



**AGREEMENT ON THE ESTABLISHMENT OF THE NORTH
EUROPEAN FUNCTIONAL AIRSPACE BLOCK
BETWEEN
THE REPUBLIC OF ESTONIA, THE REPUBLIC OF FINLAND,
THE REPUBLIC OF LATVIA AND THE KINGDOM OF NORWAY**

ENGLISH TEXT WITH EXPLANATORY MATERIAL

Version 1.0.

THIS DOCUMENT HAS NO BINDING OBLIGATION FOR THE CONTRACTING STATES

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Text of the NEFAB Agreement	Explanatory Notes
<p>The Republic of Estonia, the Republic of Finland, the Republic of Latvia and the Kingdom of Norway, hereinafter referred to as the “Contracting State” or the “Contracting States”,</p> <p>Having regard to the Regulations on the Single European Sky of the European Parliament and the Council, the relevant implementing rules, the statement by the EU Member States on military issues relating to the Single European Sky of 31 March 2004;</p> <p>Referring to the Agreement on the European Economic Area of 3 January 1994;</p> <p>Recognizing the obligations that each Contracting State is bound by as parties to the Convention on International Civil Aviation of 1944 (Chicago Convention);</p>	<p>The preamble contains an explicit reference to the Single European Sky (SES) legislation as it is the framework for the content of the Agreement and the implementation of this legislation.</p> <p>The SES legislation consists of Regulation (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 as amended by Regulation (EC) No 1070/2009 as well as a number of implementing rules referred to as the SES legislation. The statement on military issues is published in the Official Journal of the European Union (L 96, 31.3.2004, p. 9).</p> <p>The Agreement does not allow an “automatic” application of SES legislation to the Kingdom of Norway (non-EU Member State). However, this legislation is considered and incorporated through the EEA Joint Committee established in accordance with the Agreement on the European Economic Area (EEA) between the European Community and Iceland, the Principality of Liechtenstein and the Kingdom of Norway.</p>

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<p>Taking into account the need for close cooperation between the Contracting States to establish the North European Functional Airspace Block (NEFAB) and to ensure its functionality;</p> <p>Having regard to the Feasibility Study Report of NEFAB of August 2011;</p> <p>Taking into account the joint ministerial declaration of intent for the creation of NEFAB of 30 August 2011;</p> <p>Recognizing the importance of continuing close cooperation with Iceland and the Danish-Swedish functional airspace block, as well as other neighbouring functional airspace blocks with the possibility of a future consolidation as a vision;</p> <p>Taking into account the Agreement on demilitarisation and neutralisation of the Åland Islands of 1921;</p>	<p>The reference to the joint ministerial declaration of intent and the feasibility study has been added as they are the two main documents recognized by the Contracting States and the air navigation service providers (ANSPs). The joint ministerial declaration of intent for the creation of NEFAB was signed on 30 August 2011 and the feasibility study was finalised on 8 September 2011.</p> <p>A reference has also been made to the cooperation with Iceland and the Danish-Swedish FAB as well as other neighbouring FABs. Relations with European third countries and the cooperation with neighbouring FABs are required also in Article 7 of Regulation (EC) No 549/2004 and Article 9a of Regulation (EC) No 550/2004.</p> <p>Since this Agreement relates to civil and military aviation the special status of Åland Islands needs to be taken into account in this Agreement.</p> <p>Åland Islands have been demilitarised ever since the end of the Crimean War in 1856. The autonomous status of the islands was affirmed by a decision made by the League of Nations in 1921. The League of Nations decided in 1921 that the Åland Islands should remain with Finland but that no weapons should ever be kept there. This was reaffirmed within the Treaty of the accession of Finland to</p>

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<p>Considering that a cooperative approach to air traffic management is a major step towards fulfilling the needs of civil and military air traffic;</p> <p>Noting that the provisions of this Agreement shall not compromise existing agreements of the Contracting States concerning delegated functions on airspace management to the international defence organisations and regional projects;</p> <p>Considering that the creation of NEFAB requires enhanced and increasing cross-border provision of air navigation services;</p> <p>Recognizing that close cooperation among air navigation service providers is vital to fulfil the needs of civil and military air traffic;</p> <p>Considering the importance of the principle of “Just Culture” as reflected in international and European legislation;</p> <p>Aiming at achieving maximum capacity, effectiveness and efficiency of the air traffic management network while maintaining a high level of safety;</p> <p>Convinced by the added value of the creation of NEFAB for overall environmental sustainability;</p> <p>Recognizing that the conclusion of this Agreement between</p>	<p>the EU.</p>

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<p>Contracting States regarding the establishment of NEFAB shall not prejudice the principle that every Contracting State has complete and exclusive sovereignty over the airspace of its territory or the capacity of every Contracting State to exercise its prerogatives with regard to public order, public security and defence matters in its national airspace;</p> <p>have agreed as follows:</p>	
<h2>Chapter 1: General Principles</h2>	
<h3>Article 1: Definitions</h3>	
<p>1.1 For the purpose of this Agreement, except where the context otherwise requires or it is otherwise stated, the terms used in this Agreement shall have the same meaning attributed to them as in the EU regulations on the Single European Sky and the Chicago Convention.</p> <p>1.2 For the purpose of this Agreement, the following definitions shall apply:</p>	<p>The Contracting States shall interpret this Agreement in accordance with the Vienna Convention on the Law of Treaties.</p> <p>In order to avoid repetition a simple reference is made to terms and definitions used in the SES legislation as well as those used in the Chicago Convention. Changes of definitions in SES legislation could have an impact on this Agreement. In this case, the Contracting States remain competent to decide about necessary amendments to this Agreement as specified in Article 31.</p> <p>Article 1.2 contains a list of applicable definitions specific to this Agreement.</p>

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<p>“Agreement” means the present Agreement and any amendments thereto, unless provided otherwise;</p> <p>“North European Functional Airspace Block (NEFAB)” means the functional airspace block established by the Contracting States under this Agreement;</p> <p>“NEFAB Airspace” means the airspace encompassing the applicable airspace of each Contracting State;</p> <p>“Certifying NSA” means the national supervisory authority (NSA) nominated or established by the Contracting State that has certified a particular air navigation service provider (ANSP);</p> <p>“Territorial NSA” means, with respect to a particular portion of airspace, the national supervisory authority (NSA) nominated or established by the Contracting State having responsibility over that portion of airspace.</p>	
<p>Article 2: Scope and Objective</p>	
<p>2.1 This Agreement establishes the North European Functional Airspace Block (NEFAB).</p>	<p>Article 2.1 is the fundamental article as it clearly states that NEFAB is created. According to Article 9a.3 of Regulation (EC) No 550/2004 on the provision of air navigation services in the Single European Sky, a FAB shall only be established by mutual agreement between States.</p>

