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 *en route* environment targets of Poland, expressed as the average horizontal *en route* 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 *en route* 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:

***En route* charging zone of Poland**	**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)	**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 *en route* environment targets of Poland, expressed as the average horizontal *en route* 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 *en route* 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

***En route* charging zone of Poland**	**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)	**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