

Official Journal of the European Union

L 139



English edition

Legislation

Volume 65

18 May 2022

Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Commission Delegated Regulation (EU) 2022/759 of 14 December 2021 amending Annex VII to Directive (EU) 2018/2001 of the European Parliament and of the Council as regards a methodology for calculating the amount of renewable energy used for cooling and district cooling** 1
- ★ **Commission Delegated Regulation (EU) 2022/760 of 8 April 2022 amending Delegated Regulation (EU) 2021/2306 as regards the transitional provisions for certificates of inspection issued in Ukraine** 13
- ★ **Commission Implementing Regulation (EU) 2022/761 of 13 May 2022 approving non-minor amendments to the product specification for a name entered in the register of protected designations of origin and protected geographical indications ('Agneau du Périgord' (PGI))** 15

DECISIONS

- ★ **Council Decision (EU) 2022/762 of 12 May 2022 on the position to be taken on behalf of the European Union within the Port State Control Committee of the Paris Memorandum of Understanding on Port State control as regards the Russian Federation's membership of the Paris Memorandum of Understanding** 16
- ★ **Commission Decision (EU) 2022/763 of 21 December 2021 on the State aid SA.60165- 2021/C (ex 2021/N) which Portugal is planning to implement for TAP SGPS (notified under document C(2021) 9941) ⁽¹⁾** 19
- ★ **Commission Decision (EU) 2022/764 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Croatia 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) 2284) ⁽¹⁾** 72

⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

★ Commission Decision (EU) 2022/765 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Finland 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) 2285) ⁽¹⁾	81
★ Commission Decision (EU) 2022/766 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Ireland 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) 2287) ⁽¹⁾	89
★ Commission Decision (EU) 2022/767 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Portugal 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) 2288) ⁽¹⁾	97
★ Commission Decision (EU) 2022/768 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Slovakia 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) 2289) ⁽¹⁾	107
★ Commission Decision (EU) 2022/769 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Lithuania 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) 2290) ⁽¹⁾	116
★ Commission Decision (EU) 2022/770 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Denmark 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) 2291) ⁽¹⁾	124
★ Commission Decision (EU) 2022/771 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Estonia 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) 2292) ⁽¹⁾	133
★ Commission Decision (EU) 2022/772 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by the Czech Republic 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) 2293) ⁽¹⁾ ...	143
★ Commission Decision (EU) 2022/773 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Italy 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) 2294) ⁽¹⁾	153
★ Commission Decision (EU) 2022/774 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Austria 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)2297) ⁽¹⁾	162
★ Commission Decision (EU) 2022/775 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Hungary 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) 2298) ⁽¹⁾	172

⁽¹⁾ Text with EEA relevance.

★ Commission Decision (EU) 2022/776 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Spain 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) 2300) ⁽¹⁾	182
★ Commission Decision (EU) 2022/777 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Slovenia 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) 2302) ⁽¹⁾	191
★ Commission Decision (EU) 2022/778 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Bulgaria 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) 2303) ⁽¹⁾	199
★ Commission Decision (EU) 2022/779 of 13 April 2022 on the consistency of the performance targets contained in the draft performance plan submitted by Poland 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) 2304) ⁽¹⁾	208
★ 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 (notified under document C(2022) 2313) ⁽¹⁾	218

⁽¹⁾ Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2022/759

of 14 December 2021

amending Annex VII to Directive (EU) 2018/2001 of the European Parliament and of the Council as regards a methodology for calculating the amount of renewable energy used for cooling and district cooling

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources ⁽¹⁾, and in particular Article 7(3), fifth subparagraph thereof,

Whereas:

- (1) Annex VII to Directive (EU) 2018/2001 provides a methodology to calculate renewable energy from heat pumps used for heating, but does not regulate how to calculate renewable energy from heat pumps used for cooling. The lack of methodology in that Annex to calculate renewable energy from heat pumps used for cooling prevents the cooling sector from contributing to the Union's overall renewable energy target laid down in Article 3 of Directive (EU) 2018/2001 and makes it more difficult for Member States, especially those with a high cooling share in their energy consumption, to deliver the heating and cooling target and district heating and cooling targets under Articles 23 and 24 of that Directive, respectively.
- (2) Therefore a methodology on renewable cooling, including district cooling, should be introduced in Annex VII to Directive (EU) 2018/2001. Such a methodology is necessary to ensure that the renewable energy share from cooling is calculated in a harmonised way in all Member States and to make a reliable comparison of all cooling systems in terms of their capacity to use renewable energy for cooling possible.
- (3) The methodology should include minimum seasonal performance factors (SPF) for heat pumps operating in reverse mode in accordance with Article 7(3), sixth subparagraph of Directive (EU) 2018/2001. Since all active cooling systems can be considered as heat pumps working in reverse mode, so-called 'cooling mode', minimum seasonal performance factors should apply to all cooling systems. This is necessary because heat pumps extract and transfer heat from one location to another. In the case of cooling, heat pumps extract heat from a space or process and reject it to the environment (air, water or ground). Extraction of heat is the essence of cooling and the core function of a heat pump. Since this extraction goes against the natural flow of energy, which goes from hot to cold, such extraction requires energy input to the heat pump, which works as a cooling generator.
- (4) The mandatory inclusion of minimum seasonal performance factors in the methodology is due to the importance of energy efficiency to establish the presence and use of renewable energy by heat pumps. The renewable energy in the case of cooling is the renewable cold source, which can increase the efficiency of the cooling process, and makes the seasonal performance factor of cooling higher. High seasonal performance factors, while being an energy efficiency indicator, function at the same time as proxy for the presence and use of renewable cold source in cooling.

⁽¹⁾ OJ L 328, 21.12.2018, p. 82.

- (5) In cooling, the cold source functions as a heat sink, as it absorbs the heat extracted and rejected by the heat pump outside the space or process that needs to be cooled. The quantity of renewable cooling depends on the efficiency of the cooling process, and is equivalent to the quantity of heat absorbed by the heat sink. This in practice is equivalent to the quantity of cooling capacity provided by the cold source.
- (6) The cold source can be ambient energy or geothermal energy. Ambient energy is present in ambient air (formerly known as aerothermal) and ambient water (formerly known as hydrothermal), while geothermal energy comes from the ground under the surface of solid earth. Ambient and geothermal energy used for cooling by means of heat pumps and district cooling systems should be taken into account for the purposes of calculating the share of renewable energy in the gross final consumption of energy, provided that the final energy output significantly exceeds the primary energy input required to drive the heat pumps. This requirement, established in Article 7(3), third subparagraph of Directive (EU) 2018/2001, could be fulfilled with appropriately high seasonal performance factors as defined by the methodology.
- (7) Given the variety of cooling solutions, it is necessary to define which cooling solutions should fall into the scope of the methodology and which should be excluded. Cooling by the natural flow of thermal energy without the intervention of a cooling device is passive cooling and should therefore be excluded from the scope of the calculation in accordance with Article 7(3), fourth subparagraph of Directive (EU) 2018/2001.
- (8) Decreasing the need for cooling by building design, such as building insulation, green roof, vegetal wall, and shading or increased building mass, while valuable, can be considered as a passive cooling and should therefore not be included in the scope of the renewable cooling calculation.
- (9) Ventilation (either natural or forced), which is the introduction of ambient air inside a space with the aim to ensure appropriate indoor air quality is considered passive cooling and should therefore not be included in the scope of the renewable calculation. This exclusion should be maintained even when ventilation leads to the introduction of cold ambient air and thus reduces the cooling supply in some periods of the year; indeed, this cooling is not the primary function and ventilation may also contribute to heating the air in the summer and thus to increase the cooling load. Notwithstanding, where ventilation air is used as a heat transport medium for cooling, the corresponding cooling supply, which can be supplied either by a cooling generator or by free cooling, should be considered active cooling. In situations where the ventilation airflow is increased above ventilation requirements for cooling purposes, the cooling supply due to this extra airflow should be part of the renewable cooling calculation.
- (10) Comfort fan products include a fan and electric motor assembly. Comfort fans move air and provide summer comfort by increasing the air speed around the human body, which gives a thermal feeling of coolness. As opposed to ventilation, there is no introduction of ambient air in the case of comfort fans; comfort fans only move indoor air. Consequently, they are not cooling indoor air but heating it (all electricity consumed is ultimately released as heat in the room where the comfort fan is used). Comfort fans are not cooling solutions and should therefore fall outside the scope of the renewable cooling calculation.
- (11) Cooling system energy input in means of transportation (such as cars, trucks, ships) is in general supplied by the transportation engine. The use of renewable energy in non-stationary cooling is part of the renewable transport target calculation pursuant to Article 7(1), point (c) of Directive (EU) 2018/2001 and should therefore not fall into the scope of the renewable cooling calculation.
- (12) The temperature range of the cooling supply for which renewable cold sources can grow, and reduce or displace the energy use of a cooling generator lies between 0 °C and 30 °C. This temperature range is one of the parameters that should be used to screen potential cooling process sectors and applications to be included in the scope of the renewable cooling calculation.
- (13) Process cooling with low and very low cooling supply temperature has little room to use renewable cold sources to any significant degree and is mostly operated with electrically driven refrigeration. The main way of making refrigeration equipment renewable is through their energy input. When electricity driven refrigeration equipment is renewable, it is already accounted for in the renewable electricity shares under Directive (EU) 2018/2001. The efficiency improvement potential is already covered by the EU ecodesign and labelling framework. Consequently, there would be no benefit of including refrigeration equipment in the scope of the renewable cooling calculation.

- (14) As regards high temperature process cooling, any thermal power plant, combustion and other high temperature processes offer the possibility to recover waste heat. Incentivising the release of high temperature waste heat into the environment without heat recovery through renewable cooling would be against the 'energy efficiency first' principle and environmental protection. In that perspective, the 30 °C temperature limit is not enough to distinguish those processes; indeed, in a steam power plant, condensation may occur at 30 °C or lower. The cooling system of the power plant may supply cooling at a temperature lower than 30 °C.
- (15) To ensure that the scope is clearly set, the methodology should include a list of processes where the recovery or avoidance of waste heat should be prioritised instead of incentivising the use of cooling. Sectors where waste heat avoidance and recovery is promoted through Directive 2012/27/EU of the European Parliament and of the Council ⁽²⁾ include power generation plants, including cogeneration, and processes producing hot fluids from combustion or from an exothermic chemical reaction. Additional processes where waste heat avoidance and recovery is important include cement, iron and steel manufacturing, wastewater treatment plants, information technology facilities such as data centres, power transmission and distribution facilities, as well as cremation and transportation infrastructures, where cooling should not be promoted for mitigating waste heat resulting from these processes.
- (16) A central parameter for the calculations of renewable energy from heat pump used for cooling is the seasonal performance factor calculated in primary energy, denoted as the SPF_p . SPF_p is a ratio expressing the efficiency of cooling systems during the cooling season. It is calculated by dividing the produced quantity of cooling with the energy input. Higher SPF_p is better, because more cooling is produced for the same energy input.
- (17) To calculate the quantity of renewable energy from cooling, it is necessary to define the share of the cooling supply that can be considered renewable. This share is denoted as s_{SPF_p} . The s_{SPF_p} is a function of a low and high SPF_p threshold value. The methodology should set a low SPF_p threshold value below which renewable energy from a cooling system is zero. The methodology should also set a high SPF_p threshold value above which the entire cooling supply produced by a cooling system counts as renewable. A progressive calculation method should allow calculating the linearly growing portion of the cooling supply that can be counted as renewable from cooling systems with SPF_p values falling between the low and high SPF_p thresholds.
- (18) The methodology should ensure that, in accordance with Article 7(1), second subparagraph of Directive (EU) 2018/2001, gas, electricity, and hydrogen from renewable sources are considered only once for the purposes of calculating the share of gross final consumption of energy from renewable sources.
- (19) To ensure stability and predictability from the application of the methodology for the cooling sector, the low and high threshold SPF values calculated in primary energy terms should be set using the default coefficient, also called primary energy factor, as set in Directive 2012/27/EU.
- (20) It is appropriate to distinguish between different approaches to calculating renewable cooling depending on the availability of standard values for the parameters needed in the calculation, such as standard seasonal performance factors or equivalent full load hours of operation.
- (21) It is appropriate that the methodology allows the use of a simplified statistical approach based on standard values for installations smaller than 1.5 MW nominal capacity. Where standard values are not available, the methodology should make it possible to use measured data to allow cooling systems to benefit from the calculation methodology of renewable energy from cooling. The measurement approach should apply to cooling systems with a nominal capacity above 1.5 MW, for district cooling and for small systems using technologies where standard values are not available. Notwithstanding the availability of standard values, Member States may use measured data for all cooling systems.

⁽²⁾ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

- (22) Member States should be allowed to undertake their own calculations and surveys in order to improve the accuracy of national statistics beyond what is feasible with the methodology set out in this Regulation.
- (23) Annex VII to Directive (EU) 2018/2001 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment

Annex VII to Directive (EU) 2018/2001 is replaced by the Annex to this Regulation.

Article 2

Review

The Commission shall review this Regulation in the light of technological progress and innovation, the stock deployment, and its impacts on the renewable energy targets.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 December 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

'ANNEX VII

ACCOUNTING OF RENEWABLE ENERGY USED FOR HEATING AND COOLING**PART A: ACCOUNTING OF RENEWABLE ENERGY FROM HEAT PUMPS USED FOR HEATING**

The amount of aerothermal, geothermal or hydrothermal energy captured by heat pumps to be considered to be energy from renewable sources for the purposes of this Directive, E_{RES} , shall be calculated in accordance with the following formula:

$$E_{RES} = Q_{usable} * (1 - 1/SPF)$$

where

—	Q_{usable}	=	the estimated total usable heat delivered by heat pumps fulfilling the criteria referred to in Article 7(4), implemented as follows: Only heat pumps for which $SPF > 1,15 * 1/\eta$ shall be taken into account,
—	SPF	=	the estimated average seasonal performance factor for those heat pumps,
—	H	=	the ratio between total gross production of electricity and the primary energy consumption for the production of electricity and shall be calculated as an EU average based on Eurostat data.

PART B: ACCOUNTING OF RENEWABLE ENERGY USED FOR COOLING**1. DEFINITIONS**

When calculating renewable energy used for cooling the following definitions shall apply:

- (1) 'cooling' means the extraction of heat from an enclosed or indoor space (comfort application) or from a process in order to reduce the space or process temperature to, or maintain it at, a specified temperature (set point); for cooling systems, the extracted heat is rejected into and absorbed by the ambient air, ambient water or the ground, where the environment (air, ground, and water) provides a sink for the heat extracted and thus functions as a cold source;
- (2) 'cooling system' means an assembly of components consisting of a heat extraction system, one or several cooling devices and a heat rejection system, complemented in the case of active cooling with a cooling medium in the form of fluid that work together to generate a specified heat transfer and, thus, ensures a required temperature;
 - (a) for space cooling, the cooling system can be either a free cooling system or a cooling system embedding a cooling generator, and for which cooling is one of the primary functions;
 - (b) for process cooling, the cooling system is embedding a cooling generator, and for which cooling is one of the primary functions;
- (3) 'free cooling' means a cooling system using a natural cold source to extract heat from the space or process to be cooled via fluid(s) transportation with pump(s) and/or fan(s) and which does not require the use of a cooling generator;
- (4) 'cooling generator' means the part of a cooling system that generates a temperature difference allowing heat extraction from the space or process to be cooled, using a vapour compression cycle, a sorption cycle or driven by another thermodynamic cycle, used when the cold source is unavailable or insufficient;
- (5) 'active cooling' means the removal of heat from a space or process, for which an energy input is needed to meet the cooling demand, used when the natural flow of energy is unavailable or insufficient and can occur with or without a cooling generator;

- (6) 'passive cooling' means the removal of heat by the natural flow of energy through conduction, convection, radiation or mass transfer without the need for moving a cooling fluid to extract and reject heat or to generate a lower temperature with a cooling generator, including decreasing the need for cooling by building design features such as building insulation, green roof, vegetal wall, shading or increased building mass, by ventilation or by using comfort fans;
- (7) 'ventilation' means the natural or forced movement of air to introduce ambient air inside a space with the aim to ensure appropriate indoor air quality, including temperature;
- (8) 'comfort fan' means a product that includes a fan and electric motor assembly to move air and provide summer comfort by increasing the air speed around human body giving a thermal feeling of coolness;
- (9) 'renewable energy quantity for cooling' means the cooling supply that has been generated with a specified energy efficiency expressed as a Seasonal Performance Factor calculated in primary energy;
- (10) 'heat sink' or 'cold source' means an external natural sink into which the heat extracted from the space or process is transferred; it can be ambient air, ambient water in the form of natural or artificial water bodies and geothermal formations beneath the surface of solid earth;
- (11) 'heat extraction system' means a device that removes heat from the space or process to be cooled, such as an evaporator in a vapour compression cycle;
- (12) 'cooling device' means a device designed to perform active cooling;
- (13) 'heat rejection system' means the device where the final heat transfer from the cooling medium to the heat sink occurs, such as the air-to-refrigerant condenser in an air-cooled vapour compression cycle;
- (14) 'energy input' means the energy needed to transport the fluid (free cooling), or the energy needed to transport the fluid and to drive the cooling generator (active cooling with a cooling generator);
- (15) 'district cooling' means the distribution of thermal energy in the form of chilled liquids, from central or decentralised sources of production through a network to multiple buildings or sites, for the use of space or process cooling;
- (16) 'primary seasonal performance factor' means a metric of the primary energy conversion efficiency of the cooling system;
- (17) 'equivalent full load hours' means the number of hours a cooling system runs with full load to produce the amount of cooling that it actually produces during a year but at varying loads;
- (18) 'Cooling Degree Days' means the climate values computed with a base of 18 °C used as input to determine equivalent full load hours.

2. SCOPE

1. When calculating the amount of renewable energy used for cooling, Member States shall count active cooling, including district cooling, regardless of whether it is free cooling or a cooling generator is used.
2. Member States shall not count:
 - (a) passive cooling, although where ventilation air is used as a heat transport medium for cooling, the corresponding cooling supply, which can be supplied either by a cooling generator or by free cooling is part of renewable cooling calculation.
 - b) the following technologies or processes of cooling:
 - (i) cooling in means of transportation ⁽¹⁾;
 - (ii) cooling systems whose primary function is to produce or store perishable materials at specified temperatures (refrigeration and freezing);
 - (iii) cooling systems with space or process cooling temperature set points lower than 2 °C;
 - (iv) cooling systems with space or process cooling temperature set points above 30 °C;

⁽¹⁾ The renewable cooling definition concerns only stationary cooling.

- (v) cooling of waste heat resulting from energy generation, industrial processes and the tertiary sector (waste heat) ⁽²⁾.
- (c) energy used for cooling in power generation plants; cement, iron and steel manufacturing; wastewater treatment plants; information technology facilities (such as data centres); power transmission and distribution facilities; and transportation infrastructures.

Member States may exclude more categories of cooling systems from the calculation of the renewable energy used for cooling in order to preserve natural cold sources in specific geographic areas for environmental protection reasons. Examples are the protection of rivers or lakes from the risk of overheating.

3. METHODOLOGY FOR ACCOUNTING OF RENEWABLE ENERGY FOR INDIVIDUAL AND DISTRICT COOLING

Only cooling systems operating above the minimum efficiency requirement expressed as primary Seasonal Performance Factor (SPF_p) in section 3.2, second paragraph shall be considered to produce renewable energy.

3.1. Renewable energy quantity for cooling

The renewable energy quantity for cooling (E_{RES-C}) shall be calculated with the following formula:

$$E_{RES-C} = (Q_{C_{Source}} - E_{INPUT}) \times S_{SPF_p} = Q_{C_{Supply}} \times S_{SPF_p}$$

where:

$Q_{C_{Source}}$ is the amount of heat released to the ambient air, ambient water or to the ground by the cooling system ⁽³⁾;

E_{INPUT} is the energy consumption of the cooling system, including energy consumption of the auxiliary systems for measured systems, such as district cooling;

$Q_{C_{Supply}}$ is the cooling energy supplied by the cooling system ⁽⁴⁾;

S_{SPF_p} is defined at cooling system level as the share of the cooling supply that can be considered as renewable according to the SPF requirements, expressed as a percentage. The SPF is established without accounting for distribution losses. For district cooling, this means that the SPF is established per cooling generator, or at free cooling system level. For cooling systems where standard SPF can apply, the F(1) and F(2) coefficients according to Commission Regulation (EU) 2016/2281 ⁽⁵⁾ and the linked Commission Communication ⁽⁶⁾ are not used as correction factors.

For 100 % renewable heat driven cooling (absorption and adsorption) the cooling delivered should be considered fully renewable.

The calculation steps needed for $Q_{C_{Supply}}$ and S_{SPF_p} are explained in Sections 3.2 to 3.4.

⁽²⁾ Waste heat is defined in Article 2(9) of this Directive. Waste heat can be accounted for the purposes of Articles 23 and 24 of this Directive.

⁽³⁾ The quantity of cold source corresponds to the quantity of heat absorbed by ambient air, ambient water and the ground acting as heat sinks. Ambient air and ambient water correspond to ambient energy as defined in Article 2(2) of this Directive. The ground correspond to geothermal energy as defined in Article 2(3) of this Directive.

⁽⁴⁾ From a thermodynamical point of view, cooling supply corresponds to a portion of the heat released by a cooling system to ambient air, ambient water or to the ground, which function as a heat sink or cold source. Ambient air and ambient water correspond to ambient energy as defined in Article 2(2) of this Directive. The heat sink or cold source function of the ground corresponds to geothermal energy as defined in Article 2(3) of this Directive.

⁽⁵⁾ Commission Regulation (EU) 2016/2281 of 30 November 2016 implementing Directive 2009/125/EC of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy-related products, with regard to ecodesign requirements for air heating products, cooling products, high temperature process chillers and fan coil units (OJ L 346, 20.12.2016, p. 1).

⁽⁶⁾ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2017.229.01.0001.01.ENG&toc=OJ:C:2017:229:TOC

3.2. Calculation of the share of Seasonal Performance Factor that qualifies as renewable energy – S_{SPF_p}

S_{SPF} is the share of cooling supply that can be counted as renewable. The S_{SPF_p} increases with increasing SPF_p values. The SPF_p (7) is defined as described in Commission Regulation (EU) 2016/2281 and Commission Regulation (EU) No 206/2012 (8), except that the default primary energy factor for electricity has been updated to 2.1 in Directive 2012/27/EU (as amended by Directive (EU) 2018/2002 (9)) of the European Parliament and of the Council. Boundary conditions from the EN14511 standard shall be used.

The minimum efficiency requirement of the cooling system expressed in primary seasonal performance factor shall be at least 1.4 ($SPF_{p_{LOW}}$). For S_{SPF_p} to be 100 % the minimum efficiency requirement of the cooling system shall be at least 6 ($SPF_{p_{HIGH}}$). For all the other cooling systems the following calculation shall be applied:

$$S_{SPF_p} = \frac{SPF_p - SPF_{p_{LOW}}}{SPF_{p_{HIGH}} - SPF_{p_{LOW}}} \%$$

SPF_p is the efficiency of the cooling system expressed as primary seasonal performance factor;

$SPF_{p_{LOW}}$ is the minimum seasonal performance factor expressed in primary energy and based upon the efficiency of standard cooling systems (minimum eco-design requirements);

$SPF_{p_{HIGH}}$ is the upper threshold for seasonal performance factor expressed in primary energy and based on best practices for free cooling used in district cooling (10).

3.3. Calculation of renewable energy quantity for cooling using standard and measured SPF_p

Standard and measured SPF

Standardised SPF values are available for electric vapour compression cooling generators and combustion engine vapour compression cooling generator due to the Ecodesign requirements in Regulation (EU) No 206/2012 and (EU) No 2016/2281. Values are available for these cooling generators up to 2 MW for comfort cooling and up to 1.5 MW for process cooling. For other technologies and capacity scales standard values are not available. As regards district cooling, standard values are not available but measurements are used and available; these allow to compute SPF values at least on a yearly basis.

To calculate the quantity of renewable cooling, standard SPF values may be used where available. Where standard values are not available or measurement is standard practice, measured SPF values shall be used, separated by cooling capacity thresholds. For cooling generators with a cooling capacity below 1.5 MW, standard SPF can be used, while measured SPF shall be used for district cooling, for cooling generators with cooling capacities higher than or equal to 1.5 MW and cooling generators for which standard values are not available.

In addition, for all cooling systems without standard SPF , which includes all free cooling solutions and heat activated cooling generators, a measured SPF shall be established in order to take advantage of the calculation methodology for renewable cooling.

(7) In case the real operating conditions of cooling generators lead to SPF values substantially lower than planned in standard conditions because of different installation provisions, Member States may exclude these systems from the scope of the renewable cooling definition (e.g. a water cooled cooling generator using a dry cooler instead of a cooling tower to release heat to ambient air).

(8) Commission Regulation (EU) No 206/2012 of 6 March 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for air conditioners and comfort fans (OJ L 72, 10.3.2012, p. 7).

(9) Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency (OJ L 328, 21.12.2018, p. 210).

(10) ENER/C1/2018-493, Renewable cooling under the revised Renewable Energy Directive, TU-Wien, 2021.

Definition of standard SPF values

SPF values are expressed in terms of primary energy efficiency calculated using primary energy factors following Regulation (EU) 2016/2281 to determine the space cooling efficiency for the different types of cooling generators ⁽¹⁾. The primary energy factor in Regulation (EU) 2016/2281 shall be calculated as $1/\eta$, where η is the average ratio of total gross production of electricity to the primary energy consumption for electricity production in the whole EU. With the amendment of the default primary energy factor for electricity, called coefficient in point (1) of the Annex to Directive (EU) 2018/2002 amending footnote (3) in Annex IV of Directive 2012/27/EU, the primary energy factor of 2.5 in Regulation (EU) 2016/2281 shall be replaced by 2.1 when calculating the SPF values.

When primary energy carriers, such as heat or gas are used as energy input to drive the cooling generator, the default primary energy factor ($1/\eta$) is 1, reflecting the lack of energy transformation $\eta = 1$.

The standard operating conditions and the other parameters necessary for the determination of the SPF are defined in Regulation (EU) 2016/2281 and Regulation (EU) No 206/2012, depending on the cooling generator category. Boundary conditions are the ones defined in the EN14511 standard.

For reversible cooling generators (reversible heat pumps), which are excluded from the scope of Regulation (EU) 2016/2281 because their heating function is covered by Commission Regulation (EU) No 813/2013 ⁽²⁾ with regard to Ecodesign requirements for space heaters and combination heaters, the same SPF calculation that is defined for similar non reversible cooling generators in Regulation (EU) 2016/2281 shall be used.

For instance, for electric vapour compression cooling generators, the SPF_p shall be defined as follows (the index p is used to clarify that the SPF is defined in terms of primary energy):

$$\text{— For space cooling: } SPF_p = \frac{SEER}{\frac{1}{\eta}} - F(1) - F(2)$$

$$\text{— For process cooling: } SPF_p = \frac{SEPR}{\frac{1}{\eta}} - F(1) - F(2)$$

Where:

— SEER and SEPR are seasonal performance factors ⁽³⁾ (SEER stands for ‘Seasonal Energy Efficiency Ratio’, SEPR stands for ‘Seasonal Energy Performance Ratio’) in final energy defined according to Regulation (EU) 2016/2281 and Regulation (EU) No 206/2012;

— η is the average ratio of total gross production of electricity to the primary energy consumption for electricity production in the EU ($\eta = 0.475$ and $1/\eta = 2.1$).

$F(1)$ and $F(2)$ are correction factors according to Regulation (EU) 2016/2281 and the linked Commission Communication. These coefficients do not apply to process cooling in Regulation (EU) 2016/2281 as the SEPR final energy metrics is directly used. In absence of adapted values, the same values used for SEER conversion shall be used for the SEPR conversion.

SPF boundary conditions

For defining the SPF of the cooling generator, the SPF boundary conditions defined in Regulation (EU) No 2281/2016 and in Regulation (EU) No 206/2012 shall be used. In the case of water-to-air and water-to-water cooling generators, the energy input required to make the cold source available is included via the $F(2)$ correction factor. The SPF boundary conditions are shown in Figure 1. These boundary conditions shall apply for all cooling systems, either free cooling systems or systems containing cooling generators.

⁽¹⁾ SPF_p is identical to $\eta_{s,c}$ defined in Regulation (EU) No 2016/2281.

⁽²⁾ Commission Regulation (EU) No 813/2013 of 2 August 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for space heaters and combination heaters (OJ L 239, 6.9.2013, p. 136).

⁽³⁾ Part 1 of the study ENER/C1/2018-493 on ‘Cooling Technologies Overview and Market Share’ provides more detailed definitions and equations for these metrics in chapter 1.5 ‘Energy efficiency metrics of state-of-the-art cooling systems’.

These boundary conditions are similar to the ones for heat pumps (used in heating mode) in Commission Decision 2013/114/EU⁽¹⁴⁾. The difference is that for heat pumps, the electricity consumption corresponding to auxiliary power consumption (thermostat-off mode, standby mode, off mode, crankcase heater) is not taken into account to evaluate the SPF. However, as in the case of cooling both standard SPF values and measured SPF will be used, and given the fact that in the measured SPF auxiliary consumption is taken into account, it is necessary to include auxiliary power consumption in both situations.

For district cooling, distribution cold losses and distribution pump electric consumption between the cooling plant and the customer substation shall not be included in the estimation of the SPF.

In the case of air based cooling systems ensuring also the ventilation function, the cooling supply due to ventilation air flow shall not be accounted. The fan power needed for the ventilation shall also be discounted in proportion of the ratio of the ventilation air flow to the cooling air flow.

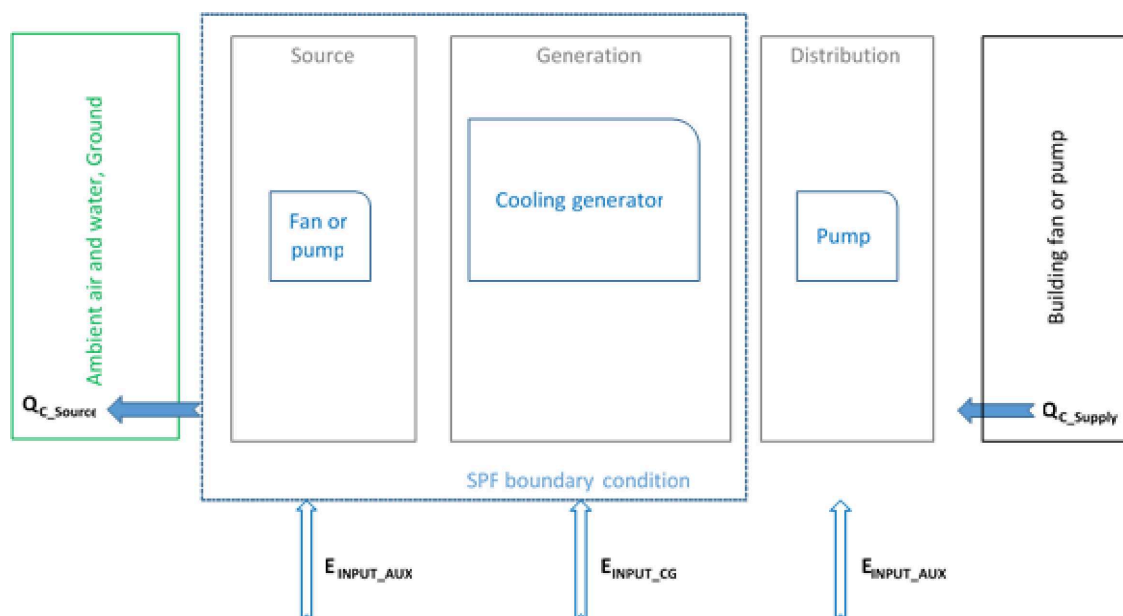


Figure 1 Illustration of SPF boundary conditions for cooling generator using standard SPF and district cooling (and other large cooling systems using measured SPF), where E_{INPUT_AUX} is the energy input to fan and/or pump and E_{INPUT_CG} the energy input to the cooling generator

In the case of air based cooling systems with internal cold recovery, the cooling supply due to the cold recovery shall not be accounted. The fan power needed for the cold recovery performed by the heat exchanger shall be discounted in proportion of the ratio of the pressure losses due to the cold recovery heat exchanger to the total pressure losses of the air based cooling system.

3.4. Calculation using standard values

A simplified method may be used for individual cooling systems of less than 1.5 MW capacity, for which a standard SPF value is available, to estimate the total cooling energy supplied.

Under the simplified method, the cooling energy supplied by the cooling system (Q_{c_supply}) is the nominal cooling capacity (P_c) multiplied by the number of equivalent full load hours (EFLH). A single Cooling Degree Days (CDD) value may be used for a whole country, or distinct values for different climate zones provided that nominal capacities and SPFs are available for these climate zones.

The following default methods may be used to compute EFLH:

- for space cooling in the residential sector: $EFLH = 96 + 0.85 * CDD$
- for space cooling in the tertiary sector: $EFLH = 475 + 0.49 * CDD$
- for process cooling: $EFLH = \tau_s * (7300 + 0.32 * CDD)$

⁽¹⁴⁾ Commission Decision of 1 March 2013 establishing the guidelines for Member States on calculating renewable energy from heat pumps from different heat pump technologies pursuant to Article 5 of Directive 2009/28/EC of the European Parliament and of the Council (OJ L 62, 6.3.2013, p. 27).

Where:

τ_s is an activity factor to account for the operation time of the specific processes (e.g. all year long $\tau_s = 1$, not on weekends $\tau_s = 5/7$). There is no default value.

3.4.1. Calculation using measured values

Systems for which no standard values exist, as well as cooling systems larger than 1.5 MW capacity and district cooling systems, shall calculate their renewable cooling based on the following measurements:

Measured energy input: The measured energy input includes all energy sources for the cooling system, including any cooling generator, i.e. electricity, gas, heat etc.. It includes also auxiliary pumps and fans used in the cooling system but not for the distribution of cooling to a building or a process. In case of air-based cooling with ventilation function, only the additional energy input due to cooling shall be included in the energy input of the cooling system.

Measured cooling energy supply: The cooling energy supply shall be measured as the output from the cooling system and subtracted any cold losses in order to estimate the net cooling energy supply to the building or process that is the end-user of the cooling. The cold losses include losses in a district cooling system and in the cooling distribution system in a building or an industrial site. In case of air-based cooling with ventilation function, the cooling energy supply shall be net of the effect of fresh air introduction for ventilation purposes.

The measurements need to be carried out for the specific year to be reported i.e. all energy input and all cooling energy supply for the whole year.

3.4.2. District cooling: additional requirements

For district cooling systems the net cooling supply at customer level shall be accounted when defining the net cooling supply, denoted as $Q_{C_Supply_net}$. Thermal losses occurring in the distribution network (Q_{C_LOSS}) shall be deducted from the gross cooling supply ($Q_{C_Supply_gross}$) as follows:

$$Q_{C_Supply_net} = Q_{C_Supply_gross} - Q_{C_LOSS}$$

3.4.2.1. Division in subsystems

District cooling systems can be divided in subsystems, which comprise at least one cooling generator or free cooling system. This requires the measurement of the cooling energy supply and of the energy input for each sub-system as well as the allocation of cold losses per sub-system as follows:

$$Q_{C_Supply_net_i} = Q_{C_Supply_gross_i} \times \left(1 - \frac{Q_{C_LOSS}}{\sum_{i=1}^n Q_{C_Supply_gross_i}} \right)$$

3.4.2.2. Auxiliaries

When dividing a cooling system into subsystems, the auxiliaries (e.g. controls, pumps and fans) of the cooling generator(s) and/or free cooling system(s) shall be included in the same subsystem(s). Auxiliary energy corresponding to cooling distribution inside the building, e.g. secondary pumps and terminal units (e.g. fan coils, fans of air handling units) are not accounted for.

For auxiliaries which cannot be allocated to a specific subsystem, for instance district cooling network pumps which deliver the cooling energy supplied by all cooling generators, their primary energy consumption shall be allocated to each cooling subsystem in the proportion of the cooling energy supplied by the cooling generators and/or the free cooling systems of each subsystem, in the same way as with cold losses in the network, as follows

$$E_{INPUT_AUX_i} = E_{INPUT_AUX1_i} + E_{INPUT_AUX2} * \frac{Q_{C_Supply_net_i}}{\sum_{i=1}^n Q_{C_Supply_net_i}}$$

where:

$E_{INPUT_AUX1_i}$ is the auxiliary energy consumption of subsystem 'i';

E_{INPUT_AUX12} is the auxiliary energy consumption of the entire cooling system, which cannot be allocated to a specific cooling subsystem.

3.5. **Calculation of renewable energy quantity for cooling for the overall renewable shares and for the heating and cooling renewable energy shares**

For the calculation of the overall renewable energy shares, the renewable energy quantity for cooling shall be added both to the numerator 'gross final consumption of energy from renewable sources' and to the denominator 'gross final consumption of energy'.

For the calculation of the heating and cooling renewable energy shares the renewable energy quantity for cooling shall be added both to the numerator 'gross final consumption of energy from renewable sources for heating and cooling' and to the denominator 'gross final consumption of energy for heating and cooling'.

3.6. **Guidance on the development of more accurate methodologies and calculations**

It is envisaged and encouraged that Member States do their own estimations for both SPF and EFLH. Any such national/regional approaches should be based on accurate assumptions, representative samples of sufficient size, resulting in a significantly improved estimate of renewable energy compared to that obtained using the methodology set out in this Delegated Act. Such improved methodologies may be based on detailed calculation based on technical data taking into account, among other factors, year of installation, quality of installation, compressor type and machine size, operation mode, distribution system, cascading of generators and the regional climate. Member States that use alternative methodologies and/or values shall submit them to the Commission together with a report describing the method and data used. The Commission will, if necessary, translate the documents and publish them on its transparency platform.'

COMMISSION DELEGATED REGULATION (EU) 2022/760**of 8 April 2022****amending Delegated Regulation (EU) 2021/2306 as regards the transitional provisions for certificates of inspection issued in Ukraine**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 ⁽¹⁾, and in particular Article 38(8), point (a)(ii), Article 46(7), point (b), and Article 57(3) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2021/2306 ⁽²⁾ lays down rules on the official controls in respect of organic products and in-conversion products intended for import into the Union and on the certificate of inspection.
- (2) In accordance with Article 5(3), first subparagraph, of Delegated Regulation (EU) 2021/2306, the certificate of inspection is to be issued in TRACES and is to bear a qualified electronic seal. The transitional provision laid down in Article 11(1) of that Regulation provides that, by way of derogation from Article 5(3), first subparagraph, of that Regulation, until 30 June 2022, the certificate of inspection may be issued on paper after being completed in TRACES and printed. The process for the enrolment of control authorities and control bodies for the qualified electronic seal is on-going.
- (3) Russia's invasion of Ukraine on 24 February 2022 constitutes an exceptional and unprecedented challenge for the control authorities and control bodies that have been recognised for the purpose of the export of organic products from Ukraine to the Union. In Ukraine, the postal services are also disrupted.
- (4) Thus, an authorised person located in Ukraine of a control authority or a control body that is not yet equipped with a qualified electronic seal cannot issue electronic certificates of inspection in accordance Article 5(3), first subparagraph, of Delegated Regulation (EU) 2021/2306. On the other hand, that authorised person cannot make use of the possibility to issue the certificate of inspection on paper, in accordance with the transitional provision in Article 11(1) of that Regulation either, given that the postal services in Ukraine are currently disrupted.
- (5) In this context, it is therefore necessary to allow an authorised person located in Ukraine of a control authority or a control body that is not yet equipped with a qualified electronic seal, to produce and submit in TRACES the certificate of inspection in an electronic format without the application of a qualified electronic seal in box 18 of that certificate. Similarly, it is necessary to allow the competent authorities in the Member States at border control posts or points of release for free circulation to carry out import controls on such certificates of inspection and to endorse them in TRACES with a qualified electronic seal or on paper with the hand signature of the authorised person after being completed in TRACES and printed.
- (6) Delegated Regulation (EU) 2021/2306 should therefore be amended accordingly.
- (7) Due to Russia's invasion of Ukraine and the immediate reaction necessary, this Regulation should apply retroactively from 24 February 2022,

⁽¹⁾ OJ L 150, 14.6.2018, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2021/2306 of 21 October 2021 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council with rules on the official controls in respect of consignments of organic products and in-conversion products intended for import into the Union and on the certificate of inspection (OJ L 461, 27.12.2021, p. 13).

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2021/2306

Article 11 of Delegated Regulation (EU) 2021/2306 is amended as follows:

(1) the following paragraph 1a is inserted:

'1a. By way of derogation from Article 5(3), first subparagraph, until 30 June 2022, an authorised person located in Ukraine of a control authority or a control body which is not equipped with a qualified electronic seal may produce and submit in TRACES the certificate of inspection in electronic format without the application of a qualified electronic seal in box 18 thereof. Such certificate shall be issued before the consignment to which it relates leaves the third country of export or of origin.'

(2) in paragraph 2, the following point (c) is added:

'(c) in case the certificate of inspection is produced and submitted in TRACES in electronic format in accordance with paragraph 1a, that certificate shall be endorsed in TRACES with a qualified electronic seal or on paper with the hand signature of the authorised person of the competent authority at the border control post or at the point of release for free circulation, in boxes 23, 25 and 30, as appropriate, after being completed in TRACES and printed.'

Article 2

Entry into force and application

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 24 February 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 8 April 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/761**of 13 May 2022****approving non-minor amendments to the product specification for a name entered in the register of protected designations of origin and protected geographical indications ('Agneau du Périgord' (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined France's application for the approval of amendments to the specification for the protected geographical indication 'Agneau du Périgord', registered under Commission Regulation (EU) No 1163/2010 ⁽²⁾.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ⁽³⁾ as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*The amendments to the product specification published in the *Official Journal of the European Union* regarding the name 'Agneau du Périgord' (PGI) are hereby approved.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 May 2022.

For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Regulation (EU) No 1163/2010 of 9 December 2010 entering a name in the register of protected designations of origin and protected geographical indications [Agneau du Périgord (PGI)] (OJ L 326, 10.12.2010, p. 64).

⁽³⁾ OJ C 42, 27.1.2022, p. 3.

DECISIONS

COUNCIL DECISION (EU) 2022/762

of 12 May 2022

on the position to be taken on behalf of the European Union within the Port State Control Committee of the Paris Memorandum of Understanding on Port State control as regards the Russian Federation's membership of the Paris Memorandum of Understanding

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Memorandum of Understanding on Port State control ('Paris MOU') was signed in Paris on 26 January 1982 and took effect on 1 July 1982. The Paris MOU has 27 maritime authorities as members, namely Belgium, Bulgaria, Canada, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovenia, Spain, Sweden and the United Kingdom. The Union is not a member of the Paris MOU.
- (2) Directive 2009/16/EC of the European Parliament and of the Council ⁽¹⁾ sets out the Union's legal regime on port State control, reformulating and reinforcing the previous Union legal acts in this field, in place since 1995. The Union's legal regime on port State control is based on the Paris MOU.
- (3) As regards the Member States, Directive 2009/16/EC effectively brings the procedures, tools and activities of the Paris MOU within the scope of Union law. By virtue of that Directive, certain decisions taken by the Port State Control Committee ('PSCC') established pursuant to Section 7.1 of the Paris MOU become binding on the Member States.
- (4) In its conclusions of 24 February 2022, the European Council condemned in the strongest possible terms the Russian Federation's unprovoked and unjustified military aggression against Ukraine. In its conclusions of 24-25 March 2022, the European Council declared that the Russian Federation's war of aggression against Ukraine grossly violates international law and demanded that the Russian Federation immediately stop its military aggression in the territory of Ukraine.
- (5) In the context of the Russian Federation's military aggression against Ukraine, on 14 March 2022 the Paris MOU Secretariat received a letter from the Ukrainian Minister of Infrastructure. In that letter, the Paris MOU was requested not to unduly detain Ukraine-flagged vessels following port State control inspections, to exclude the Russian Federation from the Paris MOU and not to recognise certificates issued on behalf of the Russian Federation's Maritime Administration.

⁽¹⁾ Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131, 28.5.2009, p. 57).

- (6) In relation to the request not to unduly detain Ukrainian vessels, on 2 March 2022 the Paris MOU issued PSCircular 101 (Guidance on repatriation of seafarers due to situation in Ukraine) which addresses this matter. PSCircular 101 informs member authorities that there is a need to apply flexibility under the current circumstances, including with respect to seafarer repatriation, the Maritime Labour Convention, 2006 certificates issued under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 and medical certificates. If developments make it necessary, the Paris MOU can consider further adjustments to PSCircular 101. This position should be communicated to the Ukrainian authorities.
- (7) In relation to the request regarding the membership of the Russian Federation of the Paris MOU, it should be noted that the Russian Federation has been excluded from access to and use of the THETIS port State control targeting tool and inspection database provided for under Article 24 of Directive 2009/16/EC. This means that the Russian Federation's participation in the work of the Paris MOU has already been severely limited and without access to that database the Russian Federation cannot effectively discharge its obligations under the Paris MOU.
- (8) Neither the Paris MOU nor any of the policy instructions contain any procedure or mechanism to remove members from the Paris MOU. Apart from exclusion from the Paris MOU, an alternative is to suspend membership until further notice. While the immediate effect of suspension would be similar to exclusion, it is less permanent. However, no provision has been included in the Paris MOU for suspension either. Suspension would allow for further consideration of the need for complete exclusion from the Paris MOU and it could be reversed if the circumstances change.
- (9) The Union, as a global actor, is at the centre of efforts within the United Nations (UN) and other multilateral fora and processes to hold the Russian Federation accountable for their unprovoked and unjustified military aggression against Ukraine, to stop the military aggression in the territory of Ukraine and to ensure a return to full respect for the sovereignty, independence, and territorial integrity of Ukraine within its internationally recognised borders. The Russian Federation's unprovoked and unjustified military aggression against Ukraine is a serious violation of Article 2(4) of the UN Charter, which prohibits the threat or use of force against the territorial integrity or political independence of any State.
- (10) In light of the above, in view of the gravity of the situation and for as long as the Russian Federation does not abide by the principles of the UN Charter, nor complies with its international obligations, it is appropriate to suspend the Russian Federation's Membership of the Paris MOU in accordance with Article 62(3) of the Vienna Convention on the Law of Treaties.
- (11) Cooperation within the PSCC with other third country members of the Paris MOU, namely Canada, Iceland, Norway and the United Kingdom, is essential in reaching a decision to suspend the Russian Federation's membership of the Paris MOU.
- (12) In relation to the request not to recognise certificates issued by the Russian Federation's Maritime Administration, such certificates are issued in accordance with international conventions. As the Russian Federation remains a member of the International Maritime Organisation, the Paris MOU does not have competence to derecognise such certificates. This position should be communicated to the Ukrainian authorities.
- (13) It is appropriate to establish the position to be taken on the Union's behalf within the PSCC as regards the Russian Federation's membership of the Paris MOU as the decisions could affect Union law, namely Directive 2009/16/EC.
- (14) The Union's position should be expressed by the Member States of the Union that are members of the Paris MOU, acting jointly in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Port State Control Committee ('PSCC') of the Paris Memorandum of Understanding on Port State Control ('Paris MOU') as regards the Russian Federation's membership of the Paris MOU shall be the following:

- (a) to agree with the approach set out in paragraph 5 of PSCC document PSCC55/11.1 regarding the detention of Ukrainian flagged vessels in Paris MOU ports;
- (b) to actively support the suspension of the Russian Federation from the Paris MOU;
- (c) to strive to reach consensus between Paris MOU members other than the Russian Federation on the suspension of the Russian Federation from the Paris MOU until further notice;
- (d) to agree with the approach set out in paragraph 7 of PSCC document PSCC55/11.1 regarding the derecognition of statutory certificates issued by the Russian Federation.

Article 2

The position referred to in Article 1 is to be expressed by the Member States of the Union that are members of the Paris MOU, acting jointly in the interest of the Union.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 12 May 2022.

