Commission Implementing Regulation (EU) 2020/1627 of 3 November 2020 on exceptional measures for the third reference period (2020-2024) of the single European sky performance and charging scheme due to the COVID-19 pandemic

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1627

of 3 November 2020

on exceptional measures for the third reference period (2020-2024) of the single European sky performance and charging scheme due to the COVID-19 pandemic

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation)[(1)], and in particular Article 11(6) thereof,

Having regard to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation)[(2)], and in particular Article 15(4) thereof,

Whereas:

(1) Commission Implementing Regulation (EU) 2019/317[(3)] sets out the detailed rules and procedures for the implementation of the performance and charging scheme, including the performance of air navigation services and network functions as well as the determination, imposition and enforcement of air navigation charges to airspace users.

(2) The COVID-19 pandemic has led to a sharp drop in air traffic as a result of a significant fall in demand and direct measures taken by the Member States as well as third countries to contain the outbreak of the pandemic. The extraordinary circumstances caused by the COVID-19 pandemic have a significant impact on the current processes and measures for the implementation of the performance and charging scheme in the third reference period 2020-2024 (‘RP3’), including the setting of performance targets and unit rates as well as the application of incentive schemes and risk sharing mechanisms. That has created an exceptional situation which needs to be addressed with specific temporary measures.

(3) Member States have submitted to the Commission their draft performance plans for RP3 by 1 October 2019, as well as subsequent updated draft performance plans by 21 November 2019. Pursuant to Article 11(3) of Regulation (EC) No 549/2004, the Commission carried out an assessment of the consistency of those draft performance plans with the Union-wide performance targets set out in Commission Implementing Decision (EU) 2019/903[(4)]. However, both the draft performance plans and the Union-wide performance targets were drawn up before the outbreak of the COVID-19

Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2020/1627. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

pandemic and hence do not take account of the resulting significantly changed circumstances for air transport.

(4) Because of the significant, unprecedented impact of the COVID-19 pandemic on the aviation sector, and in particular on the provision of air navigation services, certain rules derogating from Implementing Regulation (EU) 2019/317 should apply for the purpose of RP3. Implementing Regulation (EU) 2019/317 should apply to that reference period unless the present Regulation specifically provides for otherwise. Likewise, this Regulation should not affect adjustments to unit rates originating from the second reference period and based on Commission Implementing Regulation (EU) No 391/2013[(5)].

(5) Given the uncertainties about traffic evolution subsequent to the outbreak of the COVID-19 pandemic, sufficiently robust traffic forecasts for the years until 2024 are not so far available. It is therefore necessary to provide for special rules for the setting of revised Union-wide performance targets for RP3 to ensure the continued implementation of this reference period. Reassurances have been received as to the publication of an updated STATFOR traffic forecast for RP3 in early November 2020. This traffic forecast will provide the basis for initiating the revision of the Union-wide performance targets for RP3. Considering the time constraints, the setting of those revised targets should exceptionally not be subject to all the processes and time limits set out in Article 9(1) and (2) of Implementing Regulation (EU) 2019/317. In order to enable the Commission to set the revised targets, national supervisory authorities should provide the Commission with initial cost data and information about traffic forecasts for the relevant calendar years by 15 December 2020, as inputs for the setting of the revised Union-wide performance targets for RP3. The Commission should adopt the revised Union-wide performance targets for RP3 not later than 1 May 2021.

(6) Upon the setting of revised Union-wide performance targets by the Commission for RP3, Member States should establish performance plans containing revised performance targets for RP3. The process for performance target setting at national or functional airspace block level should be completed only after the revised Union-wide performance targets have been adopted. A new time limit for submission of draft performance plans should be set accordingly.

(7) Since the circumstances caused by the COVID-19 pandemic have led to an unavoidable delay in the procedures related to the development, assessment and adoption of performance plans, having regard to the criteria set out in Article 11 of Regulation (EC) No 549/2004 the cost-efficiency performance targets contained in the final version of the performance plans should have a retroactive effect from the beginning of the reference period, in accordance with Article 17(2) of Implementing Regulation (EU) 2019/317. They should however only produce effects through unit rate adjustments in subsequent calendar years.

(8) The Network Manager submitted to the Commission, in September 2019, a draft Network Performance Plan for RP3 in accordance with Article 19 of Implementing Regulation (EU) 2019/317. The Commission assessed the Network Performance Plan in accordance with Article 19(2) of that Regulation. Because of the material change

***Changes to legislation:** There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2020/1627. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

of circumstances caused by the impact of the COVID-19 pandemic, which occurred after the submission of the draft Network Performance Plan, the Network Manager should draw up and submit for assessment by the Commission a new draft Network Performance Plan. The time deadline for submission of this plan should be set accordingly.

