



Brussels, 29th of May

PSOs summary position paper on EC RP3 proposals on performance and charging regulation

Following the publication of the draft Performance and Charging regulation by the European Commission, the PSOs¹ as collective representatives of Professional and Social issues within ATM would like to place on record our position with regards to the aforementioned regulation. This position paper sets out our overall views and some key issues. A more detailed breakdown on our position with respect to specific draft articles in the proposal is also available.

The ATM sector has circa 60,000 people working within it, every day, to provide one of the safest and highest capacity systems in the world. As we have seen in RP2, continued attack on cost has had unintended consequences, in that investment has dropped both in technology and staffing resulting in the capacity crunch we are seeing today. The staff should be seen as an asset, to be championed, often performing complex, safety critical and high demanding tasks. The inference and rhetoric that we see all too often is that they are an overly expensive accounting line, that must be reduced. This persistent undercurrent will only continue to detriment the overall performance of the system and impair the existing infrastructure

Whilst we recognise that the Performance and Charging regulations will need to be updated from time to time, the proposal as it currently is drafted fails to achieve the aims of the original concept of the revision of the existing regulations.

The Performance Scheme has for too long been too focused on cost, to the detriment of the other Key Performance Areas, and the effects of this have become obvious with significant staffing and capacity issues throughout the European Union. We don't believe that the new proposals will in any way alleviate this, and indeed some of the proposals surrounding risk sharing are likely to increase costs, as ANSPs have to factor in greater cost of capital given the increase in financial risk they will be exposed to. We welcome a system that is properly resourced and provided with the appropriate technology, which will deliver the required capacity, whilst maintaining the highest standards of safety.

The timescales for the drafting and adoption of this regulation, when taken into consideration with the required target setting process and the looming commencement of RP3 seem extremely ambitious. It is very unclear how this will all be achieved within the remaining time. There are now significant risks that the proposals will be rushed, without the proper time for consultation and refinement, resulting in the increased chance of a

¹ The Professional Staff Associations are ATCEUC, ETF, IFAIMA, IFATCA, and IFATSEA, together representing ATM workers and professionals across Europe.



regulation which may not be fit for purpose, and with which we will all be stuck with for a further 5 years. The proposed draft may even hamper the development of the system and actually increase costs. It seems that the only valid option that remains would be of continuing with the existing regulations and in slower time continue to work on a more considered regulation for RP4, which would be compatible with any future review of SES.

Imbalance in stakeholder group input

The proposals have an asymmetric and completely imbalanced approach to stakeholder engagement, with a questionable role given to airspace users as a pseudo co signatory to elements of the performance plans. If a key principle of SES is the separation of regulation from service provision, then it must also hold true that the consumers cannot be regulators. It would appear that an unequal degree of priority has been given to certain stakeholder groups views, views which are based on bias studies only focused on the particular interests of this group.

Complexity and micro management

One of the stated aims of the revision was to simplify the scheme. We believe that the draft text fails to achieve this, and again seeks to manage the scheme with prescriptive proposals that introduce complexity. Examples include the methodology of the incentive mechanisms, cost sharing and traffic risk sharing. The Performance Scheme should be focused on outputs, rather than a quasi-hybrid system of targeting output, but then dictating the inputs to achieve those outputs. Couple that with a complete disconnect between ANSP and airspace user business planning cycles, and a perfect storm develops, leaving ANSPs with no room to manoeuvre.

Incentive Scheme

The proposals in the draft regulation on the incentive scheme are completely unacceptable. It is the stated position of the PSOs that incentive schemes are not desirable, however the incentive scheme proposed is unbalanced, and places an objectionable amount of influence in the hands of one group of stakeholders. Given the principle of regulation separated from service provision, it is completely unacceptable that the airspace users as the customer, regulate the provider as is basically the inference in the proposed Article 12 5(a). Furthermore, the concept that should the airspace users fail to agree, a default penalty only scheme apply is simply absurd. This incentive scheme would only be a punitive scheme without any positive effect on the building of the ATM system for the future. The NSAs should be given the freedom to design a symmetrical and locally appropriate incentive scheme given the particular circumstances in that Member State. The widening of the incentive value from 1% to 3% introduces additional risk and is unlikely to encourage any meaningful actions by ANSPs. Should there have to be a requirement for an incentive scheme then we would suggest this is capped at a maximum 0.5%.



Traffic Risk

The PSOs can understand the reasons for the removal of the dead band. The STATFOR base case scenario, is the scenario where the traffic has an equal chance of being above or below forecast. ANSPs need to be able to accurately predict their revenues and with the STATFOR base case scenario the risk is too high. With the removal of the dead band, NSAs and ANSPs should be allowed the freedom to be more conservative with the traffic forecast in order to have greater confidence that accurate business planning can be achieved, but any additional revenue received, should actual traffic be higher than forecast, be mostly returned to airspace users.

