

COMMISSION DECISION (EU) 2022/2256**of 15 November 2022****on the initiation of the detailed examination of certain performance targets contained in the revised draft performance plan for the third reference period submitted at functional airspace block level by Switzerland pursuant to Regulation (EC) No 549/2004 of the European Parliament and of the Council***(notified under document C(2022) 8076)***(Only the German, French and Italian texts are authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Agreement between the European Community and the Swiss Confederation on Air Transport ⁽¹⁾,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) ⁽²⁾, and in particular Article 11(3) point (c), second paragraph, thereof,Having regard to 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 ⁽³⁾, and in particular Article 15(1) and (3) thereof,

Whereas:

- (1) Pursuant to Article 10 of Implementing Regulation (EU) 2019/317, Member States are to draw up, either at national level or at the level of functional airspace blocks ('FABs'), binding performance targets for each reference period of the performance scheme for air navigation services and network functions. Those performance targets are to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned.
- (2) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽⁴⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted in October 2019 by the Member States and Switzerland were drawn up before the outbreak of the COVID-19 pandemic in March 2020, they did not take account of the considerable reduction in air traffic due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) In response to the impact of the COVID-19 pandemic on the provision of air navigation services, exceptional measures for RP3, which derogate from the provisions of Implementing Regulation (EU) 2019/317, were set out in Commission Implementing Regulation (EU) 2020/1627 ⁽⁵⁾. The Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁶⁾ setting revised Union-wide performance targets for RP3. On that basis, the Member States and Switzerland submitted to the Commission, in October 2021, draft performance plans containing revised performance targets for RP3.

⁽¹⁾ OJ L 114, 30.4.2002, p. 73.

⁽²⁾ OJ L 96, 31.3.2004, p. 1.

⁽³⁾ OJ L 56, 25.2.2019, p. 1.

⁽⁴⁾ 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 (OJ L 144, 3.6.2019, p. 49).

⁽⁵⁾ 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 (OJ L 366, 4.11.2020, p. 7).

⁽⁶⁾ Commission Implementing Decision (EU) 2021/891 of 2 June 2021 setting revised Union-wide performance targets for the air traffic management network for the third reference period (2020-2024) and repealing Implementing Decision (EU) 2019/903 (OJ L 195, 3.6.2021, p. 3).

- (4) Commission Implementing Decision (EU) 2022/780 ⁽⁷⁾ analysed certain performance targets contained in the draft performance plan for RP3 submitted by Switzerland, established jointly at the level of the Functional Airspace Block Europe Central ('FABEC'), together with Belgium, Germany, France, Luxembourg, and the Netherlands ('Member States part of FABEC'). The Commission found that the cost-efficiency performance targets for the Belgium-Luxembourg *en route* charging zone were not consistent with the Union-wide performance targets and issued recommendations for the revision of those targets.
- (5) In response to Russia's war of aggression against Ukraine, which started on 24 February 2022, the Union has imposed restrictive measures which prohibit Russian air carriers, any Russian-registered aircraft and any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body, from landing in and taking off from, or overflying the territory of the Union. Those restrictive measures and the counter-measures adopted by Russia have led to changes in air traffic in European airspace. Certain Member States have been severely affected by the changes in the number of overflights in the airspace under their responsibility. However, at Union-wide level, the observed impact on the number of flights has been limited in contrast with the sharp reduction of air traffic across Europe which resulted from the outbreak of the COVID-19 pandemic.
- (6) Switzerland, together with the Member States part of FABEC, submitted, on 13 July 2022, a revised draft FABEC performance plan for RP3 ('revised draft FABEC performance plan') for assessment by the Commission.
- (7) The performance review body, assisting the Commission in the implementation of the performance scheme pursuant to Article 11(2) of Regulation (EC) No 549/2004, has submitted to the Commission a report containing its advice on the assessment of the revised draft FABEC performance plan.
- (8) In accordance with Article 15(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the FAB performance targets contained in the revised draft FABEC performance plan on the basis of the assessment criteria laid down in point 1 of Annex IV to that Implementing Regulation, and taking account of local circumstances. In respect of each key performance area and the related performance targets, the Commission has complemented its assessment by reviewing the elements set out in point 2 of Annex IV to that Implementing Regulation.
- (9) The Eurocontrol STATFOR base traffic forecast published in June 2022 takes account of the changed circumstances referred to in recital (5). Based on that forecast, the Commission notes that Switzerland and the Member States part of FABEC are not foreseen to experience major changes in air traffic flows over RP3 as a result of Russia's war in Ukraine. Therefore, those changed circumstances do not directly impact the performance targets contained in the revised draft FABEC performance plan or the assessment of those targets in respect of their consistency with the Union-wide performance targets.
- (10) On the basis of the assessment referred to in recital (8), the Commission has found that the performance targets directly applicable to the air navigation service providers operating in the airspace of Switzerland are consistent with the Union-wide performance targets. Therefore, no related findings are set out in this Decision.

⁽⁷⁾ Commission Implementing Decision (EU) 2022/780 of 13 April 2022 on the inconsistency of certain performance targets contained in the draft functional airspace block performance plan submitted by Switzerland pursuant to Regulation (EC) No 549/2004 of the European Parliament and of the Council with the Union-wide performance targets for the third reference period and setting out recommendations for the revision of those targets (OJ L 139, 18.5.2022, p. 218).

- (11) However, in its Decision (EU) 2022/2255 ⁽⁸⁾, the Commission has concluded, in respect of the revised draft FABEC performance plan, that the cost-efficiency performance targets proposed for the Belgium-Luxembourg *en route* charging zone continue to give rise to doubts as to their consistency with the Union-wide performance targets. The Commission has therefore decided to initiate the detailed examination laid down in Article 15(3) of Implementing Regulation (EU) 2019/317 in respect of those performance targets.
- (12) Therefore, Switzerland should be notified that the Commission will initiate the detailed examination set out in Article 15(3) of Implementing Regulation (EU) 2019/317 in respect of the performance targets referred to in recital (11), which are contained in the revised draft FABEC performance plan jointly adopted by the Member States part of FABEC and Switzerland,

HAS ADOPTED THIS DECISION:

Article 1

The detailed examination procedure set out in Article 15(3) of Implementing Regulation (EU) 2019/317 is hereby initiated with regard to the cost-efficiency performance targets referred to in Article 1 of Decision (EU) 2022/2255.

Article 2

This Decision is addressed to the Swiss Confederation.

Done at Brussels, 15 November 2022.

For the Commission
Adina-Ioana VĂLEAN
Member of the Commission

⁽⁸⁾ Commission Decision (EU) 2022/2255 of 24 October 2022 on the initiation of the detailed examination of certain performance targets contained in the revised draft performance plan for the third reference period submitted at functional airspace block level by Belgium, Germany, France, Luxembourg, and the Netherlands pursuant to Regulation (EC) No 549/2004 of the European Parliament and of the Council (see page 71 of this Official Journal).