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<p>2.2 The objective of NEFAB is to achieve optimal performance in the areas relating to safety, environmental sustainability, capacity, cost-efficiency, flight efficiency and military mission effectiveness, by the design of airspace and the organisation of air traffic management in the airspace concerned regardless of existing boundaries.</p> <p>2.3 This Agreement defines the rights and obligations of the Contracting States and serves as one of the key instruments to fulfil the Single European Sky objectives.</p> <p>2.4 This Agreement applies to the airspace concerned, which is composed of the following flight information regions (FIR) and upper information regions (UIR) of North European airspace:</p> <ul style="list-style-type: none"> a. Estonia; b. Finland; c. Latvia; d. Norway; e. Bodø Oceanic. 	<p>Article 2.2 states the objective of NEFAB as a tool to achieve performance objectives of the SES legislation stemming from the Articles 1 and 11 of Regulation (EC) No 549/2004. The European Union wide performance targets are further defined in Regulation (EU) No 691/2010. The Regulation (EU) No 176/2011 states that the FABs are key enablers for enhancing cooperation between Member States in order to improve performance and create synergies.</p> <p>Article 2.4 defines the geographical scope of NEFAB. NEFAB airspace consists of entire Flight Information Regions (FIRs) and Upper Information Regions (UIRs) of the Contracting States.</p> <p>The FIRs and UIRs are defined under the rules of International Civil Aviation Organisation (ICAO).</p> <p>Bodø Oceanic is defined separately since the area is defined as a separate FIR/UIR under ICAO's rules. Norway is responsible for the air navigation service provision in the Bodø Oceanic FIR/UIR. The coordinates of the FIRs /UIRs are published in the Aeronautical Information Publications (AIP) of the respective Contracting States. No changes to the areas of the responsibilities of the Contracting States are introduced by this Agreement.</p>

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Article 3: Sovereignty	
<p>The provisions of this Agreement shall be without prejudice to the sovereignty of the Contracting States over their airspace or their rights and obligations under the Chicago Convention and other instruments of international law.</p>	<p>The Article confirms the principle also expressed in Article 1 of the Chicago Convention. This Agreement does not affect the sovereignty of the Contracting States.</p> <p>Regulation (EC) No 549/2004 laying down the framework for the creation of the Single European Sky explicitly also makes similar reservations, specifying that the application of SES legislation shall be without prejudice to Member States' sovereignty over their airspace and shall respect the rights and obligations of Member States under the Chicago Convention.</p>
Article 4: Public Security and Defence	
<p>4.1 The provisions of this Agreement shall be without prejudice to the competencies of the Contracting States relating to public order, public security and defence matters.</p>	<p>The purpose of this Article is to safeguard the discharge of responsibilities and international commitments of the Contracting States with respect to public order, public security and defence matters.</p> <p>It follows that this Agreement therefore does not concern the Contracting States competencies as regards decisions or measures when it comes to public order, public security and defence matters. These remain a responsibility of each Contracting State. The reservation shall be understood similar to the safeguard clause of</p>

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<p>4.2 Arrangements for the effective civil-military cooperation within NEFAB shall be established by the competent civil and military authorities of the Contracting States and be laid down in writing, in accordance with their respective competencies according to national law.</p>	<p>Article 13 of Regulation (EC) No 549/2004.</p> <p>“Defence matters” derives from national legislation of the Contracting States and is not defined in this Agreement. “Defence matters” entails issues related to security and defence policy and military defence, including among other things territorial surveillance tasks, military training, (education) and exercises, (international) military crisis management and operations related to international commitments.</p> <p>According to Regulation (EC) No 550/2004 on the provision of air navigation services in the Single European Sky the Members States shall ensure that necessary written agreements and legal arrangements between the competent civil and military authorities are established. Furthermore, Regulation (EC) No 551/2004 on the organisation and use of the airspace in the Single European Sky expresses the need for an effective cooperation between civil and military authorities.</p> <p>Therefore it is expressed in this Agreement (Article 4.2) that national competent civil and military authorities shall arrange effective civil-military cooperation. This must be done in accordance with respective competencies and in accordance with national law. See also Articles 5, 15 and 16. For the decision-making powers of the NEFAB Council in relation to the civil-military cooperation, see comments to Articles 8 and 9.</p> <p>Cooperation in technical or practical matters is dealt with through</p>

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	<p>arrangements. In practice this covers areas like technical and professional support between the authorities for reasons related to public order and/or security, administrative cooperation between the civil and military authorities and cooperation in material and structural preparation for situations endangering public order and/or security and/or national defence.</p> <p>This Article needs also to be read in conjunction with the statement by the Member States on military issues related to the Single European Sky of 31 March 2004.</p>
<p>Article 5: Areas of Cooperation</p>	
<p>To achieve the objective of NEFAB, the Contracting States commit to cooperate and take the appropriate measures in accordance with their national procedures in particular in the following domains:</p> <ol style="list-style-type: none"> a. Governance of NEFAB; b. Civil-military cooperation; c. Airspace; d. Harmonisation of rules and procedures; e. Provision of air navigation services; f. Meteorological services; g. Charging; h. Supervision; i. Performance. 	<p>This Article expresses the willingness of the Contracting States to cooperate in several identified domains to achieve the objective of NEFAB.</p> <p>This Article identifies nine main domains for cooperation. This list is not exhaustive, but it captures the main areas of cooperation in order to achieve the objectives expressed in the SES legislation.</p> <ul style="list-style-type: none"> - (a) Robust governance is vital for effective cooperation and decision making in NEFAB. - (b) Effective civil-military cooperation is considered to be one of the key factors in achieving required performance in the area of flexible and dynamic use of airspace.

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	<ul style="list-style-type: none"> - (c) Harmonised airspace strategies are important to enable optimum use of airspace and consistency with European route network. - (d) Harmonisation of rules and procedures is an enabler for the smooth and flexible transfer of responsibility for air traffic control between air traffic service units as well as for the cross border service provision. - (e) Efficient provision of air navigation services regardless of national boundaries is one of the main drivers in the SES legislation, thus it is one of the main areas of the cooperation. - (f) Meteorological services mean “those facilities and services that provide aircraft with meteorological forecasts, briefs and observations as well as any other meteorological information and data provided by States for aeronautical use”, as defined in Regulation (EC) No 549/2004. Meteorological services provided only for military use are not affected by this Agreement. - (g) Contracting States shall establish a harmonised charging policy in order to respond to the requirements of the Regulation (EC) 1794/2006 in a uniform manner. - (h) Article 2.3 of Regulation (EC) No 550/2004 stipulates that in respect of FABs that extend across the airspace falling under the responsibility of more than one Member State, the Member States concerned shall conclude an agreement on the supervision with regard to the ANSPs providing services relating to those blocks. Cooperation in the area of supervision is further elaborated in Article 25 of this

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	<p>Agreement.</p> <ul style="list-style-type: none"> - (i) The main goal of FABs is to achieve better overall performance of the air navigation services and to be able to respond adequately to the future European Union wide performance targets, thus this is one of the key areas for the cooperation. <p>The Contracting States ensure that any procedures prescribed by national legislation are respected in order to prepare and subsequently implement the commitments resulting from the areas of cooperation. See also comments to Articles 8 and 9 for the decision-making powers of the NEFAB Council.</p>
Article 6: Competent Authorities	
<p>Competent authorities are:</p> <ul style="list-style-type: none"> a. In Estonia: Ministry of Economic Affairs and Communications and in military matters Ministry of Defence; b. In Finland: Ministry of Transport and Communications and in military matters Ministry of Defence; c. In Latvia: Ministry of Transport and in military matters Ministry of Defence; d. In Norway: Ministry of Transport and Communications and in military matters Ministry of Defence. 	<p>No specific comment.</p>