The widening of the risk sharing band from 90% to 85% just increases the risk ANSPs are exposed too. It is inevitable that this risk will sought to be mitigated in other areas. The ability for NSAs to set other risk sharing keys is welcome and fits well with the stated aims of strengthening the NSAs, but the requirement to have written agreement with the airspace users is once again completely unacceptable. Indeed, since the airspace users have direct control over traffic levels, it is entirely inappropriate for them to have regulatory input. This provision could be susceptible to 'gaming' and we believe the risks and impacts have not been fully explored.

Cost Sharing

The proposals on Cost Sharing have been significantly reduced in scope for which there is no explained rationale. It is likely that ANSPs will be forced to build in additional economic buffers to take this into account. Pension costs are a particularly sensitive area, and in many cases are beyond the sole remit of the ANSP. Any changes in proposals must be carefully considered.

Network Manager

A consistent theme in our responses to the consultation process during the drafting of the proposals was the relationship between the Network Manager and the performance scheme. The NM is not a regulator, it is more akin to a service provider, whilst acting as a facilitator between ANSPs and airspace users. Therefore, it is inappropriate for it to have powers that could be considered as having regulatory oversight.

Conclusion

The PSOs are in favour of and working for an improved European ATM system with a focus on increased capacity and safety at a reasonable price. Taking into consideration both timescales for the drafting and adoption of this regulation and our judgment that the current draft will hamper the progress instead of improving the situation, the PSOs deeply regret that continuing the current RP2 regulation, is the only remaining reasonable option.



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Proposed text by the EC	PSOs analysis	PSOs proposal
<p>Article 11 Performance plans</p>		
<p><i>“Traffic forecasts are based on Eurocontrol's Statistics and Forecast Service (STATFOR) base forecast, unless, on the basis of a proposal from the national supervisory authority, the air navigation service providers and airspace users concerned have agreed in writing to the use an objective forecast from another independent and recognised forecasting institute.”</i></p>	<p>This proposal to seek a written agreement of airspace users or ANSPs raises both principle and juridical concerns.</p> <ul style="list-style-type: none"> • First, how an association of Airspace user’s decision could be considered as juridically binding for a member state? AUs could refuse a European member state to choose a particular forecast? • Secondly, why only 2 particular stakeholders are offered this ability to agree or disagree? <p>Practical aspects: What would be the value of this agreement? What would be the form of this agreement? How an agreement could be considered has approved or disapproved? Which airspace users are considered?</p> <p>With regards of the two first remarks, this proposal to seek the agreement of 2 stakeholders seems not to be mature and cannot be taken on board for RP3. As a consequence, the global proposal could only be regarded as imposing a single hypothesis for the traffic forecast (STATFOR base scenario). PSOs doesn’t think that Eurocontrol STATFOR services should be given the full responsibility of choosing a particular forecast.</p>	<p>PSOs would like to keep the IR390/2013 formulation</p> <p><i>“Article 11 (3.) The performance plans shall contain, in particular:</i></p> <p><i>(a) the traffic forecast, expressed in service units, to be provided for each year of the reference period and for each charging zone in the functional airspace block, with a justification of the figures used;</i></p>

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	<p>ANSPs need to secure their revenues. The STATFOR base case scenario, is the scenario where the traffic has an equal chance of being above or below forecast.</p> <p>Can this industry reasonably be expected to take this level of risk? The disappearance of the dead band would allow States to choose accurate forecast scenarios without overly penalising Airspace users in the case where traffic is actually higher than forecast.</p>	
Article 12 Incentive schemes		
	<p><i>« If all airspace users want to fly flight level 360, you will have delays »</i></p> <p>PSOs statement</p>	

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	<p>During RP2 and RP1, PSOs have not seen any added value linked with the implementation of incentive schemes and particularly on en-route delays.</p> <p>ANSPs are only partially responsible for the performance of the ATM ANS system. Airlines, Airports and Political decisions at local and national level, have direct and major consequences on the performance of the system. Even in the en-route part of the performance regulation, where the number of influencing actors is limited, we can see that the performance scheme is not able to identify this. Airlines can decide where they want to fly, at which flight level and when they want to depart.</p> <p>The created unpredictability of the Airline behaviour has to be accommodated by ANSPs. Developing any incentive scheme that doesn't take these factors into account is not advisable and can't be supported by the PSOs.</p>	<p>No incentive scheme for cost efficiency for TANS</p> <p>PSOs preferred scenario: no incentive scheme for capacity.</p>
<p><i>“The incentive schemes shall apply to en route and terminal air navigation services and shall include incentives on cost-efficiency targets, capacity targets and environment targets.”</i></p>	<p>The possibility to introduce cost efficiency target with financial incentivisation for terminal air navigation services was offered during RP2. A lot of doubts and downturns regarding the added value were identified. Answers and clarifications concerning these issues have not been brought to our knowledge. PSOs will come back on this particular point later on in this paper.</p>	<p><i>The incentive schemes shall apply to en route and terminal air navigation services and shall include incentives on cost-efficiency targets, capacity targets and environment targets.”</i></p>