For the Council
The President
J.-Y. LE DRIAN

COMMISSION DECISION (EU) 2022/763**of 21 December 2021****on the State aid SA.60165- 2021/C (ex 2021/N) which Portugal is planning to implement for TAP SGPS***(notified under document C(2021) 9941)***(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, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to the decision by which the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, in respect of the aid SA.60165 (2021/C) ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the provision cited above ⁽²⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 10 June 2021, Portugal notified its plans to grant State aid in the amount of EUR 3,2 billion, as restructuring aid, under the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ('R&R Guidelines') ⁽³⁾ to the economic unit, currently under the sole control of the Portuguese State, comprising Transportes Aéreos Portugueses SGPS S.A. ('TAP SGPS') and its current sister company Transportes Aéreos Portugueses, S.A. ('TAP Air Portugal'), including all their controlled subsidiaries (recitals 8 to 14). The notification was preceded by a rescue loan to TAP SGPS in the amount of EUR 1,2 billion, to which the Commission raised no objections in a decision of 10 June 2020 (the 'initial rescue aid decision') ⁽⁴⁾. Portugal put into effect and disbursed the rescue aid to TAP SGPS in July 2020 and submitted a restructuring plan for TAP SGPS on 10 December 2020. An updated version of the restructuring plan and other supporting documents accompanied the notification.
- (2) On 19 May 2021, the General Court annulled the initial rescue aid decision but suspended the effects of the annulment pending the adoption of a new decision by the Commission ⁽⁵⁾. On 16 July 2021, the Commission adopted a new decision raising no objections to the rescue aid ⁽⁶⁾ that attracted another action for annulment thereof ⁽⁷⁾.

⁽¹⁾ Commission Decision C(2021) 5278 final of 16 July 2021 in case SA.60165 (OJ C 317, 6.8.2021, p. 13).

⁽²⁾ OJ C 317, 6.8.2021, p. 13.

⁽³⁾ Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

⁽⁴⁾ Commission decision of 10 June 2020 in case SA. 57369 (2020/N) – COVID-19 – Portugal – Aid to TAP (OJ C 228, 10.7.2020, p. 1).

⁽⁵⁾ Judgment of 19 May 2021, Ryanair DAC v Commission, T-465/20, EU:T:2021:284. The General Court found that the Commission failed to state reasons in accordance with Article 296 TFEU in its initial rescue aid decision, in particular omitting to indicate whether TAP SGPS belonged to a group within the meaning of point 22 of the R&R Guidelines. The General Court ordered the effects of the annulment of that decision to be suspended for a period not exceeding two months from the date of the judgment if the Commission decided to adopt a new decision under Article 108(3) TFEU, and for a reasonable further period if the Commission decided to initiate the procedure under Article 108(2) TFEU.

⁽⁶⁾ Commission Decision of 16 July 2021 in case SA 57369 – Rescue aid to TAP SGPS (OJ C 345, 27.8.2021, p. 1).

⁽⁷⁾ Case T-743/21 Ryanair v Commission, currently pending before the General Court.

- (3) By letter dated 16 July 2021, the Commission informed Portugal that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (‘TFEU’) in respect of the restructuring aid (the ‘opening decision’). Portugal provided comments on that decision by letters dated 19 August and 27 August 2021.
- (4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽⁸⁾. The Commission called on interested parties to submit their comments within one month of the publication.
- (5) The Commission received 39 comments from interested parties within the time limit that expired on 6 September 2021. It forwarded them to Portugal, which was given the opportunity to respond. By letter dated 5 October 2021, Portugal submitted comments on the observations from interested parties.
- (6) The Commission requested additional information on the restructuring plan and supporting restructuring aid and funding by letter of 29 October 2021, to which Portugal replied on 16 November 2021. The Commission and the Portuguese authorities held videoconferences relating to the competition measures envisaged in the notification and the Commission also requested additional information on the competitive structure of the market for passenger air transport services to and from Lisbon airport on 25 October 2021, including updated information about the slot holdings of the air carriers operating at the airport. Portugal replied on 2 and 8 November 2021 and submitted further information on 16, 25, 27, 30 November 2021 and, eventually, on 3 December 2021.
- (7) Portugal agreed exceptionally to waive the rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958 ⁽⁹⁾ and to have this decision adopted and notified pursuant to Article 297 TFEU in English.

2. DESCRIPTION OF THE AID

2.1. Beneficiary: ownership structure and operating subsidiaries

- (8) The beneficiary of the restructuring aid is the economic unit, currently under the sole control of the Portuguese State (recitals 11 and 12), comprising TAP SGPS and its current sister company TAP Air Portugal, including all their controlled subsidiaries. TAP SGPS is a holding company incorporated in 2003, whereas TAP Air Portugal was created in 1945 as the Portuguese flagship airline. By 2017, TAP SGPS was jointly controlled by Parpública – Participações Públicas, SGPS, S.A. (‘Parpública’), a public undertaking managing holdings of the Portuguese State, and by two companies, HPGB SGPS, S.A. ⁽¹⁰⁾ (‘HPGB’) and DGN Corporation (‘DGN’), the latter two operating via a consortium Atlantic Gateways SGPS, Lda. (‘AGW’) ⁽¹¹⁾. When the Commission adopted the initial rescue aid decision, Parpública held 50 % and AGW 45 % of TAP SGPS’ shares, while the remaining 5 % of shares were held by the employees of TAP SGPS. That ownership situation changed in the context of the implementation of the ongoing rescue and restructuring process of TAP SGPS.
- (9) When the rescue and restructuring process of TAP SGPS started, TAP Air Portugal was fully owned by TAP SGPS and was its largest subsidiary, accounting for around 98 % of TAP SGPS’ turnover. The Portuguese authorities explain that until June 2020, no changes of the shareholder structure of TAP SGPS were contemplated, as all shareholders of the beneficiary agreed on the need for rescue aid to maintain the activity of TAP Air Portugal and the viability of TAP SGPS in the long run.

⁽⁸⁾ Cf. footnote 1.

⁽⁹⁾ Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

⁽¹⁰⁾ HPGB, SGPS, S.A. is located in Lisbon and is part of the Management of Companies and Enterprises Industry. HPGB, SGPS, S.A. has [...] employees at this location. There are [...] companies in the HPGB, SGPS, S.A. corporate family.

⁽¹¹⁾ For more details concerning HPGB, DGN and the AGW consortium, see recitals 11 to 15 of the Commission decision of 16 July 2021 in case SA.57369, referred to in footnote 6.

- (10) The Portuguese authorities only considered issue of the control of TAP SGPS in early July 2020, in the context of a deadlock in negotiations with AGW concerning the implementation of the rescue loan agreement. [...] Faced with a near financial collapse of TAP SGPS, which was urging the implementation of the rescue aid, the Portuguese authorities decided to conclude a private agreement with the shareholders of AGW in order to buy out the shareholdings of DGN, [...]. [...], the Portuguese Ministry of the Treasury (Direcção-Geral do Tesouro e Finanças ('DGTF')) acquired directly TAP SGPS' shares representing 22,5 % of the share capital of TAP SGPS previously held by AGW. As a consequence, the Portuguese State assumes today, directly and indirectly, a majority position corresponding to 72,5 % of the share capital and respective economic rights of TAP SGPS (50 % through Parública and 22,5 % through DGTF). Previously HPGB held a stake in the AGW consortium, not directly in TAP SGPS, but having acquired AGW's stake, HPGB currently directly holds a 22,5 % stake in TAP SGPS.
- (11) The Portuguese authorities confirm that according to the shareholding agreement entered into by the Portuguese Republic via DGTF, [...]. [...] ⁽¹²⁾, [...] ⁽¹³⁾. The control over 72,5 % of the share capital, [...], confers sole control to the Portuguese State over TAP SGPS.
- (12) Likewise, since the granting of the rescue aid, TAP SGPS' shareholding in TAP Air Portugal changed when the Portuguese State via DGTF subscribed to TAP Air Portugal's capital increase of EUR 462 million ⁽¹⁴⁾. As of 24 May 2021, the State, through DGTF, holds directly approximately 92 % of the share capital of TAP Air Portugal. TAP SGPS currently holds the remaining 8 %. TAP Air Portugal is the sole shareholder of TAP Logistics Solutions, S.A., a company incorporated on 30 December 2019 to operate cargo and mail activities.
- (13) TAP SGPS owns stakes in the following companies that are active in the provision of air transport related services in Portugal and other countries:
- 100 % in Portugália Airlines– Companhia Portuguesa de Transportes Aéreos, S.A. ('Portugalia');
 - 100 % in U.C.S.– Cuidados Integrados de Saúde, S.A., a company active in healthcare services, whose main client is also TAP Air Portugal;
 - 100 % in TAPGER Sociedade de Gestão e Serviços, S.A. and 99,83 % in Aeropar Participações Lda., both acting as holdings;
 - 78,72 % in TAP Manutenção e Engenharia Brasil, S.A ('M&E Brasil'), active in aircraft maintenance for TAP Air Portugal and for third parties;
 - 49 % (43.9 % directly and 5,1 % via Portugalia) in SPdH–Serviços Portugueses de Handling, S.A. (also known as Groundforce Portugal), a company operating in the airport ground handling sector in Portugal; and
 - 51 % in CATERINGPOR– Catering de Portugal, S.A., active in the provision of catering for aviation, whose main client is TAP Air Portugal.
- (14) The above described changes in the control during the rescue and restructuring process are notwithstanding that for the purposes of this Decision, any reference to the beneficiary undertaking that is favoured by the restructuring aid includes TAP SGPS and all its subsidiaries when its rescue and restructuring process started as of June 2020, including TAP Air Portugal, unless stated otherwise. Any reference to TAP Air Portugal includes all the air transport subsidiaries of TAP SGPS, including Portugalia, unless stated otherwise.

⁽¹²⁾ [...].

⁽¹³⁾ [...].

⁽¹⁴⁾ Commission decision C(2021) 2991 final of 23 April 2021 in case SA.62304 (2021/N) – Portugal – COVID 19: Damage compensation to TAP Portugal (OJ C 240, 18.6.2021, p. 1).

2.2. Beneficiary: main activities in the aviation sector

- (15) Within the beneficiary economic unit, TAP Air Portugal is active in the air transport of passengers and cargo. In 2019, prior to its restructuring, TAP Air Portugal operated a fleet of 108 aircraft, including aircraft operated under wet-lease agreements, and served 92 destinations in 38 countries, carried over 17 million passengers and operated over 130 000 flights. Those flights were notably on regular routes from airports such as Lisbon, Porto, Faro and four islands in the Azores and Madeira and also to international destinations, including [...] airports in Europe (outside Portugal), [...] destinations in Brazil ⁽¹⁵⁾, [...] in Africa ⁽¹⁶⁾ and [...] in North America in 2019 ⁽¹⁷⁾. TAP Air Portugal has mainly structured its operations around Lisbon airport that serves as its main hub.
- (16) Portugal submits that TAP Air Portugal is a major provider of connectivity for passengers and cargo to, from and within Portugal. In 2019, TAP Air Portugal was the only airline operating [...] of its [...] routes in summer season and [...] out of [...] routes in winter season. In particular, TAP Air Portugal plays a crucial role for the connectivity of Portugal and countries with the Portuguese-speaking diaspora. TAP Air Portugal is also considered a pillar of the Portuguese economy, in particular due to its contribution to the development of the tourism industry in Portugal.
- (17) Other airlines, in particular European airlines, provide air passenger transport or cargo services to Portugal, such as Ryanair as the second-largest airline operating in Portugal, Wizzair and easyJet, Lufthansa Group's airlines (including Brussels Airlines and Austrian Airlines), Air France-KLM, Finnair, and IAG's airlines (in particular, Vueling and Iberia).

2.3. Origin of the difficulties of the beneficiary and financial situation

- (18) The current situation of difficulty of the beneficiary has been caused by issues of both solvency and liquidity, which were highly aggravated by an acute liquidity crisis provoked by the COVID-19 pandemic.
- (19) First, between 2006 and 2015, TAP SGPS accumulated EUR [...] million [...]. Considering the weight of the airline business on the revenues of TAP SGPS, [...].
- (20) TAP SGPS also incurred extraordinary operational disruption costs in recent years that hindered the growth of profitability and competitiveness. [...] EUR [...] million [...] ⁽¹⁸⁾ [...], [...] EUR [...] million [...], driven by a high level of flight delays and cancellations, as well as very high foreign currency exchange exposure due to business in Brazil and Angola.
- (21) Second, considering that TAP Air Portugal earned around [...] % of the revenues of TAP SGPS, the air carrier's performance had a major impact on the overall financial situation of its holding parent. After TAP SGPS' privatisation in 2015 ⁽¹⁹⁾, TAP Air Portugal launched a transformation process and had been on a growth trajectory in operational terms presenting [...] % revenue growth until 2019. The transformation process targeted to [...].
- (22) The actions pertaining to the transformation process mainly took place in 2018 and 2019, namely with the delivery of [...] fuel efficient A339 aircraft followed by the transformation of product, sales and tools, improvement of procurement and systems. On the operational side, TAP Air Portugal increased its operations on high value markets, such as Brazil and North America. The transformation process, particularly new fleet phase-ins and phase-outs executed until 2019, contributed to reduce overall Cost of Available Seat Kilometre (CASK) ⁽²⁰⁾ levels. However, it also entailed high one-off costs related [...]. In addition, TAP Air Portugal continued to be less competitive than its peers in terms of labour costs and efficiency.

⁽¹⁵⁾ [...].

⁽¹⁶⁾ [...].

⁽¹⁷⁾ [...].

⁽¹⁸⁾ Irregular Operations Costs are identified by an airline or ground handler acting on behalf of an airline when a disruption on the day of travel or the day prior to travel causes the customer to not be able to use the flight(s) ticketed.

⁽¹⁹⁾ The privatisation of 61 % TAP SGPS share capital was executed in 2015. In 2017, the Portuguese State re-purchased part of the share capital from AGW, increasing its participation to 50 %.

⁽²⁰⁾ Cost of Available Seat Kilometre is used to measure the unit cost expressed in cash value [EUR cent per seat] to operate each seat for every kilometre.

- (23) On 2 December 2019, TAP Air Portugal closed an offering of EUR 375 million of senior unsecured bonds with a five-year maturity serving regular annual coupons of 5,625 % and effective interest of 5,75 % ⁽²¹⁾. The issuance aimed at meeting general corporate expenditure and at partly repaying debt and extending its average maturity. The issuance attracted preliminary ratings of BB- (Standard & Poor's) and B2 (Moody's), i.e., below 'investment grade' rating. Several months before, on 24 June 2019, TAP Air Portugal had issued EUR 200 million of bonds with four-year maturity serving regular annual coupons of 4,375 % ⁽²²⁾. Whilst the amounts and conditions of the two issuances in June and December 2019 differ, the interest shown in those issuances indicate that the beneficiary could access finance on the market before the COVID-19 outbreak at reasonable conditions.
- (24) The transformation process was interrupted as a result of the global pandemic of COVID-19 and the economic crisis that followed, at a time when TAP Air Portugal had not yet been able to considerably reduce its costs, in particular labour costs, compared to competitors, especially low cost airlines.
- (25) As a consequence, in light of the unprecedented government travel restrictions and quarantine orders due to the COVID-19 outbreak, on 20 March 2020, the rating agency Standard & Poor's lowered the rating of TAP Air Portugal to B- long-term rating and an outlook on short-term liquidity rating of CCC+. In the same announcement, Standard & Poor's assigned recovery prospects of 45 % to the EUR 375 million bonds issue. On 19 March 2020, the rating agency Moody's also downgraded the probability of default and corporate ratings of TAP Air Portugal to Caa1-PD and Caa1, respectively. On 28 May 2020, the annual yield to maturity (December 2024) of the EUR 375 million senior notes issued in December 2019 was 9,45 % on the secondary market. In other words, at that stage, buyers of those bonds issued by TAP Air Portugal required a discount on the nominal value of the security, so as to obtain a return of 9,45 %, to accept holding them to maturity. The information provided by the Portuguese authorities corroborates [...] of the financial situation of TAP Air Portugal and the beneficiary [...] ⁽²³⁾, [...].
- (26) The difficulties of TAP SGPS and of TAP Air Portugal cumulated and led to a sharp deterioration of the equity position. At the end of 2019, TAP SGPS registered a negative equity of EUR [...] million, which grew to EUR [...] billion in 2020. TAP Air Portugal also had a negative equity position in 2020 (EUR [...] billion).

2.4. Description of the restructuring plan and restructuring aid

- (27) The restructuring aid supports the implementation of the restructuring plan that covers the period from 2020 until the end of 2025 (the 'restructuring period'). The plan covers the economic unit, currently under the sole control of the Portuguese State (recitals 11 and 12), comprising TAP SGPS and its current sister company TAP Air Portugal, including all their controlled subsidiaries.

2.4.1. The restructuring of operations

- (28) The restructuring plan aims to address the root causes of TAP SGPS' difficulties and turn the company around by 2025. Due to the weight of TAP Air Portugal in the TAP SGPS's balance sheet when it entered into difficulties for the activities covered by the restructuring plan, most operational restructuring measures reducing costs and strengthening revenue and projections provided in the restructuring plan refer to TAP Air Portugal. The restructuring plan includes measures that started being implemented as of June 2020 or that will be implemented and that relate to four pillars: (i) focus on core strategy (ii) adjustment of capacity; (iii) improvement of operating costs and (iv) enhancement of revenues. Subsections 2.4.1.1 to 2.4.1.4, describe each pillar of TAP's restructuring plan as last updated.

⁽²¹⁾ Statement: 'TAP Announces the pricing of EUR 375 million 5,625 % senior notes due 2024' on 22.11.2019. Demand from investors allowed the issuance to eventually raise more money (EUR 75 million over EUR 300 initial) and with lower pricing (20 bp) than initially envisaged.

⁽²²⁾ Reference ISIN PTTAPBOM0007, TAP-SGPS 19/23.

⁽²³⁾ Earnings before interest, taxes, depreciation, amortisation, and restructuring or rent costs. EBITDAR is a metric used primarily to analyse the financial health and performance of companies that have gone through restructuring within the past year.

2.4.1.1. Focus on core strategy

- (29) The logic of the restructuring plan is to focus on the core activity, namely the aviation business carried out through TAP Air Portugal and Portugalia, while gradually shifting away from and divesting non-core businesses. Within that logic, the restructuring plan envisages that TAP SGPS will progressively abandon all other revenue-generating service activities which it has been supplying on the market by selling, divesting or discontinuing three lines of business, as follows. First, TAP SGPS plans to divest its stake in the Brazilian aircraft maintenance subsidiary, M&E Brasil, [...]. The second divestiture concerns the [...] in the ground handling services provider Groundforce, [...]. Third, TAP SGPS plans to divest its stake in the catering services provider, Cateringpor, [...].

2.4.1.2. Adjustment of capacity

- (30) Measures aimed at adjustment of TAP Air Portugal's capacity mainly consist in right-sizing TAP Air Portugal's fleet and optimizing TAP Air Portugal's network. The fleet plan envisages [...]. Overall, in 2025, TAP Air Portugal's fleet plan will lead to a more homogeneous fleet composition and to a reduction in operating costs, due to the lower fuel consumption and maintenance requirements of the new aircraft.
- (31) With regard to network optimisation, the restructuring plan increases the role of Lisbon as connectivity hub, which is crucial given the small size of TAP Air Portugal's domestic market. Operating a connectivity hub will be beneficial to the strategy [...]. [...] Finally, network optimisation measures include a more cost-efficient route-aircraft match, the reduction of loss-making routes and routes with low connectivity value. For example, in 2020 TAP Air Portugal operated [...] fewer destinations than in 2019 (from [...] to [...]) and suspended indefinitely the opening of [...] additional routes.
- (32) With respect to TAP Air Portugal's foothold at Lisbon airport, the decrease in TAP Air Portugal's fleet reduces its ability to provide passenger air transport services without, however, calling into question the significant market position that it currently has and is expected to have at the end of the restructuring period at its Lisbon hub. ⁽²⁴⁾ There are two main reasons for the preservation of TAP Air Portugal's significant market position at Lisbon airport until 2025:
- (a) First, as part of the restructuring plan, TAP Air Portugal intends to further concentrate on its core hub-and-spoke operations at Lisbon airport. ⁽²⁵⁾ As a result, the market positions and competitive structure at the airport are not expected to materially change, although TAP Air Portugal has reduced its slot holding by [...] % ([...] daily slots) in Winter 2021/2022 IATA Season compared to Winter 2019/2020 IATA Season and both the next largest slot holders (Ryanair and easyJet) have preliminarily managed to increase their slot holding for Summer 2022 IATA Season compared to Summer 2019 IATA Season. ⁽²⁶⁾ More specifically, information submitted by Portugal shows that the slot holding of TAP Air Portugal would represent [45-55] % of the total capacity of Lisbon airport in Summer 2022 IATA Season and for the following IATA Seasons, to be compared to [10-20] % and [5-10] % for respectively Ryanair and easyJet. In addition, TAP Air Portugal would deploy by far the largest fleet at Lisbon airport with [90-100] aircraft throughout the restructuring period. According to Portugal's estimates, Ryanair would base seven aircraft at Lisbon airport and easyJet five aircraft. ⁽²⁷⁾

⁽²⁴⁾ In line with the Commission's decisional practice, it is considered that an air carrier's slot holding at an airport and the latter's capacity constraints provide a measure of the air carrier's ability to compete on the passenger air transport market to or from that airport (see e.g. recital 209 of Commission Decision C(2021) 2488 final of 5 April 2021 in case SA.59913, OJ C 240, 18.6.2021, p. 1; recital 178 of Commission Decision C(2020) 4372 final of 25 June 2020 in case SA.57153, OJ C 397, 20.11.2020, p. 1).

⁽²⁵⁾ As an illustration, the number of aircraft based at Lisbon airport is only marginally reduced compared to the situation pre-restructuring. During the Summer 2019 IATA Season, TAP Air Portugal had an average fleet of approximately [90-100] aircraft based at Lisbon airport and [5-15] aircraft based at Porto airport. For the Summer 2022 IATA Season, the seasonal average would be approximately [90-100] aircraft based at Lisbon airport and [0-10] aircraft based at Porto airport. For the years 2023-2025, TAP Air Portugal expects to add a limited number of aircraft compared to 2022. The breakdown between the fleet based at Lisbon airport and the fleet based at Porto airport results from the allocation of the aircraft counts based on the allocation of the block hours to Lisbon or Porto operations. All aircraft of TAP Air Portugal are formally based at Lisbon airport, although not all flights operate to or from the airport. The Porto operations are resourced by rotating Lisbon-based aircraft, including overnighting them. TAP Air Portugal does not allocate aircraft to any other airport at which it operates.

⁽²⁶⁾ Portugal's submission of 16 November 2021.

⁽²⁷⁾ Portugal's submission of 8 November 2021.

- (b) Second, due the relatively strong, although fragile, recovery in passenger demand, Lisbon airport is expected to return during the restructuring period to the high level of congestion [90-100]% that it had reached before the COVID-19 pandemic following a phase of fast-paced growth of TAP Air Portugal and of low-cost carriers. As a consequence, during the whole restructuring period, the severe capacity constraints at Lisbon airport, linked notably to its single runway, are expected to act as a barrier to entry or expansion for TAP Air Portugal's competitors, with part of their demand for access to airport infrastructure services at Lisbon airport being unmet.

2.4.1.3. Reduction of costs

- (33) TAP Air Portugal envisages reducing operating costs over the course of the restructuring plan through three levers.
- (34) The first is the renegotiation of contracts with aircraft suppliers and lessors. With its suppliers, TAP Air Portugal agreed [...] period [...], as set in the initial contract, to [...], leading to a deferral of EUR [...] billion of capital expenditure until after the end of the restructuring plan. In addition, TAP Air Portugal obtained cash savings of EUR [...] million through renegotiations with lessors and EUR [...] million of cash proceeds from the sale and lease-out of aircrafts.
- (35) The second lever for operating cost reduction is a set of measures to reduce third party costs. First, TAP Air Portugal expects EUR [...] million of fuel costs savings over the business plan period (of which EUR [...] million in [...]) through the operation of newer, more energy-efficient aircraft, a better route-aircraft match and the implementation of a fuel optimisation software. Second, TAP plans to achieve EUR [...] million cost savings per year by [...]. [...]. Third, the restructuring plan envisages EUR [...] million of yearly cost savings through contract renegotiations with suppliers of certain services, [...].
- (36) The third lever driving the planned reduction of TAP Air Portugal's operating costs is the downsizing of labour costs, which TAP Air Portugal expects to yield EUR [...] million of savings per year, cumulated to approximately EUR [...] billion over the duration of the restructuring plan. To achieve those costs savings, TAP Air Portugal has taken the following measures:
- (a) Reduction of the staff headcount (in full-time equivalent (FTE)) by 1 200 in 2020 and early 2021, mainly through the non-renewal of temporary labour contracts, with a further headcount decrease of 2 000 in 2021.
- (b) In addition, measures of salary reductions, suspension of automatic salary increases, suspension of the collective bargaining agreements' clauses in order to increase productivity and reduce labour costs until 2024, which are applicable to all staff through the 'Emergency Agreements' with trade unions, as follows:
- i) a transversal reduction of 25 % for fixed salary above EUR 1 330 between 2021 and 2023 and 20 % in 2024 (that reduction is increased up to 50 % in 2021 and gradually reduced to 35 % in 2024 for pilots); cabin crews and a specific union M&E mechanics also accepted a 15 % reduction of their working hours in 2021, gradually decreasing to 5 % in 2023, so to allow 750 FTE to be financed and not reduced;
 - ii) a suspension of the automatic salary increases and automatic progressions, as well as of several remunerations components; and
 - iii) a reduction in the number of cabin crew members in each plane to minimal aircraft manufacture cabin crews' composition.
- (c) TAP Air Portugal obtained the commitment of several unions in the Emergency Agreements towards the 2025 labour cost targets. Those targets will be achieved either by signing new collective bargaining agreements (CBAs) or, in case of failure of the negotiations, by triggering the termination of the current CBAs and directing work rules to general labour law, which is considerably less restrictive than the current CBAs. [...].

2.4.1.4. Enhancement of revenues

- (37) TAP Air Portugal expects that its revenues will increase in the range of EUR [...] million per year in steady state, i.e. upon completion of the restructuring plan, but it only takes into account EUR [...] million (per year, in steady state) in the restructuring plan. Increases in revenues will mainly come [...].

2.4.2. Overview of restructuring costs and sources of financing

- (38) According to the restructuring plan, the implementation of the restructuring measures will trigger net restructuring costs that are not covered by expected operating staff-related cost reductions or other revenues, estimated at EUR [...] billion until 2025. In particular, the bulk of restructuring costs of EUR [...] billion are ascribed to the shortfall of cost coverage for the period, which need to be covered for TAP SGPS's operations not to risk a default or the inability to maintain its operating licence. The remaining restructuring costs are attributed to debt reimbursements up to the amount of EUR [...] million, acquisition of new aircraft up to the amount of EUR [...] million, and EUR [...] million labour indemnities to staff. The restructuring costs are net of aid notified before the present decision as compensation for damage to TAP Air Portugal suffered from an exceptional occurrence resulting from public restrictions on air transport pursuant to Article 107(2)(b) TFEU, as set out in the relevant Commission Decisions ⁽²⁸⁾.
- (39) According to Portugal, due to the worsened financial situation and the severe impact of the COVID-19 outbreak in the sector and in the economy, TAP SGPS is currently unable to [...] without support from the State. Nonetheless, TAP Air Portugal has secured EUR [...] million [...], guaranteed at [...] % by the Portuguese Republic, while the remaining [...] % is to be collateralised by TAP Air Portugal, [...]. Portugal considers that the implementation of substantial equity-enhancing measures should allow TAP SGPS to have access to the capital markets as from [...], in order to raise additional funds from private investors.
- (40) Once the EUR [...] million State-guaranteed financing and the capital increase are in place, as from [...] TAP Air Portugal would obtain financing without public guarantee of at least EUR [...] million [...]. The access to private market finance obviates the need for an additional liquidity buffer in the form of loan funding under State guarantee up to EUR [...] million that was included in the initial notification of restructuring aid as a contingency buffer.
- (41) The total State funding as revised on 16 November 2021, includes equity or quasi equity measures, to be implemented as follows:
- (a) EUR 1,2 billion rescue loan to be converted into equity in the same nominal value plus accrued interest of around EUR [...] million in 2021;
- (b) EUR [...] million for the portion of [...] % of EUR [...] million loan, that is guaranteed by the State at [...] %, to be granted by the end of [...] and repaid in [...] through an equity injection from the State. The loan will have an interest rate in line with the market terms applicable at the moment of granting ([...]), but will not exceed the reference rate set out pursuant to the Commission Reference Rate Communication ⁽²⁹⁾.
- (c) EUR [...] million direct equity injection to be executed by the State in [...].

⁽²⁸⁾ Commission decisions of 23 April 2021, in case SA.62304 (2021/N) – Portugal COVID 19: Damage compensation to TAP Portugal, (OJ C 240, 18.6.2021, p. 1), of 21 December 2021, in case SA.63402 (2021/N) – COVID-19 TAP Compensation II – not published – and case SA.100121 (2021/N) COVID-19 Damages compensation to TAP III. The amounts provided as compensation to TAP Air Portugal are an income which, like operating revenues, reduce the outstanding costs that cannot be covered by past and present operating revenues or own contributions from the beneficiary of the restructuring aid or, for instance, from lenders or suppliers.

⁽²⁹⁾ Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

- (42) Portugal informed that it would fund the measures directly from the State budget ⁽³⁰⁾, which requires the necessary acts of implementation, including corporate approval of modifications to share capital and loan and guarantee agreements to be concluded.
- (43) The own contribution of TAP SGPS and its various contributors to the restructuring costs will consist of around EUR [...] billion, spread over the period from 2020 to 2025, and integrating the following measures:
- (a) payment of labour restructuring indemnities – [...] – [...] EUR [...] million ([...] EUR [...] million [...]);
 - (b) third-party contributions or cost efficiency totalling EUR [...] million, of which EUR [...] million already implemented in 2021 and EUR [...] million stemming from ongoing contracts, comprising:
 - i) EUR [...] million related to airport services and catering and inflight due to contract renegotiations (i.e. new requests for proposal) for catering in outstations, supplier renegotiations for catering in LIS, renegotiation of Buy-on-Board, renegotiation of cleaning, ticketing and other airport services),
 - ii) EUR [...] million related to Fleet and monitoring and evaluation, i.e. renegotiation of buyer-furnished-equipment, materials and rebates),
 - iii) EUR [...] million related to corporate services and real estate (i.e. renegotiation of parking and media fees, advertising and legal support, etc.),
 - iv) EUR [...] million related to IT (i.e. renegotiation of licences, communication platforms, support being outsourced, etc.), and
 - v) EUR [...] million related to crew accommodation and fuel (i.e. renegotiation of transport and accommodation in the outstations);
 - (c) leases of new aircraft of at least EUR [...] million already committed, [...];
 - (d) other contributions linked to asset phase-outs and renegotiations with original equipment manufacturers, totalling around EUR [...] million, broken down as follows:
 - i) EUR [...] million, [...] EUR [...] million,
 - ii) EUR [...] million [...]
 - iii) EUR [...] million [...];
 - (e) new financing for EUR [...] million raised with or arranged by a [...], namely:
 - i) EUR [...] million loan non-guaranteed by the State and collateralised by TAP Air Portugal out of the EUR [...] million loan, and
 - ii) new debt for EUR [...] million with an instrument rating [...] EUR [...] million [...]; this new debt is contingent on liquidity needs that could arise and de facto replaces the initially notified contingent liquidity guaranteed by the State for the amount of EUR [...] million that is no longer considered to be granted as restructuring aid ⁽³¹⁾;
 - (f) payment of contingencies associated with the divestment of the subsidiary [...] EUR [...] million ([...] % [...], [...] % [...] % [...]), [...] ⁽³²⁾;
 - (g) deferrals of reimbursement of EUR [...] million outstanding nominal amount of two bonds issuances (recital 23) and syndicated loans resulting from waivers of covenants on the respective bonds and loans; existing creditors waived their right to due repayment by the beneficiary [...] ([...] EUR [...] million, [...] EUR [...] million [...] EUR [...] million); [...].
- (44) In its submissions of 10 June and 16 November 2021, Portugal notes that all these measures of own contribution are implemented or on the verge of implementation. They are based on binding commitments already agreed with the respective parties, which have been implemented with internal instructions to be executed. With regard to the labour restructuring measures, the costs savings are based on emergency agreements concluded between TAP Air Portugal, Portugalia and the employees' unions, after the suspension of the collective bargaining agreements that were previously in force.

⁽³⁰⁾ State Budget Laws approved during the years of the restructuring plan. In the case of the year 2021, see Article 166 of Law no. 75-B/2020, of 31 December 2020 that approves the State Budget for 2021.

⁽³¹⁾ [...].

⁽³²⁾ [...].

- (45) With regard to the burden sharing, Portugal submits that TAP SGPS has a total share capital of EUR [...] million, [...]. In order to ensure due burden sharing by the shareholders of the beneficiary, the total amount of share capital will be reduced to [...] in the accounts of TAP SGPS. Prior to that reduction, [...] for the purposes of the loss absorption. It should be noted that [...]. Following the capital reduction and loss absorption referred above, the Portuguese State, via DGTF, will subscribe a capital increase of approximately EUR [...] million in TAP SGPS, becoming the sole shareholder of TAP SGPS. In addition, TAP Air Portugal will be a direct aid beneficiary through a capital reduction for the purposes of loss absorption followed by an equity injection. The first aid measure of conversion into equity of the existing rescue loan of EUR 1,2 billion will only be executed after loss absorption and capital reduction.
- (46) In the notification of 10 June 2021, as updated on 16 November 2021, Portugal recognises that the amount of the own contribution is less than 50 % of the estimated restructuring costs. In that regard Portugal stresses that, in the current circumstances, with the uncertain outlook of the air transport industry, heavily affected by the direct and indirect effects of the COVID-19 outbreak, the beneficiary is [...]. Portugal informs that [...]. However, the debt funding markets were largely shut down for airlines following the onset of the COVID-19 pandemic with financial institutions in general drastically reducing their credit limits for the airline sector.
- (47) Portugal underlines the scope of the cost-saving measures borne by stakeholders of the beneficiary and maintains that such measures amount to real and actual sources of own contribution to the restructuring plan, considering that they are effective and lasting. In conclusion, according to Portugal, the level of own contribution is significant, as it corresponds to the maximum level that the beneficiary is able to undertake in the particular circumstances related to the COVID-19 pandemic.

2.4.3. Solvency and liquidity needs: prospective return to viability

- (48) Portugal provided financial projections in the baseline scenario of the restructuring plan, as notified on 10 June 2021 and modified on 16 November 2021, that refer to the core aviation activities of TAP Air Portugal (which will include Portugalia), as described in Section 2.4.1.1. Those projections envisage [...]. At the end of the restructuring plan in 2025, TAP Air Portugal expects to attain a return on equity (ROE) of [...] % and a return on capital employed (ROCE) of [...] %.
- (49) With regard to liquidity projections, TAP Air Portugal expects to [...]. The financial projections also envisage the equity to assets and net debt to equity ratios [...] and attaining a level of [...] % and [...], respectively, in 2025. Finally, the projections of the net debt to EBITDA ratio gradually decrease from [...] in 2022 to [...] in 2025.

Table 1

Financial projections of the restructuring plan as notified on 10 June 2021 (baseline scenario)

EUR million	Restructuring period					
	2020	2021	2022	2023	2024	2025
Revenues	1 060	[...]	[...]	[...]	[...]	[...]
EBIT	(965)	[...]	[...]	[...]	[...]	[...]
Net income	(1 230)	[...]	[...]	[...]	[...]	[...]
Net debt	4 110	[...]	[...]	[...]	[...]	[...]
Operational cash flow	(244)	[...]	[...]	[...]	[...]	[...]
Equity	[...]	[...]	[...]	[...]	[...]	[...]

Source: Company information. All data refers to TAP Air Portugal (including Portugalia)

- (50) TAP Air Portugal's return to viability hinges on cost reductions, as revenues projections follow the recovery of air traffic. Cost reductions stem from the restructuring measures described in sections 2.4.1.1 – 2.4.1.3, through which TAP Air Portugal expects to reduce CASK from EUR cent [...] in 2019 to EUR cent [...] in 2025. Such EUR cent [...] of CASK originates mainly from the restructuring measures affecting TAP Air Portugal's largest cost items in 2019, namely fuel (EUR cent [...] in 2019) and labour (EUR cent [...] in 2019). With regard to fuel, TAP Air Portugal expects savings of EUR cent [...] per ASK, assuming an exchange rate and fuel price in line with the current market expectations retrieved from Bloomberg, from the acquisition of more fuel-efficient aircraft, a better route-aircraft match and the implementation of a fuel optimisation software (section 2.4.1.3). With regard to labour, TAP Air Portugal expects the FTE reduction measures and contract renegotiations with employees (section 2.4.1.3) to yield savings of EUR cent [...] per ASK.
- (51) With regard to revenue projections, most of them originate from passenger air traffic, with maintenance, cargo and mail revenues representing roughly [...]% of the total revenues in 2025. To estimate revenues from passenger air traffic, TAP Air Portugal assumes a recovery trend in line with the IATA baseline forecasts (October 2020)⁽³³⁾, but lower levels of air traffic per year. For example, while IATA expects air traffic to increase from 49 % in 2021 to 109 % in 2025, relative to the number of passengers who flew in 2019, TAP assumes [...]% in 2021 and [...]% in 2025. Furthermore, TAP Air Portugal assumes a yield of EUR cent [...] and a load factor of [...]% in 2025, which are respectively lower (EUR cent [...]) and higher ([...]%) than their value in 2019. Finally, TAP Air Portugal projects an increase in revenues stemming from the measures related to cargo and ancillary activities described in section 2.4.1.4. Overall, taking into account all sources of revenues, TAP Air Portugal expects revenues per CASK to decrease from EUR cent [...] in 2019 to EUR cent [...] in 2025.
- (52) The restructuring plan as notified on 10 June 2021, provided for an adverse scenario based on a pessimistic evolution of three parameters: fuel cost, demand and yield. With negative variations of the parameters in the adverse scenario, TAP Air Portugal's operational cash flow and EBIT [...], the pessimistic assumption changing only the magnitude of the results. Only in the most adverse scenario, assuming a negative evolution of all three parameters concerned, [...].
- (53) Finally, Portugal provided an update of the financial projections of the notified restructuring plan on 9 November 2021. Such update takes into account the latest developments in the aviation market vis-à-vis the notified projections, notably the improvement in the traffic recovery prospects⁽³⁴⁾ and the increase of jet fuel prices, and assumes a [...]% increase in traffic costs to reflect the recent inflation dynamics. Those revised assumptions lead to an increase of revenues as well as costs, compared to the notified projections. Overall, EBIT [...], but reaches [...], namely EUR [...] million instead of EUR [...] million in the notified projections. In the same vein, the net income turns positive [...] ([...] EUR [...] million), [...] EUR [...] million. In [...], ROCE would be [...], while ROE would [...]% [...].

2.5. Preliminary findings in the opening decision

- (54) Based on the information provided by Portugal in the notification of 10 June 2021, in the opening decision, the Commission qualified the notified State support to TAP SGPS as a lawful State aid under of Articles 107(1) and 108(3) TFEU. It assessed the compatibility of that aid with the internal market under the R&R Guidelines and, having found that several conditions of compatibility laid down in these guidelines appeared, *prima facie*, not to be met, it decided to open a formal investigation procedure.
- (55) In the opening decision, the Commission preliminarily concluded that TAP SGPS, designated as the beneficiary of the aid, was eligible for restructuring aid, in particular due to the accumulated negative equity that grew from EUR [...] million at the end of 2019 to EUR [...] billion in 2020. The Commission also found that the restructuring aid was necessary for the successful completion of the restructuring plan and that its form was appropriate to address the liquidity and solvency problems encountered.

⁽³³⁾ Demand recovery data for domestic traffic in Europe and Europe to North & South America, Sub Saharan & North Africa. Source: IATA/Oxford Economics –Air Passenger Forecast Global Report, October 2020

⁽³⁴⁾ Demand recovery data for domestic traffic in Portugal, Portugal to Europe and Portugal to North & South America and Africa, according to 2019 TAP passenger weights. Source: IATA/Oxford Economics –Air Passenger Forecast Global Report, October 2021.

- (56) The Commission found that, based on prudent assumptions, the assessment of expected profits and returns on equity around [...]% [...], by the end of the restructuring period sustained the argument of Portugal that the restructuring plan would secure the long-term viability of the beneficiary and remained robust also in an adverse scenario. Without the State intervention, the beneficiary, and, as a consequence, TAP Air Portugal, would inevitably exit the market, causing social hardship, negative spill-over effects for the entire Portuguese economy – heavily dependent on the tourism sector – and a disruption of an important service that is difficult to replicate.
- (57) The Commission then raised doubts, first as to the proportionality of the aid ⁽³⁵⁾, noting that most sources of own contribution came from cost reductions, i.e. avoidance of costs only with no fresh funding from a market investor or lender, apart from new contracts for aircraft leases arriving in 2021. The Commission noted that the own contribution would correspond at best only to [...]% of the restructuring costs, while it was unclear whether labour cost reductions, representing more than [...]% of the own contribution, were admissible. As regards burden sharing requirements, the Commission noted that no justification had been provided as to why any partial reduction of debt borne by the holders of TAP SGPS's bonds would, as a matter of principle, not be achievable.
- (58) Second, the Commission raised doubts on the measures limiting distortions of competition ⁽³⁶⁾. The Commission observed in particular that: (i) it was doubtful if the proposed divestitures of certain assets concerning loss-making activities could be considered as addressing the competition distortion created by the aid, and whether in any event the proposed divestitures were sufficient to address such distortion, (ii) the view of the Portuguese authorities that slots divestiture was premature and unnecessary was not substantiated by any quantitative analysis showing that such divestitures would indeed jeopardise the return to viability of TAP Air Portugal, given its strong position in terms of slots at the highly congested Lisbon airport, and (iii) while the overall fleet capacity forecasted for 2025 was lower than before the restructuring, nothing allowed to verify that the capacity created via the acquisition of new aircraft during the restructuring period would not be excessive and there was no commitment to maintain a lower capacity for the duration of the restructuring plan.
- (59) Finally, the Commission noted that the plan was lasting longer than five years, whilst the projections carried uncertainties about the evolution of the demand by the end of 2025 in very stressed scenarios, that might require more aid ⁽³⁷⁾.

3. OBSERVATIONS OF PORTUGAL

- (60) Portugal submitted its observations on the opening decision on 19 August 2021.
- (61) As an initial remark, Portugal recalls the unprecedented and generalised halt in air traffic caused by the COVID-19 pandemic and a devastating and asymmetric consequences it had for air carriers. Portugal points out that before the outbreak TAP Air Portugal was profit-making on a stand-alone basis and presented clear signs of financial stability. Finally, Portugal observes that the pandemic postponed the review of the R&R Guidelines, intended to be applied until 31 December 2020. While the R&R Guidelines are not designed for exceptional circumstances such as the COVID-19 pandemic, they leave room for a more flexible application of its rules, in particular when it comes to own contribution to be considered sufficiently high and adequate. According to Portugal, the unique circumstances and challenges associated with COVID-19 and of its impact on TAP business model justify a more flexible approach compared with conventional rescue and restructuring precedents in the industry. The unprecedented context of the COVID-19 pandemic calls for such flexible enforcement of the rescue and restructuring rules and principles.

3.1. Financial projections and return to viability

- (62) Portugal stresses that the projections in the restructuring plan are based on reliable and conservative assumptions. Portugal underlines that, whereas the forecasts of IATA surpass 2019 levels already by 2024, the demand projections in the baseline scenario of the plan do not recover 2019 levels until [...]. Similarly, TAP Air Portugal's revenue path starts from a lower point in 2021 vs passengers forecast, e.g. passenger's revenue in 2021 is [...]% of 2019 levels vs [...]% for the number of passengers.

⁽³⁵⁾ See recitals 83 to 88 of the opening decision.

⁽³⁶⁾ See recitals 97 to 100 of the opening decision.

⁽³⁷⁾ See recitals 74 and 75 of the opening decision.

- (63) Portugal underlines TAP Air Portugal's agile capacity deployment. The company was able to redeploy its capacity to target demand pockets, compensating on travel to/from Brazil with a stronger recovery in African flows. It had also been actively replacing bigger aircraft with smaller gauge when facing low load factors and had reconfigured passenger aircraft to transport cargo etc. That agile capacity deployment and flexible operations coupled with tight cost control policies resulted in a lower cash burn than expected in the restructuring plan, despite the worse demand scenario (e.g. TAP Air Portugal's EBIT in first half of 2021 was EUR [...] million better than forecasted in the plan).
- (64) Portugal observes that TAP Air Portugal assumed a path of revenue per available seat per kilometre (RASK) below historical levels (EUR cent [...] by 2025 vs up to EUR cent [...] in 2018) and what it has currently been able to achieve (compensating for lower volume of passengers compared to the restructuring passenger numbers vs. plan). Portugal also notes that the restructuring plan did not take into account up to EUR [...] million in additional revenues coming from improvements in processes/methodologies, upgrades of key systems/tools and additional cost reduction initiatives (e.g. in fleet leases, deferrals and future negotiation rounds after approval) that were identified after the notification.
- (65) With regard to the duration of the restructuring period, Portugal claims that many of the measures contained in the restructuring plan have already been implemented as of 2020, although the restructuring aid will only be granted in the last quarter of 2021. The duration of the State intervention, which is key to TAP Air Portugal's return to viability [...], will be therefore lower than five years.

3.2. Proportionality and limitation of State aid to minimum

- (66) In its submission of 16 November 2021, Portugal notes new sources of own contribution, no longer insists on the qualification of labour cost reductions as a source of own contribution, presents a new breakdown of the restructuring costs and comments on burden sharing measures.

3.2.1. *New sources of own contribution*

- (67) Portugal identified the following new additional sources of own contribution:
- (a) *Support from existing debt providers:* Portugal notes that TAP Air Portugal managed to receive the support of existing debt providers. Due to the COVID-19 pandemic and the consequent deterioration of EBITDAR, TAP Air Portugal has [...]. However, the company managed to obtain waivers, which avoided the triggering of put and early repayments options. According to Portugal, such waivers amount to a form of burden sharing and own contribution, since [...] (recital 43(g)).
- (b) *New investor and market funding:* Portugal notes that TAP Air Portugal has been approached by potential new investors with an interest in a future stake acquisition and has negotiated new funding (recital 43(e));
- (c) *Additional aircraft funding:* Portugal presents evidence demonstrating new commitments for funding of aircraft leases, raising the level of such funding from EUR [...] million to a total of EUR [...] million (recital 43(c)).

3.2.2. *Labour cost reductions*

- (68) With regard to the labour cost reductions on which the Commission raised doubts, Portugal submitted in essence that they contribute to minimising aid and constitute effective, lasting and non-reversible contributions from creditors of the beneficiary. Portugal insists that, under Portuguese law, workers constitute privileged creditors in relation to employers, as workers claims are liquidated in first place over any other guaranteed or privileged claims. Hence, the labour cost reductions proposed as own contribution, in the total amount of EUR [...] million, include such credits. Finally, Portugal observes that TAP Air Portugal achieved such cost reductions through negotiations and required workers to forego part of their future claims. They are thus equivalent to a debt write-off or other reductions of contractual costs from partners (e.g. aircraft suppliers/lessors) both in terms of participation in the effort, as well as a sign of confidence in the long-term viability of the beneficiary.

- (69) Whilst Portugal acknowledged that the own contribution should normally be comparable to the aid granted in terms of effects on the solvency or liquidity position of the beneficiary and that cost reductions do not constitute equity enhancing measures, an own contribution not having a comparable effect to the aid granted can still be accepted, in view of exceptional circumstances. Eventually, in its submission of 16 November 2021, Portugal no longer included labour cost reductions among the sources of own contribution of the beneficiary to the restructuring costs.

3.2.3. Breakdown and sources of finance of the restructuring costs

- (70) On 16 November 2021, Portugal submitted a breakdown of restructuring costs and respective own contribution calculation and ratio, taking into account the new sources of own contribution, which is portrayed as follows.

