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