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 *en route* 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:

***En route* charging zone of Estonia**	**2014 baseline value**	**2019 baseline value**	**2020 - 2021**	**2022**	**2023**	**2024**
Draft *en route* cost-efficiency targets, expressed as determined *en route* 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 *en route* environment targets of Estonia, expressed as the average horizontal *en route* 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 *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

KEY PERFORMANCE AREA OF COST-EFFICIENCY

Determined unit cost for *en route* air navigation services

***En route* charging zone of Estonia**	**2014 baseline value**	**2019 baseline value**	**2020 - 2021**	**2022**	**2023**	**2024**
Draft *en route* cost-efficiency targets, expressed as determined *en route* 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**