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<p>Article 7: Authorisation to the National Supervisory Authorities</p>	
<p>The NSAs of the Contracting States are authorised to establish arrangements for the safe and effective implementation of NEFAB. These arrangements shall be laid down in cooperation agreements between the NSAs of the Contracting States as well as in the cooperation agreements concluded with the NSAs of other functional airspace blocks in Europe. These cooperation agreements shall contain only specific regulatory, operational and technical aspects limited to scope and objective of this Agreement and to the general competence of these authorities defined in the respective national legislation of each Contracting State.</p> <p>The cooperation agreements concluded between the NSAs shall, inter alia, cover the following areas of cooperation:</p> <ol style="list-style-type: none"> a. exchange of technical and operational information, excluding personal data; b. exchange of information of service providers, excluding personal data; c. exchange of all safety-related information relevant to the functions of NEFAB; d. supervision of technical systems, operations, service providers and other operators relevant to the functions of NEFAB; e. approval of technical systems; 	<p>This Article stipulates the possibilities to authorise other than Contracting States to agree on cooperation of the implementation of this Agreement.</p> <p>According to Finnish legislation the delegation of powers from a State Party can be done in an international agreement only in a limited way. This means in practice that at least the following criteria are met. Firstly, there has to be an explicit authorisation in an agreement to delegate contracting powers to specially named authorities. In addition to this, the scope of such arrangements may include only technical review on the agreements' main responsibilities or detailed organisation of the cooperation. Also the definition of the authorised organisation as well as the substantive content of the authorisation has to be specified in a sufficiently detailed manner.</p> <p>According to this article, the NSAs can agree on arrangements for safe and effective implementation of this Agreement. This is done through cooperation agreements between the NSAs of the Contracting States. In addition to this, the NSAs may conclude similar kind of cooperation arrangements between NSAs of other FABs in Europe.</p> <p>The scope of the cooperation arrangements between NSAs is limited</p>

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<p>f. development and harmonisation of the procedures relevant to the functions of NEFAB and the exchange of safety-related information;</p> <p>g. preparation of NEFAB performance plans.</p>	<p>to those specially mentioned in this Agreement. The cooperation is authorised only on specific regulatory, operational and technical aspects in the areas especially stated in subparagraphs a. to g. In addition to this, the scope of the authorisation of the cooperation arrangement has to belong to the competence of the NSA as specified in the national legislation of the Contracting States.</p>
<h2>Chapter 2: Governance of NEFAB</h2>	
<h3>Article 8: NEFAB Council</h3>	
<p>8.1 The NEFAB Council is established for the governance of NEFAB.</p> <p>8.2 The NEFAB Council shall be composed of representatives of the competent authorities of the Contracting States. Each competent authority may appoint several delegates in order to allow the interests of both civil and military aviation to be represented.</p>	<p>This Article establishes the NEFAB Council. Strong governance for NEFAB is essential for reaching the objectives and fulfilling the obligations within the scope of this Agreement.</p> <p>Article 8.2 states the composition of the NEFAB Council. According to Article 6 competent authorities are the ministries responsible for transport and the ministries responsible for defence. In the NEFAB Council both shall have the opportunity to be represented, having regard to the fact that both civil and military aviation matters can affect each other. It is therefore important to allow the interests of both civil and military aviation to be represented. This is also highlighted in the statement by the Member States on military issues related to the Single European Sky. The composition of the NEFAB</p>

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<p>8.3 The NEFAB Council shall be annually chaired by one of the Contracting States. Each Contracting State shall have one vote. The decisions of the NEFAB Council are made by consensus. The Contracting States shall implement decisions taken by the NEFAB Council in accordance with their national procedures, subject to parliamentary approval when necessary.</p> <p>8.4 The NEFAB Council shall establish its own rules of procedure and approve the rules of procedure for the committees.</p>	<p>Council shows the equal status of civil and military aviation authorities.</p> <p>The NEFAB Council is not an international organisation. The Contracting States regard the NEFAB Council as a forum for States' cooperation and decision-making concerning NEFAB.</p> <p>Article 8.3 specifies the chairmanship and the formal decision-making process for NEFAB: one vote per Contracting State and consensus for decisions in the NEFAB Council.</p>
<p>Article 9: Functions of the NEFAB Council</p>	
<p>9.1 In order to meet the commitments of the Contracting States under this Agreement, the NEFAB Council shall ensure the implementation of this Agreement and the fulfilment of the objectives of NEFAB in general.</p> <p>9.2 The NEFAB Council shall in particular:</p>	<p>The main function of the NEFAB Council is to prepare for and manage the implementation of this Agreement.</p> <p>The list of tasks in Article 9.2 demonstrates the wide field of activities of the NEFAB Council, which shall have a key role in the</p>

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<ul style="list-style-type: none"> a. define strategic objectives for the development of NEFAB, assess the results achieved and take appropriate measures if required; b. define the development of civil-military cooperation; c. agree on the common policy and design for the airspace concerned; d. define the modalities of the cooperation on the application of the concept of flexible use of airspace; e. support the harmonisation of the substantive rules and procedures; f. facilitate the joint designation process of the air traffic service providers; g. facilitate the work of the Air Navigation Services Consultative Board; h. adopt the charging policy applicable in the airspace concerned; i. agree on a common safety policy and support the development and the implementation of a common safety management system by the air navigation service providers; j. adopt NEFAB performance plans and the related performance targets and decide on incentives and additional or corrective measures; k. aim at coordinating the positions of the Contracting States with regard to the work of the International Civil Aviation Organisation (ICAO), EUROCONTROL, the European Commission, the European Aviation Safety Agency and joint undertakings in the field of air navigation services; l. ensure the coordination with adjacent functional airspace blocks, 	<p>determination of NEFAB cooperation and development. The list is not exhaustive and it refers to various Articles of this Agreement:</p> <ul style="list-style-type: none"> a. refers to Articles 2 and 5; b. refers to Articles 4, 15 and 16; c. refers to Article 14; d. refers to Article 15; e. refers to Article 17; f. refers to Article 13; g. refers to Article 11; h. refers to Article 24; i. refers to Article 17 and 25; j. refers to Article 26; k. refers to Article 2; l. refers to Articles 14 and 15; m. refers to Articles 10 and 11. <p>The NEFAB states have emphasized the importance of continuing close cooperation with Iceland and the Danish-Swedish FAB, as well as other FABs with the possibility of a future consolidation as a vision, which is stated in the preamble of this Agreement. Coordination with other FABs is also one of the functions of the NEFAB Council (Article 9a (l)): “ensure the coordination with adjacent FABs, including efficient interfaces”.</p>

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<p>including efficient interfaces; m. set up committees other than those established by this Agreement and working groups to assist it in specific matters and approve the proposals of the committees and working groups.</p>	
<p>Article 10: Committees</p>	
<p>In order to meet the objective of NEFAB and to assist the NEFAB Council, the National Supervisory Authorities Committee, the Civil-Military Committee and the Financial and Performance Committee will be established.</p>	<p>The NEFAB Council is assisted by three committees. These three committees cover the key areas of cooperation and will be established on permanent basis as they are necessary for preparing the work of the NEFAB Council as set out in Article 9.2 of this Agreement.</p> <p>Other committees and working groups can be established by the NEFAB Council (on an ad hoc basis) according to Article 9.2 (m).</p> <p>The details on the functioning of committees shall be described in the Rules of Procedure of each Committee. They will be prepared by the committees and approved by the NEFAB Council according to Article 8.4.</p>
<p>Article 11: Air Navigation Services Consultative Board</p>	
<p>11.1 The Air Navigation Services Consultative Board is established</p>	<p>The Air Navigation Services Consultative Board is established to</p>