Table 2

Breakdown and sources of finance of restructuring costs (million EUR rounded)

Restructuring costs		Sources of finance	MEUR	%
		Own contribution		
Acquisition new aircraft	[...]	Labour indemnities	[...]	[...]%
Debt reimbursement	[...]	Renegotiated contracts third parties	[...]	[...]%
[...]	[...]	Lease new aircraft	[...]	[...]%
Labour (Indemnities)	[...]	Other contributions	[...]	[...]%
Operating losses	[...]	Bond and bank debt covenant (market value)	[...]	[...]%
		Temporary liquidity ([...]% non-guaranteed)	[...]	[...]%
		New bank debt	[...]	[...]%
		Contingencies M&E Brazil	[...]	[...]%
		State aid		
		Equity injection	[...]	[...]%
		Temporary liquidity ([...]% guarantee)	[...]	[...]%
		Amount own contribution	[...]	[...]%
		Amount restructuring aid	[...]	[...]%
		TOTAL FUNDING	[...]	

- (71) Portugal observes that contributions below 50 % of the restructuring costs have already been accepted in other restructuring aid cases in the aviation sector ⁽³⁸⁾ and that the COVID-19 pandemic qualifies as an exceptional circumstance, as recognised by the Commission in the COVID-19 Temporary Framework ⁽³⁹⁾ ('Temporary Framework'). In consequence, Portugal submits that the revised level of own contribution is significant in the particular context of the uncertainties faced by the aviation sector due to the COVID-19 pandemic.

⁽³⁸⁾ Commission Decision of 9 July 2014 in case SA.34191 – Alleged aid to Air Baltic (OJ L 183, 10.7.2015, p. 1); and Commission Decisions of 27 June 2012 in case SA.33015 – Air Malta (OJ L 301, 30.10.2012, p. 29).

⁽³⁹⁾ Communication from the Commission 'Temporary Framework for State Aid measures to support the economy in the current COVID-19 outbreak' (C/2020/1863, OJ C 911, 20.3.2020, p. 1), as last amended by Commission Communication C (from the Commission Sixth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance C/2021/8442 final of 18 November 2021 (OJ C 473, 24.11.2021, p. 1).

3.2.4. Burden sharing

- (72) Portugal reiterates that burden sharing will be ensured at the level of shareholders of TAP SGPS. The losses of TAP SGPS have been fully accounted for in the consolidated accounts of 2020 and correspond to a total amount of negative equity of EUR [...] million. Following the approval of the restructuring plan, the total amount of EUR [...] million [...] will be reduced to [...] in the accounts of TAP SGPS. Before that, [...] for the purposes of loss absorption.
- (73) Portugal further explains that, as envisaged in the restructuring plan, TAP SGPS will have to return to the lending markets as soon as possible. The impact of an imposition of losses on creditors will affect negatively any future attempt of TAP SGPS to raise funds from the private sector even on a secured basis. It will be seen by credit market participants as a *de facto* default situation, which will trigger immediate rating downgrades to the worst credit category by rating agencies. This, in turn, would lead banks to refrain from future dealings with the company. Finally, Portugal notes that the waivers of certain right of debts providers under the relevant loan agreements/debt emissions (recital 43(g)) should be deemed as a form of burden sharing under the R&R Guidelines.

3.3. Measures limiting the distortions of competition

- (74) In terms of divestments of assets, reduction of capacity or market presence, in the restructuring plan, as notified on 10 June 2021, Portugal put forward the sale of the stakes held by TAP SGPS in non-core business, i.e., Groundforce, M&E Brasil and Cateringpor. As regards, however, a potential transfer of slots, Portugal initially expressed the view that in the case of TAP Air Portugal, a commitment to give up slots at Lisbon airport would be premature and most probably unnecessary to ensure effective competition, involving a risk of compromising connectivity and the hub model of that company and potentially jeopardizing its return to viability. Portugal further argued, clarified or expanded during the formal investigation procedure the measures aimed at limiting the distortions of competition, so that the measures as proposed in their final form stand as follows.

3.3.1. Divestment of holdings in activities vertically integrated with air transport

- (75) Portugal submits that Groundforce has been historically profitable, with a EUR [...] million net income and EUR [...] million revenues in 2019, but it was severely hit by the COVID-19 crisis. Groundforce lost EUR [...] million of revenues in 2020 compared to 2019 and, [...]. Due to those difficulties, Groundforce entered a controlled insolvency procedure, which will ultimately lead to the restructuring or liquidation of the company. In that context, Groundforce has already attracted interest of several leading ground handling providers in Europe.
- (76) Cateringpor is a catering company created in 1994. It is the main catering provider of TAP SGPS, which is also its majority shareholder (51 % stake) and main source of revenues ([...] % of 2019 revenues). The company has been historically profitable, with a EUR [...] million net income and EUR [...] million net revenues in 2019. However, like Groundforce, Cateringpor suffered because of the COVID-19 crisis, which led to a [...] % reduction of meals provided and a net income decrease of EUR [...] million compared to 2019. To deal with such difficulties, Cateringpor started a restructuring process that is underway [...], at the end of which TAP SGPS plans to [...] % [...]. According to the projections, the [...] EUR [...] million.
- (77) M&E Brasil is a maintenance, repair and overhaul (MRO) service provider incorporated in Brazil, whose majority shareholder is TAP SGPS. M&E Brasil provides wide-body aircraft maintenance services to TAP SGPS, which accounted for [...] % of its revenues in 2019. [...] has been [...], in spite of a [...]. The COVID-19 crisis exacerbated the company's difficulties, with revenues in 2020 (around EUR [...] million) shrinking to half of those in 2019 (EUR [...] million) [...] ([...] EUR [...] million [...], EUR [...] million [...]). [...] EUR [...] million [...].
- (78) As the abovementioned divestitures will significantly reduce vertically integrated activities of TAP Air Portugal, ancillary to air transport, Portugal believes that they constitute an admissible measure to limit distortions of competition under the R&R Guidelines.

3.3.2. Reduction and freeze of aircraft fleet

- (79) The restructuring plan contemplates also a reduction in capacity, as a result of fleet resizing, network streamlining and adjustment to demand reduction. TAP Air Portugal has already implemented a fleet reduction from 108 to [90-100] aircraft by February 2021. Portugal commits that over the course of the restructuring plan and until 2025 inclusive, TAP Air Portugal's fleet will not exceed [90-100] aircraft.

3.3.3. Slot release

- (80) In light of, notably, TAP Air Portugal's high slot holding at its heavily congested Lisbon base (recital 32) ⁽⁴⁰⁾, the Commission considers that, for the purposes of this Decision, TAP Air Portugal will have a significant market position for the supply of passenger air transport services at Lisbon airport after restructuring.
- (81) In that respect, Portugal submitted on 3 December 2021 an additional structural commitment to further limit the distortive effects of the aid on competition for the provision of passenger air transport services on routes to or from Lisbon airport, where TAP Air Portugal is expected to keep a significant market position after restructuring.
- (82) Namely, Portugal committed that TAP Air Portugal would transfer a slot package of up to 18 daily slots (winter and summer) to another air carrier (an actual or potential competitor) to allow it to establish a new base ⁽⁴¹⁾ or to expand its existing base at Lisbon airport (the 'remedy taker'). ⁽⁴²⁾
- (83) The slots made available by TAP Air Portugal to the remedy taker at the time of signing the slot transfer agreement, would correspond to the slot times requested by the remedy taker within +/- 20 minutes for short-haul flights and within +/- 60 minutes for long-haul flights. In the event that TAP Air Portugal does not have slots within the relevant time window, TAP Air Portugal would offer to transfer the slots closest in time to the remedy taker's request.
- (84) By exception, TAP Air Portugal would not be obliged to transfer:
- (a) more than one slot before 08:00 (local time) per aircraft based by the remedy taker at Lisbon airport using the remedy slots;
 - (b) more than half of the total remedy slots before 12:00 (local time); and
 - (c) more slots before 20:00 (local time) than the total remedy slots minus one slot per aircraft based by the remedy taker at Lisbon airport using the remedy slots for the operation of short-haul flights.
- (85) In the event that a request is made for more than one slot before 08:00 (local time) per based aircraft, more than half of the total remedy slots before 12:00 (local time) or more slots before 20:00 (local time) than the total remedy slots minus one slot per aircraft based by the remedy taker at Lisbon airport using the remedy slots for the operation of short-haul flights, TAP Air Portugal would offer the remedy taker the next closest slot after 8:00 (local time), after 12:00 (local time) and after 20:00 (local time) respectively.
- (86) The arrival and departure slot times should be such as to allow for reasonable aircraft rotation by the remedy taker to the extent possible, taking into account the eligible potential remedy taker's business model and aircraft utilisation constraints.
- (87) Portugal committed that TAP Air Portugal would not re-acquire the divested slots from the remedy taker.

⁽⁴⁰⁾ Such a combination of factors (high slot holding at a heavily congested airport used as a base) is not found at any other EU airport to or from which TAP Air Portugal provides passenger air transport services.

⁽⁴¹⁾ A base means that aircraft are parked overnight at the airport and that the based aircraft are used to operate several routes from that airport. This means for short-haul flights that per day the first movement of the aircraft is a departure from Lisbon airport and the last movement is an arrival in Lisbon airport.

⁽⁴²⁾ As further explained in recital 88, the potential remedy takers have to commit to base at Lisbon airport the aircraft using the slots transferred from TAP Air Portugal. The requirement to operate a new or expanded base at Lisbon airport using the remedy slots is justified by the relative degree of competitive pressure exerted on legacy carriers by based carriers and non-based carriers.

- (88) To be eligible, a potential remedy taker must:
- (a) be an air carrier holding an operating licence issued by an EU/EEA Member State;
 - (b) be independent of and unconnected with TAP Air Portugal;
 - (c) not be subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million;
 - (d) commit to operate the number of aircraft based at Lisbon airport using the remedy slots until the end of the restructuring plan. Potential remedy takers indicate in their proposals the number of aircraft to be based at Lisbon airport using the remedy slots; ⁽⁴³⁾ For the purpose of committing to base aircraft using the remedy slots, a potential remedy taker must commit to comply with the applicable EU and national labour laws, as interpreted as relevant by the EU Courts ⁽⁴⁴⁾.
- (89) The remedy taker would be approved by the Commission following a transparent and non-discriminatory selection procedure (call for proposals).
- (90) The Commission would be assisted by a monitoring trustee, which would be appointed directly following the adoption of this Decision.
- (91) The call for proposals would be published by the monitoring trustee sufficiently in advance of the beginning of the general slot allocation procedure for each IATA Season until the Commission approves a remedy taker, and would be granted adequate publicity.
- (92) The Commission, assisted by the monitoring trustee, would assess the proposals received. It may reject the proposals if they are not credible from an economic or operational point of view, or in respect of EU competition law.
- (93) In case of competing proposals, the Commission would give preference, in decreasing order, to potential remedy takers that in particular: (i) will provide the largest seat capacity in respect of the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan; and (ii) serve the greatest number of destinations by direct flights operated by the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan (direct connectivity, without taking account of the frequencies).
- (94) If the Commission gives the same or similar evaluation to several proposals (tied bids) upon assessment of the two criteria, it would give preference to the proposal best ranked by TAP Air Portugal (which may use any criteria of its choice, provided that they are transparent).
- (95) Shortly after the Commission's evaluation decision, TAP Air Portugal would enter into a slot transfer agreement, to be reviewed by the monitoring trustee and approved by the Commission, with the highest ranked potential remedy taker that has confirmed that it intends to establish a base or expand its base at Lisbon airport using the remedy slots.
- (96) The slots would be transferred by TAP Air Portugal to the remedy taker free of charge pursuant to Article 8b of Council Regulation (EEC) No 95/93 ⁽⁴⁵⁾ (the 'Slot Regulation').

⁽⁴³⁾ The Commission will assess the operational and financial credibility of the proposals submitted by potential remedy takers, including the business plan for the operation of the aircraft to be based at Lisbon airport using the remedy slots. To be approved, a potential remedy taker will have to demonstrate the operational and financial credibility of the business plan for its new or expanded Lisbon base. However, for the avoidance of doubt, the commitment to operate the number of aircraft based at Lisbon airport using the remedy slots is not a condition for their effective transfer or for their use imposed on the remedy taker after its approval. In other terms, once the remedy taker is approved, the remedy slots are transferred unconditionally and the remedy taker can use them freely.

⁽⁴⁴⁾ See e.g. Nogueira, Joined Cases C-168/16 and C-169/16, EU:C:2017:688.

⁽⁴⁵⁾ Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993, p. 1). According to its Article 8b, '[t]he entitlement to series of slots referred to in Article 8(2) shall not give rise to any claims for compensation in respect of any limitation, restriction or elimination thereof imposed under Community law, in particular in application of the rules of the Treaty relating to air transport. This Regulation shall not affect the powers of public authorities to require the transfer of slots between air carriers and to direct how these are allocated pursuant to national competition law or to Articles 81 or 82 of the Treaty or Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings. These transfers can only take place without monetary compensation.'

- (97) The slots would be offered for transfer until the end of the restructuring period (end of 2025, see recital 27). Whatever the circumstances, no call for proposals would be organised after the end of the restructuring period.

3.3.4. *Acquisition and advertising ban*

- (98) In addition to those divestment of assets and measures to reduce market capacity and presence, Portugal put forward the commitments that the beneficiary would refrain from (i) acquiring shares in any company during the restructuring period, except where indispensable to ensure its long-term viability and subject to Commission approval, and (ii) publicising State support as a competitive advantage when marketing its products and services.

4. COMMENTS FROM THIRD PARTIES

- (99) Third parties filed 39 replies to the invitation to submit comments within the deadline by 6 September 2021. Four further submissions came after the deadline. The observations submitted on time included substantive submissions from two direct competitors – Ryanair and euroAtlantic Airways (EAA) – and from business partners, such as travel agencies, tour operators or associations of those (13), major hotel groups (1), ticketing agencies (2), suppliers (1), airport managers/traffic control agencies (2). Other submissions came from governmental bodies, such as representations of several states of Brazil, as well as the Brazilian Ministry of Tourism (8), and from bodies promoting tourism and commercial or cultural exchanges (10).
- (100) All third parties except the two direct competitors and another party generally support the restructuring aid and confirm the important role played by TAP Air Portugal in connectivity of Portugal with the Union and other regions of the world, and for the economy of Portugal.

4.1. **Comments from competitors**

4.1.1. *Ryanair*

Contribution to a well-defined objective of common interest

- (101) Ryanair disagrees with the Commission's interim finding that the restructuring aid contributes to an objective of common interest. In Ryanair's view there is no evidence of a risk of disruption to an important service which is hard to replicate since TAP Air Portugal's service is being replicated by competitors that are stepping in. In particular, Ryanair also provides connections to destinations outside the EU, such as Israel, Turkey or Ukraine. Ryanair also indicated that it operates flights to Morocco and the United Kingdom from Portuguese airports.
- (102) Furthermore, Ryanair disagrees with the statement that other major EU air carriers, which would be offering intercontinental connections via Lisbon, operate in hub-and spoke model and accordingly they would transfer passengers from Portugal to their hubs in other Member States instead of establishing another hub in Portugal. To that end, Ryanair submits that the key long haul destinations (e.g., New York, São Paulo, Toronto, Montreal, Philadelphia, Boston, Washington DC, Dubai) are also served by large international carriers such as American Airlines, Air Canada, Delta Airlines, LATAM, United Airways, and Emirates directly from Lisbon, while TAAG Angola Airlines would offer direct flights between Lisbon and Luanda. In Ryanair's view, it would remain possible to fly to these destinations from Portugal without transfer or transit through another airline's hub, even if TAP Air Portugal discontinues some long haul routes.
- (103) According to Ryanair, several competitors operate the same routes as TAP Air Portugal domestically, to the Autonomous Regions of Madeira and Azores, other Portuguese-speaking countries and the diaspora, as well as other countries in and outside Europe. Next to TAP Air Portugal, several other airlines would provide routes from Portugal to the Autonomous Regions of Madeira and Azores, such as Ryanair, easyJet, Transavia, SATA Air Açores and Azores Airlines.

- (104) In this context, Ryanair suggest that TAP Air Portugal would also face competition on its domestic routes from the high-speed railway system or intercity bus companies, such as Flixbus, which can continue ensuring connectivity throughout Portugal and its regions.
- (105) Ryanair puts forward that it competes head-to-head with TAP Air Portugal in a large number of point of origin/point of destination ('O&D') city pair routes. To support its findings, Ryanair submitted annexes with data on 'Portuguese city pair routes on which Ryanair and TAP competed in 2020' and 'TAP European Routes & Competitors in March 2021'. Ryanair alleges that Ryanair Group competed on 17 TAP Air Portugal city pairs in 2019, 29 city pairs in 2020 and 24 city pairs in 2021, which would be far more than any other airline. Ryanair also submitted a study ⁽⁴⁶⁾ prepared on the request of Ryanair. The study analyses the size and operating licence origin of the largest airlines in a number of major European markets. It covers the total intra-European capacity offered in 2014 and 2019 and current forecasts for 2021. In addition to identifying the key airlines shares in these years, the study looked at the five-year rate of growth of the major markets between 2014 and 2019, the contribution to this growth by the leading airlines and the overall growth in routes served by the airlines over this same period. It then repeats this exercise for the two years ending 2021, as currently forecast. With specific regard to Portugal, the study finds that low cost carriers have provided 44,3 % of the growth in seat capacity between 2014 and 2019, with other airlines that are not the lead domicile airlines accounting for a further 29,3 % of growth. According to the study, the two lead domiciled Portuguese airlines provided only 26,4 % of the growth seen over this five-year period. The study finds that in terms of connectivity, the low cost carriers have delivered more again over this same five-year period, the low cost carriers have added 199 new routes to their combined networks. In comparison, the two lead Portuguese carriers have cut their number of routes by a combined 12. With regard to intra-European, non-domestic routes, this would stand at +199 vs. -10 respectively. This discrepancy would allegedly be disappointing for Portugal's lead carriers given that they control 30 % of the total market and 65 % of the domestic market in terms of seat capacity. The study also offers a table showing low cost carriers' forecast to increase their share of the Portuguese market during the pandemic. Following seven findings, the study concludes that the history of supporting the traditional 'flag carriers' at a national level has delivered neither superior growth nor greater connectivity and continues that it is the pan-European low cost carriers that have delivered this for more open markets.
- (106) Finally, Ryanair informs that Portugal is one of Ryanair Group's expansion targets. In that context, according to Ryanair, the routes where the Ryanair Group and TAP Air Portugal compete head-to-head are economically important. In particular, Ryanair Group and TAP Air Portugal would compete head-to-head on international routes to important cities, including London, Berlin, Dublin, Paris, Rome, Milan, and Vienna, which are economically relevant because they connect Portugal to the largest and most prosperous cities in Europe. Ryanair and TAP Air Portugal would also compete on domestic routes linking Lisbon and Ponta Delgada and Terceira for instance.
- (107) In the same context of the contribution to a well-defined objective of common interest, Ryanair asserts that the opening decision did not explain why TAP Air Portugal would be a systemic undertaking and does not even use the adjective 'systemic'. According to Ryanair, as the European airlines now emerge from the crisis, one airline's lost capacity would quickly be replaced by other airlines keen to deploy their surplus capacity and operate more efficiently.
- (108) Ryanair is of the view that even if some of TAP Air Portugal's activities had a truly systemic character, the Commission has failed to determine whether such systemic activities could not be preserved by downsizing the group and reducing or suppressing non-systemic or loss-making activities. Namely, according to Ryanair, other airlines and transport providers already play an important role in the connectivity of Portugal and its regions and can provide the same service as TAP Air Portugal and could take over TAP Air Portugal's service should it exit the market.
- (109) In conclusion, Ryanair postulates TAP Air Portugal would be in the process of being replaced by more efficient airlines which already serve the common interest. Therefore, its restructuring would not serve the common interest because it would endanger this process.

⁽⁴⁶⁾ 'Lading market shares in key European passenger markets', 10 August 2021, prepared in the context of the of Ryanair's appeal of the European Commission's Decision of 23 April 2021 on State Aid SA.62304 (2021/N) – Portugal – COVID-19: Damage compensation to TAP Portugal; author Mark Simpson, an airline analyst at Goodbody, United Kingdom.

Long-term viability of TAP Air Portugal

- (110) First, Ryanair complains that recital 73 and Section 2.3.3 of the opening decision, which refer to long term viability, are heavily edited and all the financial data and the chronological milestones of the restructuring plan were deleted. Therefore, it would not be possible for Ryanair to make any detailed comments due to insufficient information. Nevertheless, Ryanair makes a general comment that TAP Air Portugal's problems would stem from breakneck growth that TAP was unable to exploit to generate revenue and cover its costs, in the absence of sufficient competitiveness. In this context, TAP Air Portugal's plan to resume capacity growth as soon as market conditions become normal again would appear to repeat the failed strategy that led to TAP Air Portugal's difficulties in the first place.

Appropriateness of aid

- (111) Ryanair is of the view that verifying the satisfaction of this condition would require comparing the various options available in order to identify the least distortive option. However, the opening decision did not present or compare the aid with other options involving or not involving State aid and therefore failed to verify that the aid is appropriate.

Proportionality of aid

- (112) With regard to proportionality of the restructuring aid, Ryanair claims that the opening decision does not present any evidence of TAP SGPS's attempts to raise private funds. In Ryanair's view, given that TAP SGPS's lack of access to financial markets before the grant of the aid would not be established, its lack of access after the aid is granted appears doubly doubtful. In addition, Ryanair asserts that TAP SGPS should be able to raise private funds after the implementation of the equity measures, hence the EUR [...] million 'buffer' would be excessive. Ryanair also complains about the absence of sufficient financial data in the opening decision to allow interested parties to assess the proportionality of the quantum of aid in detail.
- (113) Ryanair critically observes that the opening decision does not provide a justification for Portugal's presumption that a Standard & Poor's B- financial rating would make borrowing on the financial markets impossible. According to Ryanair, Portugal has not described any concrete failed attempt by TAP to obtain financing nor does it explain why collateralisation was not available to secure debt. In Ryanair's view, TAP Air Portugal's portfolio of airport slots and other assets would represent a significant collateral.
- (114) With regard to the burden sharing, Ryanair raises concern that the remaining private shareholder (HPGB) will receive a favourable treatment. According to Ryanair, the opening decision did not provide any factual details that would allow Ryanair to make comments on the satisfaction of the burden sharing condition by HPGB and a fortiori other stakeholders in TAP SGPS.

Measures to limit distortions of competition

- (115) Ryanair agrees with the Commission's finding that the measures to limit distortions of competition are not justified and appear insufficient, even based on the insufficient information provided in the opening decision.
- (116) With regard to the slot release Ryanair claims that the massive size of aid provided and insufficient levels of own contribution militate in favour of slot divestments going far beyond the level of divestments of Lufthansa ⁽⁴⁷⁾.
- (117) In Ryanair's view, slot divestments at Lisbon airport of the same extent as the slot divestments in the Lufthansa decision (24 slots per day) would not harm the connectivity of Portugal (including to Brazil) or TAP Air Portugal's hub operations (e.g., by making its routes unprofitable). Ryanair believes that allowing TAP Air Portugal to hold on to slots that it would be unable to use due for instance to loss of traffic or fleet reduction would amount to hoarding of a rare resource and therefore, slot divestments should at least be equal in proportion to the reduction in TAP Air Portugal's fleet. Moreover, the demand for slots by viable airlines at Lisbon and Porto airports would be high.

⁽⁴⁷⁾ Commission Decision of 25 June 2020 in case SA.571 53 (2020/N) COVID-19 – Aid to Lufthansa (OJ C 397, 20.11.2020, p. 1).

- (118) To that end, Ryanair suggests the Commission should consider the right size for TAP Air Portugal that would allow Portugal to have adequate connectivity and should not exclude the hypothesis that the right size for TAP Air Portugal may amount to market exit. In Ryanair's view, the Commission should not exclude a priori a scenario in which TAP Air Portugal would provide only long-haul services and other (including low fares) airlines would act as codeshare or even de facto operators of the current collector routes to Lisbon.
- (119) Finally, with regard to the freeze of capacities and reduction of activities, Ryanair claims that the opening decision does not explore sufficiently a downsizing scenario.

4.1.2. EAA

- (120) At the outset, EAA puts forward that by approving the Public State Budget Law for 2021 in November 2020 in which the Portuguese Government earmarked EUR 500 million of financial support for TAP SGPS, the Portuguese State committed to make State resources available, which EAA considers to be State aid not notified to the Commission.
- (121) EAA complains about the discriminatory treatment in favour of TAP SGPS when the State provided financial support to assist TAP SGPS with its restructuring. As background information, EAA informs that it has repeatedly requested proportionate support from Portugal. Despite EAA's best efforts and presentation of the advantages to the economy, Portugal has refused to look upon the facts and has failed to provide any meaningful assistance.
- (122) EAA also informs that it transported a total of more than 1,4 million passengers on its 8 500 flights, of which 430 000 (equal to 30 % of the total passengers flown during this period) were from/to Portugal. It was the first Portuguese airline to start charter operations to northern Brazil and when TAP Air Portugal started scheduled flights to that region and gave very low rates to the tour operators, EAA found new opportunities. In 2020, due to the COVID-19 pandemic, EAA's main activity shifted to charter operations.

Appropriateness of aid instrument

- (123) In EAA's view, the aim of the restructuring aid is to provide liquidity support for the implementation of the restructuring plan and to balance the negative equity of TAP SGPS. However, the aid in question is structured mainly as equity and partly as a guarantee, which will also be converted into equity in the most adverse scenario if the access to capital markets is not achieved. This aid instrument does not seem appropriate as it goes beyond what is necessary. A less distortive measure in the form of a financial guarantee without an equity nature would be sufficient to facilitate the access to capital markets and in this way restore the liquidity and solvency of TAP SGPS. By doing so TAP SGPS would be required to find its own financing methods and thus also achieve the objectives of own contribution.

Proportionality of aid

- (124) EAA shares the concerns raised by the Commission in its preliminary findings regarding the proportionality of the aid, in particular, whether TAP SGPS would have a sufficient level of own contributions. In addition, EAA expresses its concern that Portugal already anticipates granting damage compensation under Article 107(2)(b) TFEU.
- (125) As Ryanair, EAA also complains about excessive redaction of the opening decision, which would make it impossible to make meaningful comments on proportionality.

Competition measures justified for TAP Air Portugal

- (126) EAA supports the Commission's concerns that the closure of loss-making activities is not sufficient to address competition distortions created by the restructuring aid and puts forward that the measures proposed by the Portuguese Government in the restructuring plan are not sufficient to address the distortions of competitions created by the aid. In EAA's view, more comprehensive measures are needed to limit distortions of competition taking account the size of the aid to TAP Air Portugal. To that end, EAA has identified a range of measures that should be considered cumulatively as necessary to limit the competition distortions created by an aid of this size, type and characteristics.
- (127) EAA also provides concrete proposals as to competition measures. In particular, it suggests that TAP Air Portugal should reduce its share on routes on which EAA is also present and open code share agreements with EAA on flights from Portugal to São Tomé e Príncipe and to Guinea Bissau. EAA informs that it has been the only Portuguese operator able to consistently operate direct flights do São Tomé since 2008. Moreover, from Christmas 2013 and for the next 3 years TAP Air Portugal suspended flights to Guinea Bissau due to security reasons and during this period EAA was the only Portuguese operator able to assure connection between those countries and ultimately to the Portuguese-speaking world. In addition, EAA puts forward that the Commission should ask for a commitment that TAP Air Portugal will not engage in predatory pricing practices on routes to São Tomé e Príncipe and Guinea Bissau in which TAP Air Portugal and EAA would directly compete.
- (128) EAA requires that TAP Air Portugal does not use State aid to open new routes compared to those operated before the pandemic and that it gives up frequencies on flights to profitable destinations. Moreover, EAA proposes that TAP Air Portugal should reduce its slots by 1/3 on defined profitable destinations in order to open the way for other airlines, including EAA. In addition, EAA is of the view that TAP Air Portugal must cancel all the routes it started during the pandemic.
- (129) Furthermore, EAA invites the Commission to consider two further commitments, a commitment that TAP Air Portugal will not expand into new activities, such as cargo and passengers, including with Portugalia, and as a second commitment that TAP Air Portugal will exit charter operations, and will not offer charter flights to tour operators or other clients (e.g. for sports teams).
- (130) EAA sees positively TAP Air Portugal's plans to reduce capacity in terms of aircraft numbers and proposes an additional commitment that TAP Air Portugal would not acquire any new aircraft for a period of at least five years to expand its fleet.
- (131) More generally, EAA also offers its views on competition in the airline sector in Portugal. According to EAA, Portugal should favour the entry of new competitors and the expansion of existing small competitors by granting an approval to smaller operators to operate in the main cargo routes currently operated by TAP Air Portugal, so that other (Portuguese) companies can compete on those routes.

4.2. Comments from other third parties

- (132) With the exception of the Chamber of Commerce of Porto, the other third parties expressed support for the State intervention in favour of TAP SGPS. The evidence brought by other third parties demonstrates that TAP Air Portugal does secure improved connectivity and competition. Business partners and governmental bodies highlight in particular:
- the volume and the importance of passenger air traffic between Portugal and Portuguese-speaking countries served by TAP Air Portugal, as well as a steadily growing business travel sector based on cultural and/or historical connections ⁽⁴⁸⁾;
 - the importance of services provided by TAP Air Portugal for the development of tourism, and more generally, the economy not only of Portugal but also of other regions of the world, like Cape Verde or Brazil ⁽⁴⁹⁾;

⁽⁴⁸⁾ See the submissions of: Associação Portuguesa das Agências de Viagens e Turismo (APAVT), the Brazilian Ministry of Tourism; governments of the various states of Brazil.

⁽⁴⁹⁾ See the submissions of: the Brazilian Ministry of Tourism; governments of the various states of Brazil.

- the specificity and uniqueness of TAP Air Portugal's network that takes into account the political, economic, cultural and historical ties of Portugal and the EU with several third countries, diversity of connections provided (10 different points in Brazil, including poorly served regions of Nordeste; connections to several islands of the Cape Verde archipelago; unique connections to the Portuguese-speaking African countries, as well as the convenient geographical (peripheral) position of Lisbon hub, which allows to shorten the long haul flights and to attract overseas tourist/clients to Portugal ⁽⁵⁰⁾;
- the importance for Portugal of an airline with enough dimension to create and maintain ⁽⁵¹⁾ a hub in Lisbon, which is considered as crucial for the development of connectivity with Portuguese-speaking countries (Brazil, the Portuguese-speaking African Countries);
- the importance of longstanding and well-established relationship with TAP Air Portugal for their activity/activity of their members/clients, for the development of the tourism industry and the strengthening of commercial and cultural connections between Portugal and other countries;
- finally, the importance of stability of connections ensured by a national carrier.

(133) The Porto Chamber of Commerce refers to the statement made by Portugal that TAP Air Portugal is a pillar of the Portuguese economy, in particular because of its contribution to the development of the tourist industry in Portugal. However, in the view of the Porto Chamber of Commerce, the population, the economic activity and the tourist industry are not only concentrated in Lisbon but in addition on the islands of the Azores and Madeira, as well as in the north and south of the country. In that context, the Porto Chamber of Commerce expresses criticism that the territorial cohesion and service to the tourism sector of the whole country appear to be absent from the restructuring plan when, at least, they were raised at the time of the rescue aid.

(134) In its letter, the Porto Chamber of Commerce recognises the importance of the Lisbon hub. In its view, the air connectivity and the protection of economic activities, including that of the tourism sector, are best achieved by two means. First, TAP Air Portugal's slots should be allocated to a company clean of liabilities and interests in other companies. This would ensure that long-haul flights on which the country's geographical location gives it a competitive advantage and without which there are losses for residents of Portugal, can be operated from Portugal. Second, by providing support for the attraction of routes on a competitive market (by tender open to interested operators) on national and European flights.

(135) Furthermore, the Porto Chamber of Commerce shares the doubts raised by the Commission. In particular, it points that the salary reductions of the beneficiary's employees appear to be temporary because the collective bargaining agreement has not been repealed but merely suspended. Also, it claims that the historical record of TAP SGPS (and TAP Air Portugal) in terms of results and equity developments over the past 11 years is not such as to reasonably assume that their contribution to the restructuring plan will be higher.

(136) As to the relation between the national airports, the Porto Chamber of Commerce states that contrary to the situation at Porto and Faro airports where TAP Air Portugal's presence is low, TAP Air Portugal is dominant at Lisbon airport, to the detriment of the other two national airports and the populations and economic activities that serve and depend on them.

⁽⁵⁰⁾ See the submissions of: American Express Global Business Travel (AMEX GBT); HOTELPLAN, APAVT; AMEX GBT; ARCHIPELAGO CHOICE; CVP CORP; the Brazilian Ministry of Tourism; governments of the various states of Brazil; the municipality of Lisbon.

⁽⁵¹⁾ APAVT; Agência para o Investimento e Comércio Externo de Portugal (AICEP).

5. COMMENTS FROM PORTUGAL ON THE OBSERVATIONS OF THE THIRD PARTIES

5.1. Need to ensure connectivity

- (137) The Portuguese authorities emphasize that, out of 40 interested parties replying to the opening decision, only three have submitted negative observations raising concerns as to the granting of restructuring aid to TAP SGPS. The large majority of observations received reinforced the importance of TAP SGPS and the need to ensure its long-term viability. The Portuguese authorities accordingly highlight that the restructuring aid to TAP SGPS clearly contributes to a well-defined objective of common interest, considering that, as well established in the opening decision, TAP Air Portugal undoubtedly plays a key role in the connectivity of Portugal and to the Portuguese economy. TAP Air Portugal's close association with the tourism sector in Portugal, which has been of great importance for the country's economy and recovery after the 2008 crisis, will be paramount in the aftermath of the COVID-19 pandemic. The services provided by TAP Air Portugal ensure connectivity with Portuguese-speaking countries and with countries having important Portuguese communities, which are not easily substitutable by other air carriers, namely low-cost carriers.
- (138) Contrary to what is suggested by Ryanair, other airlines offer some long-haul connections from Lisbon, but with limited frequency and few destinations. Boston was operated only briefly in 2019 by Delta as a peak season service only, whereas TAP Air Portugal provides year-round service and has continued to do so through the crisis. Likewise, United operated Washington, DC only in summer seasons and has not maintained the service, whilst TAP Air Portugal has continued to fly there. As regards New York, Delta operated a daily year-round service but has cut it back to three flights a week during the crisis, whilst TAP Air Portugal has sustained a double daily service, continuing to provide essential connectivity for Portugal. United has a daily service, which has been maintained, but United and TAP Air Portugal are both in the Star Alliance and United therefore benefits from connectivity onto TAP Air Portugal's short-haul services, which helps to sustain their operation. The same is true of Air Canada's flights from Toronto and Montreal. The elimination of TAP Air Portugal's hub operations at Lisbon would also threaten these Star Alliance services.
- (139) In addition, Ryanair's observations contain several inaccuracies, which can be misleading for the Commission's assessment. For instance, SATA Air Açores does not operate flights between the Azores and mainland Portugal (this is only the case of Azores Airlines) and there are no ferry connections with the Autonomous Regions of Azores and Madeira. Except and to a limited extent for domestic flights in mainland Portugal, the bulk of services provided by TAP Air Portugal cannot be substituted with high-speed railway system, intercity bus companies or inexistent ferry connections mainly because these transport means have not been available for the destinations that TAP Air Portugal flies to.
- (140) The Portuguese authorities note that no other airline operating to and from Portugal has an equivalent role, which cannot be assured by alternative airlines in the foreseeable future. This is an aspect that both Ryanair and EAA fail to consider, when comparing TAP Air Portugal's operation with that of a low-cost airline operating only highly profitable connections or that of a mostly charter air carrier and a provider of wet leasing (ACMI: aircraft, crew, maintenance, insurance) with limited public interest. Contrary to what its observations imply, Ryanair does not constitute an alternative to TAP Air Portugal. As previously stated, in summer 2019, [...] of the [...] destinations offered by TAP Air Portugal from Lisbon were not served by any other airlines, the majority of which constituted long-haul connections with North and South America, as well as Africa.
- (141) While it is correct to state that Ryanair and TAP Air Portugal compete head-to-head on certain international routes to several large European cities, it is worth recalling that Ryanair only competes with TAP Air Portugal on the more profitable routes and does not provide any long-haul connections. TAP Air Portugal's exit from the market would leave profitable short-haul routes to Ryanair and removing one competitor from intercontinental connections to Lisbon. In essence, the result would therefore be less competition on both attractive and less attractive routes.
- (142) In the case of EAA, it should be noted that the airline does not have a relevant positioning in the Portuguese market, being a small air carrier with 7 aircraft focussing on the provision of services (so called 'wet lease' with aircraft, maintenance, crew and insurance provided) to other airlines and charter flights, which are not markets where TAP Air Portugal holds a relevant position. EAA does not have the presence, the resources, nor the organisation required to replace an airline such as TAP Air Portugal (for instance, EAA does not have adequate sales and distribution capabilities or resources).

- (143) While the observations of EAA point towards a certain projected fleet growth (which has not been disclosed to the Portuguese authorities as this constitutes confidential information of EAA), it is unlikely that EAA would reach a fleet size comparable to TAP Air Portugal's. Being a small-sized air carrier, without significant presence at Lisbon airport, the investments required for EAA to be in a position to replace TAP Air Portugal are substantial and extremely improbable to obtain in the near future. Considering EAA's focus on providing ACMI services to other carriers, including TAP Air Portugal, the Portuguese authorities note that a successful restructuring of TAP Air Portugal could potentially translate into additional service agreements between these two companies.

5.2. Appropriateness of aid

- (144) The Portuguese authorities have reiterated their conclusion that, in view of the previous situation of difficulty of TAP SGPS and the impact of the COVID-19 pandemic, State support in the form of equity provides a better financial structure for TAP SGPS to strengthen its balance sheet.
- (145) In relation to the observations of Ryanair and EAA, the Portuguese authorities emphasise that, according to point 58 of the R&R Guidelines, Member States are free to choose the form of the restructuring aid. In doing so, they are not required to conduct an exhaustive comparison of all available options. They should assess the nature of the beneficiary's difficulties and select appropriate instruments to deal with them. Such an exercise was extensively conducted by the Portuguese authorities and submitted to the Commission for its assessment. The State aid measures notified by Portugal were construed to provide liquidity support to the implementation of the measures of the restructuring plan and address the negative equity position of TAP SGPS.
- (146) In particular, TAP SGPS accumulated a negative shareholders' equity of EUR [...] million between 2006 and 2015, mainly due to [...]. Considering the weight of the airline business on the revenues of TAP SGPS, [...]. With regards to TAP Air Portugal, even though the airline had been on a growth trajectory in operational terms, due to the launch of a transformation process, TAP Air Portugal had not yet been able to considerably reduce its costs when comparing with competitors, and it consistently presented lower profitability driven by lower efficiency and extraordinary costs.
- (147) Furthermore, TAP Air Portugal's transformation process was interrupted as a result of the global pandemic of COVID-19 and the economic crisis that followed, which resulted in an acute liquidity crisis leading to the granting of rescue aid by the Portuguese authorities, in 2020. Already in late 2020, the liquidity analysis Air Portugal clearly indicated that without further State support, TAP Air Portugal would reach a substantial negative net cash position in 2021 and 2022 in the absence of a market recovery.
- (148) As capital markets have not been available for airline borrowers like TAP SGPS, resorting to State funding was the only available option in 2020. TAP SGPS's management has [...]. However, debt funding markets were largely shut down for airlines following the onset of the COVID-19 pandemic with financial institutions in general drastically reducing their credit limits for the sector. In order to maximize liquidity, TAP Air Portugal has made an effort to sell those aircraft that were owned by the company ([...]). Other assets [...].
- (149) Currently, prior to incremental State support and despite TAP SGPS's efforts and discussions with financial institutions and other stakeholders, raising additional funds from private markets for TAP SGPS will not be possible under present conditions and definitely not before the approval of the restructuring plan. This leaves the Portuguese State, who is also the main shareholder, as the only viable source of funding (or provider of a guarantee of funding) for the company.
- (150) In this context, considering the unavailability of capital markets at this stage for TAP SGPS and the company's equity and liquidity position, it is the Portuguese authorities' conclusion that State support in the form of equity provides a better financial structure for TAP SGPS to strengthen its balance sheet. Moreover, combined with the implementation of the measures set forth in the restructuring plan (namely those regarding fleet, network and cost restructuring), the State aid is expected to facilitate TAP SGPS or TAP Air Portugal's access to the capital markets during the period from [...].

5.3. Return to long-term viability

- (151) Despite the current uncertainty of the demand recovery path associated with the pandemic situation, the Portuguese authorities reiterate that the financial projections contained in the restructuring plan are based on solid assumptions, which could even be considered conservative. The restructuring plan assumes a demand recovery outlook, in terms of number of passengers transported, which is generally lower than the IATA forecasts. Similarly, the revenue path in the restructuring plan starts from a lower point in 2021 in comparison to passenger forecasts. The restructuring plan also incorporates some flexibility to adapt the beneficiary's capacity and operations according to foreseeable demand, while respecting the maximum fleet commitment.
- (152) The financial assessment and projections demonstrate that the planned restructuring measures supported with the aid would allow TAP SGPS to attain [...]. The projections evidence a return on equity of around [...]% in 2024 and 2025, by the end of the restructuring period. The expected returns sustain the argument that the restructuring plan would secure the long-term viability of the beneficiary. In fact, those returns compare favourably with the (opportunity) cost of equity across economic sectors in Portugal (10,9 %) and for the aviation sector (8,5 %) the beneficiary's. Other key indicators such as ROCE and Equity to Assets ratio [...] and remain robust even in an adverse scenario.
- (153) Moreover, the divestment of loss-making and non-core businesses set out in the restructuring plan, namely M&E Brasil, will ensure that no further losses resulting from those activities damage recovery. In view of the above, the Portuguese Republic reiterates that the restructuring plan has been elaborated in order to specifically address the past difficulties of TAP SGPS and ensure its long-term viability.

5.4. Proportionality

- (154) As regards the proportionality of the aid, the Portuguese authorities submit that beneficiary sought to secure from its stakeholders additional sources of own contribution, namely those relating to additional bidding commitments for aircraft leases, as well significant waivers from bondholders, which should be considered as burden sharing from existing creditors of the beneficiary. Even only considering the additional aircraft leases, the level of own contribution to the restructuring costs is increased up to [...]. This level of own contribution should be deemed sufficient in the particular case of TAP SGPS and the context of the COVID-19 pandemic, given the R&R Guidelines allow for a more flexible and adjusted application of the State aid rules, specifically in exceptional circumstances.
- (155) The suggestions of Ryanair with regard to potential for the usage of collateralisation are not feasible in the case of TAP SGPS. As to Ryanair's allegations that lack of access to capital markets is used to inflate the aid through a buffer of EUR [...] million, such buffer was initially only intended as a precautionary measure set forth in the initial restructuring plan and is no longer considered.
- (156) The Portuguese authorities described TAP SGPS's recent endeavours to enhance its own contribution ratio, which include: (i) seeking additional sources of fresh funding despite the current exogenous challenges and market conditions; (ii) obtaining support of existing debt providers; and (iii) considering the entry of new investors. Since the adoption of the opening decision, TAP Air Portugal has been able to achieve additional commitments for funding of EUR [...] million in new contracts of aircraft leases arriving in 2021 and 2022, further to the EUR [...] million financial lease commitments already included in the restructuring plan. Accordingly, the total amount of own contribution resulting from aircraft leasing based on binding legal commitments entered into with the lessors has been eventually increased to EUR [...] million. Furthermore, TAP SGPS has succeeded in obtaining the support of existing debt providers, by obtaining significant waivers, which would avoid the triggering of put and early repayment options with serious consequences for the beneficiary's liquidity.
- (157) When it comes to burden sharing, it is important to take into consideration the context in which the Portuguese State has acquired, from AGW, shares representing 22,5 % of the share capital of TAP SGPS and entered, directly, into the share capital of TAP SGPS. Such transaction was agreed in order to overcome the deadlock in the negotiations regarding the granting of the rescue loan to TAP SGPS and to enable its urgent implementation.

- (158) At such time, the parties could not anticipate the final amount of the restructuring aid, which has required adjustments due to the protracted nature of the pandemic, and therefore the actual sacrifice that would have to be endured by the shareholders for the purposes of burden sharing. In this context, [...] ([...]% [...])
- (159) In addition, and to prevent such a scenario, HPGB [...]%. [...]. According to Portugal, this would constitute burden sharing by HPGB, as it will not benefit from any future gains in value of the beneficiary, resulting from the State equity injected.

6. ASSESSMENT OF THE MEASURES

- (160) The Commission will first assess whether the measures to be provided to finance TAP SGPS' restructuring plan, namely the rescue loan of EUR 1,2 billion to be converted into equity, the State guarantee of EUR [...] million on a EUR [...] million loan to be substituted with equity, as well as the EUR [...] million direct equity injection to be executed in 2022, entail State aid within the meaning of Article 107(1) TFEU, and if so, whether such aid is lawful and compatible with the internal market.

6.1. Existence of State aid

- (161) According to Article 107(1) TFEU, '[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (162) The qualification of a measure as aid within the meaning of Article 107(1) TFEU requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) the measure must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) it must distort or threaten to distort competition and affect trade between Member States. It is therefore appropriate to examine separately whether the measures qualify as aid.

6.1.1. State resources and imputability to the State

- (163) The measures involve administrative acts and public decisions and they will be funded from the State budget (recital 42).
- (164) For the purposes of Article 107(1) TFEU, therefore, the measures involve State resources and the decision to grant those measures is imputable to the Portuguese State.

6.1.2. Advantage

- (165) The Commission notes that Portugal has notified the measures as constituting State aid. That declaration does not discharge the Commission from examining itself whether the measures involve State aid and, in particular, whether they favour the beneficiary in that a market operator holding shares in a situation as close as possible to that of Portugal would not take a similar decision and grant the same measures at the same conditions, leaving aside any benefits expected in its situation as public authority ⁽⁵²⁾.
- (166) The Commission has to examine whether the measures qualify as aid in that they confer an economic advantage on the beneficiary ⁽⁵³⁾. The presence of such an advantage can be inferred and established from the fact that the beneficiary cannot obtain capital or raise debt finance at market conditions without public support (recital 39 footnote 31). Likewise, the assessment of whether a market operator in a situation as close as possible to that of DGTF or Parpública would provide the same funding ('market economy operator test') shows that the public funding in question provides an advantage when compared to market conditions.

⁽⁵²⁾ Judgment of the Court of Justice of 20 September 2017, *Commission v Frucona Košice*, C-300/16 P, EU:C:2017:706, paragraph 59; judgment of the Court of Justice of 5 June 2012, *Commission v EDF*, C-124/10 P, EU:C:2012:318, paragraphs 78, 79 and 103.

⁽⁵³⁾ Judgment of the Court of Justice of 11 July 1996, *SFEI and others*, C-39/94, EU:C:1996:285, paragraph 60; judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, EU:C:1999:210, paragraph 41.

- (a) First, there is no *prima facie* evidence that the funding can be ascribed to behaviour and decisions which a market shareholder would take. The funding is premised on reasons of public policy to guarantee air transport connectivity of Portugal and to avoid negative spill-over effects of the bankruptcy of TAP Air Portugal for the Portuguese economy (recital 17). Such considerations, however pertinent for a public authority, would not be relevant for a market shareholder. Therefore, the market economy operator test appears not to be applicable.
- (b) Second, the funding cannot be assessed as being capable of providing a shareholder return commensurate with the risk taken. Portugal does not claim that such return would actually be achieved until the end of the restructuring period. In the meantime, the other private shareholders of the beneficiary have refrained from providing any further fresh capital, let alone reaching the amounts necessary to preserve their existing proportion of shareholding and ownership entitling them to possible returns therefrom. The available evidence shows that whilst being capable of providing an adequate return and remunerating the State at the end of the restructuring plan (recitals 48, 49 and Table 1), the positive net earnings of the whole restructuring period would amount [...] EUR [...] million [...]. [...] EUR [...] million [...] % [...].