(9) It is expected that the revised determined costs for the combined calendar years 2020 and 2021 reflect the additional uncertainty and take due account of the lower traffic volumes entailed by the circumstances of the COVID-19 pandemic.

(10) In order to alleviate the severe impact of the COVID-19 pandemic on airspace users during RP3, it is necessary to apply specific provisions for the purposes of calendar years 2020 and 2021 as regards the revision of performance targets in the key performance area of cost-efficiency at Union-wide and local levels, the implementation of incentive schemes and risk sharing mechanisms, as well as unit rate adjustments stemming from those 2 calendar years.

(11) For the purpose of ensuring the proper application of the performance and charging scheme in RP3, and considering the forward-looking nature of performance target setting, the revision of cost-efficiency performance targets at Union-wide and local level should cover the determined costs of calendar years 2020 and 2021 as a single period. In setting those revised cost-efficiency targets at Union-wide and local level, due account should be taken of the actual costs incurred by air navigation service providers and Member States.

(12) The rules governing the consequences of a late adoption of performance plans set out in Implementing Regulation (EU) 2019/317 should be adapted so as to mitigate the severe adverse financial impact those mechanisms would otherwise have on airspace users as well as to avoid excessive volatility of unit rates during RP3. To this end, the corresponding unit rate adjustments should be exceptionally spread over a time period of 5 calendar years. National supervisory authorities should be allowed to extend the time period to 7 calendar years, where this is necessary in order to avoid a disproportionate effect of the carry-overs on the unit rates charged to airspace users.

(13) Member States may take additional measures to offset the impact of the COVID-19 pandemic on the level of air navigation charges during RP3, through the application of Article 29(6) of Implementing Regulation (EU) 2019/317.

(14) In order to facilitate the discharge by national supervisory authorities and the Commission of their monitoring tasks, air navigation service providers should be obliged to submit a report to those authorities by 15 December 2020 regarding measures put in place in order to address the financial and operational impact of the COVID-19 pandemic on their activities.

(15) The exceptional provisions should be immediately applied in order to enable the Commission and Member States to swiftly undertake the appropriate measures in respect of the performance target setting process for RP3 and the mitigation of the financial impact of the COVID-19 crisis on airspace users. This Regulation should enter

Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2020/1627. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union.*

(16) The Single Sky Committee did not deliver an opinion. An implementing act was deemed to be necessary and the Chair submitted the draft implementing act to the Appeal Committee for further deliberation. The measures provided for in this Regulation are in accordance with the opinion of the appeal committee,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation establishes exceptional measures to be applied for the third reference period ('RP3') of the single European sky performance and charging scheme referred to in Article 7(1) of Implementing Regulation (EU) 2019/317. The rules set out in Implementing Regulation (EU) 2019/317 apply, unless this Regulation specifically provides for otherwise.

Article 2

Setting of revised Union-wide performance targets for RP3

1 By way of derogation from Article 9(3) of Implementing Regulation (EU) 2019/317, the Commission shall set revised Union-wide performance targets for RP3 by 1 May 2021.

2 By way of derogation from Article 9(1) of Implementing Regulation (EU) 2019/317, national supervisory authorities shall provide the Commission, as inputs for the setting of revised Union-wide performance targets, with initial cost data and information about traffic forecasts covering RP3, by 15 December 2020.

3 The requirements set out in the first subparagraph of Article 9(2) of Implementing Regulation (EU) 2019/317 shall not apply to the preparation of the revised Union-wide performance targets for RP3 referred to in paragraph 1. The consultation referred to in the second subparagraph of Article 9(2) of Implementing Regulation (EU) 2019/317 shall, by derogation from this provision, cover draft revised Union-wide performance target values.

4 By way of derogation from Articles 8(1) and 9(3) of Implementing Regulation (EU) 2019/317, the revised Union-wide performance targets for RP3 referred to in paragraph 1 shall, in addition to performance targets for the key performance indicators as defined in Section 1 of Annex I to Implementing Regulation (EU) 2019/317, include performance targets for the key performance indicator as amended in Article 4(1) of this Regulation.

Article 3

Submission and assessment of draft performance plans

1 By way of derogation from Article 12 of Implementing Regulation (EU) 2019/317, Member States shall prepare and submit to the Commission, by 1 October 2021, draft performance plans, drawn up in accordance with Article 10 of that Implementing Regulation