals

1. The Appeal Board for Performance Review shall assess whether the appeal is admissible and well founded.

2. When examining the appeal pursuant to paragraph 1, the Appeal Board for Performance Review shall act expeditiously.

It shall as often as necessary invite the parties to the appeal proceedings to file, within specified time limits, written observations on notifications issued by itself or on communications from other parties to the appeal proceedings. The Appeal Board for Performance Review may decide to hold an oral hearing, either of its own motion or at the substantiated request of one of the parties to the appeal.

Article 5t

Decisions on appeal

Where the Board of Appeal finds that the appeal is not admissible or that the grounds for appeal are not founded, it shall reject the appeal. Where the Board of Appeal finds that the appeal is admissible and that the grounds for appeal are founded, it shall remit the case to the Agency acting as PRB. The Agency acting as PRB shall take a new reasoned decision taking into account the decision by the Board of Appeal.

Article 5u

Actions before the Court of Justice

1. Actions for the annulment of a decision issued by the Agency acting as PRB pursuant to this Regulation and actions for failure to act within the applicable time limits may be brought before the Court of Justice only after the exhaustion of the appeal procedure referred to in Articles 5l to 5t.

2. The Agency acting as PRB shall take the necessary measures to comply with the judgments of the Court of Justice

Article 5v

Transparency, communication and procedures for issuing opinions, recommendations and decisions by the Agency acting as PRB

1. In carrying out its tasks, the Agency acting as PRB shall extensively consult at an early stage the stakeholders listed in Article 38(3) of this Regulation and, where relevant, competition authorities and the European Environmental Agency, without prejudice to their respective competence, in an open and transparent manner. In accordance with Article 38 of this Regulation, the Agency acting as PRB shall establish consultation mechanisms for appropriate involvement of those stakeholders.

For this purpose, the Director for Performance Review shall draft a proposal for those mechanisms to the Regulatory Board for Performance Review.

2. The Agency acting as PRB shall ensure that the public and any interested parties are given objective, reliable, updated and easily accessible information, in particular with regard to the results of its work.

All documents and minutes of consultation meetings shall be made public.

3. The Agency acting as PRB shall make public, on its website, at least the agenda, the background documents and, where appropriate, the minutes of the meetings of the Regulatory Board for Performance Review and of the Appeal Board for Performance Review.

4. The Agency acting as PRB shall adopt and publish adequate and proportionate procedures for issuing opinions, recommendations and decisions by the Agency acting as PRB, in accordance with the procedure set out in Article 5c(1), point (g). Those procedures shall:

(a) ensure that the Agency acting as PRB publishes documents and widely consults interested parties, in accordance with a timetable and a procedure which includes an obligation on the Agency acting as PRB to give a written response to the consultation process;

(b) undergo, for matters concerning climate and environmental performance, a scientific review by independent experts;

(c) ensure that before taking any individual decision as provided for in the [Regulation (EU) 2018/1139 as amended by Regulation PRB] and in this Regulation, the Agency acting as PRB informs any party concerned of its intention to adopt that decision, and shall set a time limit within which the party concerned may express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter;

(d) ensure that individual decisions of the Agency acting as PRB states the reasons on which they are based for the purpose of allowing an appeal on the merits;

(e) where the Agency acting as PRB issues a decision, provide for the natural or legal person to whom the decision is addressed, and any other parties to proceedings, to be informed of the legal remedies available to them under this Regulation;

(f) specify the conditions under which decisions are notified to the persons concerned, including information on the available appeal procedures as provided for in this Regulation.

5. The Agency acting as PRB may engage in communication activities on its own initiative within its field of competence on performance review, and in doing so shall be represented by the Director for Performance Review. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the tasks and powers referred to in this Regulation. Communication activities shall be carried out in accordance with relevant communication and dissemination plans adopted by the Regulatory Board for Performance Review in accordance with point (h) of Article 5c(1);

Article 5w

Budget of the Agency for its functions as PRB

1. The Agency shall account the revenue and expenditure for performance review separately from other revenue and expenditure. Such revenue and expenditure shall be in balance, in accordance with and subject to paragraph 2.

2. Surpluses shown in the account referred to in paragraph 1 shall be transferred to the reserve fund established in accordance with paragraph 6. Losses shown in the account referred to in paragraph 1 shall be covered through transfers from that reserve fund. Where a significant positive or negative budget result becomes recurrent, the level of fees and charges referred to in paragraph 3, points (a) and (d) and Article 5y shall be revised.

3. The revenues of the Agency for its functions as PRB shall comprise:

(a) a financial contribution from the Union for the setting up of the PRB for all the expenditures necessary to initiate the supervision by the Agency acting as PRB;

(b) fees levied by the Agency acting as PRB on designated air traffic service providers for services related to performance plan assessment, target-setting and monitoring;

(c) any voluntary financial contribution from the Member States or the national supervisory authorities referred to in Article 3 of this Regulation;

(d) charges for publications and any other service provided by the Agency acting as PRB;

(e) any contribution from third countries or other entities, provided that such a contribution does not compromise the independence and impartiality of the Agency acting as PRB.

4. All revenue and expenditure of the Agency for its functions as PRB shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.

5. The revenue received by the Agency for its functions as PRB shall not compromise its neutrality, independence or objectivity.

6. The Agency acting as PRB shall establish a reserve fund covering one year of its operational expenditure to ensure the continuity of its operations and the execution of its tasks. It shall be reviewed each year to ensure that it is limited to annual needs.

7. The Director for Performance Review shall draw up each year a draft estimate of the revenue and expenditure for performance review for the following year together with the list of posts for performance review, detailing their intended duties and fields of activity, and shall submit them to the Executive Director for its integration in the draft statement of estimates of the Agency's revenue and expenditure referred to in Article 120(6) of the [Regulation (EU) 2018/1139 as amended by Regulation PRB].