(167) Therefore, the measures provide funding that the beneficiary cannot and could not obtain on the market. A market operator in a situation as close as possible to that of DGTF or Parpública would not provide similar funding.

(168) Therefore, the measures confer an economic advantage on the beneficiary within the meaning of Article 107(1) TFEU.

6.1.3. Selectivity

(169) The measures are to be granted through the exercise of discretion for an *ad hoc* amount determined by reference to the specific needs of the beneficiary's restructuring plan (recitals 38-43). The public funding is not, whether by instruments or amount, part of a broader, general, economic policy measure to provide support to undertakings in a comparable legal and economic situation that are active in the air transport or other economic sectors. As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective ⁽⁵⁴⁾. This is so regardless of whether there are operators on the relevant markets that are in a comparable factual and legal situation.

(170) Therefore, the measures are selective within the meaning of Article 107(1) TFEU.

6.1.4. Distortion of competition and effect on trade

(171) The air passenger transport and cargo services sector in which the beneficiary is active is open to competition and trade between Member States. Other airlines licensed in the European Union provide air transport services connecting the Portuguese airports, in particular Lisbon, with other cities of the Union. Therefore, by sustaining the continued operation of the air transport services that the beneficiary provides, the measures are liable to affect trade between Member States.

(172) By granting access to funding at conditions that it would not otherwise obtain on the market, the public funding is liable to improve the position of the beneficiary in relation to actual competing undertakings or potential ones that do not have access to similar State support from Portugal or that have to finance operations at market conditions.

(173) The notified measures are consequently liable to distort or threaten to distort competition and to affect trade between Member States.

6.2. Conclusion on the existence of aid

(174) In light of the above, the Commission concludes that the notified measures in favour of TAP SGPS constitute State aid within the meaning of Article 107(1) TFEU.

⁽⁵⁴⁾ Judgment of the Court of Justice of 4 June 2015, *Commission v MOL*, C-15/14 P, EU:C:2015:362, paragraph 60.

6.3. Lawfulness of the aid

- (175) After the General Court annulled on 19 May 2021 the initial rescue aid decision (recital 2), the General Court suspended the effects of the judgment on the basis of Article 264(2) TFEU pending the adoption of a new decision by the Commission within a period of two months. On 16 July 2021, the Commission adopted a new decision approving the rescue aid to TAP SGPS as notified on 8 June 2020, as a result of which the rescue aid to TAP SGPS must be regarded as lawful.
- (176) According to recital 16 of the initial rescue aid decision, the rescue aid up to a maximum of EUR 1,2 billion loan or a combination of loan and loan guarantees, was planned to be repaid within six months of the date of disbursement of the first instalment, unless Portugal were to submit a restructuring plan for approval by the Commission before that date. On 10 December 2020, i.e. within six months after the Commission approved the rescue aid in the initial rescue aid decision, Portugal submitted to the Commission a restructuring plan. Therefore, according to point 55(d)(ii) of the R&R Guidelines, the authorisation of the rescue aid and the repayment period was automatically extended until the Commission takes a final decision on the restructuring plan and supporting aid.
- (177) In its observations on the opening decision, EAA argues that by approving the Public State Budget Law for 2021 in November 2020, by which the Portuguese Government earmarked EUR 500 million of financial support for TAP SGPS, Portugal granted unlawful aid to TAP SGPS (recital 120). It has to be recalled that the mere designation of funds for a special purpose in a national budget is not equivalent to the granting of aid. For aid to be considered to be put into effect, it is needed that the right to receive support, provided through State resources, is conferred on the beneficiary under the applicable national legislation, which was not the case with the earmarked EUR 500 million.
- (178) As regards the abovementioned funds, Portugal explained that it has not adopted the necessary implementing act nor has the budgetary provision been executed to make these resources available to TAP SGPS or entitling TAP SGPS to receive them. Therefore, Portugal has not granted restructuring aid in contravention of Article 108(3) TFEU.
- (179) Accordingly, Portugal has observed the stand-still obligation laid down in Article 108(3) TFEU and the restructuring aid in favour of TAP SGPS constitutes lawful State aid.

6.4. Compatibility of the aid with the internal market

- (180) Under Article 107(3)(c) TFEU, the Commission may authorise aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (181) Thus, in order to be capable of being considered compatible with the internal market under that provision, State aid must meet two conditions, the first being that it must be intended to facilitate the development of certain economic activities or of certain economic areas and the second, expressed in negative terms, being that it must not adversely affect trading conditions to an extent contrary to the common interest. The above is without prejudice to the fact that decisions adopted by the Commission on that basis must ensure compliance with Union law ⁽⁵⁵⁾.
- (182) In the light of the notification and the information collected in the course of the formal investigation into the restructuring aid, it does not result that the restructuring aid or the conditions attached to it, or the economic activities facilitated by the aid, could entail a violation of a relevant provision of Union law. In particular, the competition measure consisting of a transfer of slots at Lisbon airport is based on the rules defined in Union law (recitals 96 and 295) and the new slot holder must commit to comply with the applicable Union labour law (recital 88(d)). Moreover, the criticism from EAA that the aid violates the principle of non-discrimination set out in the TFEU (recital 121) is unfounded. In Union law, the principle of equal treatment does not preclude the grant of ad hoc restructuring aid under Article 107(3)(c) TFEU. In any event, the Commission notes that the position of the beneficiary is objectively different from those of the other airlines operating flights in Portugal or flights to and from Portugal, both in light of its eligibility for aid under the R&R Guidelines and in light of the consequences that its failure would involve. Therefore, it is open to Portugal to decide to grant restructuring aid to the beneficiary only,

⁽⁵⁵⁾ Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 18 to 20.

and not to other airlines operating in that Member State under Article 107(3)(c) TFEU. Moreover, the Commission has not sent a reasoned opinion to Portugal on a possible infringement of Union law that would bear a relation to this case, nor has it received any complaints or information that might suggest that the State aid, the conditions attached to it or the economic activities facilitated by the aid might be contrary to relevant provisions of Union law, other than Article 107 and 108 TFEU.

- (183) Portugal considers that the restructuring aid can be declared compatible with the internal market pursuant to the R&R Guidelines.
- (184) In view of the nature and aims of the State aid at stake and the claims of the Portuguese authorities, the Commission will assess whether the planned funding supporting the restructuring aid complies with the relevant provisions laid down in the R&R Guidelines. In the R&R Guidelines, the Commission sets out the conditions under which State aid for rescuing and restructuring non-financial undertakings in difficulty may be considered to be compatible with the internal market on the basis of Article 107(3)(c) TFEU.
- (185) In examining whether restructuring aid has an adverse effect on trading conditions to an extent that is contrary to the common interest, the Commission carries out a balancing test according to Article 107(3)(c) TFEU and the R&R Guidelines. In that test, provided that the beneficiary is eligible to receive restructuring aid, the Commission weighs the positive effects of the aid for the development of the activities that the aid is intended to support against the negative effects created by the impact of the State aid on competition and trade between Member States, assessing in particular how the aid measure minimises the distortions on competition and trade (need for State intervention, appropriateness, proportionality, transparency of the aid, one time last time principle and measures to limit distortions of competition).

Eligibility: undertaking in difficulty

- (186) In order to be eligible for restructuring aid, a beneficiary must qualify as an undertaking in difficulty within the meaning of section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines explains that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. This would be the case when at least one of the circumstances described in letters (a) to (d) of point 20 of the R&R Guidelines occurs.
- (187) As explained in the opening decision (recitals 15-22), TAP SGPS presented a negative equity amount of approximately EUR [...] million at the end of 2019. Since then, the financial situation of TAP SGPS has worsened. According to the consolidated account of TAP SGPS of 2020, the total negative equity increased up to the level of EUR [...] billion. TAP Air Portugal also exhibited a negative equity in 2020, equal to EUR [...] billion (recital 26). Those figures show that at least half of the subscribed share capital of TAP SGPS and TAP Air Portugal has disappeared and thus both companies qualify as an undertakings in difficulty pursuant to point 20(a) of the R&R Guidelines.
- (188) According to point 21 of the R&R Guidelines, a newly created undertaking is not eligible for rescue aid. The beneficiary is not a newly created undertaking for the purposes of the R&R Guidelines, since it was established in 2003, so more than three years ago (see recital 8).
- (189) According to point 22 of the R&R Guidelines, a company belonging to or being taken over by a larger business group is not normally eligible for restructuring aid, unless it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.
- (190) In the second rescue aid decision (recitals 113 to 128), the Commission concluded that that TAP SGPS belonged to a larger business group at the moment of the notification of the rescue aid on 9 June 2020. On the one hand, there was no evidence of arbitrary cost allocation among TAP SGPS, AGW and Parública artificially burdening TAP SGPS by the parents in the relevant period. (In addition, it follows from recitals 19 to 22 of the present decision that the difficulties of TAP SGPS are not the result of arbitrary allocation of costs within a group and are peculiar to the air transport and related sectors on which it operates.) On the other hand, the AGW consortium as the second biggest shareholder which held 45 % in TAP SGPS was a limited liability company controlled by individual shareholders, Mr David Neeleman, who controlled 50 % of AGW shares via DGN Corporation (40 %) and Global

Azulair Projects, SGPS, SA (10 %) and Mr Humberto Pedrosa, who held 50 % of AGW, via the company HPGB, SGPS, SA. The corporate form of AGW consortium as such was independent and unrelated to the private wealth of its two indirect shareholders and physical persons Mr Neeleman and Mr Pedrosa, who were not personally liable for the obligations of the AGW consortium. Consequently, these two indirect private physical shareholders could not be held accountable for the financial difficulties of the TAP SGPS with their private wealth.

- (191) As the Commission found in the second rescue aid decision (recital 127), the jointly controlling shareholders other than Parpública (the State) did not have the necessary capacities to meet the liquidity needs estimated at EUR 1,2 billion required for ensuring continuity of TAP SGPS for a period of six months and to further finance the restructuring of TAP SGPS (without granting State aid).
- (192) In respect of TAP Air Portugal, there is no evidence that its precarious financial conditions stem from an arbitrary allocation of costs within the group or economic unit. This is valid both for the time when TAP Air Portugal was under the ultimate joint control of Parpública (the State), HPGB and DGN, and also for the present situation when it is under the sole control of the Portuguese State, within the same economic unit as its sister company TAP SGPS, which also has a non-controlling minority holding in TAP Air Portugal. (recitals 11 and 12). The finding at recital 191 on the lacking capacity of the former jointly controlling shareholders to meet the liquidity needs of the company (without granting State aid) applies equally to TAP Air Portugal, which is and was in the same economic unit as TAP SGPS.
- (193) Following the modification of the capital structure of TAP SGPS, which is the consequence of the acquisition of 22,5 % of the shares of TAP SGPS by DGTF, TAP SGPS is solely controlled by the State [...] (see recitals 8, 11 and 12). Therefore, TAP SGPS and TAP Air Portugal are part of an economic unit (or a larger business group), which the Commission can consider an independent centre of decision-making within the State providing the notified restructuring aid.
- (194) The Commission considers, therefore, that neither the joint controlling entities, nor subsequently the State as sole controlling shareholder were in a position to alleviate in a market-conform manner the economic and financial strained position of TAP SGPS, or of TAP Air Portugal. For the financial intervention of the State to remedy the difficulties of the companies whether directly via DGTF or via Parpública would amount to State aid unless carried out, alone or in conjunction with the joint controlling entities, on market terms. Parpública as joint controlling entity has not and could not have supported TAP SGPS on market terms, nor have or could the jointly controlling private entities done so ⁽⁵⁶⁾. Therefore, given the pre-existing position of the State as shareholder holding 50 % of TAP SGPS [...] and the control held thereafter, the difficulties of TAP SGPS and of TAP Air Portugal cannot be dealt with by a group.
- (195) On the basis of the above, the Commission concludes that both TAP SGPS and TAP Air Portugal (including their controlled subsidiaries) are undertakings in difficulties and are eligible for restructuring aid.

6.4.1. *The aid facilitates the development of certain economic activities or certain economic areas*

- (196) Under Article 107(3)(c) TFEU, State aid, to be considered compatible with the internal market, must facilitate the development of certain economic activities or certain economic areas.
- (197) In that regard, to show that restructuring aid is intended facilitate the development of such activities or areas, the Member State granting such aid must demonstrate that the aid aims to prevent social hardship or address a market failure. In the specific context of restructuring aid, the Commission notes that, as acknowledged at point 43 of the R&R Guidelines, in fact, market exit is important to the wider process of productivity growth, thus merely preventing an undertaking from exiting the market does not sufficiently justify State aid. On the contrary, rescue and restructuring aid are among the most distortive types of State aid, as they interfere with the process of market

⁽⁵⁶⁾ This finding is necessarily limited to AGW as a vehicle for ownership of, eventually, natural persons, for the examination of the resources of the jointly controlling entities regards the resources of those entities and not the private resources available to the natural persons who are not personally liable on the holdings of those entities.

exit. However, in certain situations, restructuring an undertaking in difficulty may contribute to the development of economic activities or areas, also beyond the very activities carried out by the beneficiary. This is the case where in the absence of such aid, the beneficiary's failure would lead to situations of market failure or social hardship, inhibiting the development of the economic activities and/or areas that would be affected by such situations. A non-exhaustive list of such situations is laid down at point 44 of the R&R Guidelines.

- (198) Such situations occur, inter alia, where the aid avoids the risk of interruption to an important service, which is hard to replicate and where it would be difficult for any competitor simply to step in, or where the beneficiary plays an important systemic role in a particular region or sector from which its exit would have potential negative consequences⁽⁷⁷⁾. By enabling the beneficiary to continue its operations, the aid thus prevents such market failure or social hardship. In case of restructuring aid, however, this is only true where the aid enables the beneficiary to compete in the marketplace on its own merits, which can only be ensured if the aid is premised on the implementation of a restructuring plan that restores the beneficiary's long-term viability.
- (199) The Commission, hence, will first assess whether the aid is intended to prevent a situation of market failure or social hardship (section 6.4.1.1) and whether it is accompanied by a restructuring plan restoring the beneficiary's long-term viability (section 6.4.1.2).

6.4.1.1. Prevention of social hardship or market failure contributing to the development of economic activity

- (200) Among the situations where rescuing an undertaking in difficulty may contribute to the development of economic activities or areas, point 44(b) and (c) of the R&R Guidelines mention cases where aid is intended to avert the risk of economic growth being hampered by the disruption of an important service as a consequence of the exit of the beneficiary from the market (point 44(b) of the R&R Guidelines), or by the failure of an undertaking with an important systemic role in the sector or region concerned (point 44(c) of the R&R Guidelines).

The aid avoids the disruption of an important service

- (201) In the opening decision, the Commission noted that the objective of the restructuring aid was to avoid that TAP SGPS and, as a consequence, TAP Air Portugal, goes out of business due to the difficulties it has been experiencing and which were acutely aggravated by the COVID-19 crisis.⁽⁷⁸⁾ Since an airline needs to guarantee sufficient liquidity to maintain its operating licence, it is manifest in light of the available resources and the recent and expected operating losses that TAP Air Portugal would be unable to meet its payment obligations and liabilities and thus need to file for insolvency discontinuing activity without the restructuring aid (Table 1). The Commission has found, on the basis of the information provided during the formal investigation, that there is indeed a concrete risk of an immediate failure of the beneficiary to meet its payment obligations leading to a disruption of the ongoing air transport activity of TAP Air Portugal.
- (202) In that respect, TAP Air Portugal provides unique connections services from its hub, Lisbon airport, by providing regular travel schedules (recitals 15 and 16). In addition to the essential air transport services provided to the Portuguese-speaking community, at national level and abroad, TAP Air Portugal decisively and significantly supports the economic growth of the one of the most relevant economic activities for Portugal, tourism. Specifically, an important segment of Portuguese companies – namely hotels, restaurants, social and cultural events, retail shops and other tourism-related activities, especially present in the largest regions of Lisbon and Porto and in Algarve, would have further difficulties surviving the crisis without support from the operations of TAP Air Portugal bringing travellers.
- (203) As Portugal points out, most of those companies that may survive COVID-19 crisis only due to support of the Portuguese government through temporary subsidised work and measures which allow them to defer due payments, need tourism to ramp up. The Portuguese travel agencies and representatives of regions having submitted comments stress that they depend on TAP Air Portugal's services for part of their business and activities, which would suffer considerable losses in turnover without business with TAP Air Portugal.

⁽⁷⁷⁾ Point 44(b) and, (c) of the R&R Guidelines.

⁽⁷⁸⁾ Recital 71 of the opening decision.

- (204) The Commission thus considers that in the absence of restructuring aid averting the discontinuation of TAP Air Portugal's activities, not only travellers but also the travel business community would entirely depend on whether a combination of low cost carriers and long-haul carriers focused on point-to-point connections within the Union and the with the rest of the world in the 92 destinations that TAP Air Portugal offered before its restructuring would be able and willing to establish the same services in frequency and geographic scope, in particular with North America, Latin America and Africa (recital 15). Third parties – in particular, business partners, such as travel agencies, tour operators, major hotel groups, ticketing agencies and suppliers, in addition to national and foreign governmental bodies, including bodies promoting tourism and commercial or cultural exchanges – have confirmed and corroborate the Commission's finding in the opening decision that a market exit of TAP Air Portugal would risk causing loss of these connections (recital 100).
- (205) In order to replicate TAP Air Portugal's role, competitors would need to build and establish network of destinations, which would take a considerable amount of time and could risk not be achieved at all with the same services in frequency and geographic scope. In this respect, the Commission notes that the objective of the restructuring aid is to avoid that TAP Air Portugal goes out of business due to the difficulties it has been experiencing and which were acutely aggravated by the COVID-19 crisis.
- (206) The concrete routes making up TAP Air Portugal's network in 2019 before the pandemic are at present reduced in the presence of restrictive travel measures put in place on health grounds to limit the spread of the virus by the Portuguese authorities. However, the forecasts of traffic recovery by IATA referred to in the opening decision, which no party put into question, point at demand recovery earlier than 2025 (recital 223). In such a setting, in the foreseeable scenario of demand for air transport services and connectivity in Portugal, TAP Air Portugal's network – or an equally dense one – would be key as it was before the pandemic to meet future demand, especially in all or some of the routes where TAP Air Portugal was the only airline operating [...] of [...] routes in summer season and [...] out of [...] routes in winter season (recitals 15 and 16).
- (207) As regards a hypothetical network replicating TAP Air Portugal's, it is highly unlikely that a combination of existing legacy or low-cost carriers would be both willing and able to build within a reasonable timeframe the required network connections, in particular to Portuguese-speaking countries, to take over TAP Air Portugal's role in connecting Portugal with the rest of the world. Indeed, none of the two air carriers that has intervened has duly substantiated the willingness and ability to develop a similar national transport network or plans to develop a similar connectivity and have only generically referred to other airlines not intervening in the proceedings that could partly replicate TAP Air Portugal's network, in their view. Likewise, whilst the studies submitted show growth of and competition from low cost carriers (recital 105), they do not explain, let alone demonstrate that TAP Air Portugal's services and network could be replicated or substituted with near certainty by one carrier or specific combinations thereof. On the contrary, as set out in recitals 100 and 132, many third parties which rely on them have voiced concerns regarding a possible loss of TAP Air Portugal's services. The information provided in the course of the formal investigation, therefore, confirms the Commission's finding that there is indeed a concrete risk of an immediate failure of the beneficiary to meet its payment obligations, thus leading to a risk of disruption of the economic activity of air transport services provided TAP Air Portugal.
- (208) Hence, the failure of the beneficiary would in turn risk disrupting an important transport service providing international and nation-wide connectivity and network -connecting mainland Portugal and its islands, as well as the Portuguese-speaking community overseas- which is hard to replicate for other suppliers as set out in point 44(b) of the R&R Guidelines.

The aid supports an undertaking with a systemic role

- (209) The aid also seeks to avert the risk of exit of an undertaking that performs an important service with a systemic role in Portugal within the meaning of point 44(c) of the R&R Guidelines.

(210) In this respect, the Commission considers that the beneficiary undoubtedly plays a key role in the Portuguese economy⁽⁵⁹⁾, not only for the development of tourism and connectivity with the Portuguese-speaking countries, but also in terms of employment. First, the beneficiary has an important systemic role for the whole of the Portuguese territory as it supports the growth of Portuguese tourism, one of the Member State's most important sectors, which accounted for 14,6 % of Portugal's gross domestic product ('GDP') in 2018. That sector was of paramount importance for the Portuguese economic recovery from the financial and sovereign debt crisis after the 2008 crisis. Tourism contributes approximately EUR 19 billion to Portugal's GDP, which represented 8,7 % of 2019 GDP there being no indication that economic recovery post pandemic would significantly affect the composition of the Portuguese GDP and the contribution of tourism thereto. Second, with approximately 10 000 employees (in 2019), TAP SGPS is one of the largest employers in the country and accounts for more than 110 000 indirect jobs. Those figures demonstrate that a possible insolvency that TAP SGPS would face in the absence of the restructuring aid would have a significant negative spill-over effect on the entire Portuguese economy.

Review of claims raised in third party observations and conclusions

- (211) The preliminary findings of the Commission in the opening decision are contested by Ryanair. Ryanair claims, first, that there is no evidence of a risk of disruption to an important service that is hard to replicate. According to Ryanair, competitors that are stepping in could replicate TAP Air Portugal's services. More precisely, Ryanair claims, firstly, that it could easily replace TAP Air Portugal on short-haul flights, whereas, on long-haul flights, there are enough competitors flying from Lisbon who could overtake the capacities of TAP Air Portugal. Secondly, Ryanair claims that TAP Air Portugal is not a systemic undertaking and even assuming that it is, the opening decision does not explain whether downsizing TAP SGPS and suppressing the non-systemic or loss making activities could not preserve systemic activities.
- (212) Ryanair's claims are largely rebutted, first, by the submissions of other third parties and, secondly, by the information submitted by Portugal (recitals 138 to 141).
- (213) The Commission's preliminary findings in the opening decision have been strongly supported by third parties. Out of 39 replies to the invitation to submit comments on the opening decision, 36 parties have expressed their support for the Commission's view on the importance of TAP Air Portugal as the most important provider of connectivity between Portugal and the other Portuguese-speaking countries (in particular, Brazil, Angola, Mozambique and São Tomé), as well as connecting the whole Europe with Portugal, and through its Lisbon hub, with the abovementioned countries. All stakeholders other than the two direct competitors support the plans for restructuring aid to TAP SGPS and confirm the important role TAP Air Portugal plays, in particular, for the economy of Portugal.
- (214) On the basis of the information in its possession, the Commission also notes that, while some of TAP Air Portugal's routes might be attractive for a competitor on a stand-alone basis, there are no indications that any competitor could take over the whole of TAP SGPS' services. TAP SGPS' market exit would thus be likely to trigger severe social hardship for its clients, staff and suppliers.
- (215) The Commission notes, in particular, that, contrary to its competitors, TAP Air Portugal is currently a major provider of connectivity for passengers travelling to and from the Portuguese-speaking countries. As already mentioned (section 4.2), that company plays a crucial role for the connectivity of Portugal and the whole of Europe with Brazil, Angola, Mozambique and São Tomé. While the services of TAP Air Portugal could theoretically be replaced by several operators within the time-span of the restructuring plan, such replacement could only be partial and would entail an important worsening of services in particular for customers located in Portugal. In the meantime, the downsizing of TAP Air Portugal that Ryanair calls for disregards the negative spill-over effects of reduction of, among other things, a sizeable number of intra-union connections in the hub model of TAP Air Portugal relying also on intercontinental routes that could be irretrievably jeopardised in a mid-term perspective⁽⁶⁰⁾.

⁽⁵⁹⁾ According to the notification, in 2019, TAP SGPS contributed EUR 3,3 billion to the Portuguese GDP (accounting for 1,2 % of total GDP of the country) and EUR 300 million in direct taxes and social contributions. TAP SGPS's contribution to Portuguese exports is close to EUR 2,6 billion, while the value of services and goods purchased by TAP SGPS from more than 1 000 national suppliers is close to EUR 1,3 billion.

⁽⁶⁰⁾ In that respect, the Commission assessment of the impact on viability of the competition measure consisting of transferring 18 slots implies a reduction and allows the opening of three routes involving three rotations in intra-Union point to point connections. The effect is a reduction by [...] % on the return on capital employed of TAP Air Portugal and a [...] of its debt to equity ratio (Table 3). The assessment thus implies that a broader and more significant reduction of profit-making routes in intra-Union flights that feed the intercontinental flights could impair its ability to sustain its standing on the market without access to market funding, thus requiring more aid by the end of the restructuring period.

- (216) The other largest airlines in Portugal (Ryanair, EasyJet) provide connectivity between Portugal and other Member States of the Union only and their business model excludes long-haul intercontinental flights. Other major EU air carriers offering intercontinental connections from Lisbon operate a hub-and-spoke model. That means that instead of providing direct flights to overseas destinations from Lisbon airport, they would rather transfer passengers from Portugal to their hubs in other Member States such as Orly/Roissy, Schiphol, Frankfurt or Munich before transporting them to such destinations. This in turn would importantly extend the overall duration of flights from Portugal to western or southern destinations.
- (217) Hence, both as employer and as central element in the economic chain for many other Portuguese undertakings, the beneficiary can be considered as an undertaking with a systemic role pursuant to point 44(c) of the R&R Guidelines.
- (218) In the light of the above, the Commission therefore concludes that the aid contributes to the development of the economic activity of provision of air transport services connecting Portugal in that it allows to maintain an important service that could risk not being replicated in its entirety or to broadly similar extent and without social hardship by competitors in the short to medium term, with potential negative consequences on the larger economy of Portugal, ensuing the current crisis caused by the Covid-19 pandemic (point 44(b) and (c) of the R&R Guidelines).

6.4.1.2. Restructuring plan and return to long-term viability contributing to the development of the economic activity or area

- (219) In addition, under point 46 of the R&R Guidelines, granting of a restructuring aid must be conditional on implementation of a restructuring plan that would restore the viability of the beneficiary. The remediation of the causes that led to the difficulty of the beneficiary, by facilitating its return to long-term viability, is a necessary condition for the restructuring aid to serve the development of the economic activity(ies) and areas where the beneficiary operates. The restructuring aid supports a wide-ranging restructuring plan encompassing the entire perimeter of activities of TAP SGPS and of TAP Air Portugal.
- (220) Under points 45 to 48 of the R&R Guidelines, restructuring aid should only be granted to support a realistic, coherent and far-reaching restructuring plan, the measures of which must be designed to restore long-term viability in a reasonable timescale, excluding any further aid beyond the one supporting the beneficiary's restructuring plan. The restructuring plan must outline how the proposed restructuring measures will remedy the beneficiary's underlying problems.
- (221) The results of the restructuring must be demonstrated in a variety of scenarios, in particular by identifying performance parameters and the main foreseeable risk factors. The return to viability of the beneficiary must result in an appropriate return on capital invested after covering costs, without depending on optimistic assumptions about factors such as variations of price or demand. Long-term viability is achieved when an undertaking is able to provide an appropriate projected return on capital after having covered all its costs including depreciation and financial charges and is also able to compete in the marketplace on its own merits.
- (222) In this section, the Commission will first assess the credibility of the assumptions underlying the beneficiary's restructuring plan and then the evidence of the beneficiary's return to viability at the end of the restructuring plan.

Assessment of the assumptions underlying financial projections

- (223) With regard to the credibility of the assumptions underlying the revenue projections, the Commission notes that the beneficiary's air traffic recovery projections are more conservative than IATA's baseline forecasts. While IATA predicts a volume of passengers in 2025 equal to 109 % of that in 2019, the beneficiary assumes that only [...] % of the 2019 passengers will be flying in 2025, the end of the restructuring plan (recital 51). Furthermore, the beneficiary assumes a slightly lower yield in 2025 (EUR cent [...] vs 2019 (EUR cent [...]), while the load factor in 2025 is expected to be [...] percentage points higher than in 2019 ([...] % compared to [...]). Finally, the beneficiary's revenue per ASK is lower in 2025 than in 2019 (EUR cent [...] compared to EUR cent [...]), which indicates that the beneficiary has already been able to achieve similar revenue per ASK targets immediately before the start of the restructuring period. Since the beneficiary's traffic projections are more conservative than IATA's forecasts, and the revenue-related key performance indicators are in line with the beneficiary's historical values in 2019, the Commission considers the beneficiary's revenue projections as reasonable.
- (224) With regard to the cost projections, the Commission observes that the beneficiary's return to profitability hinges on the reduction of costs, especially fuel and labour, as described in section 2.4.3. With regard to fuel, projections take into account the operation of newer, more fuel-efficient aircraft and rely on market-implied expectations on fuel prices retrieved from the Bloomberg database. Since the delivery schedules of the new aircraft have already been negotiated with suppliers, the fuel consumption of such aircraft is objective and verifiable data and so is the expectation of fuel prices; the Commission thus considers the fuel cost projections as credible.
- (225) With regard to labour cost projections, the Commission notes that the beneficiary has already signed agreements with all its trade unions until 2024 (the Emergency Agreements), which are applicable to all its employees. The Emergency Agreements envisage salary reductions, freeze of automatic salary increases and productivity improvements. Furthermore, the beneficiary already obtained a 1 200 FTE reduction through the non-renewal of fixed-term contracts and started the process to achieve an additional 2 000 FTE reduction through both voluntary measures and dismissals. The beneficiary has also started preparing the negotiation of new collective bargaining agreements, which will replace the Emergency Agreements, and has already obtained the commitment of several labour unions to the 2025 cost targets of the restructuring plan. Overall, considering the beneficiary has already achieved negotiations on most of the assumptions underlying the labour cost projections, the Commission finds those projections credible.
- (226) The Commission considers that the following elements also contribute to the credibility of the financial projections. First, the beneficiary already identified and started implementing multiple measures aiming to reduce costs other than labour and fuel (recital 35). Second, financial projections do not include EUR [...] million (out of EUR [...] million) revenue increases that the beneficiary has envisaged (section 2.4.1.4), which creates an additional safety buffer. Third, the restructuring plan focuses on the aviation business and envisages the sale or closure of non-core activities, such as M&E Brasil, which has been historically loss-making and contributed to the difficulties of the beneficiary (section 2.4.1.1).
- (227) To assess the overall reasonableness of the beneficiary's financial projections, the Commission has compared the beneficiary's expected EBIT margin (i.e. EBIT divided by revenues) in 2025 to that of a sample of peers for which stock market analyst forecasts for the same year are available ⁽⁶¹⁾. The average EBIT margin in that sample is 13,1 %, while the beneficiary's one is expected to be [...] %. Therefore, the Commission finds the beneficiary's profitability projections in 2025 to be in line with those of its average peer, which provides an additional indication of the credibility of the assumptions underpinning the restructuring plan.

Assessment of the beneficiary's return to viability

- (228) Having established the credibility of the assumptions underlying the financial projections, the Commission will now assess whether, based on those projections, the beneficiary is able to return to viability by the end of 2025, the end of the restructuring plan. More specifically, the Commission will verify whether, in 2025, the beneficiary expects to generate a sufficient rate of return from its operation and be able to compete on its own merits.

⁽⁶¹⁾ The sample includes: Lufthansa, IAG, SAS, Aegean and Finnair, Ryanair, Easy Jet and Wizz Air.

- (229) With regard to the beneficiary's ability to generate a sufficient return from its operations in 2025, a customary approach is to compare the return on capital employed (ROCE) ⁽⁶²⁾ in 2025 to the weighted average cost of capital (WACC). If the former is greater than the latter, the operations of a company are able to generate sufficient profits to cover its cost of capital, which is an indication of that company's viability.
- (230) The beneficiary's ROCE, whose calculation hinges on the financial projections that the Commission has assessed as credible in recitals 223-227, is expected to be [...] % in 2025, according to Portugal (recital 48). That value is the ratio between the pre-tax EBIT and capital employed in 2025. However, since the viability test consists in comparing the ROCE to the WACC, which is a post-tax rate of return, the Commission considers it is more appropriate to compute the ROCE using post-tax EBIT. Moreover, in order to smooth out the yearly fluctuations in balance sheet variables, the Commission also finds it reasonable to use the average capital employed in 2024 and 2025, instead of the capital employed in 2025, as the denominator of the ROCE in 2025. With those two changes, the Commission obtains a ROCE of [...] %.
- (231) The ROCE value of [...] % is higher than the beneficiary's WACC of [...] %. Such WACC, in line with the standard methodology, consists in a weighted average of the beneficiary's cost of equity ([...] %) and cost of debt ([...] %), with weights equal to the beneficiary's target debt to debt plus equity ratio ([...] %). Those components of the WACC are appropriately justified, based on market data and financial information on the beneficiary's peers retrieved from Capital IQ and Reuters (footnote 61). More specifically, the cost of equity calculation assumes a risk-free rate of [...] %, which is well above the current negative yields on German 10-year government bonds, an equity risk premium of 4,72 % and a country risk premium of 1,95 %, which are both in line with publicly available benchmarks ⁽⁶³⁾, and a beta of [...]. ⁽⁶⁴⁾ Such beta is the average stock beta of the beneficiary's peers in footnote 61, adjusted to reflect differences in debt to equity ratios and tax rates, in line with the standard Hamada formula. The cost of equity also incorporates a small size risk premium of 1,75 %, as calculated by Duff & Phelps. With regard to the cost of debt, it is an average of the current yield on the beneficiary's outstanding debt ([...] % pre-tax, [...] % post-tax), which is a conservative assumption since the beneficiary's indebtedness and creditworthiness ratios are expected to improve over the planning period. Therefore, the Commission considers that the beneficiary will be able to return to viability in 2025, based on the reasonable expectation that its ROCE in 2025 will be higher than its WACC.
- (232) The Commission also notes that the expected ROCE in 2025 is higher than the median 2019 ROCE ([...] %) of the peer airlines listed in footnote 61. That is a further indication of the beneficiary's return to viability, since those airlines, in 2019, were able to compete in the market on their own merit.
- (233) The beneficiary's return to viability is corroborated by an alternative approach, namely the comparison between the return on equity (ROE) and the cost of equity. Such approach focuses on the profits accruing to shareholders, while that in recital 230 hinges on the profits generated by a company's operations. From the point of view of shareholders, a company is viable if it generates a ROE higher than the cost of equity. The Commission observes that holds true for the beneficiary in 2025, since the expected ROE is [...] % and the cost of equity is [...] %.
- (234) To ensure the robustness of the return to viability assessment, the Commission has considered an alternative approach to the calculation of the WACC and cost of equity. That approach consists in using the beneficiary's expected debt to equity ratio in 2025 ([...]), instead of that of peers (1,5), to adjust the peers' stock beta for differences in leverage and compute the weights of debt and equity in the WACC formula. As a result of that assumption, the cost of equity increases from [...] % to [...] %, reflecting the higher leverage and hence riskiness of the beneficiary's equity compared to its peers. Moreover, the WACC goes from [...] % to [...] %, due to the counterbalancing effects of a higher cost of equity and a lower weight of equity in the beneficiary's capital structure. Overall, considering the expected ROCE (ROE) in 2025 is [...] % ([...] %), the Commission concludes that the return to viability tests are met even under such an alternative approach to calculate the WACC and cost of equity.

⁽⁶²⁾ ROCE in year t is defined as after-tax EBIT in year t divided by the average capital employed in year t and t-1.

⁽⁶³⁾ Equity and country risk premiums available on Prof. Damodaran's website (https://pages.stern.nyu.edu/~adamodar/New_Home_Page/datafile/ctryprem.html).

⁽⁶⁴⁾ The cost of equity is calculated as the sum of the risk free rate, the country risk premium the small size risk premium and the product of the beta and the equity risk premium.

- (235) With regard to the beneficiary's ability to compete on its own merits at the end of 2025, the end of the restructuring plan, the Commission expects the beneficiary to restore its full access to capital markets without public co-funding by 2025, that is three years after the last equity support. That expectation hinges on the following arguments. First, the financial projections show an increasing net income over the planning period, contributing to a positive equity level of EUR [...] million in 2025. That value is higher than TAP Air Portugal's equity position of EUR [...] million in 2019, when the beneficiary could raise EUR [...] million long-term finance at market conditions (recital 23) ⁽⁶⁵⁾. Second, the beneficiary expects a net debt to EBITDA ratio of [...]. Such ratio is [...] than the 3,5 threshold, which is the upper threshold consistent with an investment grade rating and hence ensuring an easier access capital markets, according to market practice. For these reasons, the Commission considers the beneficiary to be able to compete on its own merits without further rescue or restructuring aid by 2025.
- (236) As further evidence of the beneficiary's ability to access capital markets without State support and hence compete on its own merits in the future, the Commission notes promisingly that the beneficiary has already secured EUR [...] million of aircraft leasing contracts and negotiated already partly non-State guaranteed loan with [...], which declared to be highly confident in the positive closing of future funding needs up to the amount of EUR [...], should liquidity need to be enhanced. Both of these elements are indicative already of the beneficiary's ability to restore its full access to capital markets and represent a signal of market confidence into its return to viability once the restructuring aid is in place.
- (237) In addition to the baseline scenario, Portugal provided a sensitivity analysis and contemplated various adverse scenarios (recitals 52 and 53). The former analysis consists in an update of the financial projections compared to the notified plan of June 2021, taking into account the improvement of air traffic forecasts, but also the increase in fuel prices and the rising inflation expectations. The adverse scenarios build on the notified plan of June 2021 and consist in simulating the effect of higher fuel prices ([...]% increase), lower yields ([...]% decrease) and a combination thereof. The Commission considers those sensitivity analyses and adverse scenarios as reasonable, as they simulate the effects of adverse changes to key elements for the profitability of airlines.
- (238) The Commission observes that, while those adverse scenarios have a negative impact on the profitability and creditworthiness of the beneficiary, they do not jeopardize its return to viability by 2025. In the scenario with [...] % higher fuel price and [...] % lower yields (recital 52), the beneficiary would generate a positive EBIT [...], and attain an EBIT of EUR [...] million [...], instead of EUR [...] million. In the adverse scenario with updated financial projections (recital 53), the ROCE in 2025 [...], while the ROE decreases from [...] % to [...] %. Those ratios still indicate significant profitability and are higher than the viability thresholds, even assuming the most conservative configuration of WACC ([...]) and cost of equity ([...]). With regard to the beneficiary's ability to access capital markets and compete on its own merits in 2025, it would not be jeopardised, because the equity position would still be positive (EUR [...] million) and net debt to EBITA ratio would not exceed [...], reaching the value of [...].

Conclusion on the facilitation of the development of economic activities and areas

- (239) In conclusion, the Commission considers the beneficiary's restructuring plan as realistic, coherent and credible. As such, it is suitable to restoring the beneficiary's long-term viability without relying on further State aid within a reasonable period of time. Therefore, the restructuring aid meets the requirements provided for in points 44(b) and (c) and 46 of the R&R Guidelines, thus contributing to developing the economic activity of air transport services connecting Portugal, as required by Article 107(3)(c) TFEU.

6.4.2. Positive effects of the aid for economic areas outweigh the negative effects on trade and competition

- (240) In order to assess whether the aid does not unduly affect the competition and trading conditions it is necessary to examine the necessity, appropriateness and proportionality of the aid, and to ensure transparency. It is also necessary to examine the effects of the aid on competition and trade and weight the positive effects of the aid for the development of the economic activities and areas, as well as other positive effects, that the aid intends to support against its negative effects on the internal market.

⁽⁶⁵⁾ Source: Annual report of TAP Air Portugal for 2019, page 53.

6.4.2.1. Necessity

- (241) Under point 53 of the R&R Guidelines, Member States that intend to grant restructuring aid must provide a comparison with a credible alternative scenario not involving State aid, demonstrating that the development of the economic activities or areas sought by the aid, referred to in section 3.1.1 of the R&R Guidelines will not be attained or would be attained to a lesser degree.
- (242) The objective of the restructuring aid is to avoid that TAP SGPS goes out of business, and thereby to avert a situation of market failure and social hardship which would inhibit the development of air transport services connecting Portugal. That objective is achieved through the implementation of the restructuring plan, partially financed by the restructuring aid. The restructuring plan shows that both liquidity and solvency issues of the beneficiary need to be addressed to resolve its financial problems. In the short term, TAP SGPS is not able to ensure the continued provision of essential air transport, comply with financial obligations or have access to financial markets. In the long term, given the sheer negative equity of EUR [...] billion that will continue for a prolonged period, TAP SGPS is also unable to fulfil its financial obligations. The restructuring aid is therefore necessary for the successful completion of the restructuring plan, the implementation of which in turn seeks to facilitate the development of air transport services connecting Portugal.

6.4.2.2. Appropriateness

- (243) Under points 38(c) and 54 of the R&R Guidelines, the Commission will not consider restructuring aid to be compatible with the internal market if other less distortive measures allow the same objective to be achieved. Restructuring aid must be properly remunerated and fulfil the conditions laid down in point 58 of the R&R Guidelines, so that the instruments chosen must be appropriate to the solvency or the liquidity issue that it is intended to address.
- (244) The competitors contested the Commission's preliminary finding in the opening decision that the restructuring aid was appropriate in form. Ryanair claims that the aid is not appropriate, as the opening decision does not present or compare the aid with other options involving or not involving State aid. EAA claims that the form of aid, composed mainly of equity injection is not appropriate and goes beyond what is necessary, as a State guarantee (without any equity measures) would be sufficient to facilitate access to capital markets and this way restore the liquidity and solvency of TAP. EAA's claim is not substantiated by any evidence, whereas Ryanair does not take into account the present situation evidenced by a lack of sufficient access to capital markets to select an investor willing and capable of providing equity or long term funding. By contrast, the discussions securing both immediate and contingent financing with [...] corroborate the inability of TAP SGPS/TAP Air Portugal at present to raise capital at large scale ⁽⁶⁶⁾.
- (245) Moreover, the Commission considers the EUR 2,55 billion restructuring aid to TAP SGPS as appropriate in form, for the following reasons. First, TAP SGPS was an undertaking in difficulty with negative equity in 2019 (EUR [...] million). It recorded losses of EUR [...] billion in 2020 and expects a positive net income [...]. Absent the restructuring aid, the beneficiary would not be able to build enough equity to offset the roughly EUR [...] billion [...], without which TAP SGPS or TAP Air Portugal could likely not be able to attract significant long-term debt or investment funds in capital markets. In that respect, the Commission also notes that, in 2025, the beneficiary expects an equity position of EUR [...] million, which is not excessive compared to the expected net debt of EUR [...] billion. Second, the liquidity projections show that, absent the restructuring aid, the beneficiary would have a negative cash position of roughly EUR [...] billion in 2021, EUR [...] billion in 2022 and EUR [...] billion in 2023. For these two reasons, the Commission concludes that the size and form of the restructuring aid provided through mainly equity measures is the most appropriate to address TAP SGPS' problems of solvency and liquidity.
- (246) With regard to the remuneration of the State aid, the Commission notes that the structure of the intervention of the Portuguese State is such that it will own 100 % of TAP Air Portugal's share capital. The Commission considers the value of that share capital, which Portugal can realise through a sale, as the remuneration of the State aid. To quantify such remuneration, the Commission has carried out a valuation of TAP Air Portugal's equity (recital 229) on the basis of the financial projections in the notified restructuring plan and by relying on standard valuation methodologies, i.e. the discounted cash flow and multiples method.

⁽⁶⁶⁾ [...].

- (247) To estimate the value of TAP Air Portugal's equity, the Commission has first estimated its total enterprise value. To that end, it has discounted the free cash flows to the firm (FCFF) over the planning period, as well as the terminal value, by using the WACC referred to in recital 230 as a discount rate. The Commission employed two approaches to calculate the terminal value. The first is the Gordon growth approach, which assumes a constant growth rate of the company's free cash flows to the firm, from the last year of the plan in perpetuity. The second is the multiples method, by which a company is worth a multiple of its profits. The Commission has considered EBITDA as the relevant profit metric, in line with market practice, and has retrieved the (forward looking) enterprise value to EBITDA multiple from peer airlines (footnote 61). Having estimated the total enterprise value of TAP Air Portugal, the Commission calculates its value of equity by subtracting net debt.
- (248) The estimates of the Commission show an increasing value of TAP Air Portugal's equity over the planning period, which goes from EUR [...] – EUR [...] million in 2022 to EUR [...] million in 2025 ⁽⁶⁷⁾. The Commission considers that is a reasonable expectation, as of today, of the remuneration that Portugal could earn on the State aid by selling its stake into TAP Air Portugal.
- (249) It follows that the restructuring aid is adequate in form and sufficiently remunerated.

6.4.2.3. Proportionality of the aid: own contribution and burden sharing

- (250) Under point 38(e) of the R&R Guidelines, aid must not exceed the minimum needed to achieve the objective sought by the restructuring aid. The amount and intensity of restructuring aid must be limited to the strict minimum necessary to enable restructuring to be undertaken, in the light of the existing financial resources of the beneficiary, its shareholders or the business group to which it belongs (point 61 of the R&R Guidelines). In particular, a sufficient level of own contribution to the costs of the restructuring must be ensured and, where State support is given in a form that enhances the beneficiary's equity position, burden sharing. The assessment of those requirements will take account of any rescue aid granted beforehand.
- (251) The own contribution of the beneficiary to the restructuring plan must be real and actual and should normally be comparable to the aid granted in terms of effect on the solvency or liquidity position of the beneficiary. Pursuant to point 63 of the R&R Guidelines, the Commission needs to assess whether the various sources of own contribution are actual and aid-free. According to point 64 of the R&R Guidelines, the Commission normally considers the own contribution to be adequate if it amounts to more than 50 % of the restructuring costs.
- (252) The Commission needs to verify whether the various sources of funding to the plan described in recitals 43 to 45, are free of aid and real, that is sufficiently certain to materialise in the course of the implementation of the restructuring plan, excluding expected future profits. Contributions by the State in its position of shareholder of TAP SGPS and of TAP Air Portugal are not free of aid and cannot be taken into account in the assessment.
- (253) The payment of labour restructuring indemnities for EUR [...] million, of which EUR [...] million already paid in 2021 (recital 43(a)), regards costs that are pertinent to the reduction of employees foreseen by the restructuring plan. Such costs are immediate, given that TAP Air Portugal has already terminated labour contracts, as part of the labour rightsizing and restructuring undertaken as from April 2020 and minor in proportion of the revenues already cashed in until December 2021. The overall amount of indemnities relating to the termination of the employment contracts as a consequence of the restructuring is reported by Portugal as being equal to EUR [...] million, of which the mentioned are paid directly by TAP Air Portugal with operational cash flow, whereas EUR [...] million will be financed effectively by the State with resources stemming from the rescue aid loan. Hence, the part of labour restructuring indemnities that is not financed by State aid, neither from the equity nor from the State guaranteed loan, can be considered as the beneficiary's own contribution to these costs and can be regarded as real, that is to say actual, within the meaning of point 63 of the R&R Guidelines.

⁽⁶⁷⁾ To calculate the terminal value using the Gordon growth model, the Commission assumes a growth rate of 1,5 %, perpetual investment equal to depreciation in 2025, perpetual EBIT equal to EBIT in 2025 and zero changes in net working capital. With regard to the multiples method, the Commission retrieved a median enterprise value to (forward looking) EBITDA ratio of 4,16 by using data on the beneficiary's peer airlines from Capital IQ. Forward looking means the stock market analyst forecast of EBITDA in 2025.

