

**Directorate-General for Mobility and Transport  
(DG MOVE)  
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under Framework Contract  
MOVE/E3/2016-401 for assistance for  
the implementation of performance and  
charging schemes for the single  
European sky for oversight  
competences**

09 June 2020

**Draft Monitoring Process for the Commission  
(Task 2B of the Work Plan)**

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# 1 Introduction and legal considerations

The ECA concluded in their Special Report 18/2017 that the Commission and the NSAs should regularly conduct the inspections set out in the current legislation, covering in particular the eligibility of costs charged and their allocation between en-route and terminal charging zones.

The Commission accepted the recommendation raised by the ECA but noted that the verification of the eligibility of costs is primarily in the remit of NSAs as entities responsible for the drawing up of the performance plans, the performance oversight and the monitoring of performance plans and targets. As a modality to implement the ECA recommendation, the Commission noted that its intervention could for example be focused on cases where Member States have asked the revision of their performance plans. Also, the Commission will review the eligibility requirements during the revision of the Regulations ahead of RP3.

Based on our terms of reference, a monitoring process for DG MOVE on verifications performed by the NSAs should be developed. We understand that such a monitoring process from the EC regarding how the NSAs are performing the required inspections as regards cost-eligibility will help address this ECA recommendation by making more transparent the verification activities of the NSAs, their scope and frequency.

The monitoring process of DG MOVE is supported from a legal standpoint by the EC obligation to provide for the ongoing review of compliance with the principles and rules referred to in Articles 14 and 15 of Regulation (EC) 550/2004, as stipulated in Article 16 of the Service Provision Regulation. As regards the NSAs, according to Article 2 of the mentioned Regulation, they have the task of organising inspections and surveys to verify compliance with the requirements of the Service Provision Regulation<sup>1</sup>.

In performing a review and monitoring process, the EC needs however to act in cooperation with the Member States. We recognise therefore that the monitoring process activities should be integrated into the annual reporting cycle and designed in an efficient manner in order to achieve the monitoring goals without increasing the workload of national authorities concerned.

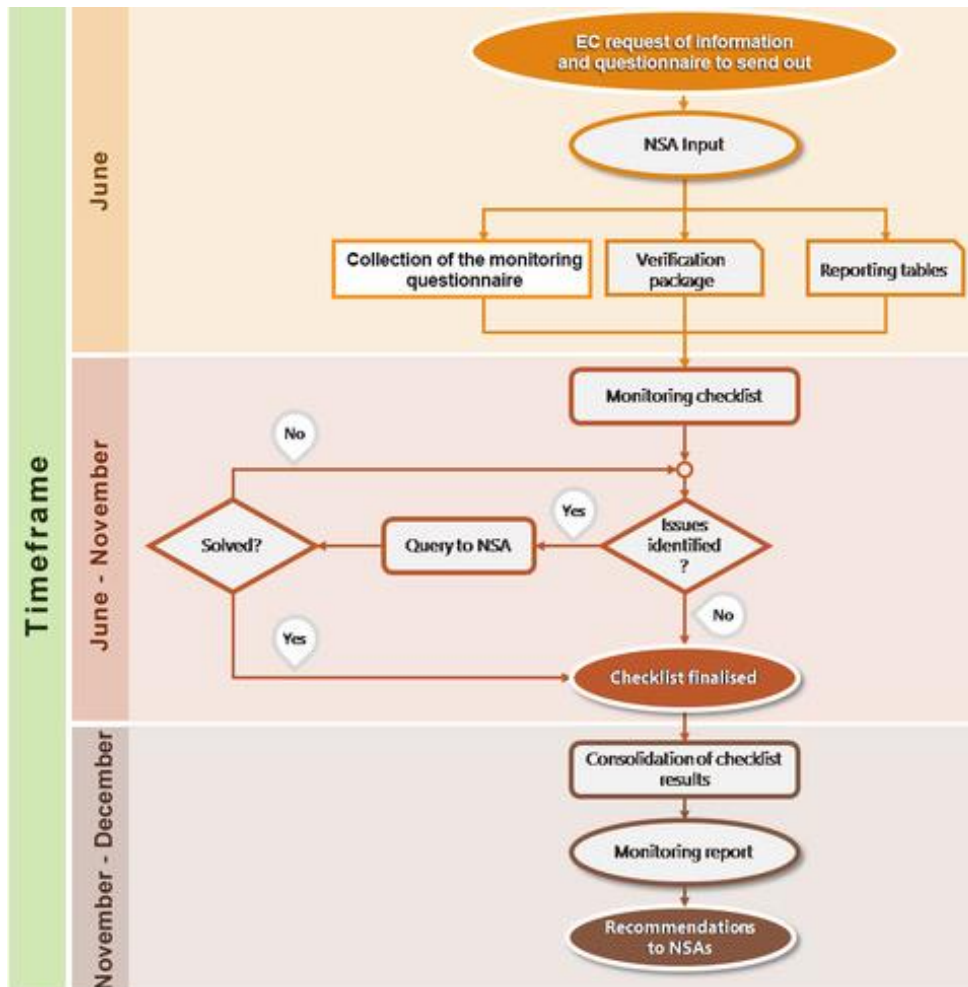
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<sup>1</sup> We note that The ECA Report is referencing the legal framework for RP2 when referring to inspections and surveys, and specifically Article 20 of Regulation (EU) No 391/2013. For RP3, we refer to recital (7) of Regulation (EU) 2019/317. However, we retain the provisions of the Service Provision Regulation as the underlying legal basis for the EC obligation to provide for the ongoing review of compliance.