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<p>by the NEFAB Council to ensure the consultation of the air navigation service providers on matters relating to the provision of services within NEFAB.</p> <p>11.2 The Air Navigation Services Consultative Board is composed of representatives from:</p> <ul style="list-style-type: none"> a. the NEFAB Council; b. the National Supervisory Authorities Committee; c. the air navigation service providers; d. the meteorological services. <p>11.3 Other participants may also attend as observers by invitation of the NEFAB Council.</p> <p>11.4 The Air Navigation Services Consultative Board shall establish its own rules of procedure.</p>	<p>facilitate exchange of information and views between stakeholders and to ensure proper involvement and consultation of the ANSPs.</p> <p>The NEFAB Council is represented by civil and/or military representatives in accordance with Article 8.2.</p> <p>The Air Navigation Services Consultative Board should have adequate representation of existing and future ANSPs.</p> <p>The representation of meteorological services is secured as they are typically provided by separate entities than the other air navigation services.</p> <p>The NEFAB Council may invite other participants (e.g. airport operators, airspace user’s representatives, ANSPs of non-NEFAB states) to the Air Navigation Services Consultative Board meetings.</p>
<p>Article 12: Relations between Service Providers for Cross-Border Services</p>	
<p>The written agreements or other legal arrangements between air traffic service providers and meteorological service providers</p>	<p>This Article is a response to the SES legislation requiring approval by the competent authorities when making use of the opportunity to avail</p>

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<p>concerning cross-border services in the airspace concerned shall be approved by the competent authorities concerned after consultation of the NEFAB Council. Once approved, they shall be communicated to the NEFAB Council.</p>	<p>themselves of the services (all or components of the air traffic services as well as for the meteorological services) of other service providers that have been certified in the Community (Regulation (EC) No 550/2004, Article 10).</p> <p>These agreements or arrangements are supplementary to the designation acts of the Contracting States, which allows for more flexibility and cooperation between existing service providers.</p>
<p>Article 13: Joint Designation</p>	
<p>13.1 Each Contracting State is entitled to designate, repeal or amend such designation of one or more air traffic service providers to provide air traffic services in its applicable airspace, wholly or partially. Such designation, repeal or amendment shall be notified to the Depositary in writing.</p> <p>13.2 Any air traffic service provider designated according to paragraph 1 of this Article shall be deemed jointly designated by all Contracting States as from the date of notification of the designation to the Depositary.</p>	<p>Article 13 responds to the requirement to have joint designation of air traffic service providers for NEFAB. Designations of the air traffic service providers for NEFAB airspace are done in accordance with Article 8 of Regulation (EC) No 550/2004.</p> <p>Existing designations of air traffic service providers by Contracting States remain valid and shall be notified to the Depositary in order to fulfil the requirement of joint designation of air traffic service providers for NEFAB. Existing designations cover all NEFAB airspace.</p> <p>Designation for cross-border areas is possible by individual parallel administrative acts by the competent authorities of the involved Contracting States. Alternatively, cross-border service provision can be arranged through written agreements or other legal arrangements</p>

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<p>13.3 Each Contracting State shall ensure that any air navigation service provider operating in its airspace shall comply with all provisions of this Agreement.</p>	<p>between air traffic service providers and following the approval procedure specified in Article 12.</p> <p>A provider designated by a particular Contracting State shall become jointly designated as from the date of notification to the Depository.</p> <p>According to Article 9.2 (f) the NEFAB Council has a role in facilitating the designation process for the air traffic service providers for NEFAB airspace.</p>
<h2>Chapter 3: Airspace</h2>	
<h3>Article 14: Airspace of NEFAB</h3>	
<p>14.1 The Contracting States shall ensure the design and management of a seamless airspace, as well as the coordinated air traffic flow and capacity management, taking due account of collaborative processes at international level.</p>	<p>Article 14.1 is the response to the obligation stemming from the SES legislation to ensure optimum use of airspace across NEFAB airspace. It also allows a coordinated air traffic flow and capacity management, aligned with the processes developed as part of the Network Management Functions of SES (Article 6 of Regulation (EC) No 551/2004).</p>

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<p>14.2 The Contracting States shall ensure in particular:</p> <ul style="list-style-type: none"> a. the development of a common airspace policy, in close cooperation between civil and military authorities; b. the design of the structure for the optimum use of airspace; c. the evaluation of modifications of the airspace affecting the performance at NEFAB level; d. coordination with the network functions of the Single European Sky; e. consultation of the airspace users; f. the coordinated establishment of cross-border areas. 	<p>Article 14.2 contains a number of activities for cooperation between the Contracting States. These activities contribute to the achievement of the expectations of airspace users that NEFAB airspace has to be a continuum. The list is not exhaustive. The NEFAB Council will be responsible for carrying out the tasks in this Article by agreeing on the common policy and design for NEFAB airspace.</p>
<p>Article 15: Flexible Use of Airspace</p>	
<p>15.1 The Contracting States shall cooperate at legal, operational and technical level for efficient and consistent application of the concept of flexible use of airspace taking into account both civil and military needs.</p>	<p>Flexible use of airspace (FUA) is an airspace management concept described by ICAO and developed by the European Organisation for the Safety of Aviation (Eurocontrol), according to which airspace should not be designated as either purely civil or purely military airspace, but should rather be considered as one continuum in which all users' requirements have to be accommodated to the maximum extent possible.</p> <p>This Article strengthens the cooperation efforts of the Contracting States in a response to the obligations stemming from Commission Regulation (EC) No 2150/2005 laying down common rules for the</p>

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<p>15.2 This Agreement does not affect the rights of each Contracting State to reserve, restrict or otherwise organise defined volumes of its own airspace, for exclusive or specific use by military users and/or aircraft operated as operational air traffic.</p>	<p>flexible use of airspace and containing principles for cross-border cooperation in the implementation of the concept of FUA.</p> <p>The NEFAB Council steers the modalities on the application of the concept of FUA.</p> <p>An additional safeguard clause is added to ensure continued possibility to reserve, restrict or otherwise organise defined volumes of airspace, for exclusive or specific use by military users and/or aircraft operated as operational air traffic. The enhanced civil-military cooperation established within NEFAB is expected to limit the use of this clause.</p>
<p>Article 16: Civil-Military Cooperation</p>	
<p>16.1 With due regard to the flexible use of airspace principles and in accordance with national existing arrangements and applicable international agreements, the Contracting States concerned shall conclude, where and when appropriate, written arrangements to enable military training activities in the airspace concerned regardless of existing boundaries.</p>	<p>The active participation and cooperative contributions of military organisations of the Contracting States are of high importance for the overall success of NEFAB. Therefore the basic principles for civil-military cooperation in NEFAB, especially in the light of military tactical control services, are laid down in this Article.</p> <p>Mainly five ideas are being expressed in this Article:</p> <ol style="list-style-type: none"> I. NEFAB military training activities may take place regardless of national boundaries subject to written arrangements between Contracting States;

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<p>16.2 The Contracting States concerned shall allow the provision of cross-border air traffic services to state aircraft operating as general air traffic as well as state aircraft operating as operational air traffic by a civil air traffic service provider of the other Contracting State concerned pursuant to appropriate written arrangements</p>	<ul style="list-style-type: none"> II. a civil ANSP of one Contracting State may provide services over the territory of another Contracting State to state aircraft; III. the air defence and/or Tactical Air Command and Control Service Organisations of one Contracting State may provide services over the territory of another Contracting State; IV. cooperation between civil and military organisations shall be encouraged by Contracting States; V. civil and military organisations shall strive to harmonise their relevant procedures under the guidance of Contracting States. <p>Article 16.1 builds on the implementation of the principle of FUA for NEFAB and creates the basis for establishing new arrangements to enable military training activities regardless of existing national boundaries within NEFAB.</p> <p>Also existing arrangements remain relevant for the application of this Article and will not be overruled by this Agreement. For instance, in cross-border areas (CBAs) the existing arrangements, in particular with respect to FUA applications shall be respected. International agreements include both NATO Status of Forces Agreement (SOFA) and agreements under Partnership for Peace (PfP).</p> <p>Article 16.2 stipulates that Contracting States allow an ANSP of one Contracting State to provide air traffic services to state aircraft operating over the territory of another Contracting State.</p>