- (254) Similarly, the payment of contingencies associated with the divestment [...] EUR [...] million (recital 43(f)), refers to contingencies (in particular, [...]% [...], [...]% [...]%) [...]), which in the context of the divestment via sale of this asset will be paid by TAP SGPS and will not be passed on to the acquirer. They constitute a pre-defined amount of exposure that the beneficiary will assume from its own resources, for an amount affordable with its immediate –and much larger– revenues in 2022 from its revenues and not from State aid. The Commission therefore considers that they may also be included as own contribution and that they are real and actual, given the commitment for the divestiture of this asset within 2022 set forth in the restructuring plan (recital 29).
- (255) With regard to contributions from third parties or cost-efficiency measures totalling EUR [...] million (recital 43), the Commission notes that permanent cost reductions borne or made possible by external suppliers or clients with the beneficiary may amount to real and actual sources of own contribution, provided they result from binding agreements and are effective and not reversible. In particular, cost reductions borne by stakeholders in relation to this kind of cost savings must be effective, lasting and not reversible to amount to real and actual source of own contribution ⁽⁶⁸⁾. The Commission has already considered that reductions of contractual liabilities set out in renegotiated agreements with suppliers and lessors amount to real sources of own contribution: compared to the terms of the initial agreements, they free resources that are available for financing restructuring costs which otherwise would have to be spent on repaying the associated payables. ⁽⁶⁹⁾ The same is true with regard to suppliers and buyers that firmly commit or amend the terms of their contracts freeing resources from the beneficiary. ⁽⁷⁰⁾
- (256) In the light of the fact that the over [...] contracts renegotiated by TAP Air Portugal are grounded in legally binding acts, of which EUR [...] million represented by contracts already implemented and EUR [...] million represented by contracts already committed, these operational restructuring measures can be considered real and actual contributions. Indeed, such measures share the financial burden of TAP SGPS's restructuring costs with suppliers that would be otherwise entitled to higher payables on its positive operating results.
- (257) Likewise, the contributions linked to asset phase-outs and renegotiations with original equipment manufacturers (notably [...]) for up to EUR [...] million (recital 43(d), represents the proceeds of the sale of assets, namely [...] ([...], [...]). Indeed, as these measures are cash proceeds and contributions from own resources of the beneficiary stemming from buyers of equipment or assets, they can be considered as real resources contributed to the restructuring. Furthermore, such contributions can be considered as actual, given that they are already implemented through contracts signed with the beneficiary's counterparts. The same reasoning applies to the finance obtained to lease new aircraft up to EUR [...] million (recital 43(c)), taken into account the evidence submitted by Portugal of the commitments on finance regarding nine tails and two engines signed as part of the restructuring plan.
- (258) In respect of partial State guarantees provided in the context of a restructuring operation, the Commission has considered that the remaining portion of risk borne by market actors amounts to a valid and real contribution to restructuring costs ⁽⁷¹⁾. Hence, the portion ([...]%) of the EUR [...] million financing, which is non-guaranteed by the State, namely EUR [...] million (recital 43(e)), may be considered as a real and actual contribution of a market lender to the restructuring costs. Likewise, the fresh funding negotiated with a private financial institution ([...] for up to EUR [...] million amounts to a real and actual contribution, which can be executed [...] onwards, contingent on liquidity needs exceeding operating cash flows (recital 43(e)).

⁽⁶⁸⁾ Commission Decision of 30 April 2021 in case SA.58101 (2020/C) and SA.62043 (2021/N) – Portugal – Rescue aid and Restructuring aid to SATA Group (OJ C 223, 11.6.2021, p. 37), recital 72; Commission Decision of 26 July 2021 in case SA.63203 (2021/N) – Germany – Restructuring aid for Condor (not yet published), recital 132(c); Commission Decision of 12 May 2016 in case SA.40419 (2015/NN) – Restructuring aid for Polzela (OJ C 258, 15.7.2016, p. 3), recital 119.

⁽⁶⁹⁾ Commission Decision of 8 June 2015 on the State aid which Slovenia is planning to implement for the Cimos Group (SA.37792 (2014/C) (ex 2013/N)) (OJ L 59, 4.3.2016, p. 168), recital 80.

⁽⁷⁰⁾ Commission Decision of 20 August 2018 in case SA.51408 (2018/N) – Aid to Terramass B.V. (OJ C 406, 19.11.2018, p. 10), recitals 22 and 71.

⁽⁷¹⁾ Commission Decision of 27 August 2021 in case SA.64175 (2021/N) – CNIM – Aide à la restructuration (OJ C 450, 5.11.2021, p. 2), recitals 18 and 71.

- (259) In the case of bonds and syndicated loans for a total amount of EUR [...], mentioned in recital 43(g), the deferrals provide the benefit of postponing payments that were due and would have been otherwise enforceable. Regarding agreed restructuring operations with deferrals of debt that maintain an obligation to reimburse the principal amount owed, the Commission considers, contrary to the initial contention of the Portuguese authorities, that the contribution to restructuring costs is lower than the nominal amount deferred and consists of the net present value of the agreed rescheduling of payments ⁽⁷²⁾. The deferrals involve a total value amount of EUR [...] million of real contribution. The amount is estimated by calculating the difference in net present value between repayment at maturity date or immediate repayment in application of the covenants waived, discounted at the market interest rate ([...]) [...]: EUR [...] million [...], EUR [...] million [...], [...] EUR [...] million [...].
- (260) In the light of the above, the total amount that can be considered real and actual contribution by the beneficiary is EUR [...] million, equal to [...] % of the restructuring costs. Of these, EUR [...] million stem from fresh finance at market conditions provided by the proceeds from sale of [...], finance lease covering [...] aircraft and engines and new finance from [...] (recital 43). These amounts may increase within the duration of the restructuring plan with proceeds from the [...] but, the amount of which, however, cannot be estimated and established with sufficient certainty to be deemed an actual own contribution from the beneficiary to restructuring costs.
- (261) In line with point 64 of the R&R Guidelines, the Commission may accept a contribution that does not reach 50 % of the restructuring costs only in exceptional circumstances and in cases of particular hardship, if the amount of that contribution remains significant.
- (262) In the current circumstances following the outbreak of the COVID-19 pandemic, the Commission considers that it may be justified, depending on the individual case, that own contributions remain below the threshold of 50 % of the restructuring costs, as long as they remain significant and include additional fresh funding at market conditions ⁽⁷³⁾. By way of indication of a level which the Commission would consider appropriate in the present case, in its case practice, the Commission has considered that an own contribution amounting to 24 % of the restructuring costs may be significant and, thus, that restructuring aid amounting to 76 % of the restructuring costs may be proportionate ⁽⁷⁴⁾.
- (263) The Commission considers that Portugal has demonstrated the presence of exceptional circumstances. In particular, the Commission acknowledges that the COVID-19 pandemic and the measures taken to contain it have created exceptional circumstances for the beneficiary, in the context of a serious disturbance of the economy within the meaning of Article 107(3)(b) TFEU, with immediate impact on the mobility and air transport sectors and its ability to raise market funding. Since the own contribution amounts to [...] % of the restructuring costs and half of it is provided as fresh finance, the Commission concludes that in the present case an amount of contribution lower than 50 % is acceptable.
- (264) Pursuant to points 65 to 67 of the R&R Guidelines, State support given in a form that enhances the beneficiary's equity position can have the effect of protecting shareholders and subordinated creditors from the consequences of their choice to invest in the beneficiary, thus creating moral hazard and undermining market discipline. Consequently, aid to cover losses should only be granted on terms that involve adequate burden sharing by existing investors and State intervention should take place after losses have been fully accounted for and attributed to the existing shareholders and subordinated debt holders. Adequate burden sharing will also mean that any State aid that enhances the beneficiary's equity position should be granted on terms that afford the State a reasonable share of future gains in value of the beneficiary, in view of the amount of State equity injected in comparison with the remaining equity of the company after losses have been accounted for.

⁽⁷²⁾ Commission Decision of 9 July 2014 in case SA.38324 (2014/N) – Spain – Restructuring aid for Alestis (OJ C 418, 21.11.2014, p. 6), recital 82.

⁽⁷³⁾ Temporary Framework as amended, points 3 and 14 bis.

⁽⁷⁴⁾ Commission Decision of 24 April 2007 relating to the aid measure implemented by Belgium in support of Inter Ferry Boats (C 46/05 (ex NN 9/04 and ex N 55/05)) (OJ L 225, 27.8.2009, p. 1), recitals 348-350. In that case, the Commission applied the 1999 R&R Guidelines which required that the own contribution ought to be significant, without specifying a minimum threshold of application, which was set to 50 % in the 2004 R&R Guidelines.

- (265) In this respect, whilst the restructuring aid mainly consists of injections or conversion of debt instruments into equity, the Portuguese State exercised joint control over the beneficiary as shareholder before the rescue aid was granted and now holds a controlling interest on both the beneficiary and in TAP Air Portugal (recitals 8 to 12). It follows that the Portuguese State has been closely associated to the strategic and financial choices described in recitals 19 to 22 that led the beneficiary to become an undertaking in difficulty. Accordingly, with a view to averting moral hazard through adequate burden sharing, it is pertinent to note that the intervention of the State as provider of restructuring aid addresses a situation of financial imbalances and losses to which the State was associated as shareholder with joint control over the beneficiary. As indicated by Portugal, TAP SGPS will [...] (recital 45).
- (266) It follows that existing shareholders of the beneficiary, including the Portuguese State, will adequately share the burden of the restructuring because, in practice, the value of their present holdings will be reduced to zero in the loss absorption. Moreover, TAP SGPS will progressively divest its operating subsidiaries Cateringpor, Groundforce, M&E Brazil, emptying it of commercial activities. As a result, the restructuring aid in the form of State equity will be granted on terms that afford the State all future gains in value of the beneficiary, in comparison with the remaining equity, thus satisfying the condition of adequate burden sharing of existing shareholders set out in point 67 of the R&R Guidelines.
- (267) As a matter of fact, the financial institutions and investors holding bonds that are creditors of the beneficiary and/or its subsidiaries referred to in recitals 67(a) and 43(g) hold senior debt that is neither subordinated to the payment of other financial debt but before shareholders in case of insolvency or liquidation nor loss-absorbing. Whilst the R&R Guidelines do not require that senior creditors share the burden of a restructuring operation, in the present case, bondholders and financial institutions actually contribute to covering the restructuring costs of the beneficiary (recital 259).
- (268) Furthermore, as regards bond holders and with a view to averting moral hazard, it is appropriate to note that the bond issuances of the beneficiary took place in June and in December 2019 (recital 23), relatively close to the pandemic. Accordingly, these investors or lenders have not financed or otherwise incentivised excessive risk-taking or expansion or commercial behaviour having contributed to the difficulty of the beneficiary. It follows that the burden sharing provided by existing shareholders of the beneficiary is adequate and sufficient.
- (269) The Commission therefore concludes that the restructuring aid is proportionate and involves appropriate burden sharing.

6.4.2.4. Negative effects

- (270) Pursuant to point 38(f) of the R&R Guidelines, when restructuring aid is granted, measures must be taken to limit distortions of competition, preferably structural in the form of divestments of self-standing activities favouring expansion of small competitors or cross-border activity. Moreover, to reduce negative effects on competition and trade, recipients of rescue or restructuring aid should in principle also not have received similar aid in the past 10 years. For, otherwise recurrent rescue or restructuring plans cast doubts on the ability of the beneficiary to contribute aggregate productivity and thus, the development of the economic activities or regions at hand, whereas more efficient competitors in the internal market face subsidised competition from a company that would otherwise disappear freeing market to grow and take up.

6.4.2.5. 'One time, last time' principle

- (271) Under points 70 and 71 of the R&R Guidelines, aid can be granted to undertakings in difficulty in respect of only one rescue or restructuring operation. Therefore, where less than 10 years have elapsed since rescue aid, restructuring aid or temporary restructuring support were granted to the beneficiary in the past, including any such aid granted before the entry into force of the R&R Guidelines and any non-notified aid, the Commission will not allow further aid (the 'one time, last time' principle).

- (272) In addition to the declaration of Portugal to that effect, the verification of the Commission records shows that during the past 10 years, none of the companies within the beneficiary economic unit (comprising TAP SGPS, its current sister company TAP Air Portugal, and all their controlled subsidiaries), has benefited from any other rescue aid, restructuring aid or temporary restructuring support. The EUR 1,2 billion rescue aid which has been approved by the Commission decision of 16 July 2021 forms part of the single restructuring operation supported by the restructuring aid, in accordance with point 72(a) of the R&R Guidelines.
- (273) In April and in December 2021, the Commission raised no objections to damage compensation under Article 107(2)(b) TFEU to TAP Air Portugal (footnote 14). However, as noted in point 15 of the Temporary Framework, the principle of 'one time last time' laid down in the R&R Guidelines does not cover aid that the Commission declares compatible under Article 107(2)(b) TFEU, since the latter type of aid is not 'rescue aid, restructuring aid or temporary restructuring support' within the meaning of point 71 of the R&R Guidelines.

6.4.2.6. Measures limiting distortions of competition

- (274) As explained in points 87 to 93 of the R&R Guidelines, competition measures should be set out in proportion to the distortive effects of the aid, and in particular: (i) to the size and the nature of the aid and the conditions and circumstances under which it is granted; (ii) to the size and relative importance of the beneficiary in the market and the characteristics of the market concerned and (iii) to the extent to which moral hazard concerns remain following the application of the own contribution and burden sharing measures.
- (275) The structural measures might include divestment of assets, reducing capacity or market presence. They should favour the entry of new competitors, the expansion of existing small competitors or cross-border activity, taking into account the market or markets where the beneficiary will have a significant market position after the restructuring, in particular those with excess capacity. Behavioural measures should ensure that aid finances only the restoration of long-term viability.
- (276) As set out in detail in recitals 75 to 98, Portugal commits that TAP SGPS will take the following measures during the restructuring period in order to limit the distortion of competition brought by the aid:
- (a) divestiture of the stakes held by TAP SGPS in non-core businesses, i.e., ground handling (Groundforce), maintenance (M&E Brasil) and catering (Cateringpor);
 - (b) cap on the aircraft fleet not exceeding a maximum of [90-100] aircraft;
 - (c) transfer of up to 18 daily slots to one actual or potential competitor at Lisbon airport;
 - (d) acquisition ban and
 - (e) advertising ban.
- i) Assessment of the divestiture of non-core businesses
- (277) The Commission observes that Groundforce and Cateringpor were profit-making and viable companies until 2019. The difficulties those companies are currently experiencing are only due to the COVID-19 crisis, which has negatively affected the aviation sector at large. In addition, the Commission positively notes a EUR [...] million estimate of the value of TAP SGPS' stake in [...], as well as the interest of potential investors in the acquisition of [...]. Such interest from investors suggests that the sale of [...] as a going-concern, followed by its restructuring and return to viability as the aviation market recovers, is a realistic scenario. For these reasons, the Commission concludes the divestment of TAP SGPS's stakes in Cateringpor and Groundforce meets the requirements of point 80 of the R&R Guidelines, as those two companies, which are currently experiencing financial difficulties due to the COVID-19 induced crisis in the aviation sector, will be able to effectively compete in the long term, if operated by a suitable purchaser able to restructure them and make them return to viability in the long term.

- (278) The Commission also considers the divestment of TAP SGPS's stakes in Cateringpor and Groundforce as a measure limiting distortions of competition. The reasons for that assessment is that both of the abovementioned companies are vertically integrated within the TAP SGPS group and represent its main supplier of catering and ground handling services. The divestment of Cateringpor and Groundforce will therefore allow other companies than TAP SGPS to compete in their respective markets and serve the large demand for services of TAP SGSP. Accordingly, those divestments constitute valid measures mitigating distortions of competition.
- (279) By contrast, the Commission does not accept the divestment of M&E Brasil as a measure limiting distortions of competition, because it is a historically loss-making company whose difficulties predate the COVID-19 crisis (recital 77). As such, the divestment of such company is rather a measure to restore long-term viability, in line with point 78 of the R&R Guidelines.

ii) Assessment of the aircraft fleet cap

- (280) Among the measures to reduce market presence or capacity is the fleet size cap of [90-100] aircraft until 2025. Such cap represents a reduction of [...] aircraft, compared to TAP Air Portugal's fleet size in 2019. Portugal demonstrates that cap is effective in limiting the market presence of TAP Air Portugal, which will not dispose of a sufficient number of aircraft to meet in full the traffic demand in 2025 according to the October 2021 IATA forecasts ⁽⁷⁵⁾ in the baseline scenario. As a result, the beneficiary will have a reduced market presence not only by reference to the aircraft fleet before restructuring but also by reference to its probable market position at the end of the restructuring period. Furthermore, this reduction in aircraft fleet is in line with competition measures that the Commission has deemed adequate in the case of the restructuring of airlines ⁽⁷⁶⁾.
- (281) Considering the size and duration of the fleet reduction and the limitations it imposes on the beneficiary's operations, the Commission considers the [90-100] aircraft fleet size cap as a valid measure to reduce market presence and capacity.

iii) Assessment of the commitment to transfer slots at Lisbon airport

- (282) As recalled in point 78 of the R&R Guidelines, measures to limit distortions of competition should take place in particular in the market or markets where the undertaking will have a significant market position after restructuring. Considering that TAP Air Portugal currently has and will retain a significant market position at Lisbon airport after restructuring (see recital 32), Portugal has proposed a specific structural measure to limit distortions of competition entailed by the aid on passenger air transport services to and from Lisbon airport.

Scope of the commitment to transfer slots at Lisbon airport

- (283) Pursuant to point 80 of the R&R Guidelines, structural measures to limit distortions of competition should normally take the form of divestments on a going concern basis of viable stand-alone businesses that, if operated by a suitable purchaser, can compete effectively in the long term.
- (284) On 3 December 2021, Portugal proposed a structural commitment, by which TAP Air Portugal would transfer to a remedy taker up to 18 daily slots at Lisbon airport on the basis of Article 8b of the Slot Regulation. The remedy taker will be approved following a call for proposals published by the monitoring trustee.

⁽⁷⁵⁾ See footnote 34.

⁽⁷⁶⁾ Commission Decision of 7 March 2007 in case SA.20100 (C10/2006, ex N555/2005) Restructuring to Cyprus Airways (OJ L 49, 22.2.2008, p. 25), recitals 129 to 133; Commission Decision of 19 September 2012 in case SA.30908 (2011/C, ex N 176/2010) implemented by the Czech Republic for České aerolinie, a.s. (OJ L 92, 3.4.2013, p. 16), recital 139; Commission Decision of 27 June 2012 in case SA33015 (2012/C, ex 2011/N) Air Malta plc. (OJ L 301, 30.10.2012, p. 29), recital 130; Commission Decision of 26 July 2021 in case SA.63203 (2021/N) – Germany – Restructuring aid for Condor, not yet published, recital 145; Commission Decision of 11 December 2020 in case SA 58463 (2020/N) – Restructuring aid for Corsair (OJ C 41, 5.2.2021, p. 8), recitals 5, 34, 88(b) and 93.

- (285) The main purpose of the structural commitment at Lisbon airport is to ensure that TAP Air Portugal transfers the slots (rights) necessary for the establishment or expansion of an operating base by a competitor at the congested airport where TAP Air Portugal has a significant market position (Lisbon airport) and to create conditions to sustain effective competition in the longer term at that airport. ⁽⁷⁷⁾ As further detailed below, the Commission considers that such a purpose is achieved, as the structural commitment combines (i) a significant volume of slots (i.e. up to 18 daily slots), while no such a volume of slots is normally available for entry or expansion at Lisbon airport, notably at peak day times or peak weeks; ⁽⁷⁸⁾ and (ii) adequate conditions for the transfer of slots to a remedy taker (i.e. free and unconditional transfer).
- (286) According to the Explanatory Memorandum for the Commission Proposal for a Regulation of the European Parliament and of the Council on common rules for the allocation of slots at European Union airports, ⁽⁷⁹⁾ *'the emergence of a strong competitor at a given airport requires it to build up a sustainable slot portfolio to allow it to compete effectively with the dominant carrier (usually the 'home'carrier).'*
- (287) Lack of access to slots constitutes a significant barrier to entry or expansion at Europe's busiest airports. ⁽⁸⁰⁾ By virtue of the Slot Regulation, slots are essential for airlines' operations as only air carriers holding slots are entitled to get access to the airport infrastructure services delivered by airport managers of coordinated airports and, consequently, to operate routes to or from these airports. Under the Slot Regulation, slots can only be exchanged or transferred between airlines in certain specified circumstances, subject to the explicit confirmation from the slot coordinator under the Slot Regulation.
- (288) The commitment consisting in transferring slots at Lisbon airport therefore removes the main barrier to entry and expansion of TAP Air Portugal's competitors at that heavily congested airport. The data collected from the Portuguese slot coordinator (Navegação Aérea de Portugal – NAV Portugal) demonstrate that the requests for slots at Lisbon airport exceed the available capacity, ⁽⁸¹⁾ and that requests for additional slots necessary to materially increase operations at Lisbon airport cannot be accommodated through the normal workings of the general slot allocation procedure, due to an insufficient pool of unused slots and the fragmented allocation of the slot pool, which makes it unlikely to trigger the emergence of a strong competitor.
- (289) The Commission considers that a commitment that TAP Air Portugal would transfer slots at the congested airport where it has a significant market position, to allow competitors to set up or expand a base, is the most effective competition measure in order to minimise distortions of competition. Furthermore, given for instance the crisis of the aviation industry, which may result in the other assets necessary to operate the transferred slots (e.g. aircraft) being available in the market at attractive terms for the full period of implementation of the commitments, the focus on slots in the scope of the package to be offered by TAP Air Portugal does not affect its viability and competitiveness. ⁽⁸²⁾
- (290) Additionally, given the fact that the creation or the expansion of a base by a competing carrier implies structural changes in the competitive landscape at Lisbon airport, the Commission acknowledges the structural nature of the commitment submitted by Portugal.

⁽⁷⁷⁾ The Commission notes that there is an aircraft parking stands shortage at Lisbon airport, resulting in a local rule (<https://www.nav.pt/en/slot-coordination-portugal/local-rules>). On 1 December 2021, the Portuguese authorities confirmed that they had been informed by the manager of Lisbon airport that access to airport infrastructure (including parking stands) would be available for the remedy taker.

⁽⁷⁸⁾ As examples, according to NAV Portugal, [...].

⁽⁷⁹⁾ COM/2011/827 final of 1 December 2011.

⁽⁸⁰⁾ See e.g. Case SA.57153 – *Germany – COVID-19 – Aid to Lufthansa*, recital 224.

⁽⁸¹⁾ As an example, according to NAV Portugal, the requests initially submitted by all airlines at Lisbon airport for Summer 2020 IATA Season represented 167 264 slots, while at the start of the season, 121 331 slots were allocated.

⁽⁸²⁾ The Commission has in its decisional practice in merger and antitrust cases accepted other commitments (e.g. special prorate agreements or access to frequent flyer programmes), aiming at removing certain barriers to entry or expansion on specific routes, such as the lack of access to feeder traffic or to business passengers (often members of frequent flyer programmes). In the case at hand, the relevant barrier consists of the lack of access to the airport's congested infrastructure, which only a transfer of slots can effectively remedy.

- (291) In light of the above, the Commission concludes that the commitment consisting in a slot transfer is a suitable measure to minimise distortions of competition because it will allow structural competition with TAP Air Portugal for the provision of passenger air transport services to and from Lisbon airport, where it holds a significant market position.
- (292) In addition, the Commission considers that the amount of 18 slots per day is sufficient for the remedy taker to establish or expand viably its based operations at Lisbon airport by, for example, basing three aircraft and operating three rotations per day with each of them. ⁽⁸³⁾ If the remedy taker is a long-haul carrier, the 18 slots per day would enable it to base a higher number of aircraft or to get access to the slots needed to operate feeder flights. As slots are not linked to any specific route, airlines can use them according to their business plan (i.e. on any route of their choice). This will allow the remedy taker to achieve economies of scale and scope and to compete more effectively with TAP Air Portugal. The Commission notes in that respect that the addition of three aircraft by either of TAP Air Portugal's two competitors basing the largest fleet at Lisbon airport (i.e. Ryanair and easyJet) would already increase their based fleet by more than 40 %, which would bring substantial additional effective competition at Lisbon airport.
- (293) The Commission concludes therefore that the size of the slot package to be transferred under the structural commitment is appropriate and effective to strengthen competition at Lisbon airport by triggering the efficient entry of a newly based competitor or expansion of an already based competitor.
- (294) Finally, the Commission considers that the transfer of slots from TAP Air Portugal to the remedy taker based on Article 8b of the Slot Regulation, as set out in the commitment proposed by Portugal, is appropriate both legally and operationally.
- (295) Article 8b of the Slot Regulation lawfully allows slots to be transferred in certain contexts without monetary compensation being made available to the original slot holder. Those contexts include slots transferred as part of commitments offered by the relevant Member State in a final State aid decision. In such case, the transfer of slots may be considered as being required under Union law. From the perspective of the airline required to transfer slots or directed as to how to use them, the commitment by the Member State or a condition imposed on it has de facto obligatory force for the Member State, since it is only by complying with the commitment or the condition that the airline can receive compatible State aid. ⁽⁸⁴⁾
- (296) From an operational perspective, the slots would be transferred on a free and unconditional basis, enabling the remedy taker to choose the slot times that best fit its new or expanded operations at Lisbon airport and to use the transferred slots flexibly on any route to or from Lisbon airport. The transfer of slots without any condition of use thus enables the remedy taker (i) to allocate the transferred slots in accordance with its business model, thus ensuring a more sustainable growth; (ii) to allocate the slots so as to maximize the economies of scope and density; and (iii) to adjust to the evolution of demand if the services on the routes initially planned are not profitable anymore, which is essential at a time where demand for passenger air transport services is very volatile.

⁽⁸³⁾ Based on the profile of the Lisbon slots used on a Monday in August 2019 by the nine aircraft based at Lisbon airport by Ryanair and easyJet in 2019, Portugal estimates that each of the based aircraft uses on average 5,55 slots per day. TAP's based aircraft would use materially fewer slots per day on average.

⁽⁸⁴⁾ Although Article 8b of the Slot Regulation does not mention explicitly State aid rules, as it does for merger or antitrust rules, Article 8b can be understood as including State aid rules. Indeed, Article 8b covers limitations, restrictions or eliminations of slots imposed under Union law (first sentence) and they include those steps flowing from the application of national competition law, Articles 101 and 102 TFEU and the Merger Regulation (second sentence), but are not limited to those instances, as demonstrated by the first sentence of Article 8b and recital 17 of Regulation (EC) No 793/2004 of the European Parliament and of the Council of 21 April 2004 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports (*For the avoidance of doubt, it should be specified that the application of the provisions of this Regulation is to be without prejudice to the competition rules of the Treaty, in particular Articles 81 and 82 thereof and Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings*). The State aid rules are found in the chapter of the Treaty on competition, and it is in line with a literal interpretation of Article 8b, first sentence, and a teleological interpretation of the provision overall (read in light of the above recital 17), to consider that a transfer of slots can come within that provision where it results from requirements of the public authorities set out in a State aid decision.

- (297) The Commission acknowledges that the choice of the slot times by the remedy taker may appear constrained by the two safeguard measures aimed at protecting TAP Air Portugal's hub-and-spoke operations at Lisbon airport, namely: (i) the cap in the number of slots to be transferred before 8:00 local time, in the morning and before 20:00 local time; and (ii) the 20- or 60-minute time-window during which TAP Air Portugal has to transfer slots (see recitals 84 to 85). However, the Commission considers that those safeguard measures do not materially restrict the ability of the remedy taker to have access to appropriate slot times and to compete effectively with TAP Air Portugal using the remedy slots. With regard to the cap in the number of slots per period of the day, the Commission has used the data provided by Portugal to verify that the ceilings were compatible with the usual rotations of based aircraft, or, where they were not, that they would not apply. As an example, the cap on the number of slots to be transferred before 20:00 local time does not apply to based aircraft using the slots for the operation of long-haul flights, so as to accommodate slot requests by air carriers departing from Lisbon airport during the afternoon and flying overnight. With regard to the time-window, the commitment contains a provision ensuring that TAP Air Portugal cannot exercise its margin for discretion to the detriment of the efficient operations of the remedy taker. ⁽⁸⁵⁾
- (298) In light of the above, the Commission considers that the transfer of a 18-slot package meets the conditions of viability and attractiveness of the divested business package, and of the structural reinforcement of effective competition at Lisbon airport.

Duration of the commitment to transfer slots at Lisbon airport

- (299) Pursuant to point 78 of the R&R Guidelines, divestments to limit distortions of competition should take place without undue delay, taking into account the type of asset being divested and any obstacles to its disposal, and in any case within the duration of the restructuring plan.
- (300) The commitment submitted by Portugal foresees that the slots will be offered to potential remedy takers until the end of the restructuring period, which means as soon as the Commission approves a remedy taker or until the end of 2025 (see recital 27), whichever is earlier. Furthermore, the corresponding call for proposals will be published sufficiently in advance of the beginning of the general slot allocation procedure for each IATA Season until a remedy taker is approved. In other terms, the call for proposals will be published in advance of each IATA Season, starting with Winter 2022/2023 IATA Season, ⁽⁸⁶⁾ until 2025, unless TAP Air Portugal transfers slots to a remedy taker approved by the Commission before that expiry date.
- (301) The Commission considers that data provided by NAV Portugal on the requests for slots by airlines at Lisbon airport give strong indications that, despite adverse market conditions, competitors would be willing to take up additional slots and enter or expand at Lisbon airport. Therefore, the Commission deems it likely that the slots will be transferred to a remedy taker in advance of the end of the restructuring period. In any case, that time-frame is expected to be sufficiently long for the passenger air transport sector to recover from the COVID-19 crisis and for passenger air traffic to return to pre-crisis levels.
- (302) In light of all the above, the Commission concludes that the duration of the commitment is adequate.

Eligibility criteria for the remedy taker of the slots at Lisbon airport

- (303) Pursuant to 80 of the R&R Guidelines, to be suitable, the purchaser of the divested business should ensure that the latter can compete effectively in the long term.
- (304) In accordance with the commitment submitted by Portugal, to be eligible to obtain the slots, a potential remedy taker must:
- (a) be an air carrier holding a valid operating licence issued by an EU/EEA Member State;

⁽⁸⁵⁾ 'The arrival and departure slot times shall be such as to allow for reasonable aircraft rotation by the remedy taker to the extent possible, taking into account the eligible potential remedy taker's business model and aircraft utilisation constraints.'

⁽⁸⁶⁾ Winter 2022/2023 IATA Season is the first IATA Season for which the general slot allocation procedure has not started at the date of adoption of this Decision.

- (b) be independent of and unconnected with TAP Air Portugal;
 - (c) not be subject to competition remedies having received a COVID-19 recapitalisation instrument of more than EUR 250 million; ⁽⁸⁷⁾
 - (d) commit to operate the number of aircraft based at Lisbon airport using the remedy slots until the end of the restructuring plan. Potential remedy takers indicate in their proposals the number of aircraft to be based at Lisbon airport using the remedy slots. For that purpose, a potential remedy taker must commit to comply with the applicable EU and national labour laws, as interpreted as relevant by the EU Courts (see e.g. Nogueira, joined cases C-168/16 and C-169/16).
- (305) The eligibility criterion relating to the operating licence is necessary to ensure that the remedy taker has the ability to operate domestic and intra-EU/EEA flights without restriction, thus guaranteeing connectivity at Lisbon airport, which is a key evaluation criterion by the Commission.
- (306) The eligibility criterion relating to independence and lack of connection is necessary to ensure that the remedy taker will compete effectively with TAP Air Portugal.
- (307) The exclusion criterion applying to beneficiaries of a large recapitalisation aid subject to competition remedies is necessary to avoid that companies that have been subject to additional measures aiming at restoring a level playing field, as referred to in point 72 of the Temporary Framework, can obtain a competitive advantage by similar structural measures to limit distortions of competition. ⁽⁸⁸⁾
- (308) As regards the final eligibility criterion, relating to the base, it is necessary to allow for effective competition, thus ensuring the effectiveness of these commitments. Furthermore, it supports the entry or expansion of a viable competitor at Lisbon airport and puts TAP Air Portugal under the threat of competition on routes to or from the airport.
- (309) The Commission notes that the eligibility criterion relating to the base is complemented by two provisions in the commitment aiming to maximise the number of aircraft based at Lisbon airport using the remedy slots. The first provision consists in linking the number of slots to be transferred before 8:00 local time, which are commercially highly valuable, to the number of based aircraft. The second provision consists in the ranking criteria, which incentivise remedy takers to base aircraft at Lisbon airport using the remedy slots. Specifically, in case of competing proposals, the Commission will give preference, in decreasing order, to those submitted by potential remedy takers that in particular (i) will provide the largest seat capacity in respect of the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan; and (ii) will serve the greatest number of destinations by direct flights operated by the based aircraft using the remedy slots from the start of the operations until the end of the restructuring plan (direct connectivity, without taking account of the frequencies).
- (310) For all of the above, the Commission concludes that the eligibility criteria for the potential remedy takers are appropriate, as they (i) allow a sufficient number of airlines that may be interested in the available slots to participate in the call for proposals, and (ii) ensure proportionate requirements to access the slots, thus facilitating the activation of the measures to preserve effective competition.

Impact of the transfer of slots at Lisbon airport on the prospects of TAP Air Portugal's return to viability

- (311) Pursuant to point 92 of the R&R Guidelines, measures limiting distortions of competition should not compromise the prospects of the beneficiary's return to viability, which might be the case if a measure is very costly to execute or, in exceptional cases duly substantiated by the Member State concerned, would reduce the activity of the beneficiary to such an extent that its return to viability would be compromised, nor should they come at the expense of consumers and competition.

⁽⁸⁷⁾ Under that criterion, the potential remedy takers that fulfil cumulatively the two following conditions are not eligible: (i) they have benefitted from a COVID-19 recapitalisation measure above EUR 250 million; and (ii) they are subject to additional measures to preserve effective competition in the relevant markets where they have significant market power for the purposes of point 72 of the Temporary Framework.

⁽⁸⁸⁾ As the number of potential remedy takers subject to competition remedies under the Temporary Framework is expected to be limited, that exclusion criterion does not diminish the effectiveness of the commitment to transfer slots at Lisbon airport.

- (312) In this context, the Commission has assessed the extent to which the transfer of 18 daily slots at Lisbon airport would (i) reduce TAP Air Portugal's operations, taking account of its hub-and-spoke business model at the airport; and (ii) affect TAP Air Portugal's return to viability at the end of the restructuring period (2025).
- (313) With regard to the operational impact of the transfer of 18 daily slots, the Commission notes that the commitment proposed by Portugal is designed taking into consideration TAP Air Portugal's long-haul transatlantic strategic and hub model. In particular, the commitment contains two measures to avoid the concentration of the slots to be transferred during the hours that are crucial for the Lisbon hub (mainly morning hours) but are not critical for non-hub operations. The first measure consists in capping the number of slots to be transferred during three periods of the day. Specifically, TAP Air Portugal shall not be obliged to transfer: (i) more than one slot before 08:00 (local time) per aircraft based by the remedy taker at Lisbon airport using the remedy slots; (ii) more than half of the total remedy slots before 12:00 (local time); and (iii) more slots before 20:00 (local time) than the total remedy slots minus one slot per aircraft based by the remedy taker at Lisbon airport using the remedy slots for the operation of short-haul flights. The second measure consists in giving some flexibility to TAP Air Portugal as to the exact times of the slots to be transferred, provided that the adjustment to the requested times does not negatively affect the planned operations of the remedy taker, hence the effectiveness of the competition brought about by the commitment. Specifically, TAP Air Portugal shall transfer slot corresponding to the slot times requested by the remedy taker within +/- 20 minutes for short-haul flights and within +/- 60 minutes for long-haul flights, unless TAP Air Portugal does not have slots within the relevant time-window. In addition to those two specific measures, the Commission notes that potential remedy takers are incentivised to use the remedy slots for based operations, which further reduces the risks of requests for slots concentrated during a limited number of morning hours.
- (314) As a consequence, the commitment proposed by Portugal contains provisions that usefully mitigate the risk that the slot transfer would damage TAP Air Portugal's network and contribution to Lisbon's hub connectivity, without unduly constraining the operations of a remedy taker.
- (315) With regard to the financial impact of the transfer of 18 daily slots, the Commission has assessed whether TAP Air Portugal would return to viability at the end of the restructuring, as defined to in point 52 of the R&R Guidelines, ⁽⁸⁹⁾ in an adverse scenario in which TAP Air Portugal's operations following the slot transfer would be structurally reduced compared to the notified restructuring plan. For that purpose, the Commission has relied on the financial projections for 2025 provided by Portugal as part of the sensitivity analysis, adjusted to factor in the estimated reduction in revenues ⁽⁹⁰⁾, EBIT and net income entailed by the transfer of 18 slots.
- (316) The Commission has applied the standard tests for the return to viability based on indicators of ROCE, ROE, indebtedness and creditworthiness. On that basis and as detailed in Table 3 below, the Commission has found that, at the end of the restructuring period, TAP Air Portugal would:
- (a) provide a return on capital employed slightly above the (opportunity) cost of raising more capital and debt (test 1);
 - (b) provide an adequate return on shareholder equity above the (opportunity) cost of raising more capital (test 2);
 - (c) have restored its (positive) equity and achieved a much better indebtedness position than the current one of an undertaking in difficulty (test 3); and
 - (d) have a creditworthiness ratio allowing access to capital markets without need of any State aid (guarantee) (test 4).

⁽⁸⁹⁾ Pursuant to point 52 of the R&R Guidelines, long-term viability is achieved when the beneficiary is able to provide an adequate projected return on capital and is able to compete on the market place on its own merits.

⁽⁹⁰⁾ The reduction in revenues entailed by the slot transfer corresponds to the revenue deficit for operating fewer short-haul flights than without the slot transfer. As short-haul flights operated by TAP Air Portugal also feed its global network, the reduction in revenues encompasses both the loss of direct revenues from passengers carried on short-haul flights and of connecting revenues from passengers connecting from the short-haul flights onto long-haul flights.

Table 3

Impact of the transfer of 18 slots on TAP Air Portugal's return to viability

2025	Restructuring plan No transfer of slots	Sensitivity analysis Transfer of 18 slots
Viability test 1: ROCE > WACC of 7,5 %-8 %; test 2: ROE > cost of equity of 10,5 %-11 %		
ROCE (= (1-21 %) * EBIT/CE)	[...]	[...]
ROE (= Net Income/Equity)	[...]	[...]
Indebtedness and creditworthiness: test 3 in difficulty (UiD) if EBITDA/Interest < 1 Debt/Equity > 7,5; test 4: Debt/EBITDA < 3-3,5		
Net Debt/Equity	[...]	[...]
EBITDA/Interest Expense	[...]	[...]
Net Debt/EBITDA	[...]	[...]

- (317) The Commission has also tested that, in more adverse scenarios (sensitivities), TAP Air Portugal would not require further aid (e.g. net income still positive and ability to access financial markets still proven).
- (318) In light of the above, the Commission finds, on the one hand, that the commitment to transfer 18 slots at Lisbon airport does not compromise TAP Air Portugal's return to viability.
- (319) On the other hand, the Commission acknowledges that TAP Air Portugal would operate at the end of the restructuring period at a positive, yet relatively low, margin (approximately [...] % in 2025). In addition, its level of indebtedness as measured by reference to its equity base would be [...]. Furthermore, while the sensitivity analysis relies on stressed market conditions, such as rising fuel costs and inflation, it does not provide for the impact on TAP's viability of unpredictable dramatic demand shocks like the ones resulting from the pandemics. Considering that the reduction of TAP Air Portugal's operations beyond the one undertaken as part of its restructuring would disproportionately affect TAP Air Portugal's net income, the transfer of more than 18 slots may call its return to viability into question in the most adverse market circumstances.

Conclusion on the commitment to transfer slots at Lisbon airport

- (320) In light of all the above, the Commission concludes that the commitment proposed by Portugal to limit distortions of competition at Lisbon airport where TAP Air Portugal will have a significant market position after restructuring complies with and will be enforced as the conditions of acceptability set out in the R&R Guidelines.

iv) Assessment of the acquisition ban and the advertising ban

- (321) With regard to behavioural measures, Portugal commits to those in point 84 of the R&R Guidelines, namely: (i) acquisition ban regarding shares in any company during the restructuring period, except where indispensable to ensure its long-term viability and subject to Commission approval, and (ii) to refrain from publicising State support as a competitive advantage when marketing its products and services (recital 98). In line with point 83 of the R&R Guidelines, those measures will ensure that '*aid is used only to finance the restoration of long-term viability and that it is not abused to prolong serious and persistent market structure distortions or to shield the beneficiary from healthy competition*'.
- (322) Therefore, the Commission considers that the measures to limit the restrictions of competition are appropriate for reducing the negative effects of the restructuring aid.

6.4.2.7. Transparency

- (323) According to point 38(g) of the R&R Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that Portugal must respect the provisions on transparency laid down in point 96 of the R&R Guidelines. The Commission notes that Portugal will make the relevant information available on the website:

<https://www.portaldiplomatico.mne.gov.pt/sobre-nos/gestao-e-transparencia/documentos-legais>

6.5. Conclusion on compatibility

- (324) Pursuant to Article 9(6) of Council Regulation (EU) 2015/1589⁽⁹¹⁾, decisions closing the formal investigation procedure shall be taken as soon as the doubts raised on the compatibility with the internal market of a notified measure have been removed.
- (325) In light of the above, the Commission concludes that, whilst the doubts it raised in the opening decision have been removed, the negative effects of the restructuring aid on the air transport sector are limited, given in particular the measures limiting the distortions of competition, of which Portugal should ensure implementation. Consequently, the positive effects of the restructuring aid on the development of the economic activity of air transport ensuring connectivity of Portugal and related activities in the tourism sector benefitting therefrom, provided Portugal ensures implementation of the restructuring plan, outweigh the remaining negative effects on competition and trade, which are therefore not adversely affected to an extent contrary to the common interest. The commitments provided by Portugal should be laid down, therefore, as conditions for the compatibility of the aid.
- (326) In its overall assessment, the Commission therefore concludes that the restructuring aid complies with Article 107(3)(c) TFEU as it facilitates the development of air transport and related activities and does not distort competition to an extent contrary to the common interest.
- (327) Finally, the Commission considers it necessary for Portugal to provide regular reports on the implementation of the restructuring plan every six months until the end of the restructuring period. Those reports will specify, in particular, the dates of disbursement of the funding committed by Portugal and of the own contribution of the beneficiary, the developments on the aircraft and capacity of TAP Air Portugal's fleet, any deviations from the financial or operational trajectories of the restructuring plan in terms of revenues, containment of cost and cost reductions from the restructuring measures and earnings, and the corrective measures envisaged or taken by Portugal or the beneficiary where appropriate,

HAS ADOPTED THIS DECISION:

Article 1

The restructuring aid that the Portuguese Republic is planning to implement for the benefit of the economic unit, currently under the sole control of the Portuguese State, comprising Transportes Aéreos Portugueses SGPS S.A., Transportes Aéreos Portugueses S.A.-TAP Air Portugal and all their controlled subsidiaries, in the form of measures amounting to EUR 2 550 million, is compatible with the internal market, subject to the conditions set out in Article 2.

Article 2

- (1) The Portuguese Republic sees to it that Transportes Aéreos Portugueses SGPS S.A., Transportes Aéreos Portugueses S.A.-TAP Air Portugal or their subsidiaries as appropriate fully implement, within the relevant timelines, the measures included in the restructuring plan as described in this Decision.

⁽⁹¹⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

(2) The Portuguese Republic sees to it that Transportes Aéreos Portugueses SGPS S.A., Transportes Aéreos Portugueses S.A.-TAP Air Portugal or their subsidiaries as appropriate fully implement, within the relevant timelines of the restructuring plan, the measures limiting the distortions of competition as described in this Decision, namely:

- (a) fully divesting the shareholding in SPdH-Serviços Portugueses de Handling, S.A. and Catering de Portugal, S.A.;
- (b) limiting the fleet of Transportes Aéreos Portugueses S.A.-TAP Air Portugal to a maximum of [90-100] aircraft;
- (c) offering for transfer eighteen daily slots at the Lisbon airport;
- (d) refraining from acquiring shares in any company except where indispensable to ensure the long term viability of Transportes Aéreos Portugueses SGPS S.A., Transportes Aéreos Portugueses S.A.-TAP Air Portugal or their subsidiaries as appropriate and, in this case subject to the Commission approving the acquisition and
- (e) refraining from publicising State support as a competitive advantage when marketing their products and services.

(3) The Portuguese Republic provides to the Commission regular reports on the implementation of the restructuring plan every six months starting from the date of adoption of this Decision until the end of the restructuring period on 31 December 2025. Those reports will specify, in particular, the dates of the actual disbursement of the funding committed by State and the own contribution of the beneficiary, the developments on the network, market position, aircraft and capacity of Transportes Aéreos Portugueses S.A.-TAP Air Portugal's fleet, any deviations from the financial or operational trajectories of the restructuring plan in terms of revenues, containment of costs and cost reductions and earnings achieved by the restructuring measures, and the corrective measures envisaged or taken by the Portuguese Republic or the beneficiary where appropriate.

Article 3

The Portuguese Republic shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 21 December 2021.

For the Commission
Margrethe VESTAGER
Member of the Commission

COMMISSION DECISION (EU) 2022/764**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Croatia 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) 2284)***(Only the Croatian 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the Eurocontrol's Statistics and Forecast Service ('STATFOR') October 2021 base traffic forecast projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Croatia.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Croatia 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.
- (9) As Croatia does not have any airport falling within the scope of Implementing Regulation (EU) 2019/317 in respect of RP3, there are no local performance targets for terminal air navigation services as part of its draft RP3 performance plan. Therefore, the findings contained in this Decision relate solely to *en route* air navigation services.

COMMISSION ASSESSMENT

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

- (10) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Croatia regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (11) The draft performance targets in the key performance area of safety proposed by Croatia in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Croatia	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	2021	2022	2023	2024
Croatia Control	Safety policy and objectives	B	B	B	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (12) In respect of the draft safety targets proposed by Croatia for the air navigation service provider (Croatia Control), the Commission has found that the level of the Union-wide performance target is planned to be achieved in 2024 with regard to the 'safety policy and objectives' as well as for the 'safety risk management' objective, whilst for the other 'safety management objectives' the local performance targets meet the level of the Union-wide performance target for each calendar year from 2021 to 2024.
- (13) The Commission notes that the draft performance plan submitted by Croatia sets out measures for Croatia Control for the achievement of the local safety targets, such as the implementation of an efficient safety management system capable of identifying and mitigating safety risk at an early stage, the application of the severity classification of the risk analysis tool (RAT), the reporting of 'just culture' and other specific safety tools. However, the Commission considers that specific measures should be described in order to demonstrate how Croatia Control will reach the safety targets in the area of 'safety policy and objectives'.
- (14) On the basis of the findings set out in recitals 12 and 13, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Croatia should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (15) Concerning the key performance area of environment, the consistency of the targets submitted by Croatia regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Croatia have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (16) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.

- (17) The draft performance targets in the key performance area of environment proposed by Croatia 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Croatia , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,46 %	1,46 %	1,46 %	1,46 %
Reference values for Croatia	1,46 %	1,46 %	1,46 %	1,46 %

- (18) The Commission observes that the draft environment targets proposed by Croatia are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (19) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Croatia has presented in the draft performance plan measures for the achievement of the local environment targets which include further cross-border collaboration with Bosnia and Herzegovina within the South East Common Sky Initiative Free Route Airspace (SECSI FRA), the introduction of performance-based navigation as well as measures to further improve flexible use of airspace. Furthermore, the Commission notes that Croatia has already implemented free route airspace within Zagreb Flight Information Region from flight level 205 since 2018.
- (20) On the basis of the findings set out in recitals 18 and 19, the draft targets included in the draft performance plan of Croatia should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Croatia regarding the average *en route* air traffic flow management ('ATFM') delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Croatia have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft *en route* capacity targets proposed by Croatia 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Croatia , in minutes of ATFM delay per flight	0,09	0,16	0,17	0,17
Reference values for Croatia	0,09	0,16	0,17	0,17

- (24) The Commission observes that the draft capacity targets proposed by Croatia are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Croatia has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include several air traffic management (ATM) system upgrades, new airspace sectorisation as well as notable increases in the planned number of air traffic controller FTEs during calendar years 2022 to 2024.
- (26) On the basis of the findings set out in recitals 24 and 25, the draft targets included in the draft performance plan of Croatia should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

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

- (27) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Croatia regarding the determined unit costs ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over the second reference period ('RP2') and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (28) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified under point 2.1(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (29) The draft *en route* cost-efficiency targets proposed by Croatia for RP3 are as follows:

<i>En route</i> charging zone of Croatia	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets , expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	377,6 HRK	300,8 HRK	518,3 HRK	398,1 HRK	345,4 HRK	305,0 HRK
	50,61 EUR	40,31 EUR	69,46 EUR	53,35 EUR	46,29 EUR	40,87 EUR

- (30) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Croatia's *en route* DUC trend at charging zone level of +0,3 % over RP3 outperforms the Union-wide trend of +1,0 % over the same period.

