

**COMMISSION DECISION (EU) 2023/177****of 14 December 2022****on the consistency of the performance targets contained in the revised draft performance plan submitted by Germany 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***(notified under document C(2022) 9233)***(Only the English text is authentic)****(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) <sup>(1)</sup>, and in particular Article 11(3), point (c) 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 <sup>(2)</sup>, and in particular Article 15(2) thereof,

Whereas:

**GENERAL CONSIDERATIONS**

- (1) Pursuant to Article 10 of Implementing Regulation (EU) 2019/317, Member States are to draw up performance plans, either at national level or at functional airspace blocks level ('FAB'), which have to include 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 <sup>(3)</sup>. Since those Union-wide performance targets and the draft RP3 performance plans subsequently submitted in October 2019 by Member States 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 <sup>(4)</sup>. The Commission adopted, on 2 June 2021, Commission Implementing Decision (EU) 2021/891 <sup>(5)</sup> setting revised Union-wide performance targets for RP3. On that basis, in October 2021, Member States submitted to the Commission draft performance plans containing revised local performance targets for RP3.

<sup>(1)</sup> OJ L 96, 31.3.2004, p. 1.

<sup>(2)</sup> OJ L 56, 25.2.2019, p. 1.

<sup>(3)</sup> 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).

<sup>(4)</sup> 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 COVID-19 pandemic (OJ L 366, 4.11.2020, p. 7).

<sup>(5)</sup> 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) The Commission adopted, on 13 April 2022, Commission Implementing Decision (EU) 2022/728 <sup>(6)</sup> addressed to Belgium, Germany, Greece, France, Cyprus, Latvia, Luxembourg, Malta, the Netherlands, Romania and Sweden. That Decision set out that, in respect of the draft performance plan established at functional airspace block level by the Federal Republic of Germany ('Germany'), jointly with Belgium, France, Luxembourg, and the Netherlands ('draft FABEC performance plan'), the *en route* cost-efficiency performance targets for the Belgium-Luxembourg charging zone were not consistent with the Union-wide performance targets, and issued recommendations for the revision of those targets. Implementing Decision (EU) 2022/728 did not include any findings with regard to the performance targets applicable to air navigation services provided in the airspace of Germany.
- (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 a significant reduction 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) On 13 July 2022, Germany, jointly with Belgium, France, Luxembourg and the Netherlands, submitted to the Commission a revised draft FABEC performance plan for RP3.
- (7) On 24 October 2022, the Commission concluded that the revised 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 therefore initiated the detailed examination in accordance with Article 15(3) of Implementing Regulation (EU) 2019/317 in respect of those performance targets, which are contained in the revised draft FABEC performance plan submitted on 13 July 2022. The Commission notified Belgium, France, Germany, Luxembourg, and the Netherlands thereof by its Decision (EU) 2022/2255 <sup>(7)</sup>.
- (8) On 3 November 2022, Germany informed the Commission that it has withdrawn from the revised draft FABEC performance plan, and submitted to the Commission a revised draft performance plan for RP3 established at national level (the 'revised draft national performance plan'). The revised draft national performance plan maintains the performance targets for air navigation services provided in the airspace of Germany at the level set in the revised draft FABEC performance plan submitted on 13 July 2022. There were effectively no additional performance benefits or synergies for Germany deriving from the revised draft FABEC performance plan. The revised draft national performance plan does not list any negative impact resulting from the discontinuation of the performance planning and target setting activities at FABEC level.
- (9) 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 assessment of the revised draft national performance plan.

<sup>(6)</sup> Commission Implementing Decision (EU) 2022/728 of 13 April 2022 on the inconsistency of certain performance targets contained in the draft national and functional airspace block performance plans submitted by Belgium, Germany, Greece, France, Cyprus, Latvia, Luxembourg, Malta, the Netherlands, Romania, and Sweden 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 135, 12.5.2022, p. 4).

<sup>(7)</sup> 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 (OJ L 297, 17.11.2022, p. 71).