8. The Executive Director or the Management Board may make changes to the draft estimate of the revenue and expenditure and the list of posts for performance review upon approval of the Director for Performance Review. Where the Executive Director and the Director for Performance Review do not come to an agreement on the draft estimate of the revenue and expenditure for performance review, the Director for Performance Review shall draft an opinion which the Executive Director shall annex to the draft statement of estimates of the Agency's revenue and expenditure referred to in Article 120(6) of the [Regulation (EU) 2018/1139 as amended by Regulation PRB]. The Director for Performance Review shall in that case also have the right to present its opinion to the Management Board before the Management Board adopts the provisional draft estimate of revenue and expenditure of the Agency in accordance with the second subparagraph of Article 120(6) of the [Regulation (EU) 2018/1139 as amended by Regulation PRB].

Article 5x

Evaluation

1. In conjunction with the evaluation referred to in Article 43 of this Regulation, the Commission shall, by the deadline defined in that Regulation, carry out an evaluation to assess the Agency's performance as PRB in relation to its objectives, tasks and powers. The evaluation shall in particular address the possible need to modify the tasks and powers of the Agency acting as PRB, and the financial implications of any such modification.

2. Where the Commission considers that the continued existence of the PRB function is no longer justified with regard to its assigned objectives, tasks and powers, it may propose that this Regulation and [Regulation (EU) 2018/1139 as amended by Regulation PRB] be amended accordingly.

3. The Commission shall forward the evaluation findings related to the activity of the Agency acting as PRB, together with its conclusions, to the European Parliament, the Council and the Management Board. The findings of the evaluation and the recommendations shall be made public.

Article 5y

Fees and charges of the Agency acting as PRB

1. Fees of the Agency acting as PRB shall be levied for:

(a) the assessment of the allocation of costs between en route and terminal air navigation services, in accordance with Article 13(6) of this Regulation.

(b) the assessment, for each initial or revised draft performance plan presented to the Agency acting as PRB, carried out in accordance with Article 13(7) to (9) of this Regulation;

(c) where the Agency acts as a supervisory authority in accordance with Article 3(8) of this Regulation, the assessment, for each initial or revised draft performance plan presented to the Agency acting as PRB, carried out in accordance with Article 14(6) to (8) of this Regulation;

(d) the establishment of performance targets of designated air traffic service providers in accordance with Article 13(9) of this Regulation;

(e) where the Agency acts as a supervisory authority in accordance with Article 3(8) of this Regulation, the establishment of performance targets of designated air traffic service providers in accordance with Article 14(8) of this Regulation;

(f) the assessment of requests for permissions to revise targets and performance plans of air traffic service providers in accordance with Article 17(3) and (4) of this Regulation;

(g) the verification of unit rates in preparation of the setting of those rates by the national supervisory authorities, in accordance with Article 21 of this Regulation;

(h) the issuance of reports, in respect of individual air traffic service providers, on the monitoring of performance in accordance with Article 13(11) of this Regulation and, where the Agency acts as a supervisory authority in accordance with Article 3(8) of this Regulation in accordance with Article 14(10) of this Regulation;

(i) the adoption of corrective measures in accordance with Article 13(11) of this Regulation and, where the Agency acts as a supervisory authority in accordance with Article 3(8) of this Regulation, in accordance with Article 14(10) of this Regulation;

The budget of the Agency acting as PRB shall comprise a separate budget line for the financing of the registry of the Appeal Board for the Performance Review.

2. The charges levied for publications and the provision of any other service by the Agency acting as PRB as referred to in Article 5w(3) shall reflect the actual cost of each individual service provided.

3. The amount of the fees and charges shall be fixed by the Commission in accordance with paragraph 4. They shall be fixed at such a level as to ensure that the revenue in respect thereof covers the full cost of the activities related to the services delivered, and to avoid a significant accumulation of surplus. All expenditure regarding members of staff whose posts are dedicated to the function of the Agency acting as PRB, in particular the employer's pro-rata contribution to the pension scheme, shall be reflected in that cost. The fees and charges shall be assigned revenues for the Agency acting as PRB for activities related to services for which fees and charges are due.

4. The Commission is empowered to adopt delegated acts in accordance with Article 36 laying down detailed rules relating to fees and charges levied by the Agency for its function as PRB. Those delegated acts shall specify:

(a) detailed criteria and a detailed methodology for establishing the amounts of the fees and charges;

(b) detailed procedures and a detailed methodology with regard to the way fees and charges are paid.

Article 5z

Cooperation agreements on performance review

1. Insofar as the activities of the Agency acting as PRB are concerned, the Agency shall be open to the participation of third countries which have concluded agreements with the Union and which have adopted and are applying the relevant rules of Union law in the field of air traffic management including, in particular, the rules on independent national supervisory authorities and on performance scheme and charging scheme.

2. Subject to the conclusion of an agreement to that effect between the Union and third countries as referred to in paragraph 1, the Agency acting as PRB may also carry out its tasks under this Regulation with regard to third countries, provided that those third countries have adopted and apply the relevant rules in accordance with paragraph 1 and have mandated the Agency acting as PRB to coordinate the activities of their national supervisory authorities with those of the national supervisory authorities of Member States.

3. Priority shall be given to those cooperation agreements with potential to result in a higher overall reduction of climate-impacting emissions;

4. The agreements referred to in paragraph 1 shall specify the nature, scope and procedural aspects of the involvement of those countries in the work of the Agency acting as PRB and shall include provisions relating to financial contributions and to staff. Those agreements may provide for the establishment of working arrangements.

CHAPTER III

SERVICE PROVISION

Article 6

Economic certification and requirements for 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 ▌ financial robustness and has obtained appropriate liability and insurance cover. ***The applicants shall also demonstrate that they have policies and processes in place to ensure compliance with Union competition law.***

The economic certificate referred to in this paragraph may be ***amended,*** limited, suspended or revoked when the holder no longer complies with the requirements for issuing and maintaining such certificate. ***The NSA shall develop a contingency plan in collaboration with the Network Manager and the Agency acting as PRB in the event of such limitation, suspension or revocation of the economic certificate, in order to ensure business continuation.***

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 shall be entitled to provide within the Union air navigation services for airspace users, under non-discriminatory conditions, without prejudice to Article 7(2).