## 2 Monitoring process

### 2.1 Proposed process flow

The proposed process flow presented in this section summarises the main activities envisaged to be performed in the context of an EC monitoring process for the verifications performed by the NSAs in the area of cost-eligibility.



## 2.2 Process activities and potential assumptions

As foreseen in the terms of reference, the monitoring process is designed for the monitoring of the verifications performed by the NSAs in the area of cost-eligibility. The process will provide tools to monitor:

- The design of the verification programme put in place by the NSAs
- The operating effectiveness of the verification programme put in place by the NSAs
- The reporting and follow-up of the findings of the verification programme put in place by the NSAs.

The end objective of the process is the preparation of a set of concrete recommendations to NSAs, meant to support them to increase compliance in the area of cost-eligibility verifications.

Considering the above elements, different assumptions can be considered as regards the implementation of such a process.

Assumptions - examples	
<b>Scope assumptions</b>	<ul style="list-style-type: none"><li>▶ The monitoring process can cover all elements (design, operating effectiveness and reporting) of the NSAs verification programme or can focus on one or two of these elements.</li><li>▶ The process can consider all NSAs for monitoring, or it can consider a sample of NSAs.</li></ul>
<b>Frequency assumptions</b>	<ul style="list-style-type: none"><li>▶ The process can be rolled out annually or can be implemented with a periodicity of more than one year.</li><li>▶ The process can be implemented concurrently with the annual reporting process (submission of the reporting tables by the NSAs in June and November each year) or using some other trigger event.</li></ul>

In sections 2.2.1 to 2.2.3 below we present the implications of these assumptions in terms of how they affect each phase of the process flow depicted in section 2.1.

In section 2.2.4 we present some considerations regarding the needed resources for the implementation of the monitoring process.

### 2.2.1 Phase 1 - Receiving information from the NSAs

The process starts with a request for information sent by DG MOVE to the NSAs, which contains the request to cooperate and includes several information to be provided by the NSAs, such as the Monitoring Questionnaire.

If the process is implemented concurrently with the annual reporting process, the NSA can provide this information together with the Reporting tables sent to the Commission.

The information to be provided can be submitted as:

- A Monitoring Questionnaire: an excel sheet with standardised questions, to be filled in by the NSA and submitted to EC at the start of the process once the EC sends out the initial formal request, containing the NSA replies to questions on the areas being monitored, and
- A 'verification package': which represents any other documentation that will be relevant for the monitoring process and that the NSA is favourable on sharing.  
For example, the NSA could share a summary of the verification activities performed as regards the reporting tables submitted in June year n and results of NSA other cost eligibility audits performed between June in year n-1 and June year n. This could be done in a template excel file provided by DG MOVE (refer to Annex 1 - Overview of findings).