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	<p>PSOs would like to have a clearer view on incentives on capacity targets.</p> <p>The possibility to adjust the target levels to cover only delay causes related to ATC capacity, ATC routing, ATC staffing, ATC equipment, airspace management and special event with the codes C, R, S, T, M must be preserved.</p>	<p><i>Article 15 Incentive schemes for air navigation service providers</i></p> <p><i>Such financial incentive schemes shall conform to the following principles:</i></p> <p><i>(g) for the key performance area of capacity, the target levels of performance may be adjusted to cover only delay causes related to ATC capacity, ATC routing, ATC staffing, ATC equipment, airspace management and special event with the codes C, R, S, T, M and P of the ATFCM user manual.</i></p>
<p><i>“(5) The incentive schemes established at local level referred to in point (a) of paragraph 3 shall:</i></p> <p><i>(a) be proposed by the national supervisory authorities and be subject to a dedicated consultation aimed at reaching written agreement between the ANSPs and airspace users concerned on the parameters of the incentive scheme.”</i></p>	<ul style="list-style-type: none"> • As explained before, this proposal of seeking a written agreement of airspace users raises both principle and juridical concerns. • The main issue about this proposal is how an association of Airspace user or an ANSPs decisions could be considered juridically binding for a member state? AUs could refuse a European member state to choose a particular incentive? 	<p><i>“(5) The incentive schemes established at local level referred to in point (a) of paragraph 3 shall:</i></p> <p><i>(a) be proposed by the national supervisory authorities and be subject to a dedicated consultation aimed at reaching written agreement between the ANSPs, staff organisations and airspace users concerned on the parameters of the incentive scheme.”</i></p>

Proposed text by the EC	PSOs analysis	PSOs proposal
<p><i>“(5) The incentive schemes established at local level referred to in point (a) of paragraph 3 shall:</i></p> <p><i>(b) address through concrete measures at least one of the following elements:</i></p> <p><i>(i) specific operational issues identified at the level of ACC or arrival sequencing and metering areas or Member State;</i></p> <p><i>(ii) initiatives related to defragmentation as regards airspace management, service provision or the procurement of technical equipment;</i></p> <p><i>(iii) consolidation and rationalisation of communication, navigation and surveillance infrastructure;</i></p> <p><i>(iv) consolidation and rationalisation of ATM infrastructure</i></p> <p><i>“(c) Provide for a financial bonus or penalty related to the implementation by the air navigation service providers of measures addressing the elements referred to in point (b) and subject to the provisions referred to in point (a);</i></p>	<ul style="list-style-type: none"> • The measures listed are considered as interesting to continue to improve the efficiency of European ATM. Nevertheless, it is difficult to understand precisely what the expectations are. Is it necessary to impose this list to help regulators to undertake their activities? • This list is very similar to the type of action required in the PCP. The risk of overlapping could be regarded as important if we have at the same time the EU imposing items in the content of local incentive schemes regarding operational changes and what is it legally required in the PCP. • PSOs prefer that ANSPs remain focused on building robust and adaptable business plans. This exercise is fundamental as well as the necessary explanations given to the regulators about the choices made. 	<p>Deletion of Article 12 (5) (b) and (c)</p>

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Proposed text by the EC

PSOs analysis

PSOs proposal

The national supervisory authorities shall include a rationale in the performance plan in the event that they do not propose a local incentive scheme in the key performance area of capacity.”

Proposed text by the EC	PSOs analysis	PSOs proposal
<p><i>The default financial penalty-based scheme shall meet the following requirements:</i></p> <ul style="list-style-type: none"> a) <i>the level of the financial penalties shall be commensurate with the targets to be reached and the performance achieved;</i> b) <i>there shall be no bonuses;</i> c) <i>the maximum amount per year of aggregate financial penalties shall not exceed 3% of the revenue from air navigation services generated in the charging zone concerned; (</i> d) <i>financial penalties shall be applied separately on the basis of the annual values specific to each air navigation service provider concerned in case of performance targets set at the level of functional airspace blocks.</i> 	<p>PSOs have not observed any of the expected beneficial influences of an incentive scheme during RP2 and RP1. Considering the number of actors having an influence on the performance and particularly on en route delays, PSOs are not in favour of such a mechanism. Nevertheless, the non-symmetrical element of this proposal, with no bonuses allowed, creates opposition amongst PSOs.</p> <ul style="list-style-type: none"> • The maximum value of 3% for financial penalties and bonuses is considered far too high. A maximum of 0,5% seems to be more appropriate. 	<p><i>The preferred scenario is to have no incentive scheme regarding capacity and environment.</i></p> <p><i>The default financial penalty-based scheme shall meet the following requirements:</i></p> <ul style="list-style-type: none"> e) <i>the level of the financial penalties and bonuses shall be commensurate with the targets to be reached and the performance achieved;</i> f) <i>there shall be no bonuses;</i> g) <i>the maximum amount per year of aggregate financial penalties or bonuses shall not exceed 3% 0,5% the revenue from air navigation services generated in the charging zone concerned; (</i> h) <i>financial penalties shall be applied separately on the basis of the annual values specific to each air navigation service provider concerned in case of performance targets set at the</i>