3. The economic certificate referred to in paragraph 1 ▌ may be subject to one or several conditions set out in Annex I. Such conditions shall be objectively justified, non-discriminatory, proportionate and transparent. The Commission 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 ***financial*** resilience of service provision.

4. The national supervisory ***authority*** 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. ▌ In order to ensure the uniform implementation of and compliance with paragraphs (1), (4) and (5) of this Article, the Commission shall***, with a view to achieving the objectives set out in Article 1,*** adopt implementing acts, in accordance with the examination procedure referred to in Article 37(3), laying down detailed provisions concerning:

   (a) the rules and procedures for certification ***issuing, maintaining, amending, limiting, suspending or revoking the certificates referred to in Article 6 paragraph 1;***

(b) ***the rules and procedures*** for conducting the investigations, inspections, audits and other monitoring activities ***referred to in Article 4(3) and Article 6(5)*** necessary to ensure effective oversight ***and enforcement*** by the national supervisory authority of the entities subject to this Regulation***;***

(c) ***the rules and procedures for developing contingency plans in case of limitation, suspension or revocation of the economic certificate, referred to in Article 6(1);***

6a. ***Notwithstanding paragraphs 1 and 2, Member States may allow the provision of air navigation services in all or part of the airspace under their responsibility without certification in cases where the provider of such services offers them primarily aircraft movements other than general air traffic. In those cases, the Member State concerned shall inform the Commission and the other Member States of its decision and of the measures taken to ensure maximum compliance with the common requirements.***

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) on the basis of a competitive tendering procedure in accordance with paragraph 4a of this Article, unless they prove to the Agency acting as PRB that the procurement would result in a loss of cost efficiency or operational efficiency, a reduction in working condition or negative climate and environmental impact***. 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 Article 41 of Regulation (EU) 2018/1139 and an economic certificate in accordance with Article 6(1).

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

(ba) they shall fulfil the requirements on service quality in accordance with the Union wide performance targets;

▌

1a. The duration of an air traffic service contract shall not exceed one reference period. Member States may decide to renew the designation of an air traffic service provider for up to two additional reference periods.

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 ***in the air traffic service contract*** 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.

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.

4a. The Commission shall adopt delegated acts in accordance with Article 36 specifying the tendering procedure to be followed by the Member States when designating air traffic service providers in accordance with Directive 2014/24/EU and Directive 2014/25/EU;

Article 7a

Relations between service providers

1. Without prejudice to Article 8, air traffic service providers may avail themselves of the air traffic services of other service providers that have been certified in the Union.

2. Air traffic service providers shall formalise their working relationships with one another by means of written agreements or equivalent legal arrangements, setting out the specific duties and functions assumed by each provider and allowing for the exchange of operational data between all service providers in so far as general air traffic is concerned. Those arrangements shall be notified to the national supervisory authority or authorities concerned. Without prejudice to Article 8, the approval of the Member States concerned shall be required.

Article 8

▌***The*** provision of CNS, AIS, ADS, MET and terminal air traffic services

1. ▌Air traffic service providers ***shall*** procure CNS, AIS, ADS or MET services under market conditions***, unless they prove to the National supervisory authorities concerned that the procurement would result in cost efficiency, operational, working conditions or climate and environmental loss.***

▌Airport operators ***shall*** procure terminal air traffic services for aerodrome control ***and terminal air traffic services for approach control*** under market conditions ***unless they prove to the National supervisory authorities concerned that the procurement would result in a loss of cost efficiency or operational efficiency, a reduction in working conditions or negative climate and environmental impact. The national supervisory authorities shall be responsible for assessing the evidence and deciding whether it is sufficient.***

In ***the case of a group of airports, the*** operators or the national supervisory authority concerned ***may decide that*** terminal air traffic services for approach control ***are to be procured at those airports. The national supervisory authority shall coordinate and oversee the procurement procedures, in particular for respecting the implementation of the European ATM Master Plan, the interoperability and ground/air investment coordination.***

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. ***The period of service allocation following the tender procedure shall not exceed the reference period.***

3. ***Air navigation services provider*** shall ensure that the provision of *en route* air traffic services is ***functionally and organisationally*** separated in terms of organisation from the ***individual*** provision of CNS, AIS, ADS, MET and terminal air traffic services and that the requirement concerning the separation of ***individual*** accounts referred to in Article 25(3) is respected. ***Member States shall take all necessary measures to ensure compliance with this paragraph.***

3a. The Commission is empowered to adopt delegated acts in accordance with Article 36 laying down rules on the imposition of fines and periodic penalty payments applicable to infringements of paragraph 3 of this Article.

4. A provider, ***individually or in a package*** of CNS, AIS, ADS, MET or terminal air traffic services may only be selected to provide services in a Member State, when:

(a) it is certified in accordance with Article 6(1) ***of this Regulation*** and ***Article 41 of Regulation (EU) No 2018/1139***;

(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 national security and defence requirements.

By way of derogation from the first subparagraph of this paragraph, 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 points (b) and (c) of this paragraph.

5. Articles 14, 17 and 19 to 22 shall not apply to the terminal air traffic service providers designated as a result of a procurement procedure in accordance with the second and third subparagraphs of paragraph 1. Those terminal air traffic service providers shall provide data on the performance of air navigation services in the key performance areas of safety, the environment ***and climate***, capacity and cost-efficiency to national supervisory authority and the Agency acting as PRB 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***, in particular for respecting the implementation of the European ATM Master Plan, the interoperability and ground/air investment coordination.*** 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 are provided, the data disseminated shall present the integrity and quality necessary to enable the safe ***and integrated*** provision of services for the management of traffic of unmanned aircraft ***in a way that enables the shared use of the airspace together with manned aircraft***.

2. The price for common information services shall be based on the fixed***, structural*** and variable costs of providing the service concerned and may, in addition, include a ***reasonable*** mark-up reflecting an appropriate risk-return trade-off.

The costs referred to in the first subparagraph 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.

3. The common information service provider shall set the price in accordance with paragraph 2, subject to assessment and approval by the national supervisory authority concerned.