- (10) In accordance with Article 15(1) of Implementing Regulation (EU) 2019/317, the Commission, taking account of local circumstances, has assessed the consistency of the local performance targets included in the revised draft national performance plan on the basis of the assessment criteria laid down in point 1 of Annex IV to that Regulation. 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 Implementing Regulation (EU) 2019/317.
- (11) The Eurocontrol's Statistics and Forecast Service ("STATFOR") base traffic forecast published in June 2022 takes account of the change in circumstances with respect to air traffic in the European airspace following Russia's war of aggression against Ukraine. On the basis of that forecast, the Commission notes that Germany is not expected to experience major changes in air traffic flows over RP3 as a result of Russia's war of aggression against Ukraine. Therefore, that change in circumstances does not directly impact the performance targets contained in the revised draft national performance plan or the Commission's assessment of those targets in respect of their consistency with the Union-wide performance targets.
- (12) Germany exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union, in conjunction with Article 3 of Regulation No 1/1958 <sup>(8)</sup> and to have this Decision adopted and notified in English.

#### COMMISSION ASSESSMENT

##### Assessment of performance targets in the key performance area of safety

- (13) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets included in the revised draft national performance plan submitted by Germany regarding the effectiveness of safety management of air navigation service providers ('ANSPs') in accordance with point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317.
- (14) The local safety performance targets proposed by Germany in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

Germany	Targets on the effectiveness of safety management, expressed as a level of implementation, ranging from European Aviation Safety Agency ('EASA') level A to D				
Air navigation service provider concerned	Safety management objective	2022	2023	2024	Union-wide targets (2024)
DFS	Safety policy and objectives	C	C	C	C
	Safety risk management	C	D	D	D
	Safety assurance	B	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

<sup>(8)</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

- (15) The safety performance targets proposed by Germany for the air navigation services provider ('ANSP'), namely Deutsche Flugsicherung ('DFS'), are consistent with the Union-wide performance targets.
- (16) The Commission notes that the revised draft national performance plan sets out measures for DFS for the achievement of the local safety targets, such as regular safety culture surveys and campaigns, regular updates of the safety plan of the ANSP, and a dedicated change management process.
- (17) Therefore, in the light of recitals 14, 15 and 16, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 are to be achieved by the final year of RP3, namely 2024, the targets in the key performance area of safety included in the revised draft national performance plan should be considered consistent with the Union-wide performance targets.

#### **Assessment of performance targets in the key performance area of environment**

- (18) Concerning the key performance area of environment, the consistency of the targets submitted by Germany regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed in accordance with point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets included in the revised draft national performance plan have been compared with the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available on 2 June 2021, date of adoption of the revised Union-wide performance targets for RP3.
- (19) In respect of the year 2020, the Union-wide performance target for RP3 in the key performance area of environment, which was initially set out in Implementing Decision (EU) 2019/903, before the outbreak of the COVID-19 pandemic, was not revised by Implementing Decision (EU) 2021/891, in so far as the period for the application of that target had expired and its implementation had thus become definitive leaving no possibility for retroactive adjustments. Similarly, it is not possible to modify retroactively, in the revised draft performance plans, the local environment performance targets for the year 2021 set by Member States in the draft performance plans submitted in October 2021. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to the years 2022, 2023 and 2024.
- (20) The performance targets in the key performance area of environment proposed by Germany and the corresponding national reference values for RP3 from the ERNIP, expressed as the average horizontal *en route* flight efficiency of the actual trajectory, are as follows:

Germany	2022	2023	2024
<b>Targets in the key performance area of environment,</b> expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	<b>2,30 %</b>	<b>2,30 %</b>	<b>2,30 %</b>
Reference values	2,30 %	2,30 %	2,30 %

- (21) The Commission observes that the environment targets proposed by Germany are equal to the corresponding national reference values for each of the years 2022, 2023 and 2024.
- (22) The Commission notes that, in its revised draft national performance plan, Germany has presented various measures for the achievement of the local environment targets which include cross-border free route operations with six neighbouring countries, as well as the removal of route restrictions and flight level caps. The Commission further invites Germany to put in place all the recommended measures from the ERNIP to improve *en route* trajectories.

- (23) Therefore, in the light of recitals 20, 21 and 22, the targets in the key performance area of environment included in the revised draft national performance plan should be considered consistent with the Union-wide performance targets.

