Commission Implementing Decision (EU) 2019/709 of 6 May 2019 on the appointment of the network manager for air traffic management (ATM) network functions of the single European sky (notified under document C(2019) 3228)

COMMISSION IMPLEMENTING DECISION (EU) 2019/709

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on the appointment of the network manager for air traffic management (ATM) network functions of the single European sky

(notified under document C(2019) 3228)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation)[(1)], and in particular point (b) of Article 6(2) thereof,

After consulting the Single Sky Committee,

Whereas:

(1) In accordance with Article 6(6) of Regulation (EC) No 551/2004, Member States entrusted Eurocontrol with the performance of air traffic flow management, through the implementation of the Central Flow Management Unit (CFMU).

(2) By its Decision C(2011) 4130 final of 7 July 2011, the Commission appointed Eurocontrol as Network Manager to perform the tasks necessary for the execution of the ATM network functions of the single European sky between July 2011 and December 2019.

(3) The Commission regularly reviewed the effectiveness of the manner in which Eurocontrol performed those tasks in the period between 2011 and 2016. The Commission concluded that Eurocontrol had done so in a manner, which is satisfactory from an operational perspective.

(4) In 2017, the Commission reviewed the governance, financial arrangements, and cost-base and cost-efficiency aspects of the ATM network functions and concluded that the Network Manager should benefit from greater management autonomy. The Director-General of Eurocontrol granted the Director Network Manager, which performs the tasks of the Network Manager at Eurocontrol, such autonomy by Decision No XI/91 (2017) of 1 November 2017[(2)].

(5) The Commission also concluded that the ATM network functions should be performed in an enhanced and more cost-efficient manner than in the 2011-2016 period, in particular by avoiding any duplication of effort, thus requiring fewer, or at least not

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Decision (EU) 2019/709. (See end of Document for details)*

more, financial and human resources for performing those functions in the Member States.

(6) Considering the overall positive assessment of the performance in a cost-efficient manner of the tasks of the Network Manager by Eurocontrol in the first and second reference period of the performance scheme as set out in Article 8 of Commission Implementing Regulation (EU) No 390/2013[(3)], as well as the need to ensure business continuity in the performance of the ATM network functions, the Commission invited, on 17 July 2018, Eurocontrol to put forward a proposal. The Commission requested Eurocontrol to specify its willingness and ability to be again appointed as Network Manager, in accordance with the criteria provided for in Article 6(2) of Regulation (EC) No 551/2004. In that respect, it also requested Eurocontrol to describe how it would meet the conditions set in Article 4(3) of Commission Implementing Regulation (EU) 2019/123[(4)], and to outline how, once appointed, it would meet the requirements as defined in Article 4(4) of that Regulation.

(7) In its proposal submitted on 17 December 2018, Eurocontrol submitted information regarding the requirements set out in Article 4(3) and 4(4) of Implementing Regulation (EU) 2019/123.

(8) Following a subsequent request made by the Commission, Eurocontrol provided additional clarifications.

(9) The Commission has assessed the elements presented by Eurocontrol and found that the requirements set out in Article 4(3) of Implementing Regulation (EU) 2019/123 are met.

(10) In its proposal, referring notably to the results it had achieved in its capacity as Network Manager during the first and second reference periods, Eurocontrol addresses the issues referred to in point (a) of Article 4(3) of Implementing Regulation (EU) 2019/123. The proposal demonstrates its competence and ability to perform the tasks set out in Article 7 of that Regulation.

(11) In accordance with Article 4(3)(b) of Implementing Regulation (EU) 2019/123, Eurocontrol described in its proposal in a qualitative and quantitative manner the main objectives it plans to achieve with regard to the management of network functions and how it will ensure a good quality of the services it provides to operational stakeholders.

(12) In accordance with Article 4(3)(c) of Implementing Regulation (EU) 2019/123, referring, inter alia, to the lessons learnt of the first and second reference period, Eurocontrol described the approach and means it plans to use to act as Network Manager.

(13) Where the Network Manager also performs activities other than those relevant to the execution of the network functions, Article 4(3)(d) of Implementing Regulation (EU) 2019/123 requires it to demonstrate that those other activities will be carried out independently from the Network Manager's tasks set out in Article 7. In its proposal, Eurocontrol indicated that the tasks of the Network Manager relevant to the execution of the network functions would be performed by its Network Manager Directorate and that the activities of that part of its organisation would be adequately separated from other activities.

(14) In addition to fulfilling the requirements of Article 4(3), Eurocontrol proposed to continue improving the cost-efficiency in performing the tasks of the Network Manager over the period of its appointment.

(15) Eurocontrol should therefore be appointed as Network Manager.

(16) That appointment should cover both the third and the fourth reference periods, specified in Article 7 of Commission Implementing Regulation (EU) 2019/317[(5)], given the investments needed for the deployment of a state-of-art system to support the performance of the ATM network functions and the need to ensure stability and continuity of network operations.

(17) In accordance with Article 4(4)(a) of Implementing Regulation (EU) 2019/123 the Network Manager should be certified by the European Union Aviation Safety Agency before the start of the third reference period.

(18) In order to ensure the autonomy of the Network Manager it is important that there is an adequate separation of activities within the organisation appointed as Network Manager. In accordance with point (d) of Article 4(3) of Implementing Regulation (EU) 2019/123, Eurocontrol should therefore carry out its activities as Network Manager independently from any other activity, including in respect of activities related to the work of international organisations.

(19) In order to ensure fairness in respect of Member States and third countries to whom the Network Manager provides its services, the Network Manager should have appropriate funding and spending arrangements and respect dedicated rules on account management,

HAS ADOPTED THIS DECISION:

Article 1

Appointment of the Network Manager

1 Eurocontrol is appointed as the Network Manager.

2 The appointment referred to in paragraph 1 shall cover the third and fourth reference period specified in Article 7 of Implementing Regulation (EU) 2019/317.

Article 2

Tasks of the Network Manager

1 Eurocontrol acting as Network Manager shall perform the tasks necessary for the execution of the ATM network functions referred to in Article 7 of Implementing Regulation (EU) 2019/123.

2 Eurocontrol acting as Network Manager shall perform its tasks in accordance with the requirements laid down in Article 4 of Implementing Regulation (EU) 2019/123.