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<p>communicated to the NEFAB Council.</p> <p>16.3 The Contracting States concerned shall allow the provision of tactical control services to operational air traffic by the air defence organisations and tactical air command and control service organisations of the other Contracting State concerned pursuant to appropriate written arrangements communicated to the NEFAB Council.</p> <p>16.4 For the provision of cross-border services in the airspace concerned, the Contracting States shall encourage close cooperation between the civil air navigation service providers and the respective air defence and tactical air command and control service organisations.</p> <p>16.5 The Contracting States shall strive to harmonise the relevant civil and military arrangements to facilitate civil-military cooperation.</p>	<p>Based on written arrangements cross-border provision of tactical control services to operational air traffic provided by air defence and/or Tactical Air Command and Control Service organisations shall be allowed (but is not governed otherwise by this Agreement). Air defence and/or Tactical Air Command and Control Service organisations are understood to be ground based static or deployable and airborne Tactical Control Units, e.g. Control Defence Centre (CDC), Control and Reporting Centre (CRC) or the Airborne Early Warning and Control System (AWACS).</p> <p>Article 16.4 explicitly stresses, in the light of cross-border provision of air navigation services, the necessity of close cooperation between military units providing tactical control services and civil ANSPs.</p> <p>Article 16.5 stresses the importance linked with harmonisation of the civil and military arrangements across NEFAB in order to facilitate further the civil-military cooperation. The NEFAB Council will monitor and outline the cooperation efforts as part of the task to define the development of civil-military cooperation.</p>

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<p>Chapter 4: Harmonisation</p>	
<p>Article 17: Harmonisation of Applicable Rules and Procedures Relevant to NEFAB</p>	
<p>17.1 The NEFAB Council shall identify the applicable rules and procedures in NEFAB.</p> <p>17.2 The Contracting States shall endeavour to harmonise their rules and procedures after recommendation of the NEFAB Council.</p> <p>17.3 The National Supervisory Authorities Committee shall consult on a regular basis with a view to identifying and eliminating differences between their respective regulations.</p> <p>17.4 The NEFAB Council shall ensure that the air navigation service providers of the airspace concerned develop a common safety policy aiming at creating a harmonized safety management system.</p>	<p>The purpose of this Article is to define the operational rules and procedures that need to be harmonized in order to meet the targets of SES legislation and to facilitate service provision in NEFAB airspace.</p> <p>Currently these rules and procedures are established separately by each country and therefore differ from state to state. Different regulations and procedures create a fragmented regulatory framework across NEFAB airspace which in result could cause less efficient cross-border operations and a less successful implementation of NEFAB.</p> <p>The NEFAB Council's task is to support the Contracting States in harmonizing substantial rules and procedures.</p> <p>The ANSPs need to formulate a common safety policy that will allow the involved ANSPs to create a harmonized safety management system. The NEFAB Council shall ensure that necessary steps are taken by the ANSPs.</p>

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<p>Chapter 5: Provision of Air Navigation Services</p>	
<p>Article 18: Air Navigation Services</p>	
<p>The Contracting States shall ensure the provision of the following air navigation services in particular with regard to the governance and oversight of the:</p> <ul style="list-style-type: none"> a. Air traffic services; b. Communication, navigation and surveillance services; c. Aeronautical information services; d. Meteorological services. 	<p>The four air navigation services, i.e. air traffic services (ATS), communication, navigation and surveillance services (CNS), aeronautical information services (AIS) and meteorological services (MET), shall be provided in NEFAB and shall therefore be subject to the application of this Agreement, in particular with regard to FAB governance and oversight.</p> <p>The elements of cooperation need to be outlined and decided by the NEFAB Council as part of the strategic objectives for the development of NEFAB.</p>
<p>Article 19: Air Traffic Services</p>	
<p>The Contracting States shall inform one another on the rights and obligations of the air traffic service providers designated in accordance with Article 13 at national level and of any change in their certification or their legal status.</p>	<p>Regulation (EC) No 550/2004 requires the Members States to define rights and obligations of designated air traffic service providers (ATSP). The Contracting States shall inform one another of all the rights and obligations granted to ATSP. These restrictions and rights can be established through the certificate or designation.</p>

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<p>Article 20: Communication, Navigation and Surveillance Services</p>	
<p>The Contracting States shall work towards common technical systems and the cost-efficient deployment of infrastructure for the provision of communication, navigation and surveillance services by civil air navigation service providers.</p>	<p>In order to allow optimal provision of CNS, a common NEFAB CNS technical infrastructure development roadmap will be applied and maintained, in the most cost-effective and highest “quality of service” manner bearing in mind highest safety standards. This will in particular be translated into common procurement and maintenance as well as centralized monitoring of CNS.</p> <p>The NEFAB Council will deal with this as part of defining the strategic objectives for the development of NEFAB.</p>
<p>Article 21: Aeronautical Information Services</p>	
<p>The Contracting States shall cooperate in the field of aeronautical information and coordinate the provision of aeronautical information services.</p>	<p>The coordination of aeronautical information services should be organized at NEFAB level with a view to ensuring further optimisation and efficiency gains.</p> <p>In line with the strategic orientations for NEFAB, AIS need to be harmonised in order to achieve a common interface for customers and providing the same services throughout NEFAB.</p> <p>Increased cooperation will enable more cost-efficient operations; reduction in the use of manpower, reducing duplication of tasks and</p>

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	<p>ensuring overall reduction of system cost through increased use of computer technologies in the management of aeronautical information, implementing the System Wide Information Management concept developed under SESAR.</p> <p>The elements of cooperation need to be outlined and decided by the NEFAB Council as part of the strategic objectives for the development of NEFAB.</p>
Article 22: Meteorological Services	
<p>22.1 The Contracting States shall ensure cooperation among providers of meteorological services.</p>	<p>Meteorological services in the Contracting States are provided by organisations independent of the providers for ATS.</p> <p>The providers of ATS in NEFAB would encourage stronger cooperation between the meteorological service providers through agreeing on common specifications, making common procurement of meteorological services possible.</p> <p>Existing and even better future cooperation or integration among providers of meteorological services should result in reduced duplication of effort. Reduction in the use of manpower as well as more efficient solutions in relation to software, systems and databases are expected.</p>
<p>22.2 Each Contracting State may designate the providers of the</p>	<p>The opportunity of the SES legislation for maintaining the monopoly</p>

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<p>meteorological services on an exclusive basis and inform the NEFAB Council thereof.</p>	<p>provision for the meteorological services at national level is maintained. Still the Contracting States must ensure that appropriate cooperation between the providers of meteorological services takes place.</p> <p>Taking into account safety considerations, the Contracting States may designate one or more providers of meteorological services in respect of all or part of NEFAB airspace without the need to organize a call for tenders, referring to Regulation (EC) No 550/2004.</p> <p>The elements of cooperation need to be outlined and decided by the NEFAB Council as part of the strategic objectives for the development of NEFAB.</p>
<p>Article 23: Contingency</p>	
<p>The Contracting States shall encourage the air navigation service providers to develop a common contingency plan for all the services provided within NEFAB. When developing this plan, the air navigation service providers shall consult the NEFAB Council in accordance with the provisions of Article 12.</p>	<p>Regulation (EU) No 1035/2011 requires ANSPs to have contingency plans in place. Contingency plans should be in line with ICAO Doc 9426 (Air Traffic Services Planning Manual – II-1-1-6).</p> <p>Existing civil-military arrangements need to be considered when developing the contingency plan for NEFAB.</p> <p>The development of a common contingency plan for NEFAB will naturally require arrangements between service providers for cross-border services. The contingency plan shall be approved by the</p>