#### **Assessment of performance targets in the key performance area of capacity**

- (24) Concerning the key performance area of capacity, the consistency of the targets submitted by Germany regarding the average *en route* air traffic flow management (ATFM) delay per flight has been assessed in accordance with point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the targets included in the revised draft performance plan have been compared with the relevant reference values set out in the Network Operations Plan available on 2 June 2021, date of adoption of the revised Union-wide performance targets for RP3.
- (25) In respect of the year 2020, the Union-wide performance target for RP3 in the key performance area of capacity, which was initially set out in Implementing Decision (EU) 2019/903, before the outbreak of the COVID-19 pandemic, was not revised by Implementing Decision (EU) 2021/891 in so far as the period for the application of that target had expired and its implementation had thus become definitive leaving no possibility for retroactive adjustments. Similarly, it is not possible to modify retroactively, in the revised draft performance plans, the local capacity performance targets for the year 2021 set by Member States in the draft performance plans submitted in October 2021. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to the years 2022, 2023 and 2024.
- (26) The *en route* capacity targets proposed by Germany for RP3, expressed in minutes of ATFM delay per flight, as well as the corresponding reference values from the Network Operations Plan, are as follows:

Germany	2022	2023	2024
<b>Targets in the key performance area of capacity, expressed in minutes of ATFM delay per flight</b>	<b>0,27</b>	<b>0,27</b>	<b>0,27</b>
Reference values	0,27	0,27	0,27

- (27) The Commission observes that the capacity targets proposed by Germany are equal to the corresponding national reference values for each of the years 2022, 2023 and 2024.
- (28) The Commission notes that, in its revised draft national performance plan, Germany has presented measures for the achievement of the local *en route* capacity targets. Those measures include a technical upgrade of the air traffic management system, airspace restructuring, enhanced civil-military coordination, the increased number of air traffic controller full-time equivalents, more flexible rostering for air traffic control, and cross-border initiatives to enhance interoperability and operational efficiencies.
- (29) Therefore, in the light of recitals 26, 27 and 28, the targets in the key performance area of capacity included in the revised draft national performance plan should be considered consistent with the Union-wide performance targets.

#### **Review of draft capacity targets for terminal air navigation services**

- (30) With regard to airports which fall within the scope of Implementing Regulation (EU) 2019/317 as set out in Article 1(3) and (4) of that Regulation, the Commission has complemented its assessment of *en route* capacity targets by reviewing the capacity targets for terminal air navigation services in accordance with point 2.1.(b) of Annex IV to Implementing Regulation (EU) 2019/317. It was found that those targets do not raise concerns in respect of Germany.

### Assessment of performance targets in the key performance area of cost-efficiency

- (31) The Commission has assessed the consistency of the cost-efficiency targets proposed in the revised draft national performance plan in accordance with points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317.
- (32) The *en route* cost-efficiency targets proposed by Germany for RP3 are as follows:

<i>En route</i> charging zone of Germany	2014 baseline value	2019 baseline value	2020–2021	2022	2023	2024
<b><i>En route</i> cost-efficiency targets,</b> expressed as determined <i>en route</i> unit cost (in real terms in 2017 prices)	<b>84,74 EUR</b>	<b>66,01 EUR</b>	<b>129,44 EUR</b>	<b>67,52 EUR</b>	<b>63,29 EUR</b>	<b>59,89 EUR</b>

- (33) As regards point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the *en route* determined unit cost ("DUC") trend at charging zone level of – 2,4 % over RP3 outperforms the Union-wide trend of + 1,0 % over the same period.
- (34) As regards point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the long-term *en route* DUC trend at charging zone level of – 3,8 % over the second reference period ("RP2") and RP3 outperforms the long-term Union-wide trend of – 1,3 % over the same period.
- (35) As regards point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the baseline value for the DUC of EUR 66,01 of Germany, expressed in 2017 prices ('EUR2017'), is 13,2 % higher than the average baseline value of 58,33 in EUR2017 of the relevant comparator group.
- (36) It is clear that Germany outperforms by a significant margin both the RP3 Union-wide DUC trend and the long-term Union-wide DUC trend. Furthermore, the DUC of Germany in 2024 is lower than the 2014 and 2019 baseline values, which shows an achievement of effective cost-efficiency gains over the medium and long term. Therefore, the Commission considers that, in respect of Germany, the difference between the baseline value and the comparator group average referred to in recital 35 does not preclude the cost-efficiency performance targets from being consistent with the Union-wide cost-efficiency performance targets.
- (37) Therefore, in the light of recitals 31 to 36, the targets in the key performance area of cost-efficiency included in the revised draft national performance plan should be considered consistent with the Union-wide performance targets.

