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Objet: Proposition de règlement du Parlement européen et du Conseil modifiant le règlement (UE) 2018/1139 en ce qui concerne la capacité de l'Agence de l'Union européenne pour la sécurité aérienne à remplir la fonction d'organe d'évaluation des performances du ciel unique européen
-Document de réflexion de la Présidence sur la gouvernance du PRB

Les Délégations trouveront, en annexe, un document de réflexion sur le sujet en objet.

Counter-Proposal for the Parliament rapporteurs regarding the PRB governance

1. Distribution of roles for the performance scheme, the adoption of plans, the assessment of local performance plans and targets

1.1. The debates in the council working party and COREPER show that it is of major importance **to keep the following main policy choices:**

- **the EU-wide targets,**
- **the criteria to assess whether the local targets are consistent with the EU-wide performance targets during the reference period and to support alert mechanisms**
- **general principles and requirements for the incentive scheme¹;**

adopted by a **Commission decision under examination procedure with the no-opinion clause.**

1.2. The assessment of the performance plans and local targets implements the decision which applies within the framework of these policy choices.

Under the current SES regulations (Article 11 of regulation (EC) 549/2004):

- In the first round of the assessment and approval procedure of the performance plans and local targets, the Commission may require a MS to revise the draft performance plan through a decision adopted under the advisory procedure, where it finds that it is not consistent with the EU-wide performance targets.
- The discussion in the aviation working party shows that the MS would like, however, to maintain their involvement at that step of the approval process.
- In addition, in the second round of the assessment and approval procedure of the performance plans and local targets, where the Commission finds that the revised performance targets and appropriate measures are not adequate, it may decide, in accordance with the examination procedure, that the Member States concerned shall take corrective measures.

In practice only the first step was necessary in almost all cases.

In this respect, the delegations may consider the possibility to transfer the role of the Commission (assisted by the current PRB) to another body (the “new” PRB) provided that the Member States and/or their NSA are sufficiently involved in the procedure for assessing and approving the performance plans and targets.

Corrective measures shall not be adopted or imposed by the new PRB.

¹ **with the detailed incentives and disincentives in the performance plans, meaning decided or approved by the NSAs**

1.3. Besides, in the preparation of the performance plans to be submitted to the PRB, the involvement of the NSA is important:

- before the consultation of airspace users, they check that the data submitted to consultation contains adequate information, including, where appropriate, answers to specific requests, and explanation, in order to fulfil the EU regulatory requirements and other national rules. Some of these data actually originate from State / NSA, including, inter alia, NSA and Eurocontrol costs, and the incentive scheme;
- after the consultation of airspace users, by ensuring the completion of the file submitted, taking into account the outcome of the consultation, and checking that appropriate answers are given to the questions of airspace users as agreed in the consultation meeting(s).

This involvement should be maintained, whoever is supposed to formally submit the full-fledged performance plan.²

2. Governance of the PRB

The Presidency suggests two main options:

- 1/ Keeping the NSAs of the 27 Member States involved in the regulatory board
- 2/ Distributing the 27 NSAs between the regulatory board (15) and the appeal board (12), one NSA being in one or another but not in both.

2.2 Regulatory Board

a) Composition

	Parliament proposal (20 May 2022)	Counter-proposal PCY	Comment
Number of members	9 NSA representatives (voting members) (*) + 1 Commission (non-voting) (*) also members of the Advisory Board. They must come from Member States covering at least 3 benchmark groups of ATSP	<u>Option 1</u> 27 NSA representatives + 1 observer of each NSA of non-EU States to which the regulation applies. <u>Option 2</u> 15 NSA representatives + 1 observer of each NSA of non-EU States to which the regulation applies.	Both options fulfil the requirement for a better representation of the NSAs. Option 1 would combine with the Appeal Board option 1. Option 2 would combine with the Appeal Board option 2.

² If the Council was to agree that the performance plans are submitted by the ATS provider, it would be its best interest to follow the advice of the NSA during this preparation process, and the NSA might add its visa on the submitted plan, on top of the submission letter signed by the authorized person of the ATS provider, testifying its due involvement. (Actually, the performance plan is currently “submitted” by uploading all data on the dedicated web platform.)

			The EC participation could be reconsidered with the EP and EC rationale that the execution level should be left up to the PRB.
Voting rights	1 vote per member	1 vote per member	
Geographic Representation of NSAs having a right to vote.		<p>Option 1 Obvious.</p> <p>Option2 3 NSA representatives for each of the 5 “comparator groups” defined on the basis of EC decision (EU) 2021/891 – to be agreed within each group of States (see Annex)</p>	<p>Ensures a balanced geographic and traffic volume representation.</p> <p>Selection of NSAs within each group: See Annex</p>
Rotation	<p>1/3 every year (i.e. 3 members each year)</p> <p>(transitional starting period with longer terms of office for 6 of the 9 members)</p>	<p>Option 2 Rotation of 5 members at every reference period, while keeping a balanced representation of each comparator group (with a transitional starting period)</p>	<p>Rotation order within each group: TBD</p> <p>The rotation should take place two years before the beginning of the next reference period.</p>

b) Role of the Regulatory Board

The **adoption of decisions on performance plans** by the director for performance review on the local performance plans and targets **shall require a simple majority** of the members of the Regulatory Board on the content of the draft decision (each voting member having one voting right).