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	<p>NSAs.</p> <p>The NEFAB ATS contingency concept needs to be incorporated in the ATS scenario development and needs to define the scope of the contingency scenarios, e.g. whether the scenario includes the provision for service continuity or limits provision to fail to safe modes of operation.</p>
<p>Chapter 6: Charging</p>	
<p>Article 24: Charging</p>	
<p>The Contracting States shall develop and apply common principles governing charging policy within the airspace concerned, taking into account the possibility of national exemptions.</p>	<p>This Article defines the principles governing the charging policy in NEFAB.</p> <p>The development and application of common charging principles for NEFAB is expected to lead to a gradual harmonisation of charging policies between the Contracting States and ease further cooperation between the ANSPs.</p> <p>This Article implies an ambition for implementing Regulation (EU) No 1794/2006 (the Charging Regulation) in a uniform way across NEFAB even given the possibility for national exemptions still to be imposed.</p>

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	<p>Already Article 4 of the Charging Regulation provides that States shall establish in their airspace charging zones that are consistent with air traffic control operations and services’.</p> <p>Of particular interest for the FAB context is Article 4.4 of the Charging Regulation imposing consistency and uniformity in the application of the Charging Regulation for cross-border charging zones “to the maximum possible extent“. This would ensure that within one charging zone, States would have to agree with respect to exemptions, incentives, VAT, etc.</p> <p>With the increase in cross-border services and mainly as a result of the implementation of suggested dynamic cross-border operations within NEFAB, charging zones need to be adjusted accordingly.</p>
<h2>Chapter 7: Supervision</h2>	
<h3>Article 25: Supervision of the Air Navigation Service Providers</h3>	
<p>25.1 The Contracting States shall ensure that the NSAs closely cooperate on the supervision of the air navigation service providers and that their practices are harmonised.</p>	<p>As required by the Article 2.3 of Regulation (EC) No 550/2004, an agreement relating to the ANSP supervision within NEFAB is hereby concluded. The harmonization of the practices is necessary to</p>

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<p>25.2 The NSAs shall conclude agreements in accordance with their respective competencies according to national law for the cooperation referred to in paragraph 1 of this Article, including arrangements for the handling of cases involving non-compliances. Such agreements may include an arrangement regarding the division of responsibilities regarding supervisory tasks. The agreements shall be communicated by the NSAs concerned to the NEFAB Council.</p> <p>25.3 In the NEFAB airspace which does not fall under the responsibility of the Contracting State which nominated the Certifying NSA, the Certifying NSA shall, without prejudice to the agreements referred to in paragraph 2, carry out all supervision and safety oversight in respect of the service provision by the air navigation service provider concerned.</p> <p>25.4 The Territorial NSA shall have the right to request audits and direct participation in all supervision tasks carried out by the Certifying NSA to the extent the tasks are exercised in relation to the</p>	<p>facilitate, develop and ensure adequate supervision.</p> <p>According to Article 25.2 the NSAs have to conclude agreements for the cooperation in supervisory tasks. This is important in order to harmonize processes and to guarantee level playing field for the ANSPs in NEFAB. Possible arrangements for the division of responsibilities regarding supervisory tasks are subject to the requirements of the national law of each Contracting State. The competencies of the NSAs are defined in Article 7, paragraph 1 of this Agreement.</p> <p>Article 25.3 recognizes the basic principle that the NSA which has certified the ANSP will also perform the oversight activities unless otherwise agreed between the NSAs in accordance with their respective competencies according to national law.</p> <p>The Article deals with the situation where the Certifying and Territorial NSA are not the same, i.e. when the service provision is provided in another Contracting State than where the ANSP is established (cross-border service provision). In that case oversight activities will be performed by the Certifying NSA unless otherwise agreed between the NSAs in accordance with their respective competencies according to national law.</p> <p>Article 25.4 defines rights of the Territorial NSA to request and participate in all supervisory tasks of the Certifying NSA in relation to the services provided in the airspace under Territorial NSA's</p>

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<p>provision of the services in the NEFAB airspace under the Territorial NSA's responsibility. The Certifying NSA shall take due account of the proposals or comments made by the Territorial NSA. The air navigation service provider subject to supervision by the Certifying NSA shall enable the Territorial NSA to exercise its rights hereunder.</p> <p>25.5 The Territorial NSA shall inform the Certifying NSA of all rules and procedures applicable for the provision of services in the airspace falling under its responsibility.</p> <p>25.6 In the NEFAB airspace which does not fall under the responsibility of the Contracting State which nominated the Certifying NSA, the Contracting States mutually recognise any finding, conclusion or decision made by the Certifying NSA with regard to provision of service by the air navigation service provider concerned. In case the Certifying NSA makes a finding, conclusion or decision without taking due account of the relevant rules and procedures disclosed to it by the Territorial NSA under paragraph 5, the Contracting State which nominated the Territorial NSA, shall have the right not to recognise such finding, conclusion or decision and, if so deemed necessary, suspend application of this article and resume supervision and safety oversight responsibility accordingly.</p>	<p>responsibility. According to this Article the Certifying NSA also has to take due account of the proposals or comments concerning oversight made by Territorial NSA. The Article highlights the Territorial NSA's right to participate to oversight activities of the services provided in the airspace under its responsibility, and the ANSP providing the services has to allow the participation of the Territorial NSA.</p> <p>According to Article 25.5 the Territorial NSA has to inform the Certifying NSA responsible for the supervision of all rules and procedures applicable for the services in the airspace falling under its responsibility. The main meaning of this Article is to ensure that all applicable rules and procedures are properly taken into account in supervisory activities.</p> <p>Article 25.6 expresses the fundamental principle of mutual recognition of the supervisory tasks of the different NSAs in accordance with the Article 2 of the Regulation (EC) No 550/2004.</p> <p>The mutual recognition covers the situation where the Certifying NSA makes findings, conclusions or decisions with regard to the service provision in NEFAB airspace falling under the responsibility of another Contracting State than that of the Certifying NSA, i.e the State of the Territorial NSA.</p> <p>Article 25.6 also contains a safeguard for the Contracting States to resume supervision and oversight responsibility if rules and procedures disclosed to the Certifying NSA by the Territorial NSA, are</p>

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<p>25.7 Paragraphs 1 to 6 of this Article shall apply mutatis mutandis to the safety oversight of Air Traffic Flow Management (ATFM) and Air Space Management (ASM). The NSA responsible for safety oversight shall be the NSA of the Contracting State in whose territory the organisation providing ATFM or ASM at the tactical level has its principal place of business.</p> <p>25.8 This Article shall not apply to supervision and oversight in respect of the provision of any service by any air navigation service provider other than those certified by an NSA of a Contracting State.</p> <p>25.9 The Contracting States concerned shall ensure that their NSAs set up a common mechanism for the exchange of information, consultation and coordination for provision of cross-border services.</p> <p>25.10 Respective military aviation authorities shall have full access to all documents concerning supervision of provision of air navigation services to military users in accordance with the national legislation of the Contracting States.</p>	<p>not taken adequately account of.</p> <p>Article 25.7 expands the application of the paragraphs 1-6 to the areas of Air Traffic Flow Management and Airspace Management. It also defines the NSA responsible for the oversight of these services.</p> <p>Article 25.8 expresses the principle that this Article shall only apply to oversight of those ANSPs certified by an NSA of a Contracting State.</p> <p>Article 25.9 states the obligation for the Contracting States to ensure that NSAs set up mechanisms for exchange of relevant information, consultation and coordination for provision of cross-border services.</p> <p>Article 25.10 expresses the principle of access of the military aviation authorities to the oversight documentation concerning provision of air navigation services to military users. However, this right is subject to national legislation of the Contracting States.</p> <p>The NEFAB Council will manage the implementation of this Article through the assistance of the National Supervisory Authorities Committee.</p>