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Proposed text by the EC

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*level of functional airspace
blocks.*

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Proposed text by the EC	PSOs analysis	PSOs proposal
Article 16 Assessment of revised performance plans and targets and adoption of corrective measures		
<p><i>(8) On the basis of the elements referred to in paragraph 7, the Commission shall assess whether the Member State or Member States have complied with the decision referred to in paragraph 5. Where the Commission establishes that the Member State or Member States have not complied with that decision, the Commission shall notify the Member State of this finding and shall take action to address the identified noncompliance, including, as appropriate, through actions provided for in Article 258 of the Treaty on the Functioning of the European Union.</i></p>		
Article 18 Revision of local performance targets in the course of a reference period		

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<p>1. The Commission may, in the course of a reference period decide, upon request by a Member State or Member States, to authorise the revision of one or several local performance targets in the following cases: (a) as a result of the application of an alert mechanism as referred to in Article 35(2)</p>	<p>PSOs doesn't understand why the Commission would not authorise the revision of the local performance target in the case of the application of an alert mechanism.</p> <p>RP2 examples have proven that it is necessary to authorise these revisions in a shorter period. The PSOs have introduce a period of 2 months.</p>	<p>1. The Commission, within a period of 2 months, shall, in the course of a reference period decide, upon request by a Member State or Member States, to authorise the revision of one or several local performance targets in the following cases: (a) as a result of the application of an alert mechanism as referred to in Article 35(2)</p>

Proposed text by the EC	PSOs analysis	PSOs proposal
<p>2. For the purposes of paragraph 1, the national supervisory authority of the Member State or Member States concerned shall submit to the Commission for assessment the necessary evidence which in their view justify the revision of local performance targets, as well as the revised performance targets.</p> <p>3. Where the Commission finds, on the basis of the evidence referred to in paragraph 2 and the criteria set out in Section 2 of Annex IV, that the conditions for revising the local performance targets referred to in paragraph 1 are met and that the revised performance targets are consistent with the Union-wide targets, it shall adopt a decision notifying the Member State or Member States concerned thereof.</p> <p>4. Where the Commission finds, on the basis of the information referred to in paragraph 2 and of the criteria set out in Section 2 of Annex IV that the conditions for revising the local performance targets referred to in paragraph 1 are not met or that the revised performance targets are not consistent with the Union-wide performance targets, it shall adopt a decision notifying the Member State or Member States concerned thereof. In that case, the revised performance targets shall not be put into effect.</p>	<ul style="list-style-type: none"> • The European Commission is acting at the legislative level with the proposal of regulations on the performance scheme, at the executive level by approving performance plans and the EC can impose corrective measures to member States. • For the revision of local performance targets, again, all the decision-making powers seem to be in the hands of the Commission. • Is it a guarantee for a fair treatment in this situation? • PSOs are in more balanced situation with more autonomy given to the local NSAs with a strong involvement of ANSPs and Staff organisations. 	

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Proposed text by the EC	PSOs analysis	PSOs proposal
<p>Article 22 Calculation of en route charges</p>		
<p><i>For the purpose of calculating the unit rate, other revenues obtained from public authorities in year n shall be deducted from the determined costs no later than in year n+2. Member States may decide to deduct from the determined costs other revenues obtained from other sources.</i></p>	<p>EU funds are there to foster deployment of new technologies and not to only reduce unit rates. PSOs see a need for a calculation of en route charges that ensures a fair sharing, taking into consideration the different contributions of all involved operational stakeholders</p>	<p><i>For the purpose of calculating the unit rate, 75% of other revenues obtained from public authorities in year n shall be deducted from the determined costs with full consideration of when these costs are depreciated. Member States may decide to deduct from the determined costs other revenues obtained from other sources</i></p>

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<p>Article 24 Eligible services, facilities and activities</p>	<p>(3) Staff organisations disagree with the principle of a distinct approach on investment. The ATM ANS industry must preserve its independence in decision making. We cannot tolerate micromanagement and the associated potential for disastrous consequences. Capex is a fundamental part of the ANSP cost base and must be set at an appropriate level to allow continuous investment. As a consequence, the risk associated to any cost and the cost sharing mechanism should be the same.</p> <p>No distinction between investments and other costs.</p> <p>No distinction amongst investments.</p> <p>The PSOs firmly believe that it is up to the ANSP to decide on what investments to make, however it is appropriate that this is overseen by the local NSA who are best placed to ensure the investment is appropriate as they have the detailed local knowledge. Capex spend should be properly consulted with all stakeholders.</p> <p>Whilst SESAR initiatives are important, the local NSA and ANSP must be able to have decision making powers to ensure that the technology is appropriate for that ANSP. There have already been too many examples of technology being deployed for the sake of it, rather than for real operational benefit.</p>	