4. ***Where manned and unmanned*** operations ***are expected to take place, including in U-Space airspace*** relevant operational data shall be made available in real-time by air navigation service providers. Common information service providers ***or U-Space service providers, as applicable,*** shall use those data only for operational purposes of the services they provide. Access to relevant operational data shall be granted to common information service providers, ***or U-Space service providers, as applicable,*** on a non-discriminatory basis, without prejudice to security or defence policy interests.

▌

4a. The Commission is empowered to adopt delegated acts in accordance with Article 36 to supplement certain non-essential elements of the legislative act, with regard to requirements for traffic management of unmanned and manned aircraft operations that support safe and shared use of the airspace, including the making available of and the access to data, and the methodology to set the prices in accordance with paragraphs 2 and 3.

Article 10

Performance scheme

1. To improve the performance of air navigation services and network functions in the Single European Sky, a performance scheme for air navigation services and network functions shall apply in accordance with this Article and Articles 11 to 18.

2. The performance scheme shall be implemented over reference periods, which shall be a minimum of two years and a maximum of ***three*** years. The performance scheme shall include:

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

(b) performance plans including binding performance targets in the key performance areas mentioned in point (a) for each reference period;

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

The Commission ***is empowered to adopt delegated acts in accordance with Article 36 to supplement this Regulation by laying down*** additional key performance areas for performance target setting or monitoring purposes, where***, on the basis of an impact assessment, these are considered to be*** necessary to improve performance***.***

3. Points (a), (b) and (c) of paragraph 2 shall be based on:

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

(b) key performance indicators for target setting in the key performance areas of ***climate and the*** environment, capacity and cost-efficiency;

(c) indicators for monitoring performance in the key performance areas of safety, ***climate and the*** environment, capacity and cost-efficiency;

(d) a methodology for the development of performance plans and of performance targets for air navigation services, and methodology for the development of the performance plan and performance targets for the network functions;

(e) the assessment of the draft performance plans and targets for air navigation services and network functions;

(f) monitoring of performance plans, including appropriate alert mechanisms for revision of performance plans and targets and for the revision of Union-wide performance targets in the course of a reference period;

(g) benchmarking of air navigation service providers;

(h) ***balanced and symmetrical incentivisation*** schemes for air traffic service provider***s that reward performance that exceeds binding performance targets during the reference period with a financial payment proportionate to the magnitude of the variation between the achieved performance and that target and penalises performance that falls short of those*** targets or ***a failure to*** implement relevant common projects referred to in Article 35 ***by imposing a fine that takes account of the deterioration in the level of service quality provided by that provider;***

(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.

3a. The Commission shall be assisted by the Agency acting as PRB and national supervisory authorities in the implementation of the performance scheme referred to in paragraph 1 of this Article and the charging scheme referred to in Article 19 to 23 of this Regulation,.

Article 11

Establishment of the Union-wide performance targets

1. The Commission shall adopt implementing acts establishing the Union-wide performance targets for *en route* air navigation services and for terminal air navigation services in the key performance areas of ***climate and the*** environment, capacity and cost-efficiency, for each reference period, in accordance with ▌ paragraphs 2 to 3 of this Article. ***The Union-wide performance targets for terminal air navigation services shall take account of differences in the provision of those services due to local circumstances. The Union-wide performance target in the key performance area of climate must contribute to the achievement of the Union's climate neutrality goal by producing CO_2 emissions savings of up to 10 %. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 37(2).***

In conjunction with the Union-wide performance targets, the Commission may define complementary baseline values, breakdown values or 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).

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

(a) they shall drive gradual, continuous improvements in respect of the operational and economic performance of air navigation services;

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

3. For the purposes of preparing its decisions on Union-wide performance targets, ***and, if the case, on complementary baseline values and breakdown values or bench mark groups*** the Commission shall collect any necessary input from stakeholders ***and the relevant national authorities***. 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.

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 ***acts in the form of*** decisions addressed to each Member State ***stating*** whether ***their*** intended classification of the services concerned complies with the criteria set out in points (***29***) and (55) of Article 2. ***At the*** request of the Commission, the Agency acting as PRB shall provide the Commission ***with information, in the form of an opinion, to assist it in its*** analysis ***of compliance by the Member States*** and ***in the*** preparation of those decisions.

3. Where a decision adopted under paragraph 2 ***states*** that the intended classification does not comply with the criteria set out in points ***(29)*** and (55) of Article 2, the Member State concerned shall, having regard to that decision, submit a new notification whose terms comply with those criteria. The Commission shall take a decision on this notification in accordance with paragraph 2.

4. The designated air traffic service providers concerned shall base their draft performance plans for *en route* and terminal air navigation services on the classifications ***referred to in paragraph 1, that*** the Commission has found to be in compliance with the criteria set out in points ***(29)*** and (55) of Article 2. The Agency acting as PRB shall base itself on those same classifications when assessing the allocation of costs between *en route* and terminal air navigation services under Article 13***(4)***.

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 shall, for each reference period, adopt draft performance plans in respect of all the *en route* air navigation services which they provide and, where applicable, procure from other providers.

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

2. The draft performance plans for *en route* air navigation services referred to in paragraph 1 shall include relevant information provided by the Network Manager. Before adopting those draft plans, designated air traffic service providers shall consult airspace users' representatives ***airport operators and airport coordinators, scientific experts in the domains of climate and environment, professional staff representative bodies*** 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 *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 ***including those regarding climate and the environment,*** and fulfil the additional conditions laid down in the third subparagraph. ***Data concerning military training and operations shall not be included in the assessment of performance objectives.***

Consistency of performance targets for *en route* air navigation service with Union-wide performance targets shall be established according to the following criteria:

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

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

(c) comparison of the planned level of performance of the air traffic service provider concerned with other air traffic service providers being part of the same benchmark group.

In addition, the draft performance plan must comply with the following conditions:

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

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

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

4. ***Where relevant***, the allocation of costs between *en route* and terminal air navigation services shall be ***evaluated*** by the ***national supervisory authority*** 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***, once they have been evaluated by the national supervisory authority,*** 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 ***on the basis of the evaluation by the national supervisory authority and*** in accordance with ***the methodology and classification referred to in*** paragraph 4.