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<h2>Chapter 8: Performance</h2>	
<h3>Article 26: Performance</h3>	
<p>26.1 The Contracting States shall develop and apply NEFAB performance plans consistent with European Union wide performance targets taking into account military needs. Performance plans shall be adopted by the NEFAB Council.</p> <p>26.2 Performance plans shall include NEFAB performance targets and a set of clear and measurable key performance indicators for at least the following key performance areas:</p> <ol style="list-style-type: none"> a. safety; b. environment; c. capacity; d. cost-efficiency; e. military mission effectiveness. 	<p>The NEFAB States have agreed to develop and apply NEFAB performance plans, including incentive schemes and targets. Given that the current performance framework for the first reference period ends 2014, the first NEFAB performance plan will run from 2015 onwards.</p> <p>The key performance areas are those of current EU legislation (Article 11 of Regulation (EC) No 549/2004 and Implementing Regulation (EU) No 691/2010 (the Performance Regulation)) with the addition of military mission effectiveness.</p> <p>Civil-military cooperation is a key factor for success within NEFAB, as this cooperation has an influence on the performance of the aviation sector as a whole. The incorporation of military mission effectiveness as part of the NEFAB performance plans is done in order to ensure that the military needs of the Contracting States are appropriately catered for and that the performance improvements are achieved in a holistic approach taking account of requirements from both civil and military users.</p> <p>There might be additional key performance areas due to the</p>

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<p>26.3 Performance plans shall also include NEFAB incentive schemes.</p> <p>26.4 The National Supervisory Authorities Committee shall report to the NEFAB Council on:</p> <ul style="list-style-type: none"> a. the implementation and the achievement of the performance targets; b. the coordination of the implementation of performance plans with the Contracting States. 	<p>regulatory approach of the EU to accommodate necessary changes to the performance scheme for the second reference period and beyond (from 2015 onwards).</p> <p>The NEFAB Council will manage the implementation of this Article through its adoption of NEFAB performance plans, the related performance targets, the corresponding incentives and additional or corrective measures.</p>
<h2>Chapter 9: Liability</h2>	
<h3>Article 27: Liability</h3>	
	<p>An obligation imposed upon a State to compensate damages caused to passengers, aircraft operators or third parties on the surface, as a consequence of acts or omissions by an ANSP, only exists to the extent such an obligation is explicitly foreseen by an international convention or by the applicable national legislation of that State. This is the case both for strict liability as well as liability in case of</p>

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	<p>negligence.</p> <p>The Chicago Convention formalises commitments subscribed under the rules of public international law. It only defines obligations between Contracting States, a breach of which is subject to the exclusive remedies foreseen under the Convention. It creates no legal rights or prerogatives for individuals in general; neither does it prescribe any duty for States to repair damages caused to individuals relating to the provision of air navigation services in particular.</p> <p>There is presently no global convention governing the liability of States in respect of air navigation services, comparable to the Montreal/Warsaw system applicable to the liability of the air carrier.</p> <p>Although Article 28 of the Chicago Convention itself does not generate any obligation for States to compensate for damages arising from a failure in the provision of air navigation services, the domestic liability regimes put in place by individual States are nevertheless often strongly inspired by their commitment under Article 28.</p> <p>The provisions in this Article intend to cover the possible claims and recourse claims between third parties, ANSPs and Contracting States in order to provide a structure and more legal certainty, preventing, for example, States to invoke sovereign immunity.</p> <p>These liability arrangements assist States in allocating responsibilities between the players involved, i.e. ANSPs and States in respect of</p>

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<p>27.1 The Contracting State in whose territory or area under its responsibility the loss or damage occurred may bring an action against another Contracting State for any compensation paid or costs incurred as a result of loss or damage caused by the negligence of the other Contracting State.</p> <p>27.2 Air navigation service providers providing services within NEFAB shall be liable only for the loss or damage caused by its/their negligence or that of its/their staff or agents. No direct claim shall be brought against the air navigation service providers' staff or agents when fulfilling their duties.</p>	<p>compensation paid or cost incurred for loss or damage caused by negligence. Furthermore, they aim at providing clarity on recourse actions, place of jurisdiction and applicable law.</p> <p>A liability claim between the Contracting States must be based on negligence by the other State. When analysing the grounds for negligence, it will include acts or omissions by the established NSA(s).</p> <p>According to Article 27.1, compensation paid by a State according to national legislation and based on strict liability cannot be recovered from another State unless if negligence of the other Contracting State can be proven.</p> <p>According to Article 27.2, ANSPs shall be liable only for the loss or damage caused by its/their negligence or that of its/their staff or agents, ruling out a strict liability claim against the ANSP.</p> <p>Article 27.2 should be interpreted as limiting ANSP's liability to the negligence situations (simple or gross negligence).</p> <p>The second sentence of Article 27.2 should be interpreted as shielding ANSP's staff from a liability claim based on negligence (simple or gross negligence), however, not from a claim based on the basis of wilful acts.</p>

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<p>27.3 The Contracting State in whose territory or area under its responsibility the loss or damage occurred may bring an action against the air navigation service providers to recover any compensation or costs paid or incurred as a result of loss or damage caused by the negligence of the air navigation service providers or that of its/their staff or agents.</p>	<p>According to Article 27.3, a recourse between a State and the ANSP is possible in cases where a State has paid compensation or incurred costs on the basis of a negligence claim against the ANSPs or their staff or agents (identification between the State and its ANSP).</p> <p>Compensation or incurred costs for the State linked to a strict liability claim is not subject to recourse towards the ANSP unless this already follows from national legislation.</p>
<p>27.4 Where through acts or omissions the Contracting States contribute to the loss or damage, the air navigation service providers may bring an action to recover compensation paid or cost incurred pursuant to paragraph 2 of this Article proportionate to the Contracting States' contribution to the loss or damage.</p>	<p>The other way around, if the State(s) (through acts or omissions of its (their) NSA(s)), contribute to the loss or damage, the ANSP has access to recourse proportionate to the Contracting States' contribution to the loss or damage.</p>
<p>27.5 All actions concerning liability of the air navigation service providers under this Article shall be brought in the courts of the Contracting State in whose territory and area under its responsibility the loss or damage occurred and subject to the law of that Contracting State.</p>	<p>Article 27.5 regulates jurisdiction as well as choice of law to the courts and laws of the State in which the damage occurred.</p>
<p>27.6 Each Contracting State shall notify the Depository of the measures taken to apply this Article.</p>	<p>Article 27.6 gives the Contracting States the opportunity to share with the other States the measures taken in order to implement or apply the liability provisions in this Agreement.</p>

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<p>Chapter 10: Institutional Provisions</p>	
<p>Article 28: Settlement of Disputes</p>	
<p>28.1 All disputes arising between Contracting States relating to this Agreement, which cannot be settled within a period of six months through direct negotiations between the Contracting States concerned or by any other means, shall be referred to the NEFAB Council.</p> <p>28.2 If a dispute cannot be settled by the NEFAB Council within three months of its referral to the NEFAB Council, the Contracting States concerned shall be entitled to refer the dispute to a third party mediator or to a binding arbitration for a final decision.</p>	<p>This Article states a three step approach (Contracting States/NEFAB Council/third party mediator or Court of Arbitration) for settlement of disputes.</p> <p>First step: before taking any other actions the Contracting States in dispute have to consult each other to settle their disputes.</p> <p>Second step after six months: if consultations fail, the dispute shall be referred to the NEFAB Council, which has then three months to settle the dispute.</p> <p>Third step after nine months: if the NEFAB Council is unable to settle the dispute:</p> <ol style="list-style-type: none"> 1) The Contracting States can agree to mediation, the dispute is referred to third party mediator in order to seek a resolution; 2) Alternatively or after unsuccessful mediation, a Contracting State can refer the dispute to a binding arbitration.

