Commission Implementing Regulation (EU) 2019/317 of 11 February 2019 laying down a performance and charging scheme in the single European sky and repealing Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013 (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2019/317

of 11 February 2019

laying down a performance and charging scheme in the single European sky and repealing Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013

(Text with EEA relevance)

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[(2)], and in particular Article 15(4) thereof,

Whereas:

(1) The performance scheme referred to in Article 11 of Regulation (EC) No 549/2004 should improve the performance of air navigation services and network functions in the single European sky.

(2) The charging scheme for air navigation services referred to in Article 15 of Regulation (EC) No 550/2004 is instrumental to the successful implementation of the performance scheme and should therefore complement it. The charging scheme should contribute to greater transparency in the determination, imposition and enforcement of charges to airspace users and should contribute to the cost efficiency of providing air navigation services and to efficiency of flights, while maintaining an optimum safety level. The charging scheme should be consistent with the Eurocontrol's charging system for *en route* charges and with Article 15 of the 1944 Chicago Convention on International Civil Aviation (the 'Chicago Convention').

(3) In the interest of clarity, and in order to provide for an adapted regulatory framework for the third reference period of the performance scheme, it is necessary to revise the implementing rules governing the performance and charging schemes contained in Commission Implementing Regulation (EU) No 390/2013[(3)] and Commission Implementing Regulation (EU) No 391/2013[(4)] and to consolidate these provisions in a single Implementing Regulation.

Changes to legislation: *Commission Implementing Regulation (EU) 2019/317 is up to date with all changes known to be in force on or before 18 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) In accordance with Article 11(1) of Regulation (EC) No 549/2004, the performance scheme should cover air navigations services and network functions referred to in Article 6 of Regulation (EC) No 551/2004 of the European Parliament and of the Council[(5)]. Therefore, this Regulation should apply to the Network Manager appointed in accordance with Article 4(3) of Commission Implementing Regulation (EU) 2019/123[(6)].

(5) The performance and charging schemes should enhance the performance of air navigation services through a gate-to-gate approach covering both *en route* and terminal air navigation services. They should foster long-term improvements in the performance of air navigation services, as reflected in the European ATM Master Plan[(7)] while having due regard to the overriding safety objectives. The performance scheme should contribute to the reduction of greenhouse gas emissions from aviation and should allow optimum use of airspace, taking into account air traffic flows in the European airspace.

(6) A Performance Review Body upon Commission's request may give independent advice to the Commission in all areas that affect the performance of air navigation services and network functions in the Union.

(7) National supervisory authorities should be able to obtain from all relevant parties, including air navigation service providers under their supervision, relevant data necessary for the purpose of ensuring the proper implementation and oversight of this Regulation at a local level. Air navigation service providers should facilitate inspections and surveys carried out by the national supervisory authorities for the purpose of monitoring the implementation of the performance and charging schemes.

(8) The Network Manager should provide relevant inputs to target setting at Union, national and functional airspace block levels, and should support the achievement of performance targets through measures and processes provided in the Network Operations Plan.

(9) In implementing the performance scheme, the Commission and Member States should coordinate with the European Union Aviation Safety Agency in order to ensure that safety aspects are properly addressed, in line with the safety objectives and requirements stemming from Regulation (EU) 2018/1139 of the European Parliament and of the Council[(8)].

(10) The duration of a reference period for the performance scheme should be such as to provide the certainty required to implement multi-annual capital expenditure programmes in order to achieve the expected return on investments in the form of performance improvements, while still allowing accuracy of forecasting.

(11) Key performance indicators should be defined in the key performance areas of safety, environment, capacity and cost-efficiency. These key performance indicators should be used for the purpose of setting achievable, sustainable, realistic and time-bound performance targets at Union level, national level or functional airspace block level. The key performance indicators should cover both *en route* and terminal air navigation services, as well as network functions, in order to improve the overall performance of the network.

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(12) Union-wide performance targets should be set by the Commission, taking account of the level of performance achieved in the previous reference period or periods and of relevant inputs provided by the Performance Review Body, the Network Manager and the national supervisory authorities. The inputs from national supervisory authorities should include in particular initial cost and information about traffic forecasts for the reference period concerned. The Commission should substantiate Union-wide performance targets with a description of underlying assumptions and rationales. Drafting of the Union-wide performance targets should be subject to stakeholder consultation.

(13) Member States should be able to decide on whether their respective performance plans are established at national level or at the level of functional airspace blocks, taking account of local circumstances.

(14) National supervisory authorities should be responsible for the development of national or functional airspace block performance plans, including binding performance targets, based on key performance indicators applied at national level or at the level of functional airspace block. The national or functional airspace block performance plans should include initiatives to support cross-border cooperation between air navigation service providers, irrespective of their geographical scope.

(15) Performance plans should provide full transparency on the determined costs of new and existing investments in respect of the purchase, development or leasing of fixed assets. Major investments should be detailed and justified, as well as consistent with SESAR deployment and with expected performance gains.

(16) Consultations should take place at national or functional airspace block level in order to ensure that the views of stakeholders are taken into account in the establishment of performance plans and targets contained therein.

(17) Given the strong links between the different key performance areas, the interdependencies between performance targets should be duly taken into account for the purposes of target setting, having regard to the overriding safety objectives.