The Regulatory Board may also deliver opinions or recommendations to the director for performance review, voted in the same manner, for other purposes.

The Regulatory Board shall also approve the appointment of the director for performance review.

2.2 Appeal Board

a) Rationale

It looks justified that the Appeal Board should be composed of NSAs only. Indeed, “qualified” persons without a thorough knowledge of the background and of the performance plans submitted initially are not considered legitimate to take a decision on an appeal, be it in terms of competence or accountability.

b) Composition

	Parliament proposal (20 May 2022)	Counter-proposal PCY	Comment
Number of members	6 members selected from current or former senior NSA staff, competition authorities or other Union or national institutions with relevant experience in the aviation sector.	<p>Option 1 10 NSA representatives + 1 observer of one NSA of non-EU States to which the regulation applies. <u>A NSA representative cannot take part in the vote on the performance plan of its State.</u></p> <p>Option 2 12 NSA representatives from States not having a member of its NSA in the Regulatory Board. + 1 observer of each NSA of non-EU States to which the regulation applies.</p>	<p>Both options cater with the requirement of a better representation of the NSAs.</p> <p>Option 1 would combine with the Regulatory Board option 1.</p> <p>Option 2 would combine with the Regulatory Board option 2.</p>
Voting rights	1 vote per member	1 vote per member	
Geographic and traffic volume Representation of NSAs having a right to vote.	Not ensured	<p>Option 1 2 NSA representatives for each of the 5 “comparator groups” defined on the basis of EC decision (EU) 2021/891 – to be agreed within each group of States.</p> <p>Option2 NSA from States which are not represented in the Regulatory Board.</p>	Both options ensure a balanced geographic and traffic volume representation.
Designation / Selection / Rotation	Members appointed for 5 years by the Commission, following public call for expression of interest, after consulting the Regulatory Board.	<p>Option 1 Rotation of 5 members at each reference period, while keeping a balanced representation of each comparator group</p> <p>Option 2 Rotation of 5 members after every reference period, while keeping a balanced</p>	<p>Rotation order within each group: TBD</p> <p>The rotation should take place two years before the beginning of the next reference period</p>

		representation of each comparator group (with a transitional starting period for both options)	
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c) Role of the Appeal Board and related provisions

The Appeal Board **decides on appeals against decisions on the performance plans and targets.** (see Article 5t of EP 1st reading – ST 10278/21).

Appeals may be only filed by designated ATS providers or by individual airlines or groups of airlines, under the principle that only interested parties may appeal. Neither the Commission nor the Member States or their NSAs would not be considered as interested parties entitled to appeal a decision.

Articles 5o to 5t of the EP first reading (see ST 10278/21) should be scrutinized and revised to be made consistent with these principles.

Inter alia, in Article 5t, it should be specified that the **“new reasoned decision taking into account the decision by the Board of Appeal”** shall be adopted by the director for performance review after a new vote by the Regulatory Board, following the same procedure as for an initial decision.

However, a second appeal against a new decision on a performance plan, or an original decision if confirmed, should not be allowed from the same ATS provider, or by airspace users. This calls for a specific provision to ensure that only one appeal procedure can take place on a given decision to approve or to disapprove a performance plan. This objective might be enabled by an “open” process for all parties being allowed to take part in case that one appeal is filed from any party, though respecting the time limit of two months as proposed.

In addition, the timelines for procedures to take place should be scrutinized and specified in order to ensure consistency with the procedures for adopting the unit rates of the first year(s) of each reference period. In particular, the possibility should be kept for an ATS provider to apply the unit rates stemming from the latest performance plan submitted, in case approval is not yet granted at the time of submitting the said unit rates and the whole procedure is not over, including where an appeal is filed by the ATS provider concerned.

3. Advisory Board

Under the EP first reading, the advisory board would revive the existing NSA Coordination Platform (NCP).

At this point in time, the provisions of the EP seem acceptable, in their broad lines.

ANNEX

I - Comparator Group in decision (EU) 2021/891:

Group	EU States (Number in group) with an En-route charging zone	Non-EU States
A	Germany, France, Spain, Italy (4)	
B	Sweden, Denmark, Finland, Ireland (4)	Norway
C	Czechia, Croatia, Slovenia, Hungary, Slovakia, Bulgaria, Poland, Romania, Portugal (9)	
D	Cyprus, Malta, Estonia, Latvia, Lithuania, Greece (6)	
E	Austria, BelgiumLuxembourg, the Netherlands (3)	Switzerland

In order to ensure a more balanced representation of MS in the regulatory and the appeal board, a reshuffling of the groups should be envisaged.

II - Illustration of possible alternative Groups to have a better representation of each Member States:

Group	EU States (Number in group)	Non-EU States
A	Germany, France, Spain, Italy, Poland (5)	
B	Sweden, Denmark, Finland, Ireland, Portugal (5)	Norway
C	Croatia, Slovenia, Hungary, Slovakia, Romania, Bulgaria, (6)	
D	Cyprus, Malta, Estonia, Latvia, Lithuania, Greece (6)	
E	Czechia, Austria, Belgium, Luxembourg, the Netherlands (5)	Switzerland

III - Illustration of possible composition of Appeal Board and Regulatory Board:

Appeal board (12 Members)			Regulatory board (15 Members)		
A	A		A	A	A
B	B		B	B	B
C	C	C	C	C	C
D	D	D	D	D	D
E	E		E	E	E