- (31) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Croatia's long-term *en route* DUC trend at charging zone level over RP2 and RP3 of -2,3 % outperforms the long-term Union-wide trend of -1,3 % over the same period.
- (32) Concerning the criterion laid down in point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Croatia's baseline value for the DUC of EUR 40,31 in EUR2017 is 3,2 % higher than the average baseline value of EUR 39,05 in real terms at 2017 prices ('EUR2017') of the relevant comparator group. However, the Commission notes that the determined *en route* unit cost of Croatia will be below the average of the comparator group by -1,8 % in 2024.
- (33) As outlined in recitals 30 and 31, it is clear that Croatia outperforms both the RP3 Union-wide DUC trend and the long-term Union-wide DUC trend, the latter being surpassed by a significant margin. Furthermore, the DUC of Croatia in 2024 is lower than the 2014 baseline value and is stable compared with the 2019 baseline value. This shows that Croatia has achieved cost-efficiency gains in the long term, which is further supported by the finding that Croatia's DUC for 2024 is below the comparator group average. Having regard to the foregoing considerations, Croatia has demonstrated a cost-efficiency evolution outperforming the Union-wide trends, which provides a sufficient basis for establishing consistency with the Union-wide cost-efficiency performance targets for RP3.
- (34) On the basis of the findings set out in recitals 30 to 33, the draft targets included in the draft performance plan of Croatia should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

CONCLUSIONS

- (35) On the basis of the assessment set out in recitals 10 to 34, the Commission has found that the performance targets contained in the draft performance plan submitted by Croatia are consistent with the Union-wide performance targets.
- (36) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (37) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Croatia, 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 Republic of Croatia.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan submitted by Croatia 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**

Croatia	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	2021	2022	2023	2024
Croatia Control	Safety policy and objectives	B	B	B	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Croatia , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,46 %	1,46 %	1,46 %	1,46 %
Reference values for Croatia	1,46 %	1,46 %	1,46 %	1,46 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Croatia , in minutes of ATFM delay per flight	0,09	0,16	0,17	0,17
Reference values for Croatia	0,09	0,16	0,17	0,17

KEY PERFORMANCE AREA OF COST-EFFICIENCY

Determined unit cost for *en route* air navigation services

<i>En route</i> charging zone of Croatia	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	377,6 HRK	300,8 HRK	518,3 HRK	398,1 HRK	345,4 HRK	305,0 HRK
	50,61 EUR	40,31 EUR	69,46 EUR	53,35 EUR	46,29 EUR	40,87 EUR

COMMISSION DECISION (EU) 2022/765**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Finland 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) 2285)***(Only the Finnish and Swedish texts are 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the Eurocontrol's Statistics and Forecast Service ('STATFOR') October 2021 base traffic forecast projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Finland.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Finland 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Finland regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (10) The draft performance targets in the key performance area of safety proposed by Finland in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Finland	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	2021	2022	2023	2024
ANS Finland	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (11) In respect of the draft safety targets proposed by Finland for the air navigation service provider (ANS Finland), the Commission has found that the level of the Union-wide performance target is planned to be achieved in 2024 with regard to the 'safety risk management' objective, whilst for the other 'safety management objectives' the local performance targets meet the level of the Union-wide performance target for each calendar year from 2021 to 2024.
- (12) The Commission notes that the draft performance plan submitted by Finland sets out measures for ANS Finland for the achievement of the local safety targets, such as the continued implementation of measures compliant with Commission Implementing Regulation (EU) 2017/373 ⁽⁶⁾, the continuous oversight of the safety performance targets by the safety managers, as well as the deployment of system investments optimising the airspace and resource management to improve safety and enhance the dynamic and cost-efficient provision of cross-border services.
- (13) On the basis of the findings set out in recitals 11 and 12, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Finland should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (14) Concerning the key performance area of environment, the consistency of the targets submitted by Finland regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Finland have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (15) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.

⁽⁶⁾ Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (OJ L 62, 8.3.2017, p. 1).

- (16) The draft performance targets in the key performance area of environment proposed by Finland 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Finland , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	0,88 %	0,88 %	0,88 %	0,88 %
Reference values for Finland	0,88 %	0,88 %	0,88 %	0,88 %

- (17) The Commission observes that the draft environment targets proposed by Finland are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (18) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Finland has presented in the draft performance plan measures for the achievement of the local environment targets which include continuous implementation of Free Route Airspace (FRA) between flight level 095 and flight level 660. Furthermore, the Commission notes that Finland is already part of the North European Free Route Airspace (NEFRA) initiative between the Member States of North East FAB ('NE FAB') and Denmark-Sweden FAB ('DK-SE FAB').
- (19) On the basis of the findings set out in recitals 17 and 18, the draft targets included in the draft performance plan of Finland should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (20) Concerning the key performance area of capacity, the consistency of the targets submitted by Finland regarding the average *en route* air traffic flow management ('ATFM') delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Finland have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (21) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (22) The draft *en route* capacity targets proposed by Finland 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Finland , in minutes of ATFM delay per flight	0,03	0,05	0,05	0,05
Reference values for Finland	0,03	0,05	0,05	0,05

- (23) The Commission observes that the draft capacity targets proposed by Finland are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (24) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Finland has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include the implementation of datalink including and above flight level 195, wide area multilateration as well as cross-border dynamic sectorisation in the context of FINEST, a cross-border initiative between the air navigation service providers of Finland (ANS Finland) and Estonia (EANS) with a view to enabling dynamically managed air traffic control services between the Helsinki and Tallinn area control centres. Furthermore, the Commission observes that Finland plans to deploy several air traffic management system upgrades during RP3, among which a common flight data processing system with Estonia to increase cross-border collaboration as well as a voice communications system (VCS) upgrade.
- (25) The Commission also observes that Finland plans to slightly increase air traffic controller (ATCO) FTEs from 2022 onwards and to introduce common rostering and planning of ATCOs with Estonia.
- (26) On the basis of the findings set out in recitals 23 to 25, the draft targets included in the draft performance plan of Finland should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (27) 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 draft *en route* capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise any concerns in respect of Finland.

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

- (28) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Finland regarding the determined unit cost ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over the second reference period ('RP2') and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (29) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (30) The draft *en route* cost-efficiency targets proposed by Finland for RP3 are as follows:

<i>En route</i> charging zone of Finland	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	55,87 EUR	40,70 EUR	81,42 EUR	48,63 EUR	41,43 EUR	40,22 EUR

- (31) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Finland's *en route* DUC trend at charging zone level of -0,3 % over RP3 outperforms the Union-wide trend of +1,0 % over the same period.
- (32) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Finland's long-term *en route* DUC trend at charging zone level over RP2 and RP3 of -3,6 % outperforms the long-term Union-wide trend of -1,3 % over the same period.
- (33) Concerning the criterion laid down in point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Finland's baseline value for the DUC of EUR 40,70 in real terms at 2017 prices ('EUR2017') is 17,4 % lower than the average baseline value of EUR 49,28 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Finland remains below the average of the comparator group during the whole RP3, with a difference of -13,6 % observed for 2024.
- (34) On the basis of the findings set out in recitals 31 to 33, the draft targets included in the draft performance plan of Finland should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (35) 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 draft *en route* cost-efficiency targets with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise any concerns in respect of Finland.

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

- (36) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the assessment of draft capacity targets, the Commission has complemented its assessment by a review of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In this respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317. The draft incentive schemes contained in the draft performance plan of Finland were found to raise concerns.
- (37) The Commission observes that the *en route* capacity incentive scheme proposed in Finland's draft performance plan comprises a maximum financial disadvantage amounting to 0,50 % of determined costs, and a maximum financial advantage amounting to 0,0 % of determined costs.
- (38) The Commission observes that the terminal capacity incentive scheme proposed in Finland's draft performance plan comprises a maximum financial disadvantage amounting to 0,25 % of determined costs, and a maximum financial advantage amounting to 0,0 % of determined costs.
- (39) In respect of those incentive schemes, the Commission, on the basis of expert advice provided by the performance review body, has strong doubts whether the proposed maximum financial disadvantages, which amount to 0,50 % and 0,25 % of determined costs respectively, would have any material impact on the revenue at risk, as required pursuant to Article 11(3), point (a) of Implementing Regulation (EU) 2019/317.
- (40) Therefore, Finland 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 schemes for achieving *en route* and terminal capacity targets so that the maximum financial disadvantages stemming from those incentive schemes are set at a level having a material impact on the revenue at risk, as expressly required under 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

- (41) On the basis of the assessment set out in recitals 10 to 40, the Commission has found that the performance targets contained in the draft performance plan submitted by Finland are consistent with the Union-wide performance targets.
- (42) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (43) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Finland, 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 Republic of Finland.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan submitted by Finland 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**

Finland	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	2021	2022	2023	2024
ANS Finland	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Finland , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	0,88 %	0,88 %	0,88 %	0,88 %
Reference values for Finland	0,88 %	0,88 %	0,88 %	0,88 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Finland , in minutes of ATFM delay per flight	0,03	0,05	0,05	0,05
Reference values for Finland	0,03	0,05	0,05	0,05

KEY PERFORMANCE AREA OF COST-EFFICIENCY**Determined unit cost for *en route* air navigation services**

<i>En route</i> charging zone of Finland	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets , expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	55,87 EUR	40,70 EUR	81,42 EUR	48,63 EUR	41,43 EUR	40,22 EUR

COMMISSION DECISION (EU) 2022/766**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Ireland 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) 2287)***(Only the English and Irish texts are 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the October 2021 base traffic forecast of the Eurocontrol's Statistics and Forecast Service ('STATFOR') projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated performance plan submitted by Ireland.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Ireland 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 the assessment by reviewing the draft performance plan in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Ireland regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (10) The draft performance targets in the key performance area of safety proposed by Ireland in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Ireland	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	2021	2022	2023	2024
IAA	Safety policy and objectives	C	C	C	C
	Safety risk management	D	D	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (11) The Commission has found that the draft safety targets proposed by Ireland for the air navigation service provider (IAA) are equal to the Union-wide safety targets for each calendar year from 2021 to 2024.
- (12) The Commission notes that the draft performance plan submitted by Ireland refers to measures planned by the IAA in the business plan for the achievement of the local safety targets. The measures include the implementation of the requirements set out in Commission Implementing Regulation (EU) 2017/373⁽⁶⁾ as well as safety related investments. The NSA states that it will continue to annually review the outcomes of the effectiveness of safety management questionnaire and will impose remedial measures in any areas of non-compliance in order to achieve the local safety targets.
- (13) On the basis of the findings set out in recitals 11 and 12, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, i.e. 2024, the draft targets included in the draft performance plan of Ireland should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (14) Concerning the key performance area of environment, the consistency of the targets submitted by Ireland regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Ireland have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (15) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that targets had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustment. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.

⁽⁶⁾ Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (OJ L 62, 8.3.2017, p. 1).

- (16) The draft performance targets in the key performance area of environment proposed by Ireland 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Ireland , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,13 %	1,13 %	1,13 %	1,13 %
Reference values for Ireland	1,13 %	1,13 %	1,13 %	1,13 %

- (17) The Commission observes that the draft environment targets proposed by Ireland are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (18) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Ireland has presented in the draft performance plan several measures for the achievement of the local environment targets which include the re-organisation of Shannon Flight Information Region (FIR) as well as the implementation of a performance based navigation (PBN) transition plan.
- (19) Furthermore, the Commission observes that Ireland has already implemented free route airspace (FRA) in both the upper and lower airspace.
- (20) On the basis of the findings set out in recitals 17 to 19, the draft targets included in the draft performance plan of Ireland should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Ireland regarding the average *en route* air traffic flow management (‘ATFM’) delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Ireland have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustment. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft *en route* capacity targets proposed by Ireland 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Ireland , in minutes of ATFM delay per flight	0,01	0,03	0,03	0,03
Reference values for Ireland	0,01	0,03	0,03	0,03

- (24) The Commission observes that the draft capacity targets proposed by Ireland are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Ireland has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include flexible airspace sectorisation, multi-ratings of air traffic controllers (ATCOs), a contingency *en route* operations centre for Shannon Area Control Centre (ACC) and projects with a focus on enhancing sector capacities.
- (26) On the basis of the findings set out in recitals 24 and 25, the draft targets included in the draft performance plan of Ireland should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (27) 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 draft *en route* capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of Ireland.
- (28) The Commission has found that the proposed RP3 targets for the average arrival ATFM delay ranging from 0,25 to 0,20 minute per flight for calendar years 2021 to 2024 are significantly higher than the achieved ATFM delay performance in all but one calendar year of the second reference period ('RP2'), with an average arrival ATFM delay of approximately 0,15 minute per flight observed during that period.
- (29) Therefore, the Commission considers that, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, Ireland should further justify the terminal capacity targets in light of the observations set out above, or should revise downwards the draft capacity targets for terminal air navigation services.

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

- (30) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Ireland regarding the determined unit cost ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over RP2 and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (31) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1 (d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (32) The draft *en route* cost-efficiency targets proposed by Ireland for RP3 are as follows:

<i>En route</i> charging zone of Ireland	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	26,36 EUR	25,03 EUR	47,25 EUR	29,84 EUR	25,01 EUR	24,66 EUR

- (33) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the *en route* DUC trend of Ireland at charging zone level of -0,4 % per year over RP3 outperforms the Union-wide trend of +1,0 % over the same period.
- (34) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the long-term *en route* DUC trend of Ireland at charging zone level over RP2 and RP3 of -0,7 % per year underperforms the long-term Union-wide trend of -1,3 % over the same period.
- (35) Concerning the criterion laid down in 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 25,03 of Ireland in real terms at 2017 prices (EUR2017) is 52,9 % lower than the average baseline value of EUR 53,20 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Ireland for 2024 will continue to be lower by 51,1 % than the average of the comparator group.
- (36) As specified in recital 33, it is clear that the DUC trend of Ireland over RP3 outperforms to a large extent the corresponding Union-wide trend. Furthermore, the DUC of Ireland in 2024 is lower than the 2014 and 2019 baseline values, which shows that effective cost-efficiency gains are achieved both in the medium and long term. Finally, referring to recital 35, Ireland demonstrates a strong cost-efficiency performance in terms of the DUC level, as the baseline value for 2019 and the DUC for 2024 of Ireland are both significantly lower (by over 50 %) than the corresponding comparator group average values. Having regard to the foregoing considerations, the Commission considers that the deviation from the Union-wide long-term DUC trend observed in recital 34 does not preclude the establishment of consistency with the Union-wide cost-efficiency performance targets in respect of Ireland.
- (37) On the basis of the findings set out in recitals 33 to 36, the draft targets included in the draft performance plan of Ireland should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

Review of draft 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 draft *en route* cost-efficiency targets with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise any concerns in respect of Ireland.

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

- (39) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the assessment of draft capacity targets, the Commission has complemented its assessment by a review of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In this respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317. The draft incentive schemes contained in the draft performance plan of Ireland were found to raise concerns.
- (40) The Commission observes that both the *en route* capacity incentive scheme and the terminal capacity incentive scheme proposed in Ireland's draft performance plan comprise a maximum financial disadvantage amounting to 0,50 % of determined costs and a maximum financial advantage amounting to 0,0 % of determined costs.
- (41) In respect of those incentive schemes, the Commission, on the basis of expert advice provided by the performance review body, has strong doubts whether the proposed maximum financial disadvantage, which amounts to 0,50 % of determined costs, would have any material impact on the revenue at risk, as required pursuant to Article 11(3), point (a) of Implementing Regulation (EU) 2019/317.

- (42) Therefore, Ireland should revise, in connection with the adoption of its final performance plan in accordance with Article 16(a) of Implementing Regulation (EU) 2019/317, its incentive schemes for achieving *en route* and terminal capacity targets so that the maximum financial disadvantages stemming from those incentive schemes are set at a level having a material impact on the revenue at risk, as expressly required under 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

- (43) On the basis of the assessment set out in recitals 9 to 42, the Commission has found that the performance targets contained in the draft performance plan submitted by Ireland are consistent with the Union-wide performance targets.
- (44) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (45) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Ireland, 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 Ireland.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan submitted by Ireland 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**

Ireland	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	2021	2022	2023	2024
IAA	Safety policy and objectives	C	C	C	C
	Safety risk management	D	D	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Ireland , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,13 %	1,13 %	1,13 %	1,13 %
Reference values for Ireland	1,13 %	1,13 %	1,13 %	1,13 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Ireland , in minutes of ATFM delay per flight	0,01	0,03	0,03	0,03
Reference values for Ireland	0,01	0,03	0,03	0,03

KEY PERFORMANCE AREA OF COST-EFFICIENCY**Determined unit cost for *en route* air navigation services**

<i>En route</i> charging zone of Ireland	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets , expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	26,36 EUR	25,03 EUR	47,25 EUR	29,84 EUR	25,01 EUR	24,66 EUR

COMMISSION DECISION (EU) 2022/767**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Portugal 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) 2288)***(Only the Portuguese 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the October 2021 base traffic forecast of the Eurocontrol's Statistics and Forecast Service ('STATFOR') projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Portugal.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Portugal 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Portugal regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (10) The draft performance targets in the key performance area of safety proposed by Portugal in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Portugal	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	2021	2022	2023	2024
NAV Portugal	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (11) In respect of the draft safety targets proposed by Portugal for the air navigation service provider (NAV Portugal), the Commission has found that the level of the Union-wide performance target is planned to be achieved in 2024 with regard to the 'safety risk management' objective, whilst for the other 'safety management objectives' the local performance targets meet the level of the Union-wide performance target for each calendar year from 2021 to 2024.
- (12) The Commission notes that the draft performance plan submitted by Portugal sets out measures for NAV Portugal for the achievement of the local safety targets, such as the upgrade of existing tools, the improvement of the monitoring process of safety indicators and of reporting on safety culture, as well as the revision of the training structure regarding the safety management system.
- (13) On the basis of the findings set out in recitals 11 and 12, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Portugal should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (14) Concerning the key performance area of environment, the consistency of the targets submitted by Portugal regarding the average horizontal en route flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Portugal have been compared to the relevant en route horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (15) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (16) The draft performance targets in the key performance area of environment proposed by Portugal 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Portugal , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,80 %	1,80 %	1,80 %	1,80 %
Reference values for Portugal	1,80 %	1,80 %	1,80 %	1,80 %

- (17) The Commission observes that the draft environment targets proposed by Portugal are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (18) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Portugal has presented in the draft performance plan several measures for the achievement of the local environment targets which include the optimisation and extension of Madeira Terminal Manoeuvring Area (TMA), the implementation of a performance-based navigation (PBN) transition plan, new Standard Instrument Departures (SID) and Standard Instrument Arrivals (STAR) structures in Cascais, Lisbon TMA point merge system as well as several measures to increase cross-border collaboration with France, Spain and Morocco.
- (19) Furthermore, the Commission observes that Portugal has already implemented free route airspace (FRA) from flight level 245 in the Lisbon Flight Information Region (FIR) and plans to extend FRA to Santa Maria FIR in late 2024.
- (20) On the basis of the findings set out in recitals 17 to 19, the draft targets included in the draft performance plan of Portugal should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Portugal regarding the average *en route* air traffic flow management ('ATFM') delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Portugal have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft *en route* capacity targets proposed by Portugal 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Portugal , in minutes of ATFM delay per flight	0,09	0,13	0,13	0,13
Reference values for Portugal	0,09	0,13	0,13	0,13

- (24) The Commission observes that the draft capacity targets proposed by Portugal are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Portugal has presented in the draft performance plan a range of measures for the achievement of the local en route capacity targets. Those measures include the transition to a new Air Traffic Management (ATM) system and Operations (OPS) room, airspace changes including FRA cross-border initiatives, enhanced Air Traffic Flow and Capacity Management (ATFCM) procedures as well as the implementation of a recruitment plan to significantly increase air traffic controller FTEs (+ 25 % by 2024 compared to 2019 levels).
- (26) On the basis of the findings set out in recitals 24 and 25, the draft targets included in the draft performance plan of Portugal should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (27) 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 draft en route capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of Portugal.
- (28) The Commission observes that when comparing at airport level the draft national targets on average arrival ATFM delay with the performance of similar airports during the second reference period ('RP2'), the Commission has found that the airports of Lisbon and Porto are expected to experience higher ATFM delays than those forecasted for similar airports.
- (29) Therefore, the Commission considers that, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, Portugal should further justify the terminal capacity targets in light of the observations set out above, or should revise downwards the draft capacity targets for terminal air navigation services.

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

- (30) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Portugal regarding the determined unit costs ('DUC') for en route air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over RP2 and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (31) The assessment of en route cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified under point 2.1(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (32) The draft en route cost-efficiency targets proposed by Portugal for RP3 are as follows:

En route charging zone of Portugal Continental	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	36,13 EUR	34,88 EUR	65,82 EUR	40,78 EUR	40,37 EUR	37,87 EUR

- (33) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the *en route* DUC trend of Portugal at charging zone level of +2,1 % per year over RP3 underperforms the Union-wide trend of +1,0 % over the same period.
- (34) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the long-term *en route* DUC trend of Portugal at charging zone level over RP2 and RP3 of +0,5 % per year underperforms the long-term Union-wide trend of -1,3 % over the same period.
- (35) It should be taken into account, however, when comparing the local and Union-wide DUC trends referred to in recitals 33 and 34, that the *en route* traffic growth forecasted by Eurocontrol STATFOR for Portugal over RP3 is foreseen to be significantly lower than the average traffic growth at Union-wide level. This renders it more challenging for Portugal to meet the said Union-wide DUC trends.
- (36) Concerning the criterion laid down in 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 34,88 of Portugal in real terms at 2017 prices ('EUR2017') is 12,2 % lower than the average baseline value of EUR 39,73 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Portugal for 2024 will continue to be lower by 9,8 % than the average of the comparator group.
- (37) The Commission has further examined whether the deviations observed in recitals 33 and 34 could be deemed necessary and proportionate under point 1.4(d) of Annex IV to Implementing Regulation (EU) 2019/317, provided that the observed deviations from the Union-wide DUC trend or from the long-term Union-wide DUC trend are exclusively due to additional determined costs related to measures necessary to achieve the performance targets in the key performance area of capacity or to restructuring measures within the meaning of Article 2(18) of Implementing Regulation (EU) 2019/317.
- (38) In respect of the criterion specified under point 1.4(d)(i) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Portugal has presented in its draft performance plan measures and investments to be implemented by the air navigation service provider, namely NAV Portugal, for the purpose of achieving the local capacity targets.
- (39) In particular, Portugal plans to put in service a new ATM system, as the system currently in use has reached the end of its lifecycle and has to be replaced. This action is indeed important in order to provide adequate capacity in the future, as the existing ATM system was responsible for a substantial part of the ATFM delays generated by NAV Portugal under RP2, in the pre-COVID circumstances. The new ATM system will reduce ATCO workload per aircraft and will enabling new functionalities, thus delivering operational gains.
- (40) Furthermore, Portugal plans to significantly increase, over RP3, the number of full-time equivalent ATCOs in operations. This development is essential in order to enable the opening of a higher number of sectors in the *en route* airspace of Portugal by the end of RP3, which will enhance the provided capacity.

- (41) Based on the detailed analysis by the performance review body, the Commission considers that the relevant measures outlined by Portugal in the draft performance plan are indeed necessary to achieve the local capacity targets. Furthermore, having regard to the evaluation made by the performance review body, it can be concluded that the additional costs of those measures are larger than the deviations from the Union-wide DUC trend and from the long-term Union-wide DUC trend referred to in recitals 33 and 34.
- (42) In light of the considerations in recitals 38 to 41, the Commission therefore finds that the criterion set out in point 1.4(d)(i) is fulfilled in respect of Portugal.
- (43) It follows from the foregoing observations that it is not necessary to further examine whether the criterion set out under point 1.4(d)(ii) would be fulfilled with regard to Portugal.
- (44) On the basis of the findings set out in recitals 33 to 43, the draft targets included in the draft performance plan of Portugal should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (45) 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 draft en route cost-efficiency targets with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise concerns in respect of Portugal.

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

- (46) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the assessment of draft capacity targets, the Commission has complemented its assessment by a review of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In this respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317. The draft incentive schemes contained in the draft performance plan of Portugal were found to raise concerns.
- (47) The Commission observes that both the *en route* capacity incentive scheme and the terminal capacity incentive scheme proposed in Portugal's draft performance plan comprise a maximum financial disadvantage amounting to 0,5 % of determined costs and a maximum financial advantage amounting to 0,5 % of determined costs.
- (48) In respect of those incentive schemes, the Commission, on the basis of expert advice provided by the performance review body, has strong doubts whether the proposed maximum financial disadvantage, which amounts to 0,5 % of determined costs, would have any material impact on the revenue at risk, as required pursuant to point (a) of Article 11(3) of Implementing Regulation (EU) 2019/317.
- (49) Therefore, Portugal, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, should revise its incentive schemes for achieving en route and terminal capacity targets so that the maximum financial disadvantages stemming from those incentive schemes are set at a level having a material impact on the revenue at risk, as expressly required under 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

- (50) On the basis of the assessment set out in recitals 9 to 49, the Commission has found that the performance targets contained in the draft performance plan submitted by Portugal are consistent with the Union-wide performance targets.

- (51) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (52) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Portugal, 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 Portuguese Republic.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan submitted by Portugal 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**

Portugal	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	2021	2022	2023	2024
NAV Portugal	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Portugal , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,80 %	1,80 %	1,80 %	1,80 %
Reference values for Portugal	1,80 %	1,80 %	1,80 %	1,80 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Portugal , in minutes of ATFM delay per flight	0,09	0,13	0,13	0,13
Reference values for Portugal	0,09	0,13	0,13	0,13

KEY PERFORMANCE AREA OF COST-EFFICIENCY**Determined unit cost for *en route* air navigation services**

<i>En route</i> charging zone of Portugal Continental	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	36,13 EUR	34,88 EUR	65,82 EUR	40,78 EUR	40,37 EUR	37,87 EUR

COMMISSION DECISION (EU) 2022/768**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Slovakia 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) 2289)***(Only the Slovakian 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the Eurocontrol's Statistics and Forecast Service ('STATFOR') October 2021 base traffic forecast projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Slovakia.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Slovakia 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.
- (9) As Slovakia does not have any airport falling within the scope of Implementing Regulation (EU) 2019/317 in respect of RP3, there are no local performance targets for terminal air navigation services as part of its draft RP3 performance plan. Therefore, the findings contained in this Decision relate solely to *en route* air navigation services.

COMMISSION ASSESSMENT

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

- (10) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Slovakia regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (11) The draft performance targets in the key performance area of safety proposed by Slovakia in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Slovakia	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	2021	2022	2023	2024
LPS SR	Safety policy and objectives	B	B	C	C
	Safety risk management	C	C	C	D
	Safety assurance	B	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	B	B	C	C

- (12) In respect of the draft safety targets proposed by Slovakia for the air navigation service provider (LPS SR), the Commission observes, with regard to 'safety promotion', that the local performance targets meet the level of the Union-wide performance target for each calendar year from 2021 to 2024. In respect of 'safety assurance', the local targets are aligned with the Union-wide performance target from year 2022 onwards, whilst in the areas of 'safety policy and objectives' and 'safety culture', the Union-wide target is planned to be achieved from 2023 onwards. Finally, in respect of 'safety risk management', consistency with the Union-wide performance target is planned to be reached in 2024.
- (13) The Commission notes that the draft performance plan submitted by Slovakia sets out measures for LPS SR for the achievement of the local safety targets, such as activities to enhance 'just culture', the strengthening of emergency response procedures as well as actions concerning the training of staff in relation to safety management.
- (14) On the basis of the findings set out in recitals 12 and 13, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Slovakia should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (15) Concerning the key performance area of environment, the consistency of the targets submitted by Slovakia regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Slovakia have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (16) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (17) The draft performance targets in the key performance area of environment proposed by Slovakia 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Slovakia , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	2,15 %	2,13 %	2,13 %	2,13 %
Reference values for Slovakia	2,15 %	2,13 %	2,13 %	2,13 %

- (18) The Commission observes that the draft environment targets proposed by Slovakia are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (19) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Slovakia has presented in the draft performance plan several measures for the achievement of the local environment targets which include further progress in the implementation of South East Europe Free Route Airspace (SEE FRA), increased cross-border collaboration, and the re-sectorisation of the airspace of the Bratislava Area Control Centre.
- (20) Furthermore, the Commission observes that Slovakia has already implemented 24-hour free route airspace.
- (21) On the basis of the findings set out in recitals 18 to 20, the draft targets included in the draft performance plan of Slovakia should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (22) Concerning the key performance area of capacity, the consistency of the targets submitted by Slovakia regarding the average *en route* air traffic flow management ('ATFM') delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Slovakia have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (23) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (24) The draft *en route* capacity targets proposed by Slovakia 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Slovakia , in minutes of ATFM delay per flight	0,05	0,07	0,08	0,07
Reference values for Slovakia	0,05	0,07	0,08	0,07

- (25) The Commission observes that the draft capacity targets proposed by Slovakia are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (26) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Slovakia has presented in the draft performance plan a range of measures for the achievement of the local en route capacity targets. Those measures include an air traffic management (ATM) system upgrade, the implementation of air-ground datalink, the re-evaluation and increase of sector capacity, participation in the SEE FRA project, improved air traffic flow and capacity management techniques, as well increased recruitment of air traffic controllers (ATCOs) resulting in an overall increase in ATCO FTEs by the end of RP3.
- (27) On the basis of the findings set out in recitals 25 and 26, the draft targets included in the draft performance plan of Slovakia should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

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

- (28) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Slovakia regarding the determined unit cost ('DUC') for en route air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over the second reference period ('RP2') and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (29) The assessment of en route cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (30) The draft *en route* cost-efficiency targets proposed by Slovakia for RP3 are as follows:

<i>En route</i> charging zone of Slovakia	2014 baseline value	2019 baseline value	2020 - 2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	57,08 EUR	47,18 EUR	80,51 EUR	68,51 EUR	59,12 EUR	51,88 EUR

- (31) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the *en route* DUC trend of Slovakia at charging zone level of +2,4 % per year over RP3 underperforms the Union-wide trend of +1,0 % over the same period.
- (32) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the long-term *en route* DUC trend of Slovakia at charging zone level over RP2 and RP3 of -1,1 % per year underperforms the long-term Union-wide trend of -1,3 % over the same period.
- (33) It should be taken into account, however, when comparing the local and Union-wide DUC trends referred to in recitals 31 and 32, that the *en route* traffic growth forecasted by Eurocontrol STATFOR for Slovakia over RP3 is foreseen to be significantly lower than the average traffic growth at Union-wide level. This renders it more challenging for Slovakia to meet the said Union-wide DUC trends.

- (34) Concerning the criterion laid down in 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 47,18 of Slovakia in EUR2017 is 23,5 % higher than the average baseline value of EUR 38,19 in real terms at 2017 prices ('EUR2017') of the relevant comparator group. The Commission notes that that difference becomes even larger during RP3, as the determined *en route* unit cost of Slovakia for 2024 is higher by 28,9 % than the average of the comparator group.
- (35) The Commission has further examined whether the deviations observed in recitals 31, 32 and 34 could be deemed necessary and proportionate under point 1.4(d) of Annex IV to Implementing Regulation (EU) 2019/317, provided that the observed deviations from the Union-wide DUC trend and from the long-term Union-wide DUC trend are exclusively due to additional determined costs related to measures necessary to achieve the performance targets in the key performance area of capacity or to restructuring measures within the meaning of Article 2(18) of Implementing Regulation (EU) 2019/317.
- (36) In respect of the criterion specified under point 1.4(d)(i) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Slovakia has presented in its draft performance plan measures and investments to be implemented by the air navigation service provider, namely LPS SR, for the purpose of achieving the local capacity targets.
- (37) Slovakia plans, in particular, a notable increase in the number of full-time equivalent ATCOs in operations by the end of RP3. As explained by Slovakia, LPS SR had to make extensive use of ATCO overtime hours in order to accommodate traffic demand in the pre-COVID circumstances. It is understandable that this would not be sustainable in the longer term either operationally or financially, and that LPS SR therefore plans to pursue the recruitment and training of additional ATCOs in order to cater for the forecasted future traffic demand. A further enhancement of capacity is foreseen through upgrades of the ATM system, including the implementation of the air-ground datalink functionality and the introduction of a 'complexity tool' enabling a more advanced management of air traffic control capacity.
- (38) Based on the detailed analysis by the performance review body, the Commission considers that the relevant measures outlined by Slovakia in the draft performance plan are indeed necessary to achieve the local capacity targets. Furthermore, having regard to the evaluation made by the performance review body, it can be concluded that the additional costs of those measures are larger than the deviations from the Union-wide DUC trend and from the long-term Union-wide DUC trend referred to in recitals 31 and 32.
- (39) In light of the considerations in recitals 36 to 38, the Commission therefore finds that the criterion set out in point 1.4(d)(i) is fulfilled in respect of Slovakia.
- (40) It follows from the foregoing observations that it is not necessary to further examine whether the criterion set out under point 1.4(d)(ii) would be fulfilled with regard to Slovakia.
- (41) On the basis of the findings set out in recitals 28 to 40, the draft targets included in the draft performance plan of Slovakia should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

CONCLUSIONS

- (42) On the basis of the assessment set out in recitals 10 to 41, the Commission has found that the performance targets contained in the draft performance plan submitted by Slovakia are consistent with the Union-wide performance targets.
- (43) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.

- (44) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Slovakia, 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 Slovak Republic.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan, submitted by Slovakia 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**

Slovakia	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	2021	2022	2023	2024
LPS SR	Safety policy and objectives	B	B	C	C
	Safety risk management	C	C	C	D
	Safety assurance	B	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	B	B	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Slovakia , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	2,15 %	2,13 %	2,13 %	2,13 %
Reference values for Slovakia	2,15 %	2,13 %	2,13 %	2,13 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Slovakia , in minutes of ATFM delay per flight	0,05	0,07	0,08	0,07
Reference values for Slovakia	0,05	0,07	0,08	0,07

KEY PERFORMANCE AREA OF COST-EFFICIENCY**Determined unit cost for *en route* air navigation services**

<i>En route</i> charging zone of Slovakia	2014 baseline value	2019 baseline value	2020 - 2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	57,08 EUR	47,18 EUR	80,51 EUR	68,51 EUR	59,12 EUR	51,88 EUR

COMMISSION DECISION (EU) 2022/769**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Lithuania 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) 2290)***(Only the Lithuanian 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) ⁽¹⁾, and in particular Article 11(3), point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the October 2021 base traffic forecast of the Eurocontrol's Statistics and Forecast Service ('STATFOR') projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Lithuania.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Lithuania 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.
- (9) As Lithuania does not have any airport falling within the scope of Implementing Regulation (EU) 2019/317 in respect of RP3, there are no local performance targets for terminal air navigation services as part of its draft RP3 performance plan. Therefore, the findings contained in this Decision relate solely to *en route* air navigation services.

COMMISSION ASSESSMENT

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

- (10) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Lithuania regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (11) The draft performance targets in the key performance area of safety proposed by Lithuania in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Lithuania	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	2021	2022	2023	2024
Oro Navigacija	Safety policy and objectives	C	C	C	C
	Safety risk management	D	D	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (12) The Commission has found that the draft safety targets proposed by Lithuania for the air navigation service provider (Oro Navigacija) are equal to the Union-wide safety targets in respect of each calendar year from 2021 to 2024.
- (13) The Commission notes that the draft performance plan submitted by Lithuania sets measures for Oro Navigacija for the achievement of the local safety targets such as the deployment of a new air traffic management ('ATM') system with additional safety functions, regular reviews of safety policy which have regard to national and international regulations, enhanced safety training, and increased civil-military cooperation.
- (14) On the basis of the findings set out in recitals 12 and 13, the draft targets included in the draft performance plan of Lithuania should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (15) Concerning the key performance area of environment, the consistency of the targets submitted by Lithuania regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Lithuania have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (16) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.

- (17) The draft performance targets in the key performance area of environment proposed by Lithuania 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Lithuania , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,93 %	1,92 %	1,92 %	1,92 %
Reference values for Lithuania	1,93 %	1,92 %	1,92 %	1,92 %

- (18) The Commission observes that the draft environment targets proposed by Lithuania are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (19) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Lithuania has presented in the draft performance plan measures for the achievement of the local environment targets which include the extension of free route airspace procedures within Baltic FAB by February 2022 as well as measures recommended in the ERNIP by the Network Manager, including a transition plan for performance based navigation and major airspace reconfiguration.
- (20) On the basis of the findings set out in recitals 18 and 19, the draft targets included in the draft performance plan of Lithuania should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Lithuania regarding the average *en route* air traffic flow management (ATFM) delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Lithuania have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft *en route* capacity targets proposed by Lithuania 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Lithuania , in minutes of ATFM delay per flight	0,01	0,03	0,03	0,03
Reference values for Lithuania	0,01	0,03	0,03	0,03

- (24) The Commission observes that the draft capacity targets proposed by Lithuania are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Lithuania has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include the optimisation of Vilnius Area Control Centre airspace, the deployment of a new ATM system as well as the introduction of a new air traffic controller (ATCO) rostering system in 2022.
- (26) On the basis of the findings set out in recitals 24 and 25, the draft targets included in the draft performance plan of Lithuania should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

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

- (27) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Lithuania regarding the determined unit cost ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over RP2 and RP3 (2015–2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (28) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified under point 2.1(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (29) The draft *en route* cost-efficiency targets proposed by Lithuania for RP3 are as follows:

<i>En route</i> charging zone of Lithuania	2014 baseline value	2019 baseline value	2020–2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	45,12 EUR	37,64 EUR	50,51 EUR	44,40 EUR	41,02 EUR	37,52 EUR

- (30) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Lithuania's *en route* DUC trend at charging zone level of -0,1 % over RP3 outperforms the Union-wide trend of +1,0 % over the same period.
- (31) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Lithuania's long-term *en route* DUC trend at charging zone level over RP2 and RP3 of -2,0 % outperforms the long-term Union-wide trend of -1,3 % over the same period.
- (32) Concerning the criterion laid down in point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Lithuania's baseline value for the DUC of EUR 37,64 in real terms at 2017 prices ('EUR2017') is 42,7 % higher than the average baseline value of EUR 26,39 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Lithuania remains above the average of the comparator group during the whole RP3, with a difference of 23,0 % observed for 2024.

- (33) As outlined in recitals 30 and 31, it is clear that Lithuania outperforms both the RP3 Union-wide DUC trend and the long-term Union-wide DUC trend. Furthermore, the DUC of Lithuania in 2024 is lower than the 2014 baseline value and is stable compared with the 2019 baseline value. Regardless of the difference between Lithuania's baseline value and the comparator group average observed in recital 32, Lithuania has demonstrated a cost-efficiency evolution outperforming the Union-wide trends, which provides a sufficient basis for establishing consistency with the Union-wide cost-efficiency performance targets for RP3.
- (34) On the basis of the findings set out in recitals 27 to 33, the draft targets included in the draft performance plan of Lithuania should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

CONCLUSIONS

- (35) On the basis of the assessment set out in recitals 10 to 34, the Commission has found that the performance targets contained in the draft performance plan submitted by Lithuania are consistent with the Union-wide performance targets.
- (36) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (37) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Lithuania, 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 ('RP3') set out in Implementing Decision (EU) 2021/891.

Article 2

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan, submitted by Lithuania 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

Lithuania	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	2021	2022	2023	2024
Oro Navigacija	Safety policy and objectives	C	C	C	C
	Safety risk management	D	D	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT

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

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Lithuania , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,93 %	1,92 %	1,92 %	1,92 %
Reference values for Lithuania	1,93 %	1,92 %	1,92 %	1,92 %

KEY PERFORMANCE AREA OF CAPACITY

Average *en route* ATFM delay in minutes per flight

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Lithuania , in minutes of ATFM delay per flight	0,01	0,03	0,03	0,03
Reference values for Lithuania	0,01	0,03	0,03	0,03

KEY PERFORMANCE AREA OF COST-EFFICIENCY
Determined unit cost for *en route* air navigation services

<i>En route</i> charging zone of Lithuania	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets , expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	45,12 EUR	37,64 EUR	50,51 EUR	44,40 EUR	41,02 EUR	37,52 EUR

COMMISSION DECISION (EU) 2022/770**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Denmark 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) 2291)***(Only the Danish 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the October 2021 base traffic forecast of the Eurocontrol's Statistics and Forecast Service ('STATFOR') projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Denmark.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Denmark 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Denmark regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (10) The draft performance targets in the key performance area of safety proposed by Denmark in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Denmark	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	2021	2022	2023	2024
Naviair	Safety policy and objectives	C	C	C	C
	Safety risk management	B	C	D	D
	Safety assurance	B	C	C	C
	Safety promotion	B	C	C	C
	Safety culture	B	C	C	C

- (11) In respect of the draft safety targets proposed by Denmark for the air navigation service provider (Naviair), the Commission has found that the level of the Union-wide performance target is planned to be achieved in 2023 with regard to the 'safety risk management' objective, whilst for the other 'safety management objectives' the local performance targets meet the level of the Union-wide performance target for each calendar year from 2022 to 2024, apart from the 'safety policy and objectives', where the level of the Union-wide performance target is planned to be achieved for each calendar year of the reference period.
- (12) The Commission notes that the draft performance plan submitted by Denmark sets out measures for Naviair for the achievement of the local safety targets, such as the implementation of the compliance requirements imposed by Commission Implementing Regulation (EU) 2017/373⁽⁶⁾, as well as best practices outlined by the Safety Management Manuals of ICAO, CANSO and Eurocontrol. However, the Commission considers that more details on the foreseen measures should be provided during the monitoring of the remaining years of RP3.
- (13) On the basis of the findings set out in recitals 11 and 12, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Denmark should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (14) Concerning the key performance area of environment, the consistency of the targets submitted by Denmark regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Denmark have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.

⁽⁶⁾ Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (OJ L 62, 8.3.2017, p. 1).

- (15) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (16) The draft performance targets in the key performance area of environment proposed by Denmark 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Denmark , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,14 %	1,14 %	1,14 %	1,14 %
Reference values for Denmark	1,14 %	1,14 %	1,14 %	1,14 %

- (17) The Commission observes that the draft environment targets proposed by Denmark are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (18) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Denmark has presented in the draft performance plan measures for the achievement of the local environment targets which include the implementation of performance-based navigation and the re-design of standard instrument departure and arrival routes.
- (19) Furthermore, the Commission observes that Denmark has already implemented free route airspace (FRA) from flight level 285 and encourages Denmark to pursue a further implementation of FRA.
- (20) On the basis of the findings set out in recitals 17 to 19, the draft targets included in the draft performance plan of Denmark should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Denmark regarding the average *en route* air traffic flow management ('ATFM') delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Denmark have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.

- (23) The draft *en route* capacity targets proposed by Denmark 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Denmark , in minutes of ATFM delay per flight	0,03	0,06	0,06	0,05
Reference values for Denmark	0,03	0,06	0,06	0,05

- (24) The Commission observes that the draft capacity proposed by Denmark are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Denmark has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include the continuous improvement of the air traffic services route network, increased civil-military cooperation to optimise the use of FRA, minor air traffic management system upgrades, and the implementation of improved air traffic flow and capacity management techniques.
- (26) On the basis of the findings set out in recitals 24 and 25, the draft targets included in the draft performance plan of Denmark should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (27) 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 draft *en route* capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise any concerns in respect of Denmark.

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

- (28) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Denmark regarding the determined unit cost ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over the second reference period ('RP2') and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (29) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (30) The draft *en route* cost-efficiency targets proposed by Denmark for RP3 are as follows:

<i>En route</i> charging zone of Denmark	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets , expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	488,1 DKK	428,7 DKK	935,4 DKK	479,4 DKK	423,3 DKK	393,9 DKK
	65,63 EUR	57,64 EUR	125,78 EUR	64,47 EUR	56,92 EUR	52,97 EUR

- (31) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Denmark's *en route* DUC trend at charging zone level of -2,1 % over RP3 outperforms the Union-wide trend of +1,0 % over the same period.
- (32) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Denmark's long-term *en route* DUC trend at charging zone level over RP2 and RP3 of -2,4 % outperforms the long-term Union-wide trend of -1,3 % over the same period.
- (33) Concerning the criterion laid down in point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Denmark's baseline value for the DUC of EUR 57,64 in real terms at 2017 prices ('EUR2017') is 28,0 % higher than the average baseline value of EUR 45,04 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Denmark remains above the average of the comparator group during the whole RP3, with a difference of 22,2 % observed for 2024.
- (34) As outlined in recitals 31 and 32, it is clear that Denmark outperforms by a significant margin both the RP3 Union-wide DUC trend and the long-term Union-wide DUC trend. Furthermore, the DUC of Denmark in 2024 is lower than the baseline values for 2014 and 2019, which shows that effective cost-efficiency gains are achieved both in the medium and long term. Regardless of the difference between Denmark's baseline value and the comparator group average observed in recital 33, Denmark has demonstrated a cost-efficiency evolution outperforming the Union-wide trends, which provides a sufficient basis for establishing consistency with the Union-wide cost-efficiency performance targets for RP3.
- (35) On the basis of the findings set out in recitals 31 to 34, the draft targets included in the draft performance plan of Denmark should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (36) 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 draft *en route* cost-efficiency targets with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise any concerns in respect of Denmark.

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

- (37) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the assessment of draft capacity targets, the Commission has complemented its assessment by a review of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In this respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317. The draft incentive schemes contained in the draft performance plan of Denmark were found to raise concerns.
- (38) The Commission observes that both the *en route* capacity incentive scheme and the terminal capacity incentive scheme proposed in Denmark's draft performance plan comprise a maximum financial disadvantage amounting to 0,50 % of determined costs, and a maximum financial advantage amounting to 0,40 % of determined costs.
- (39) In respect of those incentive schemes, the Commission, on the basis of expert advice provided by the performance review body, has strong doubts whether the proposed maximum financial disadvantages, which amount to 0,50 % of determined costs, would have any material impact on the revenue at risk, as required pursuant to Article 11(3), point (a) of Implementing Regulation (EU) 2019/317.

- (40) Therefore, Denmark 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 schemes for achieving *en route* and terminal capacity targets so that the maximum financial disadvantages stemming from those incentive schemes are set at a level having a material impact on the revenue at risk, as expressly required under 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

- (41) On the basis of the assessment set out in recitals 9) to 40, the Commission has found that the performance targets contained in the draft performance plans submitted by Denmark are consistent with the Union-wide performance targets.
- (42) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (43) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Denmark, 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 Kingdom of Denmark.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan submitted, by Denmark 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**

Denmark	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	2021	2022	2023	2024
Naviair	Safety policy and objectives	C	C	C	C
	Safety risk management	B	C	D	D
	Safety assurance	B	C	C	C
	Safety promotion	B	C	C	C
	Safety culture	B	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Denmark , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,14 %	1,14 %	1,14 %	1,14 %
Reference values for Denmark	1,14 %	1,14 %	1,14 %	1,14 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Denmark , in minutes of ATFM delay per flight	0,03	0,06	0,06	0,05
Reference values for Denmark	0,03	0,06	0,06	0,05

KEY PERFORMANCE AREA OF COST-EFFICIENCY

Determined unit cost for *en route* air navigation services

<i>En route</i> charging zone of Denmark	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	488,1 DKK	428,7 DKK	935,4 DKK	479,4 DKK	423,3 DKK	393,9 DKK
	65,63 EUR	57,64 EUR	125,78 EUR	64,47 EUR	56,92 EUR	52,97 EUR

COMMISSION DECISION (EU) 2022/771**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Estonia 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) 2292)***(Only the Estonian 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.
- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the Eurocontrol's Statistics and Forecast Service ('STATFOR') October 2021 base traffic forecast projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Estonia.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Estonia 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Estonia regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.