(18) Performance targets should be subject to incentives with a view to encouraging better performance, including the application of a traffic risk sharing mechanism in respect of the key performance area of cost-efficiency. Incentive schemes should be effective and should set parameters in a non-discriminatory and transparent manner for the purpose of rewarding or penalising actual performance in relation to the adopted performance targets. The safety key performance area should not be subject to any incentives due to its overriding nature. Member States should ensure that the implementation of incentive schemes does not adversely impact planned and ongoing investments aimed at delivering the adequate capacity and flight efficiency to users.

(19) Member States should adopt draft performance plans and submit them to the Commission for the Commission's assessment and review. In this respect, the Commission should first verify whether the performance plans are complete. If the plans are complete, the Commission should assess whether the proposed performance targets contained in the performance plans are consistent with the Union-wide performance

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targets. If the required consistency cannot be established, the Commission should request Member States to revise their performance plans and targets, or to take corrective measures.

(20) Member States should adopt and publish the final versions of their respective performance plans only after the Commission has found that the national performance targets or performance targets set at the level of functional airspace blocks ('FAB performance targets') contained therein are consistent with the Union-wide targets.

(21) The targets set in the draft performance plans should apply during the procedures for the assessment from the start of the reference period and, where appropriate, during the revision of performance targets set at national or functional airspace block level. Upon the adoption of the final performance plans, the performance targets in the key performance area of cost-efficiency should apply retroactively through an adjustment of unit rates in order to ensure that airspace users benefit from performance improvements from the start of the reference period.

(22) Member States should request permission from the Commission if they want to revise one or several performance targets during a reference period. Such a request can be made where alert thresholds are reached, or where the Member State demonstrates that the initial data, assumptions and rationales, including on investments, underpinning the performance targets are to a significant and lasting extent no longer accurate due to circumstances that were unforeseeable at the time of the adoption of the performance plan. The Commission should authorise the Member State concerned to proceed with the intended revision only if it is necessary and proportionate in light of the aforementioned circumstances, and where the revised performance targets ensure that consistency with the Union-wide performance targets is maintained.

(23) The introduction of new technologies and business models to stimulate integrated service provision should lead to significant cost reductions to the benefit of users over time but can lead to initial restructuring costs. If a Member State demonstrates that restructuring measures bring a net benefit to users, it should also be able to request a revision of local cost-efficiency targets in order to recover the associated restructuring costs through a revision of the determined costs contained in their performance plans, subject to the Commission's authorisation.

(24) The Commission should review the Union-wide performance targets during the reference period to determine whether they remain adequate. The Commission should consider a revision of Union-wide performance targets where it is demonstrated during a reference period that these targets are no longer adequate in light of changed circumstances, and that the revision of targets is necessary and proportionate. A revision of Union-wide targets during a reference period should trigger the start of a new reference period, including the establishment of associated performance plans and performance targets set at national or functional airspace block level.

(25) Network functions should also be subject to performance targets and should contribute to the achievement of the Union-wide performance targets. For this purpose the Network Manager should prepare the Network Performance Plan which should be verified and adopted by the Commission.

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(26) An effective operational partnership and cooperative decision making between the principal stakeholders, such as air navigation service providers, functional airspace blocks, airports, civil and military airspace users and the Network Manager is of key importance for the achievement of performance targets of network functions.

(27) The determined costs of air navigation services should be financed by charges imposed on airspace users. These charges should be levied in charging zones established for *en route* and terminal air navigation services. Member States should ensure that the geographical scope of these charging zones is clearly defined and that the charging zones are consistent with the provision of air navigation services. It may be necessary to modify a terminal charging zone during a reference period due to changes in the operation of airports.

(28) A cost base for charges, which comprises the determined costs of eligible air navigation services and facilities, should be established for each charging zone. Member States should also be allowed to include in these cost bases the determined costs incurred by their national supervisory authorities as well as other State costs related to the provision of air navigation services.

(29) The determined costs for *en route* and terminal charges should be established prior to the start of each reference period, as part of the performance plans. These determined costs shall be specified for each calendar year of the reference period concerned. National supervisory authorities should verify that the established determined costs only comprise cost items that are eligible under the performance and charging scheme.

(30) The determined costs included in a cost base for *en route* or terminal air navigation services should include staff costs, operating costs other than staff costs, depreciation costs, cost of capital, and exceptional costs. Actual costs incurred should be annually reported in accordance with the same categorisation in order to ensure consistency and transparency.

(31) National supervisory authorities should, before the start of each reference period, define the criteria used to allocate costs between *en route* and terminal services and inform the Commission accordingly. Those criteria should ensure the transparent setting of determined costs and guarantee that there are no cross-subsidies between *en route* and terminal services.

(32) Member States should annually calculate the unit rates for their *en route* and terminal charging zones. In calculating the unit rate, Member States should ensure that services or facilities funded through public funds including Union assistance programmes such as the Trans-European transport network, the Connecting Europe Facility and the Cohesion Fund, are not charged to airspace users. In calculating the unit rates, Member States should be allowed to adjust their determined costs for inflation.

(33) The performance and charging scheme should provide for a traffic risk sharing mechanism to incentivise the provision of services. National supervisory authorities should be allowed to adjust the values of the traffic risk sharing parameters as defined in this Regulation in order to take account of local circumstances and to better incentivise the provision of air navigation services. That adjustment should be done