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

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

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, ***including those regarding climate and environment***. Where paragraph 6 applies, this assessment shall take place after a decision on the allocation of costs has been taken in accordance with the ***third*** 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 ***for climate and the environment, capacity and cost efficiency. The revised draft performance plan shall be evaluated by the national supervisory authority.***

9. The Agency acting as PRB shall assess the revised draft performance plan ***taking in account the evaluation 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.

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, ***including those regarding climate and the environment,*** 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***, including for climate and the environment***.

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 ***including those regarding climate and the environment.***

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 ***including those regarding climate and the environment.***

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 ***reports on*** the achievement of the *en route* Union-wide performance targets ***including those regarding climate and the environment,*** 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. ***National supervisory authority shall report on an annual basis to the Agency acting as PRB on the achievement of performance targets by the designated air traffic service providers for the purpose of the regular reports referred to in the first subparagraph***. Where performance targets are not reached or the performance plan is not correctly implemented, ***including those regarding climate and the environment,*** the Agency acting as PRB ***after consultation with the Network Manager,*** shall issue decisions requiring corrective measures***, including fines and periodic penalty payments in accordance with Article 42a of this Regulation and Article 84 of the [Regulation (EU) 2018/1139 as amended by Regulation PRB],*** to be implemented by the air traffic service providers. These corrective measures may include, where objectively necessary, a requirement ***addressed to a Member State*** 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, ***including those regarding climate and the environment*** 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.

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

2. The draft performance plans for terminal air navigation services referred to in paragraph 1 shall include relevant information provided by the Network Manager. Before adopting those draft plans, designated air traffic service providers shall consult airspace users' representatives ***airport operators and airport coordinators, scientific experts in the fields of climate and the environment, professional staff representative bodies*** 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 ***including those regarding climate and the environment,*** and fulfil the additional conditions laid down in the third subparagraph.

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

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

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

(c) comparison of the planned level of performance of the air traffic service provider concerned with other air traffic service providers being part of the same benchmark group.

In addition, the draft performance plan must comply with the following conditions:

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

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

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

(ca) description of how the plan and targets within it contribute to the overall objectives of the Single European Sky referred to in Article 1(1).

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

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

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

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

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

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

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

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

Where the revised draft performance plan submitted in accordance with paragraph 7 is denied because it contains performance targets for terminal air navigation services that are not consistent with the Union-wide performance targets, ***including those regarding climate and the environment,*** 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, ***including those regarding climate and the environment.***

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***, including those regarding climate and the environment.***

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 ***that*** the national supervisory authority has found ***are*** not being met***, including those regarding climate and the environment.***

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

10. The national supervisory authority concerned shall issue regular reports on the monitoring of performance of terminal air navigation services, including regular assessments of the achievement of the performance targets for terminal air navigation services for air traffic service providers***, including those regarding climate and the environment,*** 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, ***including regarding climate and the environment,*** the national supervisory authority shall issue decisions requiring corrective measures***, including fines and periodic penalty payments,*** 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, ***including regarding climate and the environment,*** the national supervisory authority shall request the Agency acting as PRB to conduct an investigation in accordance with Article 24(2), and the Commission may take action in accordance with Article 24(3).

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

12 Where the Agency acting as PRB carries out the tasks of a national supervisory authority in accordance with Article 3(8), the draft performance plans for terminal air navigation services shall be submitted to the Agency acting as PRB together with the draft performance plans for *en route* air navigation services. Where the Agency has taken a decision in respect of the allocation of costs as referred to in the third subparagraph of Article 13(6), this decision shall be binding on it for the purposes of the assessment of the draft performance plans for terminal air navigation services.

Article 15

Role of the Agency acting as PRB as regards the monitoring of Union-wide performance targets for terminal air navigation services

1. The Agency acting as PRB shall on a regular basis ***once per year,*** establish a Union-wide overview of the performance of terminal air navigation services and of how it relates to Union-wide performance targets***, including those regarding climate and the environment.***

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 a draft Network Performance Plan in respect of all the network functions which it ***supports and*** 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 ***specific*** performance targets ***for Network Manager*** in the key performance areas of ***climate and the*** environment, capacity and cost-efficiency.

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

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

(a) consideration of performance improvements over time, for the reference period covered by the performance plan, and additionally for the timeframe comprising both the preceding reference period and the reference period covered by the performance plan;

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

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

Article 17

Revision of performance targets and performance plans during a reference period

1. Where, during a reference period, Union-wide performance targets are no longer adequate, in light of significantly changed circumstances, and where the revision of targets is necessary and proportionate, the Commission shall revise those Union-wide performance targets***, including those regarding climate and the environment.*** 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.

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

3. Designated air traffic service providers 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 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, ***including those regarding climate and the environment.*** 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.

Article 18

Implementation of the performance scheme

In order to ensure uniform implementation of ***and compliance with the requirements referred to in Articles 10 to 17***, the Commission shall ***with a view to achieving the objectives set out in Article 1,*** adopt ***implementing acts laying down*** detailed ***provisions concerning:***

(a) ***the rules,*** procedures ***and methodology for*** the development, ***, assessment, monitoring and revision of the*** draft performance plans ***for air navigation services and network functions referred to in Articles 13, 14 and 16;***

(b) ***the rules and procedures for*** the setting of performance targets, the criteria and conditions for their assessment, ***referred to in Articles 10(3), 13 and 14;***

(c) ***the rules and procedures for classification of en route and terminal air navigation services, referred to in Article 12;***

(d) ***the rules and procedures for elaboration of*** the methodology for allocation of costs between *en route* and terminal air navigation services, ***referred to in Articles 10(3), 13 and 14;***

(e) ***the rules and procedures for*** the monitoring of performance ***plans, alert mechanisms for revision of performance plans and targets and for the revision of Union-wide performance targets during the course of a reference period and targets*** and issuance of corrective measures, ***referred to in Articles 10(3)***, ***13, 14, 15 and 17;***

(f) ***the rules and procedures for the timetables for all procedures, referred in Article 10(3)***

(g) ***the rules*** and procedures ***for a mechanism to address unforeseeable and significant events,*** referred to in Article ***10(3).***

(h) ***rules and procedures for the collection, validation, examination, evaluation and dissemination of relevant data related to the performance of air navigation services and network functions;***

(i) rules and procedures for the setting of key performance indicators and indicators for monitoring.