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<p><i>“(3) Costs stemming from investments in new ATM systems and cost stemming from major overhauls of existing ATM systems are eligible to be included in the cost base insofar as they are consistent with the implementation of the European ATM Master Plan, and, in particular, with the common projects referred to in Article 15a(3) of Regulation (EC) No 550/2004.”</i></p>	<p>PSOs would like to highlight some of the practical aspects induced by this proposal.</p> <p>One concrete example: 3 cars are bought by an ANSP. On Monday and Tuesday these cars are used to attend meetings or to prepare implementations linked with the European ATM Master Plan but it is not the case for the rest of the week. Do regulator and ANSP will have to make a distinction and consider the number of days? The number of kilometers? The number of persons in the car?</p> <p>About the content of this proposal and the principles implied, the PSOs objections regarding this proposal are:</p> <ul style="list-style-type: none"> • The performance and charging regulation should be output based, not input based. Micromanagement and associated potential consequences can reveal to be disastrous. • The performance and charging regulation should remain distinct of SESAR initiatives and of the measurement of the efficiency of SESAR deployment. • Additional administrative burden leading to general misunderstanding 	<p><i>“Costs stemming from investments in new ATM systems and cost stemming from major overhauls of existing ATM systems are eligible to be included in the cost base insofar as they are consistent with the implementation of the European ATM Master Plan, and, in particular, with the common projects referred to in Article 15a(3) of Regulation (EC) No 550/2004.”</i></p>

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	<p>Whilst SESAR initiatives are important, the local NSA and ANSP must be able to a level of independence in its decision-making powers to ensure that investments are appropriate for that ANSP. This proposal is an additional restriction to this already limited ability.</p> <p>PSOs do not support this proposal of a distinction of investment with regard to the other costs and the principle of a distinction amongst investments.</p>	
<p>Article 27 Transparency of costs and of the charging mechanism</p>		

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<p><i>As part of the unit rate setting process referred to in Article 31(2), the Member States shall, by 1 August of each year, in a coordinated manner, consult the airspace users' representatives on charging policy and on essential elements relating to the implementation of this Regulation as set out in Annex X. The Commission shall, on an annual basis, consult Member States, national supervisory authorities and the airspace users' representatives on issues where no common understanding has been found during the consultation organised by Member States. Airspace users' representatives may request Member States that more consultations be held. User consultation shall also be organised systematically by Member States following the activation of an alert mechanism as provided for in Articles 18 and 35 generating a revision of the determined unit cost or costs.</i></p>	<p>PSOs think it would also be necessary that staff organisations to be involved in this annual consultation.</p> <p>This proposal to seek a common understanding of airspace users or ANSPs raises practical concerns similar to what have been explained before.</p> <p>As a consequence, the second paragraph of this article 27 (2) should be deleted to avoid any additional complexity.</p>	<p><i>As part of the unit rate setting process referred to in Article 31(2), the Member States shall, by 1 August of each year, in a coordinated manner, consult the airspace users' representatives and staff organisations on charging policy and on essential elements relating to the implementation of this Regulation as set out in Annex X. The Commission shall, on an annual basis, consult Member States, national supervisory authorities and the airspace users' representatives on issues where no common understanding has been found during the consultation organised by Member States. Airspace users' and staff organisations representatives may request Member States that more consultations be held. User and staff organisations consultation shall also be organised systematically by Member States following the activation of an alert mechanism as provided for in Articles 18 and 35 generating a revision of the determined unit cost or costs.</i></p>

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<p>Article 28 (4) Traffic risk sharing</p>	<p>ANSPs have little influence on the traffic volumes and the flow of traffic. Geopolitical and other external risks create traffic pattern variations outside of the control of the ANSP: these risks must continue to be shared and risks that expose ANSPs should be diminished.</p>	
	<p>PSOs can understand the reasons explaining the disappearance of the dead band, in return this initiative will have to allow Member states to have more freedom to choose the most suitable traffic forecast.</p> <p>ANSPs need to secure their revenues. The STATFOR base case scenario, is the scenario where the traffic has 50% of chances to be above and 50% to be below.</p> <p>Can this industry reasonably be expected to take this level of risk? The disappearance of the dead band would allow States to choose more conservative forecast scenarios without overly penalising Airspace users in the case where traffic is actually higher than forecast.</p>	

