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Commission Implementing Decision (EU) 2019/903 of 29 May 2019 setting the Union-wide performance targets for the air traffic management network for the third reference period starting on 1 January 2020 and ending on 31 December 2024 (Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION (EU) 2019/903

of 29 May 2019

setting the Union-wide performance targets for the air traffic management network for the third reference period starting on 1 January 2020 and ending on 31 December 2024

(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 point (a) of Article 11(3) thereof,

Whereas:

(1) Regulation (EC) No 549/2004 requires the Commission to adopt for each reference period Union-wide performance targets in the key performance areas of safety, environment, capacity and cost-efficiency. Implementing rules regarding those targets have been set out in Commission Implementing Regulation (EU) 2019/317[(2)]. In particular, paragraph 4 of Article 9 of Implementing Regulation (EU) 2019/317 requires the Commission to adopt, together with the Union-wide performance targets, the following values: a Union-wide 'baseline value for determined costs', a Union-wide 'baseline value for the determined unit cost', alert thresholds beyond which Member States may request a revision of the performance targets contained in performance plans as well as the comparator groups of air navigation service providers with a similar operational and economic environment. The setting of determined costs is based on Article 15 of Regulation (EC) No 550/2004 of the European Parliament and of the Council[(3)].

(2) The Union-wide performance targets for the third reference period ('RP3'), which covers the calendar years 2020 to 2024 inclusive, Union-wide baseline values, alert thresholds and the comparator groups should be established prior to 1 June 2019 allowing time for the preparation of performance plans, which should be submitted to the Commission by 1 October 2019 for their assessment.

(3) On 16 December 2016, the Commission designated a Performance Review Body of the Single European Sky, in accordance with Article 11(2) of Regulation (EC) No 549/2004 and Commission Implementing Decision (EU) 2016/2296[(4)], to assist it in implementing the performance scheme.

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(4) To facilitate the adoption of Union-wide performance targets for RP3, the Performance Review Body, on behalf of the Commission, carried out a stakeholder consultation between 20 June 2018 and 16 January 2019. It included all stakeholders listed in Article 10(3) of Regulation (EC) No 549/2004, including airspace users, air navigation service providers and professional staff representative bodies, on indicative performance target ranges and on the approach and methodology for setting performance targets as well as other values.

(5) The Performance Review Body presented to the Commission its final report on 22 February 2019. That report takes into account changes that were introduced by Implementing Regulation (EU) 2019/317, relevant comments from stakeholders and the latest statistics and forecast for RP3 made available by Eurocontrol's Statistics and Forecast Service ('STATFOR') and Central Route Charges Office. The report by the Performance Review Body sets out the assumptions and the rationale underlying the proposed targets, the baseline values, the alert thresholds and the comparator groups.

(6) The Union-wide performance targets set out in this Decision take into account the input received from the Performance Review Body, the Network Manager, the European Union Aviation Safety Agency ('EASA'), and the national supervisory authorities. The Commission also organised, during January and February 2019, meetings and exchanges with Member States, national supervisory authorities, the Network Manager and the Performance Review Body to share latest information relevant for the performance target setting. In those discussions, Member States were invited to update the initial cost data and information about traffic forecasts. The performance targets set out in this Decision take into account this information.

(7) The Union-wide performance targets and baseline values are based on data covering the geographical scope of the Member States, Norway and Switzerland and use *en route* traffic forecast expressed in terms of Instrument Flight Rules ('IFR') movements and in service units based on Eurocontrol's STATFOR base forecast, dated 18 February 2019. This *en route* traffic forecast corresponds to 10 534 000 IFR movements and 139 141 000 service units for 2019, 10 824 000 IFR movements and 143 878 000 service units for 2020, 10 996 000 IFR movements and 146 980 000 service units for 2021, 11 191 000 IFR movements and 150 398 000 service units for 2022, 11 355 000 IFR movements and 153 368 000 service units for 2023, and 11 523 000 IFR movements and 156 359 000 service units for 2024.