### Review of cost-efficiency targets for terminal air navigation services

- (38) With regard to airports which fall within the scope of Implementing Regulation (EU) 2019/317 as set out in Articles 1(3) and (4) of that Regulation, the Commission has complemented its assessment of the *en route* cost-efficiency targets by reviewing the cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. It was found that those targets do not raise concerns in respect of Germany.

**Review of the incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317 complementing the Commission's assessment of capacity targets**

- (39) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission has complemented its assessment of capacity targets by reviewing the incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In that respect, the Commission has examined whether the proposed incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317.
- (40) In Implementing Decision (EU) 2022/728, the Commission concluded that Germany is to revise its incentive scheme for achieving *en route* capacity targets in such a way that the maximum financial disadvantage stemming from that incentive scheme is set at a level having a material impact on the revenue at risk. The Commission notes that Germany has not made any changes to its incentive schemes in comparison with the draft FABEC performance plan submitted in 2021 and the revised draft FABEC performance plan submitted on 13 July 2022.
- (41) Therefore, in the light of recital 40, the Commission concludes that the *en route* capacity incentive scheme set out in the revised draft national performance plan continues to give rise to concerns. The Commission therefore reiterates its view that Germany should revise, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, its incentive scheme for achieving *en route* capacity targets so that the maximum financial disadvantage stemming from that incentive scheme is set at a level having a material impact on the revenue at risk, as expressly required by Article 11(3), point (a) of Implementing Regulation (EU) 2019/317, which in the Commission's view should lead to a maximum financial disadvantage equal to or higher than 1 % of determined costs.

**CONCLUSIONS**

- (42) In the light of all the foregoing, the Commission finds that the performance targets included in the revised draft national performance plan submitted by Germany are consistent with the Union-wide performance targets,

HAS ADOPTED THIS DECISION:

*Article 1*

The performance targets included in the revised draft performance plan submitted by Germany on 3 November 2022, pursuant to Regulation (EC) No 549/2004, and listed in the Annex to this Decision, are consistent with the Union-wide performance targets for the third reference period set out in Implementing Decision (EU) 2021/891.

*Article 2*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 December 2022

*For the Commission*  
Adina-Ioana VĂLEAN  
*Member of the Commission*

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## ANNEX

**Performance targets included in the revised draft performance plan submitted by Germany pursuant to Regulation (EC) No 549/2004, found to be consistent with the Union-wide performance targets for the third reference period**

**KEY PERFORMANCE AREA OF SAFETY**

**Effectiveness of safety management**

Germany	Targets on the effectiveness of safety management, expressed as a level of implementation, ranging from EASA level A to D			
Air navigation service provider concerned	Safety management objective	2022	2023	2024
DFS	Safety policy and objectives	C	C	C
	Safety risk management	C	D	D
	Safety assurance	B	C	C
	Safety promotion	C	C	C
	Safety culture	C	C	C

**KEY PERFORMANCE AREA OF ENVIRONMENT**

**Average horizontal *en route* flight efficiency of the actual trajectory**

Germany	2022	2023	2024
<b>Targets in the key performance area of environment,</b> expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	<b>2,30 %</b>	<b>2,30 %</b>	<b>2,30 %</b>

**KEY PERFORMANCE AREA OF CAPACITY**

**Average *en route* ATFM delay in minutes per flight**

Germany	2022	2023	2024
<b>Targets in the key performance area of capacity,</b> expressed in minutes of ATFM delay per flight	<b>0,27</b>	<b>0,27</b>	<b>0,27</b>

**KEY PERFORMANCE AREA OF COST-EFFICIENCY**

**Determined unit cost for *en route* air navigation services**

<i>En route</i> charging zone of Germany	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
<b><i>En route</i> cost-efficiency targets,</b> expressed as determined <i>en route</i> unit cost (in real terms in 2017 prices)	<b>84,74 EUR</b>	<b>66,01 EUR</b>	<b>129,44 EUR</b>	<b>67,52 EUR</b>	<b>63,29 EUR</b>	<b>59,89 EUR</b>