Those implementing acts shall be 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, within the limits of Union competition law, to finance the provision of air ***navigation*** traffic services covered in this Article through public funds, **,** charges for air navigation services shall be determined, imposed and enforced on airspace users.

2. Charges shall be based on the costs of air traffic service providers in respect of services and functions delivered 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***, including those regarding climate and the environment,*** 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 traffic service provider*** from charges imposed on airspace users in accordance with this Article shall not be used to finance services which ***that air traffic service provider may provide*** under market conditions in accordance with Article 8 ***or any other commercial activity performed by that provider.***

6. Financial data on determined costs, actual costs and revenues of designated air traffic service providers shall be reported to national supervisory authorities***, Eurocontrol*** and the Agency acting as PRB and shall be made publicly available ***subject to the protection of confidential information.***

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 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 capital investment and depreciation of assets, as well as the costs of maintenance, operation, management and administration.

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 oversight and certification by ***the competent*** national supervisory authorities, unless other financial resources are used by Member States to cover such costs;

(c) costs incurred by the air traffic 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.

(ca) costs of Eurocontrol in relation to the provision of air navigation services, unless other financial resources are used by Member States to cover these costs.

(cb) other costs incurred by the Member States in relation to the provision of air navigation services such as the costs stemming from international agreements, except Eurocontrol, if such costs are not covered by other financial resources.

4. Determined costs shall not include the costs of penalties imposed by Member States referred to in 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. Costs that pertain to both *en route* air navigation services and terminal air navigation services shall be allocated in a proportional way between *en route* air navigation services and terminal air navigation services on the basis of a transparent methodology. Cross-subsidy shall be allowed between different air navigation services in 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 ***full*** details of their cost base to the Agency acting as PRB, the national supervisory authorities, 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 ***referred to in Article 20(3)*** and exceptional costs.

Article 21

Setting of 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 national supervisory authorities, after verification by the Agency acting as PRB that they comply with Article 19, Article 20 and with this Article. Where the Agency acting as PRB 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 ***climate and*** 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.

Article 22

Establishment of charges

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

2. The 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 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, 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 be modulated to encourage ▌ airspace users to support improvements in environmental performance, ▌ such as increased use of ***alternative clean propulsion technologies, and*** sustainable ▌ development***, to support improvements in service quality such as those leading to reduced delays, more direct-routing or to support the implementation of the European ATM Master Plan***, while maintaining an optimum safety level. ▌ The modulation shall consist of financial advantages ▌ and shall be ***proceeded by an analysis confirming how*** revenue ***neutrality*** for air traffic service providers ***will be ensured***.

Article 23

Implementation of the charging scheme

The Commission is empowered to adopt delegated acts in accordance with Article 36 to supplement this Regulation, with regard to:

(a) setting of determined cost and cost bases, referred to in Articles 19 and 20;'

(b) setting of the unit rate, referred to in Article 21;

(c) establishing charges referred to in Article 22, including their modulation in accordance with that Article; and

(d) establishing the incentives schemes and risk sharing mechanisms, referred to in Article 10(3).

Article 24

Review of compliance with the performance and charging schemes

1. ***Without prejudice to the tasks of the national supervisory authorities and the Agency acting as PRB*** Commission shall ***provide for ongoing*** review ***of*** compliance with Articles 10 to 17 and 19 to 22***, including the delegated acts referred to in Article 23,*** and the implementing acts referred to in Articles 18, 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 and with national supervisory authorities ***and airspace users***.

2. At the request of one or more Member States, of a national supervisory authority***,*** ▌ of the Commission, ***of airspace users or a relevant group representing them,*** the Agency acting as PRB shall carry out an investigation into any allegation of non-compliance as referred to in paragraph 1. Where it has indications of such non-compliance, the Agency acting as PRB ***shall*** initiate an investigation on its own initiative. It shall conclude the investigation within four months of receipt of a request, after having heard the Member State, the national supervisory authority concerned and the designated air traffic service provider concerned. ***When such non-compliance concerns requirements regarding climate and the environment, the Agency acting as PRB shall provide for consultation with scientific experts in the domain of climate.*** Without prejudice to Article 41(1), the Agency acting as PRB shall share the results of the investigation with the Member States concerned, the air traffic service providers concerned and the Commission.

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

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 ***by ... [OJ: one year from the entry in force of this Regulation]***. 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 supervisory authorities.

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 ***without prejudice to Article 20(5)*** 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;

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

   The determined costs, 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 ***the national supervisory authority, the national competent authority, the Agency and the*** Agency acting as PRB, and exceptional costs 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 conclusions of the audit shall be made publicly available.

CHAPTER IV
NETWORK MANAGEMENT

Article 26
Network functions

1. The air traffic management network functions shall ensure the sustainable and efficient use of the airspace and of scarce resources. They shall also ensure that airspace users can operate ***climate-optimised flight trajectories***, while allowing maximum access to airspace and air navigation services ***and avoiding congestion***. Those network functions, enumerated in paragraphs 2 and 3, shall support the achievement of the Union-wide performance targets ***including those regarding climate and the environment*** and shall be based on operational requirements.

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

   (a) the design and management of the European airspace structures ***taking in account, among others targets, those regarding climate and the environment;***

   (b) air traffic flow management ***including climate-optimised flight trajectories;***

   (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 ***and airspace structures*** 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 delivery of air traffic control capacity in the network as set out in the binding Network Operations Plan (NOP);

   (c) function for coordination and support in case of network crisis.