Proposed text by the EC	PSOs analysis	PSOs proposal
<p><i>“Where, over a given year n, the actual number of service units exceeds the forecast established in the performance plan for that year n, a minimum of 70% of the resulting additional revenue obtained by the ANSP concerned shall be passed on to airspace users in accordance with paragraph 6.</i></p> <p><i>Where, over a given year n, the actual number of service units falls below the forecast established in the performance plan for that year n, a maximum of 70% of the resulting revenue loss incurred by the ANSP concerned shall be recovered from airspace users in accordance with paragraph 6.”</i></p>	<p>The proposal of new repartition of the risk (with a minimum of 70% when the traffic is above and a maximum of 70% when the traffic is below) increase the exposure of ANSPs regarding traffic volatility. This proposal goes in the opposite direction of what is recognised by PSOs.</p>	<p><i>“Where, over a given year n, the actual number of service units exceeds the forecast established in the performance plan for that year n, a MAXIMUM of 70% of the resulting additional revenue obtained by the ANSP concerned shall be passed on to airspace users in accordance with paragraph 6.</i></p> <p><i>Where, over a given year n, the actual number of service units falls below the forecast established in the performance plan for that year n, a MINIMUM of 70% of the resulting revenue loss incurred by the ANSP concerned shall be recovered from airspace users in accordance with paragraph 6.”</i></p>
<p>Article 28 (5) Traffic risk sharing</p>		

*“Where, over a given year n, the actual number of service units is **lower than 85%** of the forecast established in the performance plan for that year n, the full amount of the revenue loss incurred by the air navigation service provider or providers concerned in excess of 15% of the difference between the actual service units and the forecast in respect of determined costs established in the performance plan, shall be recovered from airspace users in accordance with paragraph 6.”*

- Regarding the moving of the limit from 85% to 90% for RP2. PSOs believe that the RP2 90% alert threshold is already too low. Several States were put in difficult situations due to unexpected traffic evolution, changing patterns. PSOs do believe something concrete has to be done to prevent similar situations.
- Something more gradual have been proposed to avoid threshold effects.

*Where, over a given year n, the actual number of service units is **lower than 93%** of the forecast established in the performance plan for that year n, the **90%** amount of the revenue loss incurred by the air navigation service provider or providers concerned in excess of 7% of the difference between the actual service units and the forecast in respect of determined costs established in the performance plan, shall be recovered from airspace users in accordance with paragraph 6.”*

*Where, over a given year n, the actual number of service units is **lower than 90%** of the forecast established in the performance plan for that year n, the full amount of the revenue loss incurred by the air navigation service provider or providers concerned in excess of **10%** of the difference between the actual service units and the forecast in respect of determined costs established in the performance plan, shall be recovered from airspace users in accordance with paragraph 6.”*

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<p><i>Where, over a given year n, the actual number of service units exceeds 115% of the forecast established in the performance plan for that year n, the full amount of the additional revenue obtained by the air navigation service provider or providers concerned in excess of 15% of the difference between the actual service units and the forecast in respect of determined costs established in the performance plan shall be passed on to airspace users in accordance with paragraph 6.</i></p>	<p>Experience from RP2 suggests that the vast majority of ANSPs cannot accommodate traffic over and above the level forecast in the performance plan without incurring significant additional costs. On the other hand, the alignment of this limit with the alert threshold limit creates difficulties. If the alignment principle is chosen, PSOs would prefer to have a rate of 110%.</p>	<p><i>Where, over a given year n, the actual number of service units exceeds 110% of the forecast established in the performance plan for that year n, the full amount of the additional revenue obtained by the air navigation service provider or providers concerned in excess of 10% of the difference between the actual service units and the forecast in respect of determined costs established in the performance plan shall be passed on to airspace users in accordance with paragraph 6.</i></p>
<p><i>“The national supervisory authority may, based in particular on input from the Network Manager, set in the performance plan values for the risk sharing keys other than those set out in the first and second subparagraphs of this paragraph, subject to a written agreement between the air navigation service provider or providers and airspace users.”</i></p>	<p>Regarding the possibility to deviate to the recommendation of the European Commission, PSOs position remains the same regarding the conditional approval of Airspace users and ANSPs.</p>	<p>Deletion of this paragraph</p>
<p>Article 29 Cost sharing</p>		