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Article 29: Accession of a State to this Agreement	
<p>29.1 This Agreement is open to accession. Any state desiring to become a party to this Agreement shall submit its application for accession to the Depositary.</p> <p>29.2 The conditions of accession and any resultant adjustments to this Agreement shall be the subject of an agreement between the Contracting States and the applicant state. The agreement of accession is subject to ratification, acceptance or approval in accordance with the national legislation of the Contracting State.</p> <p>29.3 The instrument of ratification, acceptance or approval shall be deposited with the Depositary.</p> <p>29.4 The agreement of accession shall enter into force on the first day of the second month following the deposit of the last instrument of ratification, acceptance or approval with the Depositary.</p>	<p>This Article defines how a State can access to this Agreement, which is required by Regulation (EC) No 550/2004. Article 9a of this Regulation contains the provisions concerning the way in which a FAB can be modified, in this case through simple accession including resultant adjustments to this Agreement.</p>
Article 30: Withdrawal of a Contracting State from this Agreement	
<p>30.1 In case of the withdrawal from this Agreement by a Contracting State, the Contracting State concerned shall inform in writing through diplomatic channels the NEFAB Council and notify the Depositary of</p>	<p>This Article is an explicit requirement of the SES legislation (Article 9a.4 of Regulation (EC) No 550/2004). A possible dispute that can arise following a withdrawal is the resolution of financial</p>

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<p>its decision.</p> <p>30.2 The withdrawal shall become effective one year after the date on which the notification is received by the Depositary.</p> <p>30.3 The NEFAB Council shall take all measures required by such withdrawal.</p> <p>30.4 The Contracting State withdrawing from this Agreement shall bear the costs resulting from such withdrawal. The financial consequences resulting from such withdrawal shall be determined in a special agreement concluded between the withdrawing Contracting State and the other Contracting States. The Contracting State's right of withdrawal shall remain unaffected.</p>	<p>consequences. That is why a clear process is described in order to deal with the withdrawal and to allow the resolution of the financial consequences in a proper way.</p>
<p>Article 31: Amendment of this Agreement</p>	
<p>31.1 If a Contracting State wishes to propose an amendment to this Agreement, it shall duly inform the NEFAB Council in writing.</p> <p>31.2 Amendments of this Agreement shall be done in writing and adopted by the Contracting States at the NEFAB Council.</p> <p>31.3 Amendments of this Agreement shall enter into force 30 days after the deposit of the last instrument of ratification, acceptance or approval with the Depositary.</p>	<p>This Article is an explicit requirement of the SES legislation (Article 9a.4 of Regulation (EC) No 550/2004). The amendment of this Agreement is subject to the national processes of ratification.</p>

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Article 32: Termination	
<p>32.1 The Contracting States may unanimously decide to terminate this Agreement at any time.</p> <p>32.2 Termination shall be effectuated by a written declaration to the Depository by the Contracting States that this Agreement shall cease to have effect on a date specified by the Contracting States.</p> <p>32.3 The Contracting States shall jointly determine and allocate the costs resulting from termination.</p>	<p>This Article is an explicit requirement of the SES legislation (Articles 13 of Regulation (EC) No 549/2004 and 9a.4 of Regulation (EC) No 550/2004).</p>
Article 33: Suspension	
<p>33.1 Each Contracting State has the right to immediately suspend the application of this Agreement or parts thereof for reasons related to public order, public security and defence matters. The Contracting State suspending the application of this Agreement or parts thereof shall inform the other Contracting States immediately of its decision and notify the Depository accordingly.</p> <p>33.2 The Contracting State suspending the application of this Agreement or parts thereof shall endeavour to terminate the suspension as soon as possible. It shall inform the other Contracting States immediately of its decision and notify the Depository</p>	<p>This Article is an explicit requirement of the SES legislation (Articles 13 of Regulation (EC) No 549/2004 and 9a.4 of Regulation (EC) No 550/2004). Moreover, this Agreement describes the possibility of suspension of this Agreement related to public order, public security and defence matters, including neutrality. In such an event, each Contracting State has the right to immediately suspend the application of this Agreement.</p>

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<p>accordingly.</p> <p>33.3 The suspension does not exempt the other Contracting States from complying with Article 30.</p>	
<p>Article 34: International Civil Aviation Organisation Registration</p>	
<p>This Agreement and any subsequent amendment thereto shall be registered with ICAO in accordance with the provisions of Article 83 of the Chicago Convention.</p>	<p>No specific comment.</p>
<p>Article 35: Entry into Force</p>	
<p>35.1 This Agreement is subject to ratification, acceptance or approval in accordance with the national legislation of the Contracting States. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.</p> <p>35.2 This Agreement shall enter into force 30 days after the deposit of the last instrument of ratification, acceptance or approval with the Depositary.</p>	<p>No specific comment.</p>

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Article 36: Depositary and its Functions	
<p>36.1 The Kingdom of Norway is the Depositary of this Agreement.</p> <p>36.2 The Depositary shall:</p> <ol style="list-style-type: none"> 1) inform the Contracting States of: <ol style="list-style-type: none"> a. each deposit of an instrument of ratification, acceptance and approval with the date thereof; b. the date of entry into force of this Agreement and of any amendment; c. any application by a state to accede to this Agreement; d. any withdrawal by a Contracting State of this Agreement, the date on which the notification of the withdrawal is received by the Depositary and the date on which this Agreement shall cease to have effect for the Contracting State concerned; e. any notification of the designation of the air traffic service providers; f. any notification of the suspension and the termination of the suspension; g. any notification of the application of Article 27. 2) register this Agreement and any subsequent amendment with ICAO. 3) inform the European Commission of the date of entry into force of this Agreement and any subsequent amendment. 4) inform ICAO and the European Commission of: 	<p>The Kingdom of Norway has been appointed as Depositary of this Agreement. In accordance with Article 9a of the Regulation (EC) No 550/2004, the European Commission shall be informed of the date of the entry into force of this Agreement. Moreover, the Article details the specific tasks of the Depositary Contracting State. It belongs to the functions customary for Depositaries to register this Agreement and any amendments with the Secretariat of the United Nations in accordance with the Article 102 of the United Nations Charter.</p>

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<ul style="list-style-type: none"> a. any accession to this Agreement with the date thereof; b. any withdrawal of this Agreement with the date thereof; c. any suspension or partial suspension of this Agreement with the date thereof; d. the termination of this Agreement with the date thereof. <p>5) perform any other functions customary for depositaries.</p>	
<p>IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Agreement.</p> <p>DONE at Tallinn on 4 June 2012 in one (1) original version in the English language. The Depositary shall transmit certified copies to all the Contracting States.</p>	