The Monitoring Questionnaire can include questions meant to cover all elements (design, operating effectiveness and reporting) of the NSAs verification programme, or only questions related to one or two of these elements. The Monitoring Questionnaire may include the following questions (the below are examples):

Monitoring Questionnaire	
<b><i>Design of the verification programme (A)</i></b>	<ol style="list-style-type: none"> <li>1. Does the NSA actually perform verification process based on the verification programme for the cost-eligibility in place?</li> <li>2. Are all legal requirements from Regulation (EU) 2019/317 and Regulation (EC) 550/2004 reflected in the verification programme? (question will be specific, listing at least the critical ones)</li> <li>3. Is the use of the verification programme formalised at the level of the NSA?</li> </ol>
<b><i>The operating effectiveness of the verification programme put in place by the NSAs (B)</i></b>	<ol style="list-style-type: none"> <li>1. How many cost-eligibility verifications were done by the NSA in the prior year? (i.e. between June in year n-1 and June year n)</li> <li>2. Were the costs of new and existing investments in scope of the verifications done, in respect of the purchase, development or leasing of fixed assets (Recital 15 of Regulation (EU) 2019/317)?</li> <li>3. Did the cost-eligibility verifications performed by the NSAs result in any findings?</li> </ol>
<b><i>The reporting and follow-up of the findings of the verification programme put in place by the NSAs (C)</i></b>	<ol style="list-style-type: none"> <li>1. Have the conclusions of the NSA cost-eligibility verifications been formalised in factual findings reports?</li> <li>2. Have the conclusions of the verifications been shared with the ANSPs and the latter provided with the opportunity to present comments?</li> <li>3. Did the NSA provide the ANSP with the factual findings following the cost-eligibility verifications?</li> <li>4. How many factual findings were issued?</li> <li>5. On what areas where these factual findings issued?</li> <li>6. Did the NSA follow-up on the implementation by the ANSP of the remediation action?</li> </ol>

For the first run of the monitoring process, it would be preferable to have an approach to collecting data that includes a full-scope Monitoring Questionnaire (i.e. all elements, design, operating effectiveness and reporting) and to be addressed to all NSAs. Using this approach, the scope of the subsequent monitoring cycle could be narrowed down by collecting data only from the NSAs that did not reach a certain score in the analysis, and only for the areas that they need to improve.

### 2.2.2 Phase 2 - Analysis EC

The analysis phase of the monitoring process entails the filling-in by the EC of a Monitoring checklist per NSA.

The Monitoring checklist is designed as an excel file which has as input:

- the replies of the NSAs to the standard questions in the Monitoring Questionnaire and
- any other technical considerations of the person doing the analysis, that will impact the scoring of the NSA. This may be technical shortcomings identified previously in RP2 for example, with regards to the verification practices of the respective NSA.

The replies of the NSA to the standard questions in the Monitoring Questionnaire will automatically assign certain scores in the Monitoring checklist which will generate two results:

1. A scoring grid which aims to sort the NSAs based on a risk-based approach.

(N.B. In setting the scoring grid, we recognise the need to further reflect on what represents compliance with regulations vs. what is only recommended practice.)

For example, a scoring grid of 1-3 can be used (with 1 - 'not compliant', 2 - 'partly compliant' and 3 - 'compliant'):

Scoring example			
	Question	Reply	Score
<b>The operating effectiveness of the verification programme put in place by the NSAs</b>	1. How many cost-eligibility verifications were done by the NSA in the prior year? (i.e. between June in year n-1 and June year n)	1	3
	2. Were the costs of investments in scope of the verifications done?	No	1
	3. Were the costs under the cost risk sharing mechanism (Article 28 of Regulation (EU) 2019/317) in scope of the verifications done?	Yes	3

An overall scoring will be then calculated automatically for each NSA.

To get to the final overall score for the NSA analysed, a further score will be added manually by the person filling-in the Monitoring checklist, based on their judgement of the:

- substance of any documents received in the 'verification package' and
- any other technical considerations of the person doing the analysis.

In finalising the Monitoring checklist and reaching the final score, the NSA can still be queried on specific points that need clarification.

Considering the overall score obtained by the NSA, the respective authority can be ranked as low, medium or high risk for compliance purposes and based on that can be included (partially or in full) or excluded from the scope of the next monitoring cycle. Partial inclusion would mean, for example, only collecting and analysing data on the area (design, operating effectiveness and reporting) that proved to be high risk. Medium risk-rated NSAs could be in scope for monitoring every two years instead of on an annual basis.

**Output of the scoring grid:** The EC will have a clear view on which NSA has a well-built system for cost verifications and for inspecting the respective ANSPs periodically.

## ***2. An overview of findings and the deadlines for their implementation issued by the NSAs.***

This database will contain the NSAs raised factual findings generated from the NSAs cost verification reports and their respective deadlines put by NSAs for their implementation.