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Proposed text by the EC	PSOs analysis	PSOs proposal
<p><i>The following cost items shall be exempted from the application of the cost sharing mechanism:</i></p> <p>a) <i>new investments specified in the performance plans, subject to the conditions laid down in paragraph 3;</i></p> <p>b) <i>the difference between actual pension costs and determined pension costs established in accordance with Article 25(3) due to unforeseeable and significant changes in financial market conditions, deemed to be outside the control of the air navigation service provider and subject to the conditions laid down in paragraph 4 of this Article;</i></p>	<p>The PSOs doubt whether this distinction of investments will have a positive influence on the overall costs of the ATM system. This proposal seems unclear and too complex. As a result, it will force the ANSPs to build in larger economical buffers.</p> <p>Regarding the very sensitive issue of pension cost, the PSOs don't understand this proposal. Pension costs have to be considered the same way as other costs. Many of the elements of these pension costs are not within the remit of ANSPs including changes by law. Protection of workers' rights should be preserved.</p>	<p>PSOs will be particularly vigilant on the deletion of this proposal and suggest using the text and principle of RP2</p> <p>PSOs will be particularly vigilant on the deletion of this proposal and suggest using the text and principle of RP2 where the changes in the national law are also considered.</p>
<p>In respect of the new investments referred to in point (a) of paragraph 2, the following requirements shall apply:</p> <p>(a) where actual costs over a calendar year are lower than the determined costs set in the performance plan, the difference shall be returned to airspace users through a reduction of the unit rate in year n+2 with a final adjustment of the unit rate in the last six months of year n+3</p>	<p>See above</p>	<p>PSOs suggest using the text and principle of RP2.</p>

Proposed text by the EC	PSOs analysis	PSOs proposal
<p><i>In respect of point (b) of paragraph 2, the following principles shall apply:</i></p> <ul style="list-style-type: none"> • <i>(a) where actual pension costs over a reference period are lower than the determined pension costs set in the performance plan, the difference due to the changes referred to in point (b) of paragraph 2 shall be reimbursed to airspace users through a reduction of the unit rate in the following reference period;</i> • <i>(b) where actual pension costs over a reference period are higher than the determined pension costs set in the performance plan, the difference due to the changes referred to in point (b) of paragraph 2 shall be recovered from airspace users through an increase of the unit rate in the following reference period, subject to the conditions set out in paragraph 7;</i> 	See above	PSOs suggest using the text and principle of RP2
<p>Article 34 (2) Ongoing monitoring and reporting</p>		

Proposed text by the EC	PSOs analysis	PSOs proposal
<p><i>“If the appropriate or corrective measures referred to in paragraph 1 are not implemented by the air navigation service provider or providers concerned, the national supervisory authorities concerned may impose penalties in accordance with Article 9 of Regulation (EC) No 549/2004.”</i></p>	<p>The PSOs are surprised to see that the old-fashioned model of problem solving (promoted by SDG) has been taken on board by the European Commission:</p> <ul style="list-style-type: none"> • Identify difficulties / Impose solutions to ANSPs / Sanction ANSPs <p>The ATM sector is a very sensitive sector and this reasoning can be widely considered as not adapted. The ATM industry is a highly interconnected industry with Airline, Airport industries and the ATM system, depending on cooperation to achieve common goals thus contributing to European Economic Growth.</p> <p>Only through collaboration and more involvement of all aviation stakeholders, it is possible to find solutions to problems of the SES. On several occasions the PSOs have pointed out that collaboration is the only way forward.</p> <p>These methods have failed in delivering results for more than a decade. This was recently highlighted in the report by the European Court of Auditors.</p>	
<p>Article 35 (1) and (2) Alert mechanisms</p>		

Brussels, 29th of May

Proposed text by the EC	PSOs analysis	PSOs proposal
<p>1. Where the alert threshold or thresholds referred to in Article 10(6) are reached at Union level, the Commission shall assess, in consultation with the Member States, whether the Union-wide performance targets remain adequate or need to be revised in accordance with Article 10(9).</p> <p>2. Where the alert threshold or thresholds in Article 10(6) are reached at local level, the national supervisory authorities concerned shall review the situation. Where the national supervisory authorities concerned can demonstrate that the alert threshold or thresholds have been reached due to circumstances that were unforeseeable at the time of adoption of the performance plans and are both insurmountable and beyond the control of the Member States or air navigation service providers concerned, they may request the revision of local performance targets in accordance with Article 18. 3</p>	<p>These different possibilities for alert thresholds is not precisely understood. If the proposal is to offer the possibility to activate article 35 if at least one these 3 thresholds is reached it could be regarded as interesting. This possibility should be coupled with highly dynamic revision mechanism</p>	<p>1. Where the alert threshold or one of the three thresholds referred to in Article 10(6) are reached at Union level, the Commission shall assess, in consultation with the Member States, whether the Union-wide performance targets remain adequate or need to be revised in accordance with Article 10(9).</p> <p>2. Where the alert threshold or one of the three thresholds in Article 10(6) are reached at local level, the national supervisory authorities concerned shall review the situation. Where the national supervisory authorities concerned can demonstrate that the alert threshold or one of the three thresholds have been reached due to circumstances that were unforeseeable at the time of adoption of the performance plans and are both insurmountable and</p>
<p>Article 35 (3) Alert mechanisms</p>		