⁽³⁾ 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).

⁽⁴⁾ 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).

⁽⁵⁾ 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).

- (10) The draft performance targets in the key performance area of safety proposed by Estonia in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

Estonia	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	2021	2022	2023	2024
EANS	Safety policy and objectives	C	C	C	C
	Safety risk management	D	D	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (11) The Commission has found that the draft safety targets proposed by Estonia for the air navigation service provider (EANS) are equal to the Union-wide safety targets in respect of each calendar year from 2021 to 2024.
- (12) The Commission notes that the draft performance plan submitted by Estonia sets out measures for EANS for the achievement of the local safety targets, including activities in accordance with the State Safety Programme, participation in the Eurocontrol/CANSO Standard of Excellence Safety Maturity Study and further actions undertaken as part of the EANS Safety Strategy.
- (13) On the basis of the findings set out in recitals 11 and 12, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Estonia should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (14) Concerning the key performance area of environment, the consistency of the targets submitted by Estonia regarding the average horizontal en route flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) of Estonia 2019/317. Accordingly, the proposed targets contained in the draft performance plan have been compared to the relevant en route horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (15) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.

- (16) The draft performance targets in the key performance area of environment proposed by Estonia 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:

	2021	2022	2023	2024
Draft en route environment targets of Estonia , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,22 %	1,22 %	1,22 %	1,22 %
Reference values for Estonia	1,22 %	1,22 %	1,22 %	1,22 %

- (17) The Commission observes that the draft environment targets proposed by Estonia are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (18) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Estonia has presented in the draft performance plan measures for the achievement of the local environment targets which include a transition plan for performance based navigation (PBN) as well as continued cross-border collaboration with Finland within the FINEST project.
- (19) Furthermore, the Commission observes that Estonia has already implemented free route airspace (FRA) between flight levels (FL) 95 and FL660.
- (20) On the basis of the findings set out in recitals 17 to 19, the draft targets included in the draft performance plan of Estonia should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Estonia regarding the average *en route* air traffic flow management (ATFM) delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Estonia have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft *en route* capacity targets proposed by Estonia 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:

	2021	2022	2023	2024
Draft en route capacity targets of Estonia , in minutes of ATFM delay per flight	0,01	0,03	0,03	0,03
Reference values for Estonia	0,01	0,03	0,03	0,03

- (24) The Commission observes that the draft capacity targets proposed by Estonia are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Estonia has presented in the draft performance plan measures for the achievement of the *en route* capacity targets, in particular the continued cross-border collaboration with Finland within the FINEST project which enables dynamic cross-border sectorisation.
- (26) On the basis of the findings set out in recitals 24 and 25, the draft targets included in the draft performance plan of Estonia should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (27) 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 draft *en route* capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise any concerns in respect of Estonia.

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

- (28) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Estonia regarding the determined unit costs ("DUC") for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the determined unit cost trend over RP3, the long-term DUC trend over the second reference period ("RP2") and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (29) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (30) The draft *en route* cost-efficiency targets proposed by Estonia for RP3 are as follows:

<i>En route</i> charging zone of Estonia	2014 baseline value	2019 baseline value	2020 - 2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	25,16 EUR	32,13 EUR	60,19 EUR	34,80 EUR	30,57 EUR	29,97 EUR

- (31) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Estonia's *en route* DUC trend at charging zone level of -1,7 % over RP3 outperforms the Union-wide trend of +1,0 % over the same period.
- (32) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Estonia's long-term *en route* DUC trend at charging zone level over RP2 and RP3 of +2,0 % underperforms the long-term Union-wide trend of -1,3 % over the same period.

- (33) Concerning the criterion laid down in 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 32,13 of Estonia in real terms at 2017 prices ('EUR2017') is 19,8 % higher than the average baseline value of EUR 26,81 in EUR2017 of the relevant comparator group. However, the DUC of Estonia outperforms the comparator group during the reference period and hence reaches in 2024 a level which is lower by 3,0 % than the average of the comparator group.
- (34) The Commission has further examined whether the deviations observed in recitals 32 and 33 could be deemed necessary and proportionate under point 1.4(d) of Annex IV to Implementing Regulation (EU) 2019/317, provided that the observed deviation from the long-term Union-wide DUC trend is exclusively due to additional determined costs related to measures necessary to achieve the performance targets in the key performance area of capacity or to restructuring measures within the meaning of Article 2(18) of Implementing Regulation (EU) 2019/317.
- (35) In respect of the criterion laid down under point 1.4(d)(i) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission has not found, in the draft performance plan of Estonia, information suggesting that the deviation from the Union-wide long-term DUC trend referred to in recital 32 would be exclusively due to additional determined costs related to measures necessary to achieve the local capacity performance targets. Therefore, the criterion set out in point 1.4(d)(i) of Annex IV of Implementing Regulation (EU) 2019/317 is not fulfilled in respect of Estonia.
- (36) In respect of the criterion laid down under point 1.4(d)(ii) of Annex IV to Implementing Regulation (EU) 2019/317, Estonia has invoked in its draft performance plan, as restructuring costs, the costs associated with the FINEST project undertaken as a bilateral cooperation between the Estonian and Finnish air navigation service providers for the purpose of implementing dynamic cross-border air traffic services. The Commission notes that the FINEST project aims to create a borderless free route airspace environment across Estonian and Finnish airspace, to allow a dynamic cross-border sectorization of airspace, and to deliver synergies through the joint use and planning of resources. The FINEST project has already comprised the implementation of a wide range of preparatory steps with the objective of starting the provision of cross-border services by the end of 2022.
- (37) Estonia reports that the FINEST project gives rise to costs relating to staff, training activities, travel for project implementation, as well as new software and systems. Estonia emphasizes that investments in the ATM system hardware and software over RP3 are a precondition for the FINEST cooperation, as the project comprises the implementation of a unified ATM system in Estonia and Finland.
- (38) The Commission acknowledges that the FINEST project is foreseen to deliver substantial benefits in terms of the flexibility, efficiency and quality of services, whilst minimizing air traffic flow management delays. The resulting financial gains have been quantified by Estonia as part of a cost-benefit analysis, based on which Estonia estimates that a net financial benefit to airspace users will materialize once traffic recovers to pre-pandemic levels.
- (39) Based on the detailed analysis by the performance review body of the measures reported by Estonia in respect of the FINEST project, the Commission considers that the related costs qualify as restructuring costs within the meaning of Article 2(18) of Implementing Regulation (EU) 2019/317, because the project delivers a business model and procedures for an integrated provision of air navigation services on a cross-border basis. Furthermore, having regard to the evaluation made by the performance review body, the Commission has found that the deviation from the Union-wide long-term DUC trend referred to in recital 32 can be attributed to the restructuring costs reported by Estonia in respect of the FINEST project.
- (40) In light of the considerations in recitals 36 to 39, the Commission finds that the criterion set out in point 1.4(d)(ii) is fulfilled in respect of Estonia.
- (41) On the basis of the findings set out in recitals 28 to 40, the draft targets included in the draft performance plan of Estonia should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (42) 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 draft *en route* cost-efficiency targets with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise concerns in respect of Estonia.

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

- (43) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the draft capacity targets, the Commission has complemented its assessment by a review of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In this respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317. The draft incentive schemes contained in the draft performance plan of Estonia were found to raise concerns.
- (44) The Commission observes that both the *en route* capacity incentive scheme and the terminal capacity incentive scheme proposed in Estonia's draft performance plan comprise a maximum financial disadvantage amounting to 0,5 % of determined costs and a maximum financial advantage amounting to 0,0 % of determined costs.
- (45) In respect of those incentive schemes, the Commission, on the basis of expert advice provided by the performance review body, has strong doubts whether the proposed maximum financial disadvantage, which amounts to 0,5 % of determined costs, would have any material impact on the revenue at risk, as required pursuant to Article 11(3), point (a) of Implementing Regulation (EU) 2019/317.
- (46) Therefore, Estonia should revise, in connection with the adoption of its final performance plan in accordance with Article 16(a) of Implementing Regulation (EU) 2019/317, its incentive schemes for achieving *en route* and terminal capacity targets so that the maximum financial disadvantages stemming from those incentive schemes are set at a level having a material impact on the revenue at risk, as expressly required under 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

- (47) On the basis of the assessment set out in recitals 10 to 46, the Commission has found that the performance targets contained in the draft performance plans submitted by Estonia are consistent with the Union-wide performance targets.
- (48) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.

- (49) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Estonia, 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 Republic of Estonia.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan, submitted by Estonia 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

Estonia	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	2021	2022	2023	2024
EANS	Safety policy and objectives	C	C	C	C
	Safety risk management	D	D	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT

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

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Estonia , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,22 %	1,22 %	1,22 %	1,22 %
Reference values for Estonia	1,22 %	1,22 %	1,22 %	1,22 %

KEY PERFORMANCE AREA OF CAPACITY

Average *en route* ATFM delay in minutes per flight

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Estonia , in minutes of ATFM delay per flight	0,01	0,03	0,03	0,03
Reference values for Estonia	0,01	0,03	0,03	0,03

KEY PERFORMANCE AREA OF COST-EFFICIENCY**Determined unit cost for *en route* air navigation services**

<i>En route</i> charging zone of Estonia	2014 baseline value	2019 baseline value	2020 - 2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	25,16 EUR	32,13 EUR	60,19 EUR	34,80 EUR	30,57 EUR	29,97 EUR

COMMISSION DECISION (EU) 2022/772**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by the Czech Republic 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) 2293)***(Only the Czech 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the October 2021 base traffic forecast of the Eurocontrol's Statistics and Forecast Service ('STATFOR') projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by the Czech Republic.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by the Czech Republic 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by the Czech Republic regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (10) The draft performance targets in the key performance area of safety proposed by the Czech Republic in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Czech Republic	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	2021	2022	2023	2024
ANS CR	Safety policy and objectives	C	C	C	C
	Safety risk management	D	D	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (11) The Commission has found that the draft safety targets proposed by the Czech Republic for the air navigation service provider (ANS CR) are equal to the Union-wide safety targets in respect of calendar year 2024 as well as the preceding years of the reference period.
- (12) The Commission notes that the draft performance plan submitted by the Czech Republic sets out measures for ANS CR for the achievement of the local safety targets, such as the further development of mandatory and voluntary reporting systems, the establishment of a Safety Board comprising the NSA and ANS CR, and the development and support of the fatigue risk management system in ANS CR.
- (13) On the basis of the findings set out in recitals (11) and (12), and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of the Czech Republic should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (14) Concerning the key performance area of environment, the consistency of the targets submitted by the Czech Republic regarding the average horizontal en route flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of the Czech Republic have been compared to the relevant en route horizontal flight efficiency reference values set out in the European Route Network Improvement Plan (ERNIP) available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (15) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (16) The draft performance targets in the key performance area of environment proposed by the Czech Republic 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of the Czech Republic , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	2,05 %	2,05 %	2,05 %	2,05 %
Reference values for the Czech Republic	2,05 %	2,05 %	2,05 %	2,05 %

- (17) The Commission observes that the draft environment targets proposed by the Czech Republic are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (18) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that the Czech Republic has presented in the draft performance plan several measures for the achievement of the local environment targets which include new sectorisation for the Praha Flight Information Region, the suppression of routes in the Praha Terminal Manoeuvring Area (TMA) as well as increased cross-border collaboration.
- (19) Furthermore, the Commission observes that the Czech Republic has already completed the implementation of free route airspace (FRA) between flight level 95 and flight level 660 since February 2021.
- (20) On the basis of the findings set out in recitals (17) to (19), the draft targets included in the draft performance plan of the Czech Republic should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by the Czech Republic regarding the average *en route* air traffic flow management ("ATFM") delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of the Czech Republic have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft *en route* capacity targets proposed by the Czech Republic 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:

	2021	2022	2023	2024
Draft en route capacity targets of the Czech Republic , in minutes of ATFM delay per flight	0,06	0,11	0,11	0,11
Reference values for the Czech Republic	0,06	0,11	0,11	0,11

- (24) The Commission observes that the draft capacity targets proposed by the Czech Republic are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that the Czech Republic has presented in the draft performance plan a range of measures for the achievement of the local en route capacity targets. Those measures include the transition to a new air traffic management (ATM) system, the implementation of an ATM optimisation and restructuring project, the introduction of an airspace management tool, new sectorisation as well as a significant increase in the number of air traffic controllers (ATCOs) in operations by the end of RP3.
- (26) On the basis of the findings set out in recitals (24) and (25), the draft targets included in the draft performance plan of the Czech Republic should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (27) 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 draft en route capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of the Czech Republic.
- (28) Specifically, the Commission has found that the proposed RP3 targets for the average arrival ATFM delay of 0,40 minute per flight for calendar years 2021 to 2024 are significantly higher than the achieved ATFM delay performance during the second reference period ('RP2'), which ranges from 0,01 to 0,16 minute per flight.
- (29) Therefore, the Commission considers that, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, the Czech Republic should further justify the terminal capacity targets for RP3 in light of the observations set out in recital (28), or should revise downwards those targets.

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

- (30) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by the Czech Republic regarding the determined unit cost ('DUC') for en route air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the determined unit cost trend over RP3, the long-term determined unit cost trend over RP2 and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (31) The assessment of en route cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1 (d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (32) The draft en route cost-efficiency targets proposed by the Czech Republic for RP3 are as follows:

<i>En route</i> charging zone of the Czech Republic	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	1 224,0 CZK	1 103,6 CZK	2 090,6 CZK	1 557,2 CZK	1 381,7 CZK	1 212,0 CZK
	46,52 EUR	41,95 EUR	79,46 EUR	59,18 EUR	52,51 EUR	46,06 EUR

- (33) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the *en route* DUC trend of the Czech Republic at charging zone level of +2,4 % per year over RP3 underperforms the Union-wide trend of +1,0 % over the same period.
- (34) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the long-term *en route* DUC trend of the Czech Republic at charging zone level over RP2 and RP3 of -0,1 % per year underperforms the long-term Union-wide trend of -1,3 % over the same period.
- (35) It should be taken into account, however, when comparing the local and Union-wide DUC trends referred to in recitals (33) and (34), that the *en route* traffic growth forecasted by Eurocontrol STATFOR for the Czech Republic over RP3 is foreseen to be significantly lower than the average traffic growth at Union-wide level. This renders it more challenging for the Czech Republic to meet the said Union-wide DUC trends.
- (36) Concerning the criterion laid down in 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 41,95 of the Czech Republic in real terms at 2017 prices ('EUR2017') is 8,0 % higher than the average baseline value of EUR 38,85 in EUR2017 of the relevant comparator group. The Commission notes that that difference becomes even larger during RP3, as the determined *en route* unit cost of the Czech Republic for 2024 is higher by 12,4 % than the average of the comparator group.
- (37) The Commission has further examined whether the deviations observed in recitals (33), (34) and (36) could be deemed necessary and proportionate under point 1.4(d) of Annex IV to Implementing Regulation (EU) 2019/317, provided that the observed deviations from the Union-wide DUC trend and from the long-term Union-wide DUC trend are exclusively due to additional determined costs related to measures necessary to achieve the performance targets in the key performance area of capacity or to restructuring measures within the meaning of Article 2(18) of Implementing Regulation (EU) 2019/317.
- (38) In respect of the criterion specified under point 1.4(d)(i) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the Czech Republic sets out in its draft performance plan a wide range of measures undertaken by the ANSP (ANS CR) for the purpose of achieving the local capacity targets. The Czech Republic contends that without major investments into systems, procedures and operational staff during RP3, ANS CR would not be able to accommodate the level of traffic recorded in 2019, in the pre-COVID context, given also a continued increase in traffic complexity.
- (39) Indeed, the capacity-enhancement measures outlined in the draft performance plan aim to deliver a structural increase in capacity and productivity in respect of *en route* services, in particular by enabling air traffic controllers previously responsible for aerodrome control at regional airports to take over new responsibilities in respect of the control of lower *en route* airspace. The underlying measures include a dedicated training process for the air traffic controllers concerned, a reorganisation of work within the company and airspace re-sectorization. Drawing on this initiative and on the recruitment of new air traffic controllers, the planned number of *en route* air traffic controllers shows a significant increase over RP3 compared to 2019 levels. A further positive contribution to capacity is expected from the new ATM system planned to be put in operations in 2022.

- (40) Based on the detailed analysis by the performance review body, the Commission considers that the relevant measures outlined by the Czech Republic in the draft performance plan are indeed necessary to achieve the local capacity targets. Furthermore, having regard to the evaluation made by the performance review body, it can be concluded that the additional costs of those measures are larger than the deviations from the Union-wide DUC trend and from the long-term Union-wide DUC trend referred to in recitals (33) and (34).
- (41) In light of the considerations in recitals (38) to (40), the Commission finds that the criterion set out in point 1.4(d)(i) is fulfilled in respect of the Czech Republic.
- (42) It follows from the foregoing observations that it is not necessary to further examine whether the criterion set out under point 1.4(d)(ii) would be fulfilled with regard to the Czech Republic.
- (43) On the basis of the findings set out in recitals (33) to (42), the draft targets included in the draft performance plan of the Czech Republic should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (44) 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 draft en route cost-efficiency targets with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of the Czech Republic.
- (45) When comparing the terminal DUC with the performance of similar airports for RP3, the Commission observes that the DUC for Prague airport is estimated to be above the median DUC of the relevant airports by a very significant margin.
- (46) Therefore, the Commission considers that, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, the Czech Republic should further justify the terminal cost-efficiency targets for RP3 in light of the observations set out in recital (45), or should revise downwards those targets.

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

- (47) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the draft capacity targets, the Commission has complemented its assessment by a review of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In this respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317. The draft incentive schemes contained in the draft performance plan of the Czech Republic were found to raise concerns.
- (48) The Commission observes that both the en route capacity incentive scheme and the terminal capacity incentive scheme proposed in the Czech Republic's draft performance plan comprise a maximum financial disadvantage amounting to 0,50 % of determined costs and a maximum financial advantage amounting to 0,50 % of determined costs.
- (49) In respect of those incentive schemes, the Commission, on the basis of expert advice provided by the performance review body, has strong doubts whether the proposed maximum financial disadvantage, which amounts to 0,50 % of determined costs, would have any material impact on the revenue at risk, as required pursuant to Article 11(3), point (a) of Implementing Regulation (EU) 2019/317.

- (50) Therefore, the Czech Republic 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 schemes for achieving en route and terminal capacity targets so that the maximum financial disadvantages stemming from those incentive schemes are set at a level having a material impact on the revenue at risk, as expressly required under 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

- (51) On the basis of the assessment set out in recitals (9) to (50), the Commission has found that the performance targets contained in the draft performance plan submitted by the Czech Republic are consistent with the Union-wide performance targets.
- (52) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (53) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3.

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by the Czech Republic, 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 Czech Republic.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan, submitted by the Czech Republic 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

Czech Republic	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	2021	2022	2023	2024
ANS CR	Safety policy and objectives	C	C	C	C
	Safety risk management	D	D	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT

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

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Czech Republic , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	2,05 %	2,05 %	2,05 %	2,05 %
Reference values for Czech Republic	2,05 %	2,05 %	2,05 %	2,05 %

KEY PERFORMANCE AREA OF CAPACITY

Average *en route* ATFM delay in minutes per flight

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Czech Republic , in minutes of ATFM delay per flight	0,06	0,11	0,11	0,11
Reference values for Czech Republic	0,06	0,11	0,11	0,11

KEY PERFORMANCE AREA OF COST-EFFICIENCY

Determined unit cost for *en route* air navigation services

<i>En route</i> charging zone of the Czech Republic	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets , expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	1 224,0 CZK	1 103,6 CZK	2 090,6 CZK	1 557,2 CZK	1 381,7 CZK	1 212,0 CZK
	46,52 EUR	41,95 EUR	79,46 EUR	59,18 EUR	52,51 EUR	46,06 EUR

COMMISSION DECISION (EU) 2022/773**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Italy 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) 2294)***(Only the Italian 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the October 2021 base traffic forecast of the Eurocontrol's Statistics and Forecast Service ('STATFOR') projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Italy.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Italy 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Italy regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (10) The draft performance targets in the key performance area of safety proposed by Italy in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Italy	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	2021	2022	2023	2024
ENAV	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (11) In respect of the draft safety targets proposed by Italy for the air navigation service provider (ENAV), the Commission has found that the level of the Union-wide performance target is planned to be achieved in 2023 with regard to the 'safety risk management' objective, whilst for the other 'safety management objectives' the local performance targets meet the level of the Union-wide performance target for each calendar year from 2021 to 2024.
- (12) The Commission notes that the draft performance plan submitted by Italy sets out a variety of measures for ENAV for the achievement of the local safety targets, such as the centralisation of safety data and the development of new methodologies for safety investigations, the improvement of 'safety culture' and 'effectiveness of safety management' by means of new surveys and action plans, as well as the improvement of 'safety risk management' through enhanced assessment and monitoring processes.
- (13) On the basis of the findings set out in recitals (11) and (12), and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Italy should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (14) Concerning the key performance area of environment, the consistency of the targets submitted by Italy regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Italy have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (15) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.

- (16) The draft performance targets in the key performance area of environment proposed by Italy 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Italy , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	2,67 %	2,67 %	2,67 %	2,67 %
Reference values for Italy	2,67 %	2,67 %	2,67 %	2,67 %

- (17) The Commission observes that the draft environment targets proposed by Italy are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (18) In respect of point 2.1(a) of Annex IV to Implementing Regulation 2019/317, the Commission notes that Italy has presented in the draft performance plan measures for the achievement of the local environment targets which include a transition plan for performance based navigation, arrival management improvements at five major airports, the re-organisation of several control zones as well as the enhanced application of flexible use of airspace to respond more adequately to demand.
- (19) Furthermore, the Commission observes that Italy has already implemented free route airspace above flight level 305, and encourages Italy to extend its application of FRA during RP3.
- (20) On the basis of the findings set out in recitals (17) and (19), the draft targets included in the draft performance plan of Italy should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Italy regarding the average *en route* air traffic flow management (ATFM) delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Italy have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft *en route* capacity targets proposed by Italy for RP3, expressed in minutes of ATFM delay per flight, as well as the corresponding reference values from Network Operations Plan, are as follows:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Italy , in minutes of ATFM delay per flight	0,07	0,11	0,11	0,11
Reference values for Italy	0,07	0,11	0,11	0,11

- (24) The Commission observes that the draft capacity targets proposed by Italy are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation 2019/317, the Commission notes that Italy has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include further improvements in the application of Flexible Configuration Concept, the introduction of a new Air Traffic Management (ATM) system, an increase in air traffic controller (ATCO) FTEs in most area control centres as well as several measures to improve airspace management.
- (26) On the basis of the findings set out in recitals (24) and (25), the draft targets included in the draft performance plan of Italy should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (27) 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 draft *en route* capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of Italy.
- (28) Firstly, the Commission has found that the proposed RP3 targets for the average arrival ATFM delay ranging from 0,41 to 0,30 minute per flight for calendar years 2021 to 2024 are above the achieved arrival ATFM delay performance towards the end of the second reference period ('RP2'), ranging from 0,12 to 0,29 minute per flight for calendar years 2018 and 2019 respectively.
- (29) Secondly, when comparing at airport level the draft national targets on average arrival ATFM delay with the performance of similar airports during RP2, the Commission has found that the airports of Milan-Linate and Venice are expected to experience higher ATFM delays than those forecasted for similar airports.
- (30) Therefore, the Commission considers that, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, Italy should further justify the terminal capacity targets for RP3 in light of the observations in recitals (28) and (29), or should revise downwards those targets.

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

- (31) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Italy regarding the determined unit cost ("DUC") for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over RP2 and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (32) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (33) The draft *en route* cost-efficiency targets proposed by Italy for RP3 are as follows:

<i>En route</i> charging zone of Italy	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	79,97 EUR	63,46 EUR	123,72 EUR	73,67 EUR	61,52 EUR	57,80 EUR

- (34) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Italy's *en route* DUC trend at charging zone level of -2,3 % over RP3 outperforms the Union-wide trend of +1,0 % over the same period.
- (35) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Italy's long-term *en route* DUC trend at charging zone level over RP2 and RP3 of -3,5 % outperforms the long-term Union-wide trend of -1,3 % over the same period.
- (36) Concerning the criterion laid down in point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Italy's baseline value for the DUC of EUR 63,46 in real terms at 2017 prices ('EUR2017') is 7,2 % higher than the average baseline value of EUR 59,18 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Italy remains above the average of the comparator group during the whole RP3, with a difference of 3,6 % observed for 2024.
- (37) As outlined in recitals (34) and (35), it is clear that Italy outperforms by a significant margin both the RP3 Union-wide DUC trend and the long-term Union-wide DUC trend. Furthermore, the DUC of Italy in 2024 is lower than the 2014 and 2019 baseline values, which shows that effective cost-efficiency gains are achieved both in the medium and long term. Regardless of the difference between Italy's baseline value and the comparator group average observed in recital (36), Italy has demonstrated a cost-efficiency evolution outperforming the Union-wide trends, which provides a sufficient basis for establishing consistency with the Union-wide cost-efficiency performance targets for RP3.
- (38) On the basis of the findings set out in recitals (34) to (37), the draft targets included in the draft performance plan of Italy should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (39) 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 with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of Italy.
- (40) When comparing the terminal DUC with the performance of similar airports for RP3, the Commission observes that the DUC for Rome Fiumicino and Milan Linate airports respectively is estimated to be above the median DUC of the relevant airports by a significant margin.
- (41) Therefore, the Commission considers, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, that Italy should further justify the terminal cost-efficiency targets for RP3 in light of the observations set out in recital (40), or should revise downwards those targets.

CONCLUSIONS

- (42) On the basis of the assessment set out in recitals (9) to (41), the Commission has found that the performance targets contained in the draft performance plan submitted by Italy are consistent with the Union-wide performance targets.
- (43) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.

- (44) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3.

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Italy, 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 Italian Republic.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan submitted by Italy 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**

Italy	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	2021	2022	2023	2024
ENAV	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Italy , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	2,67 %	2,67 %	2,67 %	2,67 %
Reference values for Italy	2,67 %	2,67 %	2,67 %	2,67 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Italy , in minutes of ATFM delay per flight	0,07	0,11	0,11	0,11
Reference values for Italy	0,07	0,11	0,11	0,11

KEY PERFORMANCE AREA OF COST-EFFICIENCY**Determined unit cost for *en route* air navigation services**

<i>En route</i> charging zone of Italy	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	79,97 EUR	63,46 EUR	123,72 EUR	73,67 EUR	61,52 EUR	57,80 EUR

COMMISSION DECISION (EU) 2022/774**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Austria 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)2297)***(Only the German 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the October 2021 base traffic forecast of the Eurocontrol's Statistics and Forecast Service ('STATFOR') projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Austria.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Austria 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 the assessment by reviewing the draft performance plan in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Austria regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (10) The draft performance targets in the key performance area of safety proposed by Austria in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Austria	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	2021	2022	2023	2024
Austro Control	Safety policy and objectives	B	B	B	C
	Safety risk management	C	C	C	D
	Safety assurance	B	B	B	C
	Safety promotion	B	B	B	C
	Safety culture	B	B	B	C

- (11) The Commission has found that the draft safety targets proposed by Austria for the air navigation service provider (Austro Control) are equal to the Union-wide safety targets in respect of calendar year 2024.
- (12) The Commission notes that the draft performance plan submitted by Austria sets out measures for Austro Control for the achievement of the local safety targets, such as investment in resources in the area of ‘safety risk management’, enhancement of cross border safety cooperation by means of surveys, as well as training and raising awareness in the area of ‘safety culture’.
- (13) On the basis of the findings set out in recitals (11) and (12), and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Austria should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (14) Concerning the key performance area of environment, the consistency of the targets submitted by Austria regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Austria have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan (‘ERNIP’) available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (15) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (16) The draft performance targets in the key performance area of environment proposed by Austria 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Austria , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,96 %	1,96 %	1,96 %	1,96 %
Reference values for Austria	1,96 %	1,96 %	1,96 %	1,96 %

- (17) The Commission observes that the draft environment targets proposed by Austria are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (18) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Austria has presented in the draft performance plan measures for the achievement of the local environment targets which include its participation in the South East Common Sky Initiative Free Route Airspace (SECSI FRA), cross-border collaboration activities as well as the implementation of local and sub-regional airspace management support systems to improve civil-military coordination.
- (19) On the basis of the findings set out in recitals (17) and (18), the draft targets included in the draft performance plan of Austria should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (20) Concerning the key performance area of capacity, the consistency of the targets submitted by Austria regarding the average *en route* air traffic flow management (‘ATFM’) delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Austria have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (21) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (22) The draft *en route* capacity targets proposed by Austria 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Austria , in minutes of ATFM delay per flight	0,10	0,17	0,17	0,16
Reference values for Austria	0,10	0,17	0,17	0,16

- (23) The Commission observes that the draft capacity targets proposed by Austria are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (24) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Austria has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include the continuous recruitment and training of air traffic controllers, flexible and centralised rostering systems, permanent improvement of ATFM activities and cross-border collaboration with neighbouring countries.
- (25) On the basis of the findings set out in recitals (23) and (24), the draft targets included in the draft performance plan of Austria should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (26) 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 draft *en route* capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of Austria.
- (27) First, the Commission has found that the proposed RP3 targets for an average arrival ATFM delay of 0,87 minute, 0,84 minute and 0,82 minute per flight for calendar years 2022, 2023 and 2024 respectively, are higher than the achieved ATFM delay performance during the second reference period ('RP2'), ranging from 0,49 to 0,81 minute per flight.
- (28) Second, when comparing at airport level the draft national targets on average arrival ATFM delay with the performance of similar airports during RP2, the Commission has found that the airports of Vienna, Innsbruck and Salzburg are expected to experience higher ATFM delays than those forecasted for similar airports.
- (29) Therefore, the Commission considers that, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, Austria should further justify the terminal capacity targets for RP3 in light of the observations set out in recitals (27) and (28), or should revise downwards those targets.

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

- (30) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Austria regarding the determined unit cost ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over RP2 and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (31) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1 (d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (32) The draft *en route* cost-efficiency targets proposed by Austria for RP3 are as follows:

<i>En route</i> charging zone of Austria	2014 baseline value	2019 baseline value	2020-2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	EUR 69,54	EUR 63,19	EUR 109,28	EUR 62,09	EUR 54,65	EUR 50,07

- (33) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Austria's *en route* DUC trend at charging zone level of – 5,7 % over RP3 outperforms the Union-wide trend of + 1,0 % over the same period.
- (34) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Austria's long-term *en route* DUC trend at charging zone level over RP2 and RP3 of – 3,6 % outperforms the long-term Union-wide trend of – 1,3 % over the same period.
- (35) Concerning the criterion laid down in point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Austria's baseline value for the DUC of EUR 63,19 in real terms at 2017 prices ('EUR2017') is 21,3 % lower than the average baseline value of EUR 80,26 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Austria remains significantly below the average of the comparator group during the whole RP3, with a difference of – 42,6 % observed for 2024.
- (36) On the basis of the findings set out in recitals (33) to (35), the draft targets included in the draft performance plan of Austria should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (37) 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 draft *en route* cost-efficiency targets with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of Austria.
- (38) When comparing the terminal DUC with the performance of similar airports for RP3, the Commission observes that the DUC for Vienna, the main airport, is estimated to be above the median DUC of the relevant airports by a significant margin.
- (39) Therefore, the Commission considers that, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, Austria should further justify the terminal cost-efficiency targets for RP3 in light of the observations set out in recital (38), or should revise downwards those targets.

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

- (40) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the draft capacity targets, the Commission has complemented its assessment by a review of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In this respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317. The draft incentive schemes contained in the draft performance plan of Austria were found to raise concerns.

- (41) The Commission observes that both the *en route* capacity incentive scheme and the terminal capacity incentive scheme proposed in Austria's draft performance plan comprise a maximum financial disadvantage amounting to 0,50 % of determined costs and a maximum financial advantage amounting to 0,50 % of determined costs.
- (42) In respect of those incentive schemes, the Commission, on the basis of expert advice provided by the performance review body, has strong doubts whether the proposed maximum financial disadvantages, which amount to 0,50 % of determined costs, would have any material impact on the revenue at risk, as required pursuant to Article 11(3), point (a) of Implementing Regulation (EU) 2019/317.
- (43) Therefore, Austria 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 schemes for achieving *en route* and terminal capacity targets so that the maximum financial disadvantages stemming from those incentive schemes are set at a level having a material impact on the revenue at risk, as expressly required under 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

- (44) On the basis of the assessment set out in recitals (10) to (43), the Commission has found that the performance targets contained in the draft performance plan submitted by Austria are consistent with the Union-wide performance targets.
- (45) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (46) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3.

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Austria, 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 Republic of Austria.

Done at Brussels, 13 April 2022

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan submitted by Austria 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**

Austria	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	2021	2022	2023	2024
Austro Control	Safety policy and objectives	B	B	B	C
	Safety risk management	C	C	C	D
	Safety assurance	B	B	B	C
	Safety promotion	B	B	B	C
	Safety culture	B	B	B	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Austria , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,96 %	1,96 %	1,96 %	1,96 %
Reference values for Austria	1,96 %	1,96 %	1,96 %	1,96 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Austria , in minutes of ATFM delay per flight	0,10	0,17	0,17	0,16
Reference values for Austria	0,10	0,17	0,17	0,16

KEY PERFORMANCE AREA OF COST-EFFICIENCY**Determined unit cost for *en route* air navigation services**

<i>En route</i> charging zone of Austria	2014 baseline value	2019 baseline value	2020-2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	EUR 69,54	EUR 63,19	EUR 109,28	EUR 62,09	EUR 54,65	EUR 50,07

COMMISSION DECISION (EU) 2022/775**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Hungary 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) 2298)***(Only the Hungarian 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the October 2021 base traffic forecast of the Eurocontrol's Statistics and Forecast Service ('STATFOR') projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Hungary.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Hungary 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Hungary regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (10) The draft performance targets in the key performance area of safety proposed by Hungary in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Hungary	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	2021	2022	2023	2024
Hungarocontrol	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (11) In respect of the draft safety targets proposed by Hungary for the air navigation service provider (Hungarocontrol), the Commission has found that the level of the Union-wide performance target is planned to be achieved in 2023 with regard to the 'safety risk management' objective, whilst for the other 'safety management objectives' the local performance targets meet the level of the Union-wide performance target for each calendar year from 2021 to 2024.
- (12) The Commission notes that the draft performance plan submitted by Hungary sets out a wide range of measures for Hungarocontrol for the achievement of the local safety targets, covering developments in technology, human factor related issues, compliance and performance monitoring, cyber and data safety, 'just culture' and 'safety culture'. The draft performance plan contains 70 actions, including with regard to the implementation of a new ATM system, a sector complexity tool for planning the workload distribution, a new sectorisation scheme, a radio direction finder system for better situational awareness of air traffic controllers ('ATCOs') and a fatigue risk management system.
- (13) On the basis of the findings set out in recitals 11 and 12, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Hungary should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (14) Concerning the key performance area of environment, the consistency of the targets submitted by Hungary regarding the average horizontal en route flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Hungary have been compared to the relevant en route horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (15) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.

- (16) The draft performance targets in the key performance area of environment proposed by Hungary 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:

	2021	2022	2023	2024
Draft en route environment targets of Hungary , expressed as the average horizontal en route flight efficiency of the actual trajectory	1,50 %	1,49 %	1,49 %	1,49 %
Reference values for Hungary	1,50 %	1,49 %	1,49 %	1,49 %

- (17) The Commission observes that the draft environment targets proposed by Hungary are equal to the corresponding national reference values for calendar years 2021 to 2024.
- (18) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Hungary has presented in the draft performance plan several measures for the achievement of the local environment targets which include a transition plan for performance based navigation and participation in the further implementation of the South East Europe Free Route Airspace (SEE FRA) project.
- (19) Furthermore, the Commission observes that Hungary has already implemented free route airspace from flight level 095 to flight level 660.
- (20) On the basis of the findings set out in recitals 17 to 19, the draft targets included in the draft performance plan of Hungary should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Hungary regarding the average en route air traffic flow management ('ATFM') delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Hungary have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft en route capacity targets proposed by Hungary 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:

	2021	2022	2023	2024
Draft en route capacity targets of Hungary , in minutes of ATFM delay per flight	0,06	0,11	0,11	0,11
Reference values for Hungary	0,06	0,11	0,11	0,11

- (24) The Commission observes that the draft capacity targets proposed by Hungary are equal to the corresponding national reference values for each calendar year of RP3.

- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Hungary has presented in the draft performance plan a range of measures for the achievement of the local en route capacity targets. Those measures include the re-organisation of Budapest Area Control Centre, a new ATCO training programme, an air traffic management (ATM) system upgrade as well as an increase in the planned number of ATCO FTEs by the end of RP3.
- (26) On the basis of the findings set out in recitals 24 and 25, the draft targets included in the draft performance plan of Hungary should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (27) 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 draft en route capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise any concerns in respect of Hungary.

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

- (28) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Hungary regarding the determined unit costs ('DUC') for en route air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over RP2 and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment..
- (29) The assessment of en route cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (30) The draft en route cost-efficiency targets proposed by Hungary for RP3 are as follows:

<i>En route charging zone of Hungary</i>	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	11 916 HUF	9 803 HUF	17 628 HUF	14 127 HUF	11 842 HUF	10 946 HUF
	38,56 EUR	31,72 EUR	57,05 EUR	45,72 EUR	38,32 EUR	35,42 EUR

- (31) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Hungary's *en route* DUC trend at charging zone level of +2,8 % over RP3 underperforms the Union-wide trend of +1,0 % over the same period.
- (32) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Hungary's long-term *en route* DUC trend at charging zone level over RP2 and RP3 of -0,9 % underperforms the long-term Union-wide trend of -1,3 % over the same period.

- (33) Concerning the criterion laid down in point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Hungary's baseline value for the DUC of EUR 31,72 in real terms at 2017 prices ('EUR2017') is lower by 21 % than the average baseline value of EUR 40,13 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Hungary remains below the average of the comparator group during the whole RP3. However, the difference is reduced to -16 % in respect of year 2024.
- (34) The Commission has further examined whether the deviations observed in recitals 31 and 32 could be deemed necessary and proportionate under point 1.4(d) of Annex IV to Implementing Regulation (EU) 2019/317, provided that the deviation from the Union-wide DUC trend or from the long-term Union-wide DUC trend is exclusively due to additional determined costs related to measures necessary to achieve the performance targets in the key performance area of capacity or to restructuring measures within the meaning of Article 2(18) of Implementing Regulation (EU) 2019/317.
- (35) In respect of the criterion specified under point 1.4(d)(i) of Annex IV to Implementing Regulation (EU) 2019/317, Hungary contends in its draft performance plan that the cost deviations from the Union-wide DUC trend and from the long-term Union-wide DUC trend are exclusively due to measures required to achieve capacity targets.
- (36) The Commission observes that Hungary sets out in its draft performance plan a wide range of measures undertaken by the ANSP (Hungarocontrol) for the purpose of achieving the local capacity targets and for which additional costs are incurred. Those measures are detailed and quantified in the draft performance plan.
- (37) Hungary explains that in the pre-COVID circumstances, in 2019, it became clear that the number of ATCOs in operations was not sufficient to cater for the volume and complexity of traffic. Therefore, in view of accommodating the expected future traffic levels, Hungarocontrol has put in place a training programme in view of increasing the number of ATCOs over RP3. The relevant associated costs comprise the staff costs for the remunerations of the new students in the initial training phase and of the licensed student air traffic controllers, as well as the other operating costs incurred for the training of those new recruits.
- (38) The capacity increases required to meet future traffic demand will be further supported by investments in state-of-the-art equipment. The Commission notes that several upgrades to ATM system components are therefore planned, including the implementation of a radio direction finder function and of a complexity tool, improvements of airspace management functionalities, and the introduction of improved flow and capacity management techniques. The timely realisation of these investments over RP3 is expected to enable notable capacity increases.
- (39) Based on the detailed analysis by the performance review body, the Commission considers that the relevant measures outlined by Hungary in the draft performance plan are indeed necessary to achieve the local capacity targets. Furthermore, having regard to the evaluation made by the performance review body, it can be concluded that the additional costs of those measures are larger than the deviations from the Union-wide DUC trend and from the long-term Union-wide DUC trend referred to in recitals 31 and 32.
- (40) In light of the considerations in recitals 35 to 39, the Commission finds that the criterion set out in point 1.4(d)(i) is fulfilled in respect of Hungary.
- (41) It follows from the foregoing observations that it is not necessary to further examine whether the criterion set out under point 1.4(d)(ii) would be fulfilled with regard to Hungary.
- (42) On the basis of the findings set out in recitals 31 to 41, the proposed targets included in the draft performance plan of Hungary should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (43) 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 draft *en route* cost-efficiency targets with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of the Hungary.
- (44) Firstly, when comparing the RP3 terminal determined unit cost trend with the *en route* DUC trend, the Commission has found that the terminal DUC trend of Hungary's Terminal Charging Zone of +11,0 % is higher than Hungary's *en route* DUC trend at charging zone level of +2,8 % over RP3.
- (45) Secondly, the Commission observes that the draft targets for the terminal DUC trend for Hungary's terminal charging zone of +11,0 % over RP3 is higher than the actual terminal DUC trend of -4,7 % observed over RP2.
- (46) Thirdly, when comparing the terminal DUC with the performance of similar airports for RP3, the Commission observes that the DUC for Budapest airport is estimated to be above the median DUC of the relevant airports by a very significant margin.
- (47) Therefore, the Commission considers that, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, Hungary should further justify the terminal cost-efficiency targets for RP3 in light of the observations set out in recital 44 to 46, or should revise downwards those targets.

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

- (48) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the assessment of draft capacity targets, the Commission has complemented its assessment by a review of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In this respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317. The draft incentive schemes contained in the draft performance plan of Hungary were found to raise concerns.
- (49) The Commission observes that both the *en route* capacity incentive scheme and the terminal capacity incentive scheme proposed in Hungary's draft performance plan comprise a maximum financial disadvantage amounting to 0,5 % of determined costs and a maximum financial advantage amounting to 0,5 % of determined costs.
- (50) In respect of those incentive schemes, the Commission, on the basis of expert advice provided by the performance review body, has strong doubts whether the proposed maximum financial disadvantage, which amounts to 0,5 % of determined costs, would have any material impact on the revenue at risk, as required pursuant to Article 11(3), point (a) of Implementing Regulation (EU) 2019/317.
- (51) Therefore, Hungary 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 schemes for achieving *en route* and terminal capacity targets so that the maximum financial disadvantages stemming from those incentive schemes are set at a level having a material impact on the revenue at risk, as expressly required under 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

- (52) On the basis of the assessment set out in recitals 10 to 51, the Commission has found that the performance targets contained in the draft performance plans submitted by Hungary are consistent with the Union-wide performance targets.

- (53) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (54) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Hungary, 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 Hungary.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan, submitted by Hungary 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**

Hungary	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	2021	2022	2023	2024
Hungarocontrol	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Hungary , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,50 %	1,49 %	1,49 %	1,49 %
Reference values for Hungary	1,50 %	1,49 %	1,49 %	1,49 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Hungary , in minutes of ATFM delay per flight	0,06	0,11	0,11	0,11
Reference values for Hungary	0,06	0,11	0,11	0,11

KEY PERFORMANCE AREA OF COST-EFFICIENCY

Determined unit cost for *en route* air navigation services

<i>En route</i> charging zone of Hungary	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	11 916 HUF	9 803 HUF	17 628 HUF	14 127 HUF	11 842 HUF	10 946 HUF
	38,56 EUR	31,72 EUR	57,05 EUR	45,72 EUR	38,32 EUR	35,42 EUR

COMMISSION DECISION (EU) 2022/776**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Spain 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) 2300)***(Only the Spanish 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) These performance targets have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (3) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

- (4) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.
- (5) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (6) The Commission notes that the October 2021 base traffic forecast of the Eurocontrol's Statistics and Forecast Service ('STATFOR') projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (7) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Spain.
- (8) 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 RP3 draft performance plans.
- (9) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of local performance proposed by Spain 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 the assessment by reviewing the draft performance plan in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (10) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Spain regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.

⁽³⁾ 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).

⁽⁴⁾ 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).

⁽⁵⁾ 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).

- (11) The draft performance targets in the key performance area of safety proposed by Spain in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

Spain	Targets on the effectiveness of safety management, expressed as a level of implementation, ranging from EASA level A to D				
Air navigation service providers concerned	Safety management objective	2021	2022	2023	2024
ENAIRES, FERRONATS	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (12) In respect of the draft safety targets proposed by Spain for the air navigation service providers (ENAIRES and FERRONATS), the Commission has found that the level of the Union-wide performance target is planned to be achieved in 2024 with regard to the safety risk management objective, whilst for the other safety management objectives the local performance targets meet the level of the Union-wide performance target for each calendar year from 2021 to 2024.
- (13) The Commission notes that the draft performance plan submitted by Spain sets out measures for the ANSPs for the achievement of the local safety targets, such as the reinforcement of just culture and the implementation of the 'Digital Sky' strategic plan to modernise the communication, navigation and surveillance services for ENAIRES, as well as the advancement of safety culture and improvement of the safety management systems audit and survey procedures for FERRONATS.
- (14) On the basis of the findings set out in recitals 12 and 13, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Spain should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (15) Concerning the key performance area of environment, the consistency of the targets submitted by Spain regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Spain have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (16) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.

- (17) The draft performance targets in the key performance area of environment proposed by Spain 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Spain, expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	3,08 %	3,08 %	3,08 %	3,08 %
Reference values for Spain	3,08 %	3,08 %	3,08 %	3,08 %

- (18) The Commission observes that the draft environment targets proposed by Spain are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (19) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Spain has presented in the draft performance plan measures for the achievement of the local environment targets which include several route network improvements, changes in respect of sectors within the Canarias Area Control Centre (ACC), a reorganisation of the Madrid and Palma Terminal Manoeuvring Areas as well as measures to increase cross-border collaboration.
- (20) Furthermore, the Commission notes that Spain has already implemented free route airspace (FRA) within the Madrid Flight Information Region sectors of Santiago and Asturias (FRASAI project) and has initiated several FRA implementation projects (e.g. HISPAFRA).
- (21) On the basis of the findings set out in recitals 18 to 20, the draft targets included in the draft performance plan of Spain should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (22) Concerning the key performance area of capacity, the consistency of the targets submitted by Spain regarding the average *en route* air traffic flow management ('ATFM') delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Spain have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (23) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (24) The draft *en route* capacity targets proposed by Spain 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Spain , in minutes of ATFM delay per flight	0,12	0,20	0,19	0,19
Reference values for Spain	0,12	0,20	0,19	0,19

- (25) The Commission observes that the draft capacity targets proposed by Spain are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (26) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Spain has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include a comprehensive modernisation of the air traffic management system, an increase in sector capacities, optimisation of arrivals, recruitment of air traffic controllers (ATCOs) to replace retiring staff as well as efficiency improvements in the ATCO rostering process.
- (27) On the basis of the findings set out in recitals 25 and 26, the draft targets included in the draft performance plan of Spain should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (28) 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 draft *en route* capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise any concerns in respect of Spain.