(8) The setting of Union-wide performance targets should take into account economic, safety, environmental and operational considerations. A balance is required to ensure that disbenefits, or a combination of disbenefits, do not outweigh anticipated benefits. Therefore, Union-wide performance targets for RP3 should take into account interdependencies or trade-offs between key performance areas. Indeed, the performance targets in the key performance areas of cost-efficiency and capacity should take into account the relationship between costs to provide additional capacity and the improvements those costs can deliver. The performance targets in the key performance area of environment should take into account that air traffic management ('ATM') operational measures aiming to minimise fuel consumption, and to therefore

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reduce emissions, cannot always be implemented in practice. This is due to operational restrictions related to, in particular, safe separation of aircraft and the available ATM capacity. Finally, the performance targets in the key performance area of safety should take account of the fact that the provision of air navigation services in a safe way is an overriding objective and that safety should be fully embedded into the business planning of air navigation service providers.

(9) The Union-wide performance targets set out in this Decision reflect the ambition for performance of the network as a whole. In accordance with Articles 14 and 15 of Implementing Regulation (EU) 2019/317, the Commission takes into account local circumstances when assessing the consistency of the national performance targets or Functional Airspace Block ('FAB') performance targets contained in the draft performance plans with the Union-wide performance targets contained in this Decision.

(10) The Union-wide performance targets in the key performance area of safety, developed in collaboration with EASA, should be measured as the minimum level of the effectiveness of safety management to be achieved by air navigation service providers certified to provide air traffic services. These performance targets should take account of actual and targeted performance in the second reference period and go beyond minimum compliance with the requirements for the elements of the safety management system. Furthermore, the Commission entrusted EASA with a task to update compliance and guidance material to monitor and ensure the correct implementation of the safety indicators set out in point 1 of Section 1 and point 1 of Section 2 of Annex I to Implementing Regulation (EU) 2019/317. As a result, the framework used to measure the levels of the effectiveness of safety management is more stringent than in the second reference period, which is reflected in the approach taken to set the Union-wide performance targets in the key performance area of safety for RP3. These targets should also take into account the safety management implications of ATM changes promoted by the implementation of SESAR projects referred to in Article 15a(3) of Regulation (EC) No 550/2004, by focusing on the safety assurance and safety risk management objectives.

(11) The Union-wide performance targets in the key performance area of environment, measured as the average horizontal *en route* flight efficiency of the actual trajectory, should take account of the level of performance achieved in the second reference period, the measures implemented to optimise ATM operations and relevant inputs from the Performance Review Body, the Network Manager and the national supervisory authorities.

(12) The environmental impact of aviation is increasing but at a lower rate than expected considering the growth in the number of flights over the second reference period. The extra gate-to-gate CO_2 emissions caused by ATM network inefficiency, calculated by comparing the actual trajectories and the unimpeded trajectories of all European flights, have remained stable at about 6 % over the last six years despite the growth in number of flights, thanks to optimisation of ATM operations related to design, planning and flow and capacity management of the European ATM network. Horizontal *en route* flight

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inefficiency has been decreasing overall and the performance target set for the second reference period is expected to be met.

(13) Improvements in the key performance area of environment are driven mainly by the implementation of Free Route Airspace ('FRA'), which enables shorter routes and a more efficient use of the European airspace. It is expected that FRA will be implemented in most of the European airspace by the end of 2019, and in its totality by 2022. Combined with the gradual implementation of cross-border free route activities, this can lead to more direct routing and can reduce the number of nautical miles flown and emissions caused by air traffic, thereby supporting a sustainable reduction of the carbon intensity of aviation. This gradual implementation justifies therefore an improvement in the horizontal *en route* flight efficiency until 2022. After 2022, the horizontal *en route* flight efficiency should remain stable. From the measures currently foreseen and considering that aircraft need to avoid increasingly frequent adverse weather and danger areas and considering that ATM operations have to ensure minimum separation between aircraft, it is not expected that horizontal *en route* flight efficiency further improves in 2023 and 2024.

(14) The Union-wide performance target in the key performance area of capacity, measured as the average *en route* air traffic flow management ('ATFM') delay per flight attributable to air navigation services, should take account of the level of performance achieved in the second reference period, and of relevant input from the Performance Review Body, the Network Manager and the national supervisory authorities.