Proposed text by the EC	PSOs analysis	PSOs proposal
<p>3. The alert threshold or thresholds referred to in Article 10(6) shall be set for:</p> <p>(a) a deviation by 15% of the actual traffic from the traffic forecast over a given calendar year expressed in service units;</p> <p>(b) the variation of the reference values as a result of the seasonal updates of the Network Operations Plan pursuant to Article 7(3) of [revised network functions Regulation];</p> <p>(c) the deviation of the actual costs from the determined costs.</p>	<ul style="list-style-type: none"> • The content of point (b) should need clarification. • Nevertheless, an alert threshold higher than a deviation by 10% of the actual traffic from the traffic forecast over a given calendar year is considered as too high. The proposal of 15% cannot be supported by PSOs. 	<p>3. The alert threshold or thresholds referred to in Article 10(6) shall be set for:</p> <p>(a) a deviation of a maximum of 10% by 15% of the actual traffic from the traffic forecast over a given calendar year expressed in service units;</p> <p>(b) the variation of the reference values as a result of the seasonal updates of the Network Operations Plan pursuant to Article 7(3) of [revised network functions Regulation];</p> <p>(c) the deviation of the actual costs from the determined costs.</p>
<p>Article 36 (2)</p> <p>Ongoing monitoring and reporting</p> <p>Compliance monitoring</p>		

Proposed text by the EC	PSOs analysis	PSOs proposal
<p><i>Taking enforcement action in the event that air navigation service providers under their supervision fail to comply with their obligations under this Regulation including the possibility to impose financial penalties in accordance with national legislation”</i></p>	<p>The PSOs are surprised to see that the old-fashioned model of problem solving (promoted by SDG) has been taken on board by the European Commission:</p> <p style="padding-left: 40px;">Identify difficulties / Impose solutions to ANSPs / Sanction ANSPs</p> <p>The ATM sector is a very sensitive sector and this reasoning can be widely considered as not adapted. The ATM industry is a highly interconnected industry with Airline, Airport industries and the ATM system, depending on cooperation to achieve common goals thus contributing to European Economic Growth.</p> <p>Only through collaboration and more involvement of all aviation stakeholders, it is possible to find solutions to problems of the SES. On several occasions the PSOs have pointed out that collaboration is the only way forward.</p> <p>These methods have failed in delivering results for more than a decade. This was recently highlighted in the report by the European Court of Auditors.</p>	
<p>Article 37 Appeal</p>		
<p><i>Member States shall ensure that decisions taken pursuant to this Regulation are duly reasoned and are subject to an effective judicial appeal in accordance with national law.</i></p>	<p>This proposal is unclear.</p>	

Proposed text by the EC	PSOs analysis	PSOs proposal
<p>Annex I 4. COST-EFFICIENCY 4.1. Key performance indicators</p>		
<p><i>(b) The year-on-year change of the average Union-wide DUC for terminal air navigation services, calculated as follows:</i></p> <p><i>This indicator applies only to airports with more than 150 000 IFR movements per year.</i></p>	<p>The possibility to introduce cost efficiency target with financial incentivisation for terminal air navigation services was offered during RP2. A lot of doubts and downturns regarding the added value were identified. Answers and clarifications concerning these issues seems have not been given by anyone.</p>	<p>To be deleted</p>
<p>Annex I SECTION 2 KPIs and PIs for target setting at local level and performance monitoring at local level 1. SAFETY 1.2. Performance indicators</p>		
<p><i>(f) The ATFM over-deliveries above the declared capacity limits by the ATFM system when ATFM regulations are in place calculated as follows:</i></p> <p><i>(i) the ratio of time that the traffic values exceed by more than 10% the declared capacity limits by the ATFM system when ATFM regulations are in place, and the total number of hours where ATFM regulation are in place;</i></p>	<p>This indicator is inappropriate. The use of occupancy counts allows flow manager to handle more traffic than the declared capacity.</p> <p>With this indicator what could be considered as a safety event is only the result of the work of flow managers.</p> <p>The capacity declared is a figure used when flow managers are not able to analyse the traffic and implement tactical measures.</p>	<p>Proposal to be deleted.</p>

Brussels, 29th of May

Proposed text by the EC	PSOs analysis	PSOs proposal
<i>(ii) for the purposes of this indicator the regulated time is divided in overlapping hourly slices at every 20-minutes interval.</i>		
Annex I SECTION 2 3. CAPACITY 3.1. Key performance indicator (a) The average minutes of en route delay		
<i>(iv) for the purposes of this indicator, 'local' means at national or functional airspace block level with a breakdown at the level of area control centres' areas of responsibility, including cases of delegation of the responsibility for the provision of air traffic services as a result of collaborative crossborder arrangements.</i>	The breakdown at area control center can be regarded as micro management. Furthermore, this proposal will create additional administrative burden.	PSOs suggest using the text and principle of RP2 <i>"For the purpose of this indicator, local means at functional airspace block level with a breakdown monitored for reasons of transparency at the most appropriate level."</i> (