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

- (29) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Spain regarding the determined unit costs ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over the second reference period ('RP2') and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (30) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1 (d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (31) The draft *en route* cost-efficiency targets proposed by Spain for the Spain Continental and Spain Canarias charging zones for RP3 are as follows:

<i>En route</i> charging zones of Spain	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets of Spain Continental , expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	69,88 EUR	52,06 EUR	107,71 EUR	53,64 EUR	51,69 EUR	48,19 EUR

Draft <i>en route</i> cost-efficiency targets of Spain Canarias , expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	70,11 EUR	52,39 EUR	104,97 EUR	66,92 EUR	58,97 EUR	53,93 EUR
---	------------------	------------------	-------------------	------------------	------------------	------------------

- (32) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Spain's *en route* DUC trend over RP3 at the charging zone levels of Spain Continental (-1,9 %) and Spain Canarias (+ 0,7 %) both outperform the Union-wide trend of +1,0 % over the same period.
- (33) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Spain's long-term *en route* DUC trend over RP2 and RP3 at the charging zone level of Spain Continental (-4,0 %) and Spain Canarias (-2,9 %) both outperform the long-term Union-wide trend of -1,3 % over the same period.
- (34) Concerning the criterion laid down in point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Spain's average baseline value for the DUC of the Spain Continental and Spain Canarias charging zones of EUR 52,11 in real terms at 2017 prices ('EUR2017') is 17,2 % lower than the average baseline value of EUR 62,97 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Spain remains below the average of the comparator group during the whole RP3, with a difference of -16,8 % observed for 2024.
- (35) On the basis of the findings set out in recitals 32 to 34, the draft targets included in the draft performance plan of Spain should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (36) 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 draft *en route* cost-efficiency targets with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were not found to raise concerns in respect of Spain.

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

- (37) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the draft capacity targets, the Commission has complemented its assessment by a review of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In this respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317. The draft incentive schemes contained in the draft performance plan of Spain were found to raise concerns.
- (38) The Commission observes that both the *en route* capacity incentive scheme and the terminal capacity incentive scheme proposed in Spain's draft performance plan comprises a maximum financial disadvantage amounting to 0,50 % of determined costs, and a maximum financial advantage amounting to 0,00 % of determined costs.
- (39) In respect of those incentive schemes, the Commission, on the basis of expert advice provided by the performance review body, has strong doubts whether the proposed maximum financial disadvantages, which amount to 0,50 % of determined costs respectively, would have any material impact on the revenue at risk, as required pursuant to Article 11(3), point (a) of Implementing Regulation (EU) 2019/317.

- (40) Therefore, Spain 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 schemes for achieving *en route* and terminal capacity targets so that the maximum financial disadvantages stemming from those incentive schemes are set at a level having a material impact on the revenue at risk, as required under 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

- (41) On the basis of the assessment set out in recitals 10 to 40, the Commission has found that the performance targets contained in the draft performance plans submitted by Spain are consistent with the Union-wide performance targets.
- (42) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (43) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Spain, 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 Kingdom of Spain.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan, submitted by Spain 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**

Spain	Targets on the effectiveness of safety management, expressed as a level of implementation, ranging from EASA level A to D				
Air navigation service providers concerned	Safety management objective	2021	2022	2023	2024
ENAIRES, FERRONATS	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Spain , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	3,08 %	3,08 %	3,08 %	3,08 %
Reference values for Spain	3,08 %	3,08 %	3,08 %	3,08 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Spain , in minutes of ATFM delay per flight	0,12	0,20	0,19	0,19
Reference values for Spain	0,12	0,20	0,19	0,19

KEY PERFORMANCE AREA OF COST-EFFICIENCY

Determined unit cost for *en route* air navigation services

<i>En route</i> charging zones of Spain	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets of Spain Continental, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	69,88 EUR	52,06 EUR	107,71 EUR	53,64 EUR	51,69 EUR	48,19 EUR
Draft <i>en route</i> cost-efficiency targets of Spain Canarias, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	70,11 EUR	52,39 EUR	104,97 EUR	66,92 EUR	58,97 EUR	53,93 EUR

COMMISSION DECISION (EU) 2022/777**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Slovenia 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) 2302)***(Only the Slovenian 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the Eurocontrol's Statistics and Forecast Service ('STATFOR') October 2021 base traffic forecast projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Slovenia.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of local performance targets proposed by Slovenia 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 the assessment by reviewing the draft performance plan in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.
- (9) As Slovenia does not have any airport falling within the scope of Implementing Regulation (EU) 2019/317 in respect of RP3, there are no local performance targets for terminal air navigation services as part of its draft RP3 performance plan. Therefore, the findings contained in this Decision relate solely to *en route* air navigation services.

COMMISSION ASSESSMENT

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

- (10) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Slovenia regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (11) The draft performance targets in the key performance area of safety proposed by Slovenia in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Slovenia	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	2021	2022	2023	2024
Slovenia Control	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (12) In respect of the draft safety targets proposed by Slovenia for the air navigation service provider (Slovenia Control), the Commission has found that the level of the Union-wide performance target is planned to be achieved in 2024 with regard to the safety risk management objective, whilst for the other safety management objectives the local performance targets meet the level of the Union-wide performance target for each calendar year from 2021 to 2024.
- (13) The Commission notes that the draft performance plan submitted by Slovenia sets out measures for Slovenia Control for the achievement of the local safety targets, including continued oversight by the NSA, as well as regular internal and external monitoring of safety processes and outputs which follow the protocols agreed at the level of Eurocontrol, CANSO and EASA.
- (14) On the basis of the findings set out in recitals 12 and 13, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Slovenia should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (15) Concerning the key performance area of environment, the consistency of the targets submitted by Slovenia regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Slovenia have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (16) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (17) The draft performance targets in the key performance area of environment proposed by Slovenia 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Slovenia , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,55 %	1,55 %	1,55 %	1,55 %
Reference values for Slovenia	1,55 %	1,55 %	1,55 %	1,55 %

- (18) The Commission observes that the draft environment targets proposed by Slovenia are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (19) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Slovenia has presented in the draft performance plan measures for the achievement of the local environment targets which include increased cross-border collaboration, such as the expansion of free route as part of the South East Common Sky Initiative Free Route Airspace (SECSI FRA).
- (20) On the basis of the findings set out in recitals 18 and 19, the draft targets included in the draft performance plan of Slovenia should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Slovenia regarding the average *en route* air traffic flow management ('ATFM') delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Slovenia have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft *en route* capacity targets proposed by Slovenia 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Slovenia , in minutes of ATFM delay per flight	0,05	0,09	0,09	0,09
Reference values for Slovenia	0,05	0,09	0,09	0,09

- (24) The Commission observes that the draft capacity targets proposed by Slovenia are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Slovenia has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include the enhancement of air traffic flow and capacity management, sectorisation improvements in accordance with the Functional Airspace Block Central Europe (FAB CE) Airspace Plan, increased flexibility in sector capacity based on demand, hiring of additional air traffic controllers (ATCOs) as well as an improved rostering of ATCOs.
- (26) On the basis of the findings set out in recitals 24 and 25, the draft targets included in the draft performance plan of Slovenia should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

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

- (27) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Slovenia regarding the determined unit costs ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over the second reference period ('RP2') and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (28) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1 (d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (29) The draft *en route* cost-efficiency targets proposed by Slovenia for RP3 are as follows:

<i>En route</i> charging zone of Slovenia	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	67,08 EUR	54,19 EUR	101,44 EUR	62,11 EUR	59,84 EUR	56,19 EUR

- (30) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Slovenia's *en route* DUC trend at charging zone level of +0,9 % over RP3 outperforms the Union-wide trend of +1,0 % over the same period.
- (31) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Slovenia's long-term *en route* DUC trend at charging zone level over RP2 and RP3 of -1,9 % outperforms the long-term Union-wide trend of -1,3 % over the same period.
- (32) Concerning the criterion laid down in point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Slovenia's baseline value for the DUC of EUR 54,19 in real terms at 2017 prices ('EUR2017') is 45,2 % higher than the average baseline value of EUR 37,32 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Slovenia remains above the average of the comparator group during the whole RP3, with a difference of 41,5 % observed for 2024.

- (33) As outlined in recitals 30 and 31, it is clear that Slovenia meets both the RP3 Union-wide DUC trend and the long-term Union-wide DUC trend. Furthermore, the DUC of Slovenia in 2024 is lower than the 2014 baseline value. Regardless of the difference between Slovenia's baseline value and the comparator group average observed in recital 32, Slovenia has demonstrated a cost-efficiency evolution meeting the Union-wide trends, which provides a sufficient basis for establishing consistency with the Union-wide cost-efficiency performance targets for RP3.
- (34) On the basis of the findings set out in recitals 27 to 33, the draft targets included in the draft performance plan of Slovenia should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

CONCLUSIONS

- (35) On the basis of the assessment set out in recitals 10 to 34, the Commission has found that the performance targets contained in the draft performance plan submitted by Slovenia are consistent with the Union-wide performance targets.
- (36) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (37) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Slovenia, 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 Republic of Slovenia.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan submitted by Slovenia 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

Slovenia	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	2021	2022	2023	2024
Slovenia Control	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT

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

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Slovenia , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,55 %	1,55 %	1,55 %	1,55 %
Reference values for Slovenia	1,55 %	1,55 %	1,55 %	1,55 %

KEY PERFORMANCE AREA OF CAPACITY

Average *en route* ATFM delay in minutes per flight

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Slovenia , in minutes of ATFM delay per flight	0,05	0,09	0,09	0,09
Reference values for Slovenia	0,05	0,09	0,09	0,09

KEY PERFORMANCE AREA OF COST-EFFICIENCY**Determined unit cost for *en route* air navigation services**

<i>En route</i> charging zone of Slovenia	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	67,08 EUR	54,19 EUR	101,44 EUR	62,11 EUR	59,84 EUR	56,19 EUR

COMMISSION DECISION (EU) 2022/778**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Bulgaria 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) 2303)***(Only the Bulgarian 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the Eurocontrol's Statistics and Forecast Service ('STATFOR') October 2021 base traffic forecast projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Bulgaria.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of local performance targets proposed by Bulgaria 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 the assessment by reviewing the draft performance plan in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.
- (9) As Bulgaria does not have any airport falling within the scope of Implementing Regulation (EU) 2019/317 in respect of RP3, there are no local performance targets for terminal air navigation services as part of its draft RP3 performance plan. Therefore, the findings contained in this Decision relate solely to *en route* air navigation services.

COMMISSION ASSESSMENT

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

- (10) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Bulgaria regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (11) The draft performance targets in the key performance area of safety proposed by Bulgaria in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Bulgaria	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	2021	2022	2023	2024
BULATSA	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (12) In respect of the draft safety targets proposed by Bulgaria for the air navigation service provider (BULATSA), the Commission has found that the level of the Union-wide performance target is planned to be achieved in 2023 with regard to the 'safety risk management' objective, whilst for the other 'safety management objectives' the local performance targets meet the level of the Union-wide performance targets for each calendar year from 2021 to 2024.
- (13) The Commission notes that the draft performance plan submitted by Bulgaria sets out a range of measures for BULATSA for the achievement of the local safety targets including: fatigue and stress management to improve human performance; the deployment of a system to assess changes, identify hazards and manage risks; the continuous promotion of safety awareness; and the deployment of mature technological solutions to improve safety.
- (14) On the basis of the findings set out in recitals 12 and 13, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Bulgaria should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (15) Concerning the key performance area of environment, the consistency of the targets submitted by Bulgaria regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Bulgaria have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (16) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (17) The draft performance targets in the key performance area of environment proposed by Bulgaria 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Bulgaria , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	2,25 %	2,25 %	2,25 %	2,25 %
Reference values for Bulgaria	2,25 %	2,25 %	2,25 %	2,25 %

- (18) The Commission observes that the draft environment targets proposed by Bulgaria are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (19) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Bulgaria has presented in the draft performance plan measures for the achievement of the local environment targets which include further progress on the implementation of South-East Free Route Airspace ('SEE FRA') including Romania, Hungary and Slovakia.
- (20) On the basis of the findings set out in recitals 18 and 19, the draft targets included in the draft performance plan of Bulgaria should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Bulgaria regarding the average *en route* air traffic flow management ('ATFM') delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Bulgaria have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3 that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft *en route* capacity targets proposed by Bulgaria 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Bulgaria , in minutes of ATFM delay per flight	0,04	0,08	0,07	0,08
Reference values for Bulgaria	0,04	0,08	0,07	0,08

- (24) The Commission observes that the draft capacity targets proposed by Bulgaria are equal to the corresponding national reference values for each calendar year from 2021 to 2024.

- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Bulgaria has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include the use of traffic complexity analysis tools, adapted air traffic controller (ATCO) FTE planning throughout RP3 in accordance with forecasted traffic levels as well as a number of actions to improve airspace design, including re-sectorisation and dynamic sectorisation.
- (26) On the basis of the findings set out in recitals 24 and 25, the draft targets included in the draft performance plan of Bulgaria should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

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

- (27) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Bulgaria regarding determined unit costs ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the determined unit cost trend over RP3, the long-term determined unit cost trend over the second reference period ('RP2') and RP3 (2015-2024), and the baseline value for the determined unit cost at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (28) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1 (d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (29) The draft *en route* cost-efficiency targets proposed by Bulgaria for RP3 are as follows:

<i>En route</i> charging zone of Bulgaria	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	56,62 BGN	53,64 BGN	95,60 BGN	67,56 BGN	61,42 BGN	55,62 BGN
	28,96 EUR	27,43 EUR	48,89 EUR	34,55 EUR	31,41 EUR	28,44 EUR

- (30) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Bulgaria's *en route* determined unit cost trend at charging zone level of +0,9 % over RP3 outperforms the Union-wide trend of +1,0 % over the same period.
- (31) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Bulgaria's long-term *en route* determined unit cost trend at charging zone level over RP2 and RP3 of -0,2 % underperforms the long-term Union-wide trend of -1,3 % over the same period.
- (32) Concerning the criterion laid down in point 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that Bulgaria's baseline value for the determined unit cost of EUR 27,43 in real terms at 2017 prices ('EUR2017') is 32,5 % lower than the average baseline value of EUR 40,66 in EUR2017 of the relevant comparator group. The Commission notes that the determined *en route* unit cost of Bulgaria remains below the average of the comparator group during the whole RP3, with a difference of -34,1 % observed for 2024.

- (33) As specified in recital 30, it is clear that the determined unit cost trend of Bulgaria over RP3 meets the corresponding Union-wide trend. Furthermore, the determined unit cost of Bulgaria in 2024 is slightly lower than the 2014 baseline value, which shows that Bulgaria maintains cost-efficiency at a stable level in the long term. Finally, referring to recital 32, Bulgaria demonstrates a strong cost-efficiency performance in terms of the determined unit cost level, as the baseline value for 2019 and the determined unit cost for 2024 of Bulgaria are both significantly lower, by over 30 % than the corresponding comparator group average values. Having regard to the foregoing considerations, the Commission considers that the deviation from the Union-wide long-term determined unit cost trend observed in recital 31 does not preclude the establishment of consistency with the Union-wide cost-efficiency performance targets in respect of Bulgaria.
- (34) On the basis of the findings set out in recitals 30 to 33, the draft targets included in the draft performance plan of Bulgaria should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (35) In accordance with point 2.1(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the draft capacity targets, the Commission has complemented its assessment by a review of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In this respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out in Article 11(1) and (3) of Implementing Regulation (EU) 2019/317. The draft incentive schemes contained in the draft performance plan of Bulgaria were found to raise concerns.
- (36) The Commission observes that the *en route* capacity incentive scheme proposed in Bulgaria's draft performance plan comprises a maximum financial disadvantage amounting to 0,40 % of determined costs, and a maximum financial advantage amounting to 0,20 % of determined costs.
- (37) In respect of that incentive scheme, the Commission, on the basis of expert advice provided by the performance review body, has strong doubts whether the proposed maximum financial disadvantage which amounts to 0,40 % of determined costs, would have any material impact on the revenue at risk, as required pursuant to Article 11(3), point (a) of Implementing Regulation (EU) 2019/317.
- (38) Therefore, Bulgaria 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 the *en route* capacity targets so that the maximum financial disadvantages stemming from that incentive scheme is set at a level having a material impact on the revenue at risk, as expressly required under 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

- (39) On the basis of the assessment set out in recitals 10 to 38, the Commission has found that the performance targets contained in the draft performance plan submitted by Bulgaria are consistent with the Union-wide performance targets.
- (40) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.

- (41) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Bulgaria, 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 Republic of Bulgaria.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan submitted by Bulgaria 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**

Bulgaria	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	2021	2022	2023	2024
BULATSA	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	D	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT**Average horizontal *en route* flight efficiency of the actual trajectory**

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Bulgaria , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	2,25 %	2,25 %	2,25 %	2,25 %
Reference values for Bulgaria	2,25 %	2,25 %	2,25 %	2,25 %

KEY PERFORMANCE AREA OF CAPACITY**Average *en route* ATFM delay in minutes per flight**

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Bulgaria , in minutes of ATFM delay per flight	0,04	0,08	0,07	0,08
Reference values for Bulgaria	0,04	0,08	0,07	0,08

KEY PERFORMANCE AREA OF COST-EFFICIENCY

Determined unit cost for *en route* air navigation services

<i>En route</i> charging zone of Bulgaria	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	56,62 BGN	53,64 BGN	95,60 BGN	67,56 BGN	61,42 BGN	55,62 BGN
	28,96 EUR	27,43 EUR	48,89 EUR	34,55 EUR	31,41 EUR	28,44 EUR

COMMISSION DECISION (EU) 2022/779**of 13 April 2022****on the consistency of the performance targets contained in the draft performance plan submitted by Poland 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) 2304)***(Only the Polish 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) ⁽¹⁾, and in particular Article 11(3) point (c), first 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 ⁽²⁾, and in particular Article 14(2) thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004, a performance scheme for air navigation services and network functions is to be set up. Furthermore, 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans drawn up by the Member States are consistent with the Union-wide performance targets using the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes as compared to pre-pandemic levels, due to the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were originally set out in Commission Implementing Decision (EU) 2019/903 ⁽³⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ 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 (OJ L 56, 25.2.2019, p. 1).

⁽³⁾ 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).

- (4) 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 ⁽⁴⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Implementing Decision (EU) 2021/891 ⁽⁵⁾ setting revised Union-wide performance targets for RP3.
- (5) The Commission notes that the October 2021 base traffic forecast of the Eurocontrol's Statistics and Forecast Service ('STATFOR') projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission also notes that the traffic recovery is expected to be uneven across Member States.
- (6) All Member States have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Following the verification of completeness of those draft performance plans, the Commission requested Member States to submit updated draft performance plans by 17 November 2021. The Commission's assessment presented in this Decision is based on the updated draft performance plan submitted by Poland.
- (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 RP3 draft performance plans.
- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of the local performance targets proposed by Poland 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.

COMMISSION ASSESSMENT

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

- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Poland regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the safety targets in respect of the elements set out in point 2.1.(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (10) The draft performance targets in the key performance area of safety proposed by Poland in respect of the effectiveness of safety management, broken down per safety management objective and expressed as a level of implementation, are as follows:

⁽⁴⁾ 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).

⁽⁵⁾ 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).

Poland	Targets on the effectiveness of safety management, expressed as a level of implementation, ranging from EASA level A to D				
Air navigation service providers concerned	Safety management objective	2021	2022	2023	2024
PANSA, Warmia i Mazury sp. z o.o., Port Lotniczy Bydgoszcz S.A.	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

- (11) In respect of the draft safety targets proposed by Poland for all the covered air navigation service providers, the Commission has found that the level of the Union-wide performance target is planned to be achieved in 2024 with regard to the 'safety risk management' objective, whilst for the other 'safety management objectives' the local performance targets meet the level of the Union-wide performance target for each calendar year from 2021 to 2024.
- (12) The Commission notes that the draft performance plan submitted by Poland sets out measures for the ANSPs for the achievement of the local safety targets, such as measures to ensure compliance with Commission Implementing Regulation (EU) 2017/373 ⁽⁶⁾, a review of safety processes, an update of safety trainings for managers, the development of safety management indicators, continued safety promotion, as well as the implementation of best practices, documents and procedures in line with national and international regulations.
- (13) On the basis of the findings set out in recitals 11 and 12, and considering that the Union-wide safety performance targets set in Implementing Decision (EU) 2021/891 must be achieved by the final year of RP3, namely 2024, the draft targets included in the draft performance plan of Poland should be assessed as consistent with the Union-wide performance targets in the key performance area of safety.

Assessment of draft performance targets in the key performance area of environment

- (14) Concerning the key performance area of environment, the consistency of the targets submitted by Poland regarding the average horizontal *en route* flight efficiency of the actual trajectory has been assessed based on the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Poland have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan ('ERNIP') available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the environment targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (15) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. Therefore, the consistency of the local environment performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.

⁽⁶⁾ Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (OJ L 62, 8.3.2017, p. 1).

- (16) The draft performance targets in the key performance area of environment proposed by Poland 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:

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Poland , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,65 %	1,65 %	1,65 %	1,65 %
Reference values for Poland	1,65 %	1,65 %	1,65 %	1,65 %

- (17) The Commission observes that the draft environment targets proposed by Poland are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (18) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Poland has presented in the draft performance plan several measures for the achievement of the local environment targets which include the reorganisation of sector configurations for the Warsaw Area Control Centre, implementation of advanced flexible use of airspace concepts as well as improvements in Warsaw Terminal Manoeuvring Area.
- (19) Furthermore, the Commission observes that Poland has already implemented free route airspace (FRA) between flight level 95 and flight level 660 since February 2019. The Commission also notes that Poland plans to further expand FRA with the Baltic FAB, Slovakia and Ukraine in calendar year 2024.
- (20) On the basis of the findings set out in recitals 17 to 19, the draft targets included in the draft performance plan of Poland should be assessed as consistent with the Union-wide performance targets in the key performance area of environment.

Assessment of draft performance targets in the key performance area of capacity

- (21) Concerning the key performance area of capacity, the consistency of the targets submitted by Poland regarding the average *en route* air traffic flow management ('ATFM') delay per flight has been assessed based on the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of Poland have been compared to the relevant reference values set out in the Network Operations Plan available at the time of adopting the revised Union-wide performance targets for RP3, that is on 2 June 2021. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for the achievement of the capacity targets under point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (22) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive leaving no possibility for retroactive adjustments. Accordingly, Member States were not requested to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. Therefore, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets should be assessed with regard to calendar years 2021, 2022, 2023 and 2024.
- (23) The draft *en route* capacity targets proposed by Poland 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:

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Poland , in minutes of ATFM delay per flight	0,07	0,12	0,12	0,12
Reference values for Poland	0,07	0,12	0,12	0,12

- (24) The Commission observes that the draft capacity targets proposed by Poland are equal to the corresponding national reference values for each calendar year from 2021 to 2024.
- (25) In respect of point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Poland has presented in the draft performance plan a range of measures for the achievement of the local *en route* capacity targets. Those measures include continued air traffic controller training, flexible staff planning and rostering, increased number of sectors and improved sector opening times as well as the implementation of cross-border FRA.
- (26) On the basis of the findings set out in recitals 24 and 25, the draft targets included in the draft performance plan of Poland should be assessed as consistent with the Union-wide performance targets in the key performance area of capacity.

Review of draft capacity targets for terminal air navigation services

- (27) 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 draft *en route* capacity targets by the review of the draft capacity targets for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of Poland.
- (28) Specifically, when comparing at airport level the draft national targets on average arrival ATFM delay with the performance of similar airports during the second reference period ('RP2'), the Commission has found that the airports of Warszawa-Chopin, Warszawa-Modlin, Krakow-Balice and Katowice-Pyrzowice are expected to experience higher ATFM delays than those forecasted for similar airports.
- (29) Therefore, the Commission considers that, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, Poland should further justify the terminal capacity targets for RP3 in light of the observations set out in recital 28, or should revise downwards those targets.

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

- (30) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Poland regarding the determined unit costs ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist of the DUC trend over RP3, the long-term DUC trend over RP2 and RP3 (2015-2024), and the baseline value for the DUC at charging zone level compared with the average value of the charging zones where air navigation service providers have a similar operational and economic environment.
- (31) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the key factors and parameters underpinning those targets as specified in point 2.1(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (32) The draft *en route* cost-efficiency targets proposed by Poland for RP3 are as follows:

<i>En route</i> charging zone of Poland	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	169,6 PLN	174,8 PLN	320,1 PLN	200,2 PLN	172,0 PLN	163,2 PLN
	39,85 EUR	41,07 EUR	75,24 EUR	47,05 EUR	40,42 EUR	38,35 EUR

- (33) Concerning the criterion laid down in point 1.4(a) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the *en route* DUC trend of Poland at charging zone level of -1,7 % per year over RP3 outperforms the Union-wide trend of +1,0 % over the same period.
- (34) Concerning the criterion laid down in point 1.4(b) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission observes that the long-term *en route* DUC trend of Poland at charging zone level over RP2 and RP3 of -0,4 % per year underperforms the long-term Union-wide trend of -1,3 % over the same period.
- (35) Concerning the criterion laid down in 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 41,07 of Poland in real terms at 2017 prices ('EUR2017') is 5,4 % higher than the average baseline value of EUR 38,96 in EUR2017 of the relevant comparator group. However, the Commission notes that the determined *en route* unit cost of Poland for 2024 is lower by 6,7 % than the average of the comparator group.
- (36) The Commission has further examined whether the deviations observed in recitals 34 and 35 could be deemed necessary and proportionate under point 1.4(d) of Annex IV to Implementing Regulation (EU) 2019/317, provided that the observed deviation from the long-term Union-wide DUC trend is exclusively due to additional determined costs related to measures necessary to achieve the performance targets in the key performance area of capacity or to restructuring measures within the meaning of Article 2(18) of Implementing Regulation (EU) 2019/317.
- (37) In respect of the criterion specified under point 1.4(d)(i) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that Poland sets out in its draft performance plan a wide range of measures undertaken by the air navigation service provider (PANSa) for the purpose of achieving the local capacity targets. Those measures are detailed and quantified in the draft performance plan.
- (38) Indeed, Poland plans a significant increase over RP3 in the number of air traffic controllers in operations at the Warsaw area control centre. Poland further explains that the training and recruitment of additional air traffic controllers will enable PANSa to implement airspace re-sectorisation as well as to accommodate forecasted traffic demand which is expected to reach 2019 levels by the end of RP3.
- (39) The Commission observes an increase in the investment costs related to capacity-enhancing projects such as upgrades and associated changes of the ATM system, the deployment of new operations rooms and radio communications stations, as well as the replacement and development of surveillance infrastructure. Poland points out that the planned RP3 capital expenditure is focused on capacity-related investments, and will enable airspace optimisation (e.g. three-layer vertical division of airspace) as well as enhanced resilience, scalability and flexibility of service provision.
- (40) Based on the detailed analysis by the performance review body, the Commission considers that the relevant measures outlined by Poland in the draft performance plan are indeed necessary to achieve the local capacity targets. Furthermore, having regard to the evaluation made by the performance review body, it can be concluded that the additional costs of those measures are larger than the deviation from the long-term Union-wide DUC trend referred to in recital 34.

- (41) In light of the considerations in recitals 37 to 40, the Commission therefore finds that the criterion set out in point 1.4(d)(i) is fulfilled in respect of Poland.
- (42) It follows from the foregoing observations that it is not necessary to further examine whether the criterion set out under point 1.4(d)(ii) would be fulfilled with regard to Poland.
- (43) On the basis of the findings set out in recitals 33 to 42, the proposed targets included in the draft performance plan of Poland should be assessed as consistent with the Union-wide performance targets in the key performance area of cost-efficiency.

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

- (44) 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 draft *en route* cost-efficiency targets with the review of the draft cost-efficiency targets for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those draft targets were found to raise concerns in respect of Poland.
- (45) Firstly, when comparing the RP3 terminal DUC trend with the *en route* DUC trend, the Commission has found that the terminal DUC trend of Poland's terminal charging zone 1 of +2,2 % and charging zone 2 of +1,9 %, respectively, are higher than Poland's *en route* DUC trend at charging zone level of -1,7 % over RP3.
- (46) Secondly, the Commission observes that the draft targets for the terminal DUC trend for Poland's terminal charging zone 1 of +2,2 % over RP3 is higher than the actual terminal DUC trend of -8,9 % observed over RP2. In addition, the draft targets for the terminal DUC trend for Poland's terminal charging zone 2 of +1,9 % over RP3 is higher than the actual terminal DUC trend of -2,6 % observed over RP2.
- (47) Therefore, the Commission considers, in connection with the adoption of its final performance plan in accordance with Article 16, point (a) of Implementing Regulation (EU) 2019/317, that Poland should further justify the terminal cost-efficiency targets for RP3 in light of the observations set out in recitals 45 and 46, or should revise downwards those targets.

CONCLUSIONS

- (48) On the basis of the assessment set out in recitals 9 to 47, the Commission has found that the performance targets contained in the draft performance plan submitted by Poland are consistent with the Union-wide performance targets.
- (49) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (50) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan submitted by Poland, 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 Republic of Poland.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ANNEX

Performance targets included in the draft performance plan submitted by Poland 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

Poland	Targets on the effectiveness of safety management, expressed as a level of implementation, ranging from EASA level A to D				
Air navigation service providers concerned	Safety management objective	2021	2022	2023	2024
PANSA Warmia i Mazury sp. z o.o. Port Lotniczy Bydgoszcz S.A.	Safety policy and objectives	C	C	C	C
	Safety risk management	C	C	C	D
	Safety assurance	C	C	C	C
	Safety promotion	C	C	C	C
	Safety culture	C	C	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT

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

	2021	2022	2023	2024
Draft <i>en route</i> environment targets of Poland , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	1,65 %	1,65 %	1,65 %	1,65 %
Reference values for Poland	1,65 %	1,65 %	1,65 %	1,65 %

KEY PERFORMANCE AREA OF CAPACITY

Average *en route* ATFM delay in minutes per flight

	2021	2022	2023	2024
Draft <i>en route</i> capacity targets of Poland , in minutes of ATFM delay per flight	0,07	0,12	0,12	0,12
Reference values for Poland	0,07	0,12	0,12	0,12

KEY PERFORMANCE AREA OF COST-EFFICIENCY

Determined unit cost for *en route* air navigation services

<i>En route</i> charging zone of Poland	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
Draft <i>en route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms at 2017 prices)	169,6 PLN	174,8 PLN	320,1 PLN	200,2 PLN	172,0 PLN	163,2 PLN
	39,85 EUR	41,07 EUR	75,24 EUR	47,05 EUR	40,42 EUR	38,35 EUR

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***(notified under document C(2022) 2313)***(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 ('the Agreement') ⁽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 subparagraph thereof,

After consulting the Single Sky Committee,

Whereas:

GENERAL CONSIDERATIONS**Background**

- (1) Pursuant to Article 11 of Regulation (EC) No 549/2004 a performance scheme for air navigation services and network functions is to be set up. Furthermore, pursuant to Article 10 of Commission Implementing Regulation (EU) 2019/317 ⁽³⁾ 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 have to be consistent with the Union-wide targets adopted by the Commission for the reference period concerned. The Commission is responsible for assessing whether the proposed performance targets contained in the draft performance plans are consistent with the Union-wide performance targets, on the basis of the assessment criteria set out in Annex IV to Implementing Regulation (EU) 2019/317.
- (2) The outbreak of the COVID-19 pandemic has, since the first quarter of calendar year 2020, significantly impacted the air transport sector and has considerably reduced air traffic volumes compared to pre-pandemic levels, because of the measures taken by the Member States and third countries to contain the pandemic.
- (3) Union-wide performance targets for the third reference period ('RP3') were initially set out in Commission Implementing Decision (EU) 2019/903 ⁽⁴⁾. As those Union-wide performance targets and the draft RP3 performance plans subsequently submitted by the Member States and Switzerland were drawn up before the outbreak of the COVID-19 pandemic, they could not take account of the resulting significantly changed circumstances for air transport.

⁽¹⁾ OJ L 114, 30.4.2002, p. 73.

⁽²⁾ OJ L 96, 31.3.2004, p. 1.

⁽³⁾ 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 (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).

- (4) 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⁾. Pursuant to Article 2(1) of Implementing Regulation (EU) 2020/1627, the Commission adopted, on 2 June 2021, Commission Implementing Decision (EU) 2021/891 ⁽⁶⁾ setting revised Union-wide performance targets for RP3 in the key performance areas of safety, environment, capacity and cost-efficiency.
- (5) All Member States and Switzerland have developed and adopted draft performance plans containing revised local performance targets for RP3, which were submitted to the Commission for assessment by 1 October 2021. Switzerland submitted to the Commission its draft performance plan at FAB level, in this case at the level of Functional Airspace Block Europe Central ("FABEC"). Following the verification of completeness of FABEC's draft performance plan, the Commission requested FABEC to submit an updated draft performance plan by 17 November 2021. The Commission's assessment included in this Decision is based on the updated draft performance plan of FABEC submitted by Switzerland and the Member States comprising FABEC.
- (6) 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 RP3 draft performance plans.
- (7) This Decision covers solely the draft performance targets and related elements contained in the draft performance plan of FABEC which directly apply to the air navigation service provider designated to provide services in the airspace of Switzerland.

Approach to the assessment

- (8) In accordance with Article 14(1) of Implementing Regulation (EU) 2019/317, the Commission has assessed the consistency of national targets or targets at the level of FABs on the basis of the assessment criteria laid down in point 1 to 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 the assessment by reviewing draft performance plans in respect of the elements set out in point 2 of Annex IV to that Implementing Regulation.
- (9) Concerning the key performance area of safety, the Commission has assessed the consistency of the targets submitted by Switzerland, as laid down in the draft performance plan of FABEC, regarding the effectiveness of safety management of air navigation service providers based on the criterion laid down in point 1.1 of Annex IV to Implementing Regulation (EU) 2019/317. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for achievement of the safety targets in respect of the elements set out in point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317. The Commission concluded that the local safety performance targets proposed by Switzerland and the Member States part of FABEC, as laid down in the draft performance plan of FABEC, did not give rise to concerns in respect of their consistency with the corresponding Union-wide performance targets and therefore no related findings have been set out in this Decision.
- (10) Concerning the key performance area of environment, the consistency of the targets submitted by Switzerland, as laid down in the draft performance plan of FABEC, regarding the average horizontal *en route* flight efficiency of the actual trajectory, has been assessed on the basis of the criterion laid down in point 1.2 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of FABEC have been compared to the relevant *en route* horizontal flight efficiency reference values set out in the European Route Network Improvement Plan. The assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for achievement of the environment targets in respect of the elements set out in point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.

⁽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 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).

- (11) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive, leaving no possibility for retroactive adjustment. Accordingly, it was not appropriate for Member States and Switzerland to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of environment. In light of those considerations, the consistency of the local environment performance targets with the corresponding Union-wide performance targets was assessed with regard to calendar years 2021, 2022, 2023 and 2024. On that basis, the Commission concluded that the local environment performance targets proposed by Switzerland and the Member States part of FABEC, as laid down in the draft performance plan of FABEC, did not give rise to concerns in respect of their consistency with the corresponding Union-wide performance targets and therefore no related findings are set out in this Decision.
- (12) Concerning the key performance area of capacity, the consistency of the targets submitted by Switzerland, as laid down in the draft performance plan of FABEC, regarding the average *en route* air traffic flow management ('ATFM') delay per flight, has been assessed on the basis of the criterion laid down in point 1.3 of Annex IV to Implementing Regulation (EU) 2019/317. Accordingly, the proposed targets contained in the draft performance plan of FABEC have been compared to the relevant reference values set out in the Network Operations Plan. That assessment was conducted taking account of local circumstances and was complemented by the review of measures planned for achievement of the *en route* capacity targets, including in particular the review of planned major investments and the review of the incentive scheme or schemes in respect of the elements set out in point 2.1(a) of Annex IV to Implementing Regulation (EU) 2019/317.
- (13) In respect of the calendar 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, was not revised by Implementing Decision (EU) 2021/891, considering that the time period for the application of that target had expired and that its implementation had thus become definitive, leaving no possibility for retroactive adjustment. Accordingly, it was not appropriate for Member States and Switzerland to revise, in the draft performance plans submitted by 1 October 2021, their local performance targets for calendar year 2020 in the key performance area of capacity. In light of those considerations, the consistency of the local capacity performance targets with the corresponding Union-wide performance targets was assessed with regard to calendar years 2021, 2022, 2023 and 2024. On that basis, the Commission concluded that the local capacity performance targets proposed by Switzerland and the Member States part of FABEC, as laid down in the draft performance plan of FABEC, did not give rise to concerns in respect of their consistency with the corresponding Union-wide performance targets and therefore no related findings are set out in this Decision.
- (14) Furthermore, in relation to the assessment of draft capacity targets, for airports which are in the scope of Implementing Regulation (EU) 2019/317 in accordance with Articles 1(3) and (4) of that Regulation, the Commission has complemented its assessment by the review of the draft capacity targets of Switzerland, as laid down in the draft performance plan of FABEC, for terminal air navigation services in accordance with point 2.1(b) of Annex IV to Implementing Regulation (EU) 2019/317. As those draft targets were not found to raise concerns in respect of Switzerland, it is not necessary to set out any related findings in this Decision.
- (15) Concerning the key performance area of cost-efficiency, the consistency of the targets submitted by Switzerland, as laid down in the draft performance plan of FABEC, regarding determined unit costs ('DUC') for *en route* air navigation services has been assessed based on the criteria laid down in points 1.4(a), 1.4(b) and 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317. Those criteria consist namely of the determined unit cost trend over RP3, the long-term determined unit cost trend over the second reference period ('RP2') and RP3 (2015-2024), and the baseline value for the determined unit cost at charging zone level compared with the average value of the charging zones, where air navigation service providers have a similar operational and economic environment. Where the *en route* cost-efficiency targets were found to be inconsistent with the criteria laid down in point 1.4(a), (b) and (c) of Annex IV of Implementing Regulation (EU) 2019/317, the Commission further examined whether a deviation could be deemed necessary and proportionate on the basis of point 1.4(d) of Annex IV to Implementing Regulation (EU) 2019/317.
- (16) On that basis, the Commission concluded that the proposed local cost-efficiency performance targets for the *en route* charging zone of Switzerland, as laid down in the draft performance plan of FABEC, do not give rise to concerns in respect of their consistency with the corresponding Union-wide performance targets and therefore no related findings are set out in this Decision.

- (17) The assessment of *en route* cost efficiency targets was conducted taking account of local circumstances. It was complemented by the review of the elements laid down in point 2 of Annex IV to Implementing Regulation (EU) 2019/317, namely the key factors and parameters underpinning those targets as specified under point 2.1(d) of that Annex. As certain key factors and parameters underpinning those targets were found to raise concerns in respect of Switzerland, related findings are set out in this Decision.
- (18) Furthermore, in relation to the assessment of draft cost-efficiency targets, for airports which are in the scope of Implementing Regulation (EU) 2019/317 in accordance with Articles 1(3) and (4) of that Regulation, the Commission has complemented its review with the assessment of the draft cost-efficiency targets of Switzerland, as laid down in the draft performance plan of FABEC, for terminal air navigation services in accordance with point 2.1(c) of Annex IV to Implementing Regulation (EU) 2019/317. As those draft targets were found to raise concerns in respect of Switzerland, related findings are set out in this Decision.
- (19) In accordance with point 2(f) of Annex IV to Implementing Regulation (EU) 2019/317, in relation to the assessment of draft capacity targets, the Commission has complemented its review by an assessment of the draft incentive schemes referred to in Article 11 of Implementing Regulation (EU) 2019/317. In that respect, the Commission has examined whether the draft incentive schemes fulfil the substantive requirements set out under paragraphs 1 and 3 of Article 11 of Implementing Regulation (EU) 2019/317. As those draft incentive schemes were found to raise concerns in respect of Switzerland, the related findings are set out in this Decision.

Special considerations concerning traffic evolution

- (20) The STATFOR October 2021 base traffic forecast projects that air traffic at Union-wide level will reach its pre-pandemic levels in the course of 2023 and will exceed those levels in 2024. However, the level of uncertainty regarding traffic development remains particularly high because of the risks related to the evolution of the COVID-19 epidemiological situation. The Commission notes that the traffic recovery is expected to be uneven across Member States.
- (21) Accordingly, the forecasted RP3 traffic growth in several Member States is foreseen to be significantly lower than the average traffic growth at Union-wide level, and RP3 traffic volumes are forecasted to remain below pre-pandemic levels in a number of those Member States. The Commission acknowledges that this renders the achievement of Union-wide cost-efficiency targets more demanding for the Member States concerned, and has taken this point into account when reviewing the local circumstances relevant for the assessment of each draft performance plan.

COMMISSION ASSESSMENT

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

- (22) In respect of the review of key factors and parameters referred to in point 2.1.(d) of Annex IV to Implementing Regulation (EU) 2019/317 underpinning the FABEC draft performance targets for Switzerland in the key performance area of cost-efficiency, the Commission's assessment has resulted in the following findings related to determined costs and their allocation.
- (23) In respect of determined costs, the Commission observes that, in the draft performance plan of FABEC, Switzerland reports that the *en route* air navigation service provider (Skyguide) has applied changes in respect of capitalisation rules of Skyguide, which have the effect of increasing its staff costs and operating costs while reducing the depreciation costs over RP3. In its advice to the Commission, the performance review body takes the view that this change could potentially distort the implementation of the cost risk sharing mechanism with regard to Switzerland. Therefore, the rationale and implications of the method applied should be further explained and justified in the revised draft performance plan of FABEC in terms of their compliance with the relevant legal provisions, including Article 28(4) of Implementing Regulation (EU) 2019/317.
- (24) In respect of the cost allocation between *en route* and terminal services, Switzerland introduces a change in the applied methodology as regards the treatment of indirect OPEX costs. However, the Commission notes that, in the draft performance plan of FABEC, Switzerland did not describe or justify this change in the cost allocation of indirect OPEX costs between *en route* and terminal services. The Commission therefore considers that this should be further explained and justified in the revised draft performance plan.

- (25) On the basis of the findings set out in recitals (21) to (41) of Implementing Decision C(2022) 2283 (7), the proposed targets included in the draft performance plan of FABEC, as regards the *en route* charging zone of Belgium and Luxembourg, were assessed as inconsistent with the Union-wide performance targets in the key performance area of cost-efficiency. Therefore, Switzerland, which together with Belgium, France, Germany, Luxembourg, and the Netherlands developed and submitted a draft RP3 performance plan at FAB level, should jointly submit a revised draft performance plan for FABEC addressing the recommendations set out in this Decision and in Implementing Decision C(2022) 2283.

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

- (26) The Commission has concerns as regards the draft performance targets submitted by Switzerland, as laid down in the draft performance plan of FABEC, on the terminal determined unit cost trend in accordance with point 2(c) of Annex IV to Implementing Regulation (EU) 2019/317.
- (27) Firstly, when comparing the RP3 terminal determined unit cost trend with the *en route* determined unit cost trend, the Commission has found that the terminal determined unit cost trend of Switzerland's terminal charging zone of +2,7 % is higher than Switzerland's *en route* determined unit cost trend at charging zone level of -0,5 % over RP3.
- (28) Secondly, the Commission considers that the draft targets for the terminal determined unit cost trend for Switzerland's terminal charging zone of +2,7 % over RP3 is higher than the actual terminal determined unit cost trend of -3,4 % observed over RP2. That difference appears to be due to significant increases in terminal determined costs during RP3, especially as regards other operating and depreciation costs.
- (29) Thirdly, when comparing the draft terminal cost-efficiency targets with the performance at similar airports for RP3, the Commission observes that the determined unit cost for Geneva and Zurich airports is estimated to be very significantly above the median determined unit cost of the relevant comparator group over RP2 and RP3.
- (30) Therefore, the Commission considers that Switzerland should further justify the terminal cost-efficiency targets in light of the observations in recitals (26) to (29), or should revise downwards the draft targets on the terminal determined unit cost.

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

- (31) In relation to the elements for review set out in point 2.1 (f) of Annex IV to the Implementing Regulation (EU) 2019/317, the Commission observes that the draft *en route* capacity incentive scheme proposed in the draft performance plan of FABEC comprises a maximum financial advantage equal to the maximum financial disadvantage, both of which amount to 0,5 % of determined costs. The Commission also observes that the draft terminal capacity incentive scheme proposed by Switzerland in the draft performance plan of FABEC comprises a maximum financial advantage equal to the maximum financial disadvantage, both of which amount to 0,5 % of determined costs.
- (32) On the basis of expert advice provided by the performance review body, the Commission has strong doubts whether the proposed maximum financial disadvantages stemming from those incentive schemes, which amount to 0,5 % of determined costs, would have any material impact on the revenue at risk, as required pursuant to Article 11(3), point (a), of Implementing Regulation (EU) 2019/317.

(7) Commission Implementing Decision 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.

- (33) Therefore, Switzerland, in respect of the draft performance plan submitted by FABEC, should revise its draft incentive schemes for achieving *en route* and terminal capacity targets so that the maximum financial disadvantages stemming from those incentive schemes are set at a level having a material impact on the revenue at risk, as expressly required under 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

- (34) With reference to Implementing Decision C(2022) 2283, the Commission has found that the draft performance plan submitted by Switzerland, as part of FABEC, contains certain performance targets in respect of Belgium and Luxembourg that are inconsistent with the Union-wide performance targets.
- (35) Therefore, in accordance with Article 14(3) of Implementing Regulation (EU) 2019/317, Switzerland and the FABEC Member States, are to submit their revised draft performance plan to the Commission within three months from the date of the adoption of this Decision, taking account of the recommendations put forward by the Commission.
- (36) The Commission will subsequently assess the revised draft performance plan in its entirety in accordance with the procedure set out in Article 15 of Implementing Regulation (EU) 2019/317, and as a result of that subsequent assessment, it can take any position in respect of the draft performance targets and other elements of the performance plans for which no objections were raised in this Decision.
- (37) Pursuant to Article 17 of Implementing Regulation (EU) 2019/317, the targets set in the most recent version of the draft performance plan are to apply on a provisional basis until the Commission has issued a decision on the consistency of performance targets or revised performance targets, after which Switzerland and the FABEC Member States are required to adopt their final performance plan.
- (38) In respect of the key performance area of cost-efficiency, Article 17 of Implementing Regulation (EU) 2019/317 has conferred a retroactive effect to the targets contained in the final performance plan. As a result, any difference in revenue due to the application of the unit rate or unit rates calculated on the basis of the draft performance plan, instead of the unit rate or unit rates calculated on the basis of the final performance plan, are to be settled through subsequent unit rate adjustments during RP3 which are further regulated by the exceptional measures for RP3 set out in Implementing Regulation (EU) 2020/1627. Consequently, the Commission will not conclude on the compliance of the unit rates in accordance with Article 29(3) of Implementing Regulation (EU) 2019/317 before the relevant final performance plans have been adopted.
- (39) The Commission notes that some Member States have indicated their intention to include cost items relating to airport drone detection in their RP3 cost bases. It has not been possible to precisely establish, based on the elements contained in the draft performance plans, to what extent Member States have included such determined costs in their RP3 cost bases and, where such costs have been included, to what extent they are incurred in relation to the provision of air navigation services and could thus be deemed eligible under the performance and charging scheme. The Commission services have sent an ad hoc information request to all Member States in order to gather relevant information, and will further examine the reported airport drone detection costs in the context of unit rate compliance verification. This Decision is without prejudice to the findings and conclusions of the Commission on the topic of drone detection costs.
- (40) In response to Russia's military aggression against Ukraine, which started on 24 February 2022, the Union has adopted restrictive measures prohibiting 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, taking off from, or overflying the territory of the Union. Those measures are leading to a reduced air traffic in the airspace over the territory of the Union. The impact at the Union-wide level should however not be comparable to the reduction of air traffic which resulted from the outbreak of the COVID-19 pandemic in March 2020. Therefore, it is appropriate to maintain the existing measures and processes for the implementation of the performance and charging scheme in RP3. When revising the local performance targets contained in the draft performance plan of FABEC, Switzerland and the FABEC Member States should take due account of the operational and financial effects of relevant changes in traffic.

- (41) The Commission has consulted Switzerland on the recommendations set out in this Decision, in accordance with Article 19(2) of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The performance targets contained in the draft performance plan of FABEC submitted by Belgium, Germany, France, Luxembourg, the Netherlands, and Switzerland pursuant to Regulation (EC) No 549/2004, listed in the Annex to Implementing Decision C(2022) 2283, are inconsistent 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 Swiss Confederation.

Done at Brussels, 13 April 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)



Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN