ICB Position Paper

Evolution of the SES Performance Scheme

The European Commission is now preparing new regulation for the SES Performance Scheme to optimise it in preparation of RP3. As part of this process, an ex-post evaluation study will include open public consultation.

A good Performance Scheme is key to achievement of the SES goals. Revision is required to ensure it is fit for purpose. This document sets out:

a) The agreed principles for the evolution of the performance scheme

b) Short term recommendations on the evolution of the PRB.

The Commission is requested to take the ICB views fully in to account in their current deliberations on the Performance Scheme. In due course the ICB will provide the Commission with a view on the lesson learnt from RP1 and how these should inform the revision of the performance scheme Regulation. The ICB will also provide the Commission advice on realising an Independent Performance and Economic Regulator (IPER), in line with the ICB's high-level vision for SES.

Note: this ICB Position paper is not approved by ATCEUC.

1 BACKGROUND

A good Performance Scheme is critical to the success of the Single European Sky. The ICB is currently in the process of building consensus on how best to achieve reform including the concept of a new Independent Performance and Economic Regulator (IPER) as included in the ICB's Vision for SES[1].

In the meantime, this position sets out the high level principles which the ICB believes should drive the Commission's deliberations on the future of the Performance Scheme from RP3 onwards (Section 2) and the short term actions required to rejuvenate the Performance Review Body (PRB) for the remainder of RP2 (Section 3).

2 HIGH-LEVEL PRINCIPLES

The ICB considers that the following principles should apply to performance and economic regulation of ATM:

1. Fundamental principles for a properly functioning performance-based ATM system are:
   - **Separation** of regulation and service provision at the local and network level.
   - Effective **collaboration** between regulators (at EU and State/FAB Level).
   - Adequately **resourced** and **competent** regulators (at EU and State/FAB Level).
   - Effective **governance** and **accountability** of all bodies to fulfil their specific obligations.
   - The form of economic regulation should be **proportionate**. Full economic regulation should only apply to regulated entities operating under monopoly conditions. Conversely some form of economic regulation is required where full market condition do not exist. However, economic regulation should not act as a barrier to transitioning services from a monopoly environment to market-based approaches where this is appropriate.
2. General principles for performance and economic regulation. A regulator for Europe should:
   - be **competent** in its role to guide performance improvement whilst ensuring safety;
   - remain **transparent** in all processes, including proposals for target setting and the appeals mechanism;
   - have **flexible processes** to respond to changes in the environment;
   - be **cost effective;**
   - apply a **longer-term approach** to performance to prevent undue focus on short-term behaviours;
   - recognise and assess where **interdependencies** exist between, and within, the Key Performance Areas;

[1] A high level vision for achieving the Single European Sky, ICB, January 2015 http://www.icb-portal.eu/phocadownload/2015-01-22%20icb%20vision%20for%20achieving%20the%20single%20european%20sky.pdf

- undertake **effective consultation** with ANSPs, civil and military Airspace Users, Airports and staff;
- support an **Appeals Mechanism** operated by an external body;
- identify and monitor the need for **corrective actions**;
- consider the **military dimension**.

3. General principles for target setting:

- The Performance Scheme should be applied in a harmonised and consistent manner across Europe.
- Binding targets should only be set on regulated entities. All other entities (regardless of legal status) are vehicles in the framework for achieving the targets; target setting should, however, recognise the influence that activities of these entities have on performance outcomes.
- Binding targets should be set in relation to long-term performance requirements, with sufficient recognition of achievements in previous reference periods, and taking into account changes to assumptions underpinning the long-term performance requirements.
- Ex-post impact assessments should be conducted such that binding targets on regulated entities are set for RPn+1 based on lessons and achievements from RPn-1 (including cumulative evolution since before RP1) and on developments and forecast outcomes during RPn.
- Binding targets should be set at a level with an appropriate balance of risk and opportunity.

3 REFORM OF THE PRB

The ICB recognises that short term revision of the set-up of the existing Performance Review Body is required to ensure it is fit for purpose for the remainder of RP2.

In particular, the ICB considers that:

a) The PRB must be fully independent of all regulated entities. In particular, the PRB should be independent of the Network Manager (on which performance targets are set).

b) The PRB should be able to draw on industry and system user experience and knowledge, including of other regulated sectors.

c) PRB processes should be improved to ensure the transparency and independence of advice provided to the Commission.

d) The PRB should be independently governed, and have clear authority to select and fully manage the required technical support services and suppliers.

4 RECOMMENDATIONS

The ICB is continuing to work on reform of the Performance Scheme – in particular with a focus on the evolution of the PRB from 2017, supporting the Commission's ex-post assessment of the RP1 (*paper due Q3 2016*) and steps to realise the ICB's vision of an Independent Performance and Economic Regulator (IPER) for RP3 onwards (*paper due Q1 2017*).

At this stage the ICB requests that the Commission:

a) takes due account of the considerations in Section 3 in developing their Decision on nomination of the PRB;

b) takes due account of the principles established in Section 2 when considering revision of the performance scheme; and

c) updates the Performance Scheme Regulation taking in to account the current ex-post evaluation of RP1 and subsequent advice on RP1 lessons from the ICB.