**Output of the Overview of findings<sup>2</sup>:** This will allow the EC to monitor the effectiveness of the NSAs inspections. Each NSA will use the same format and completing a full database will allow the EC to have in depth analysis and generate the factual finding implementation ratio for each NSA. This will be an indicator for the EC to assess the performance of the NSAs' inspections (No. of factual findings implemented/ No. of total factual findings identified). The higher the rate, the better is the NSA performing in its inspection competences.

**Outcome of Phase 2:** The combined use of these two tools will allow the EC to monitor the NSAs from the procedures built but also the quality of their inspections. While the scoring grid will identify mostly

<sup>2</sup> Detailed in Annex 1

issues in the NSAs procedures, the database will allow the EC to check in details how the job was performed. The aim of this phase is not to put additional bureaucratic steps to each stakeholder of the process, rather building a system that will help each of the players monitor the performance of their work.

### *2.2.3 Phase 3 - Reporting*

The reporting part of the monitoring process is the consolidation of the scores obtained by each NSA in scope in a Monitoring report. The report will be automatically created from the results in each of the Monitoring checklists. The purpose of the report is to have the overview of the status of compliance per NSA and per total NSAs analysed.

Based on this, recommendations for the improvement of compliance will be developed. These can be addressed to specific NSAs and specific areas of non-compliance. Also, in case the aggregation of the scores indicates an overall 'medium' level of compliance in a certain area, recommendations can be issued to all NSAs, regarding that specific element.

Carrying out the monitoring process annually is tantamount to having a continuous monitoring approach regarding the verification activities of the NSAs. However, a frequency of every two years (or more) can also be envisaged if, for example, the aggregate scoring indicates medium or low risk for certain NSAs or certain areas of interest in more than two consecutive years.

### *2.2.4 Considerations on resources*

Among the possibilities for the implementation of the monitoring process presented in the previous sections, we consider the most resource-intensive the full-scope approach: the process is performed every year, with all NSAs in scope, with all elements to be monitored (design, operating effectiveness and reporting of the NSAs verification programme).

Provided the process is implemented concurrently with the annual reporting process (submission of the reporting tables by the NSAs in June and November each year), the dedicated staff would need to:

- receive the needed information in June (together with the reporting tables),
- perform the analysis in the period June - November (with any follow-up questions and considering the re-submission of the reporting tables with potentially new information in November) and
- conclude in the period November - December (prepare and disseminate recommendations).

Considering that the tools used (Monitoring Questionnaire and Checklist, as well as Monitoring report) are envisaged to be at least partly automated, we do not foresee that the work related to the compilation of the data will be significant. The most effort would be thus dedicated to the substantive analysis of the results and to the preparation of recommendations that reflect the scoring and ratings obtained.

The limited scope approach, where the process is performed with a frequency of more than one year, with only some NSAs in scope, and with some elements to be monitored, would not change the activities to be performed as part of the process (the flow), but would decrease the time necessary for the overall implementation of the process.

The monitoring activities can be outsourced as a stand-alone activity to an external consultant, with precise terms of reference. In this case, DG MOVE input and feedback would be required in critical points of the process flow, preliminary identified as:

- Initial request to the NSAs (a formal request from DG MOVE is needed)
- Identification and correct interpretation of the issues detected using the monitoring checklists (both at initial filling-in of the checklist and at the finalisation of the checklist) and



- Drawing-up recommendations at the end of the monitoring process.

## Annex 1

### Overview of findings

No.	Priority level of the finding <sup>3</sup>	NSA ID	Country	Inspected ANSP	Period in scope	Period of the verification	Overview of the factual finding	Remediation action for the following year	Deadline set for the implementation	Cause of the factual finding
1	Very Important	XXX	Austria	ABC	RPX, yyyy	dd/mm/yyyy - dd/mm/yyyy	The Authority identified that the personnel costs included cost elements which are not compliant to the Regulation.	Detailed checks on the personnel costs calculation methodology used.	dd/mm/yyyy	
2	Requires attention	YYY	Belgium	CDE	RPX, yyyy	dd/mm/yyyy - dd/mm/yyyy	The Authority identified that the personnel costs included cost elements which are not compliant to the Regulation.	High level checks on the existence of the cost centres.	dd/mm/yyyy	

<sup>3</sup> Ratings of the priority level are: Very important - Important - Of concern - Requires attention - Needs review.