(15) As documented by the Network Manager, air traffic in Europe has grown significantly over the second reference period and is now at a historic high. IFR movements increased by 13 % in the first four years of the second reference period and *en route* average ATFM delay rose from 0,73 minute per flight in 2015 to 1,73 minute per flight in 2018, which represents a 137 % increase in delay. In some areas of the Union, in particular in a limited number of area control centres in the core area of Europe and in adjacent areas in Central Europe, ATM capacity was not sufficient to accommodate this growth in traffic. Five area control centres are responsible for more than half of the total *en route* ATFM delay attributed to Air Traffic Control (ATC) capacity and staffing in Europe, and some of those centres have not complied with the capacity plans agreed in the Network Operations Plan ('NOP'). This led to the situation that the Union-wide performance target for the second reference period of 0,5 minute average ATFM delay per flight was not met. The capacity shortage is expected to worsen in the next years.

(16) Considering the traffic forecast for RP3, according to the Network Manager and the Performance Review Body, most of the air navigation service providers are expected to be capable to deliver their capacity requirements for RP3. However, according to information transmitted by national supervisory authorities, the service quality proposed by the air navigation service providers in the NOP is expected to remain problematic for some area control centres due to inappropriate staffing levels in particular, especially in the first three years of RP3. As a result, reaching the system-wide optimum average ATFM delay of 0,5 minute per flight can only be expected at the end of RP3. To address the capacity shortage and to meet the targets set in this

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Decision, the Network Manager and the Performance Review Body recommend that air navigation service providers take specific actions at the level of concerned area control centres.

(17) The Union-wide performance targets in the key performance area of cost-efficiency for each year of the reference period should be expressed as a percentage, reflecting the year-on-year change of the average Union-wide 'determined unit cost' ('DUC') for *en route* air navigation services. The Union-wide performance targets in the key performance area of cost-efficiency should take account of the level of performance achieved in the first and second reference periods and of relevant input from the Performance Review Body and the national supervisory authorities.

(18) At Union-wide level, since the beginning of the first reference period in 2012, *en route* actual costs expressed in EUR2017 have remained constant in spite of the significant increase in traffic. Actual costs for the first three years of the second reference period are below the corresponding determined costs. As a result, the aggregate surplus of air navigation service providers at Union-wide level has been higher than planned. This, together with the analysis conducted by the Performance Review Body, gives an indication that most air navigation service providers can achieve further cost-efficiency improvements in RP3, while also addressing the capacity needs. At the same time, air traffic and *en route* ATFM delays have increased significantly in recent years, which may indicate that insufficient resources have been invested in the network during the second reference period. The cost-efficiency targets for RP3 should aim at cost-efficiency improvements, while ensuring that these improvements are not to the detriment of providing sufficient capacity.

(19) Airspace users expressed concerns about cancelled or delayed investment projects to provide necessary capacity. The costs stemming from such projects were often partly or wholly included in the determined costs of previous reference periods and thus included in the charges. Where air navigation service providers generated part of their surplus from not implemented or from delayed implementation of necessary investments, those surpluses could serve to finance necessary investments in RP3, if they have not been paid out as dividends to shareholders or to the state budget. Furthermore, when setting the interest rates for the purpose of calculation of capital costs, air navigation service providers should take into account the limitations of risks for the air navigation service providers under the traffic and cost risk sharing mechanisms and the generally favourable financing conditions.

(20) The expected improvement in cost-efficiency for the RP3 should be calculated starting from the Union-wide baseline value for the determined unit cost, which is derived by dividing the baseline value for the determined costs with the traffic forecast expressed in service units for the year 2019. The baseline value for Union-wide determined costs is estimated by using the actual costs for the years 2015, 2016 and 2017 through a linear regression analysis and is adjusted to take account of the latest available cost estimates, traffic variations and their relation to costs.

(21) The determined costs at Union-wide level for RP3 should only slightly increase over RP3, above the level of the baseline value for determined costs. This is justified