(d) air traffic flow and capacity management***, in order to fulfil key performance targets;***

(e) the management of the planning, monitoring and coordination of implementation activities of the deployment of infrastructure in the European ATM network, in accordance with the European ATM Master Plan, taking into account operational needs and associated operational procedures;

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

4. The functions listed in paragraphs 2 and 3 shall not involve the adoption of binding measures of a general scope or the exercise of political discretion. They shall be performed in coordination with military authorities 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. ***Such new functions shall not extend the existing scope of Union competence and shall be without prejudice to the prerogatives and responsibilities of the Member States.***

Article 27

The Network Manager

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

2. The Commission ***shall*** appoint an ***independent,*** impartial and competent body to carry out the tasks of the Network Manager. ***The appointment Decision shall include the terms and conditions of the appointment, including how the Network Manager will be financed.***

To ***that*** end, the Commission shall adopt ▌ implementing ***acts laying down the following:*** ▌

(a) the requirements and procedure for appointing the Network Manager;

(***b) requirements that the Network Manager be free from conflicts of interests and act independently;***

(c) requirements for functional and hierarchical separation of the Agency acting as PRB from the Agency;

(d) requirements concerning the qualifications and expertise of the Network Manager;

(e) financing of the Network Manager.

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

3. The Network Manager shall ***execute its tasks*** in an independent, impartial and cost efficient manner. ***In the execution of its tasks, the Network Manager*** shall be subject to appropriate governance and regulation where the competent body designated as the Network Manager also has regulatory functions. ***The Network Manager shall respect the different accountabilities of its tasks from its activities as an entity on its own account, and shall keep them separate at all times.*** In the execution of its tasks, the Network Manager shall take into consideration the needs of the whole ATM network and shall fully involve the airspace users, air navigation service providers, aerodrome operators and the military.

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

5. The Network Manager shall cooperate closely with the Agency acting as PRB in order to ensure that the performance targets referred to in Article 10***, including those relating to climate and the environment,*** are adequately reflected in the ***overall capacity planning, as well as the*** capacity to be delivered by individual air navigation service providers and agreed between the Network Manager and those air ***traffic*** service providers in the Network Operations Plan.

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***. Those measures shall include flight plan corrections in order to provide climate-optimized flight trajectories. In such case, paragraph 7 shall not apply.***

   (b) 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. 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.

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 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 air traffic demands, seasonality and complexity of air traffic and of performance plans ***including those regarding climate and the environment***. Before deciding on those aspects, they shall ***give due consideration to the needs of the*** airspace users concerned or ***to*** groups representing such airspace users and military authorities as appropriate.

Article 28

Transparency of accounts of the Network Manager

1. The Network Manager shall draw up, submit to and publish its financial accounts. 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 and regularly undergo an independent audit.

Article 29

Relations with stakeholders

The air traffic service providers shall establish consultation mechanisms to consult the ***stakeholders, as necessary, referred to in Article 38(3),*** on all major issues related to services provided, including relevant changes to airspace configurations ***such as those resulting from the required emission reduction efforts***, 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***, especially as regards aspects requiring synchronisation between air and ground equipment deployment.*** The Commission shall adopt ***implementing acts laying down detailed arrangements for*** the consultation and the involvement of airspace users ***and the Agency acting as PRB and Network Manager in drafting and*** approving investment plans ***to ensure in particular their consistency with the ATM Master Plan and common projects referred to in Article 35.*** 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

Availability of and access to operational data for general air traffic

1. With regard to general air traffic, relevant operational data shall be made available in ***an interoperable format in*** real-time, on a ***transparent and*** non-discriminatory basis and without prejudice to 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 ***navigation*** service providers, entities having a proven interest in considering the provision of air navigation services, ***military air traffic service providers,*** airspace users and airports as well as the Network Manager. The data shall be used only for operational purposes.

2. Prices for the service referred to in paragraph 1 shall be based on 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 ***including those regarding*** oversight ***of climate and the environment*** and network oversight, including the Agency. ***The military bodies responsible for oversight and protection of airspace shall also be granted access to that data.***

4. The Commission may ***adopt implementing acts laying*** down the detailed requirements for the making available of and the access to data in accordance with paragraphs 1 and 3 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, 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.

newArticle 33
Flexible use of airspace

1. Taking into account 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 ***provided by Union law***, in order to facilitate airspace management and air traffic management in the context of the common transport policy and***, when circumstances allow,*** in consistency with the European ATM Master Plan.

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

3. Where, in particular following the reports submitted by Member States, it becomes necessary to reinforce and harmonise the application of the concept of the flexible use of airspace***, or to promote technical innovation and in particular the relevant airspace technological infrastructure,*** within the single European sky, the Commission ***in close cooperation with the Agency*** shall adopt ***implementing acts laying down*** measures within the context of the common transport policy ***such as the harmonisation of training for air traffic controllers***. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

Article 34

SESAR coordination

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

1a. The coordination of standardisation activities shall be executed by the Commission with assistance from the Agency. They shall be subject to appropriate governance, which shall recognise the needs and priorities of operational stakeholders.

1b. With a view to achieving the objectives set out in Article 1, Commission shall adopt implementing acts laying down detailed provisions concerning establishment of an integrated European Aviation Standards Coordination Group for the coordination of standards necessary for aviation including decision-making and coordination processes involving operational stakeholders and aviation-related standards development organisations as referred to in paragraph 1a. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(3).

Article 35

Common projects

1. The Commission may set up common projects for implementing the essential operational changes identified in the European ATM Master Plan ***which:***

   (a) ***have*** a network-wide impact***;***

   (b) ***require synchronised implementation of multiple operational stakeholders in order to achieve timely performance benefits;***

   (c) ***have reached sufficient maturity;***

   (d) ***aim to enable interoperable capabilities in all Member States; and***

   (e) ***support a timely and synchronised deployment of the Union law as regards digital, climate and environment areas.***

2. ***In order to support the priorities set in paragraph 1 of this Article the*** Commission may also establish governance mechanisms for common projects and their implementation.

3. Common projects may be eligible for Union funding. 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 10, exploring all appropriate means for financing the implementation thereof ***including financial mechanisms to improve the synchronisation of air-based and ground-based capital expenditure related to the deployment of SESAR solutions.***

4. The Commission shall ***adopt implementing acts establishing*** the common projects and governance mechanisms ***and financial mechanism*** referred to in paragraphs 1***, 2*** and ***3***. ***Those*** implementing acts ***shall be*** 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 ***5y,*** 6***, 7, 8, 9, 10, 23***, 26 ***and 42a*** 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 ***5y***, 6, ***7, 8, 9, 10, 23,*** 26 and ***42a*** 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 ***5y*** 6, ***7, 8, 9, 10, 23,*** 26 and ***42a*** 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.

Article 38

Consultation of stakeholders

1. Member States, national supervisory authorities, the Agency whether or not it is acting as PRB 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 on matters related to the implementation of this Regulation ***in all areas including those regarding climate and the environment.*** 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 military experts designated by the Member States.

3. The stakeholders may include:

   (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;

(e) the military;

(f) the manufacturing industry;

(g) professional staff representative bodies;

(ga) scientific experts in the fields of climate and the environment

(h) relevant non-governmental organisations.

(ha) Expert Group on Human Dimension of the Single European Sky

3a. The outcome of the consultations shall be made publicly available in due time.

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, 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 network functions, or in the framework of the Agreement between the Union and Eurocontrol providing a general framework for enhanced cooperation, reinforcing the 'pan-European dimension' of ATM.

Article 40

Support by other bodies

The Commission may request support from other bodies for the fulfilment of its tasks under this Regulation.

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 components.

2. Paragraph 1 shall be without prejudice to the right of disclosure by national supervisory authorities, the Commission or the Agency acting as PRB where this is essential for the fulfilment of their duties, in which 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 pursuant to the charging scheme laid down in Articles 19 to 24, in particular as regards determined costs, actual costs and revenues of designated air traffic service providers shall be publicly disclosed.

Article 42

Penalties

Member States shall lay down rules on penalties applicable to infringements of this Regulation***, except for the rules on fines and periodic penalty payments when the Agency is acting in accordance with in Article 42a,*** 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 42a

Fines and periodic penalty payments when the Agency is acting as PRB

1. *The Commission may, at the request of the Agency acting as PRB, impose on a legal or natural person responsible for the performance of Air Navigation Service Providers, in accordance with this Regulation and Article 84 of the [Regulation (EU) 2018/1139 as amended by Regulation PRB], either one or both of the following:*

   (a) *a fine, where that person infringed, intentionally or negligently, one of the provisions of this Regulation;*

   (b) *a periodic penalty payment where that person continues to infringe one of those provisions, in order to compel that person to comply with those provisions.*

2. *The fines and periodic penalty payments referred to in paragraph 1 shall be effective and proportionate. The amount of the fines shall not exceed 4 % of the annual income or turnover of the legal or natural person concerned.*

   The amount of the periodic penalty shall not exceed 2,5 % of the average daily income or turnover of the legal or natural person concerned.

3. *The Commission shall only impose fines and periodic penalty payments pursuant to paragraph 1 when other measures provided for in this Regulation and in the delegated and implementing acts adopted on the basis thereof to address such infringements are inadequate or disproportionate.*

4. *With regard to the imposition of fines and periodic penalty payments in accordance with this Article, the Commission shall adopt delegated acts in accordance with Article 36, laying down:*

   (a) *detailed criteria and a detailed methodology for establishing the amounts of the fines and periodic penalty payments;*

(b) detailed rules for enquiries, associated measures and reporting, as well as decision-making, including provisions on rights of defence, access to file, legal representation, confidentiality and temporary provisions; and

(c) procedures for the collection of the fines and periodic penalty payments.

5. Legal or natural person who is directly effected by a decision taken by the Commission pursuant to paragraph 1 may appeal that decision to the Court of Justice of the European Union. The Court of Justice may cancel, reduce or increase the fine or periodic penalty payment imposed.

6. The decisions of the Commission taken pursuant to paragraph 1 shall not be of a criminal law nature.

Article 43

Evaluation

1. The Commission shall conduct an evaluation to assess the application of this Regulation ***including the effects of the different performance targets, and particularly on the overall impact on the reduction of climate-impacting emissions, by 2026***. When justified for this purpose, the Commission may request from the Member States information relevant to the application of this Regulation.

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

Article 44

Safeguards

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

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

(b) in the event of serious internal disturbances affecting the maintenance of law and order;

(c) in the event of war or serious international tension constituting a threat of war;

(d) for the fulfilment of a Member State's international obligations in relation to the maintenance of peace and international security;

(e) in order to ***maintain operational readiness, gather information supporting the development of national defence capacities,*** 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) shall apply from *[OP please insert the date - **12** months after the entry into force of this Regulation]*.

   Articles 10 to 24 shall apply as from 1 July 2023. 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.

   Article 26(3) 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.

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*

ANNEX I

CONDITIONS THAT MAY BE ATTACHED TO CERTIFICATES REFERRED TO IN ARTICLE 6

Additional conditions attached to certificates may, as appropriate, be related to:

(a) ring-fencing or restriction of operations of services other than those related to the provision of air navigation services;

(b) contracts, agreements or other arrangements between the service provider and a third party and which concern the service(s);

(c) provision of information reasonably required for the verification of the requirements of Article 6(1);

(d) any other legal conditions which are not specific to air navigation services, such as conditions relating to the suspension or revocation of the certificate.

ANNEX II

Repealed Regulations with the amendment thereto

Regulation (EC) No 549/2004 of the European Parliament and of the Council (OJ L 96, 31.3.2004, p. 1)	
Regulation (EC) No 550/2004 of the European Parliament and of the Council (OJ L 96, 31.3.2004, p. 10)	
Regulation (EC) No 551/2004 of the European Parliament and of the Council (OJ L 96, 31.3.2004, p. 20)	
Regulation (EC) No 1070/2009 of the European Parliament and of the Council (OJ L 300, 14.11.2009, p. 34)	Only Articles 1, 2 and 3

ANNEX III

CORRELATION TABLE

Regulation 549/2004	Regulation 550/2004	Regulation 551/2004	This Regulation
Article 1(1) to (3)			Article 1(1) to (3)
Article 1(4)			-
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