



2024/2035

31.7.2024

COMMISSION DECISION (EU) 2024/2035

of 29 July 2024

on the non-compliance of the unit rates for air navigation charges set by Italy for year 2024

(notified under document C(2024) 5240)

(Only the Italian text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky ⁽¹⁾, and in particular Article 16(1) thereof,

Having regard to Commission Implementing Regulation (EU) 2019/317 of 11 February 2019 laying down a performance and charging scheme in the single European sky and repealing Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013 ⁽²⁾, and in particular Article 29(3) thereof,

Whereas:

1. BACKGROUND

- (1) In accordance with Article 29(3) of Implementing Regulation (EU) 2019/317, the Commission is to verify that the unit rates for each charging zone set by the Member States for each year of the reference period have been calculated in compliance with Article 25(2) of that Implementing Regulation.
- (2) By 20 December 2023, Member States informed the Commission pursuant to Article 29(2), point (c), of Implementing Regulation (EU) 2019/317 of their unit rates for 2024. The Commission proceeded with the verification referred to in Article 29(3), first subparagraph, of that Implementing Regulation.
- (3) Where the Commission finds that a unit rate does not comply with the requirements set out in Article 25(2) of Implementing Regulation (EU) 2019/317, it has to notify the Member State concerned and invite it to submit a revised unit rate, pursuant to Article 29(3), second subparagraph, of that Implementing Regulation.

2. PROCEDURE

- (4) In the context of the verifications conducted pursuant to Article 29(3) of Implementing Regulation (EU) 2019/317, the Commission found irregularities in the *en route* and terminal unit rates set by Italy for 2024. Those irregularities concern the following adjustments included in the *en route* and terminal unit rates of Italy for year 2024 in respect of the air navigation service provider 'ENAV':
 - (a) cost risk sharing adjustments deriving from year 2022 in respect of unforeseen changes in the costs of new and existing investments of ENAV within the meaning of Article 28(3), point (a), and Article 28(4) of Implementing Regulation (EU) 2019/317;
 - (b) cost risk sharing adjustments deriving from year 2022 in respect of unforeseeable changes in interest rates on loans that finance costs arising from the provision of air navigation services by ENAV within the meaning of Article 28(3), point (d), and Article 28(6) of Implementing Regulation (EU) 2019/317.

⁽¹⁾ OJ L 96, 31.3.2004, p. 10, <http://data.europa.eu/eli/reg/2004/550/oj>.

⁽²⁾ OJ L 56, 25.2.2019, p. 1, http://data.europa.eu/eli/reg_impl/2019/317/oj.

- (5) The cost risk sharing adjustments referred to in recital (4) ('the cost risk sharing adjustments') were initially included by Italy as part of the preliminary data on the unit rates for 2024 received by the Commission on 7 June 2023 in accordance with Article 29(2), point (a), of Implementing Regulation (EU) 2019/317. Subsequently, those adjustments were further substantiated in the cost risk sharing report submitted by Italy to the Commission on 11 September 2023, in accordance with Article 28(7) of Implementing Regulation (EU) 2019/317.
- (6) On 4 October 2023, the Commission sent a letter to the national supervisory authority of Italy ('Italian NSA'). In that letter, the Commission raised concerns regarding the compliance of the cost risk sharing adjustments proposed by Italy to be included in the unit rates for 2024 with Implementing Regulation (EU) 2019/317. The Italian NSA was therefore invited to rectify the cost risk sharing adjustments included in the proposed unit rates for 2024, in order to ensure the compliance of those unit rates with Implementing Regulation (EU) 2019/317.
- (7) The Italian NSA submitted on 2 November 2023 to the Commission updated reporting tables for the setting of the unit rates for 2024, in accordance with Article 29(2), point (b), of Implementing Regulation (EU) 2019/317. The reporting tables included revised cost risk sharing adjustments stemming from calendar year 2022, which were included in the proposed unit rates for 2024.
- (8) Italy set its unit rates for 2024 in December 2023 and informed the Commission thereof on 20 December 2023, in accordance with Article 29(2), point (c), of Implementing Regulation (EU) 2019/317. Furthermore, on 22 December 2023, Italy submitted to the Commission a revised cost risk sharing report regarding year 2022 ('revised cost risk sharing report'), which substantiates the revised cost risk sharing adjustments included in the unit rates for 2024.
- (9) On 18 January 2024 and 10 June 2024, the Commission informed the Italian NSA of remaining concerns with regard to the cost risk sharing adjustments included in the unit rates for 2024. The Commission invited Italy to address those concerns. In its responses received on 5 February 2024 and 27 June 2024, the Italian NSA provided additional information to the Commission in respect of the calculation of the cost risk sharing adjustments, without making any rectifications to those adjustments.

3. ANALYSIS

- (10) The Commission has found that the cost risk sharing adjustments included by Italy in its unit rates for 2024 remain incorrectly calculated because of the erroneous application of legal requirements regarding the recovery from airspace users of costs incurred for loans financing the provision of air navigation services. The following legal requirements are of relevance for the findings made by the Commission.
- (11) Pursuant to Article 15(3), points (a) and (c) of Regulation (EC) No 550/2004, Member States are to set charges for the availability of air navigation services per calendar year on the basis of the determined costs. In accordance with Article 15(2), point (a), of Regulation (EC) No 550/2004, read in conjunction with Article 10(2), point (b), and Article 22(2) of Implementing Regulation (EU) 2019/317, Member States are to establish those determined costs in their performance plans prior to the start of each reference period and for each calendar year of the reference period. As set out in Article 15(2), point (a), of Regulation (EC) No 550/2004, the determined costs of providing air navigation services include, inter alia, 'appropriate amounts for interest on capital investment'.
- (12) In accordance with Article 22(4) of Implementing Regulation (EU) 2019/317, read in conjunction with point 3.3(f) of Annex II to that Implementing Regulation, an interest rate assumption ('determined interest rate') is to be set *ex ante* in the performance plan for each year of the reference period, for the purpose of establishing the cost of capital. Furthermore, it follows from those legal provisions that the determined interest rate has to be equal to the weighted average interest rate on debts which is expected to be incurred by the air navigation service provider in the year concerned⁽³⁾.

⁽³⁾ The determined interest rate is set in the reporting table on 'Total costs and Unit costs' ('Table 1') which is included in Annex VII to Implementing Regulation (EU) 2019/317.

- (13) The 'actual interest rate', which is reported after the end of the calendar year, has to be equal to the effectively incurred weighted average interest rate on debts of the air navigation service provider, pursuant to Article 22(4) of Implementing Regulation (EU) 2019/317, read in conjunction with Article 23 of that Implementing Regulation ⁽⁴⁾.
- (14) Furthermore, it is clear from the definition in Article 2, point (1), of Implementing Regulation (EU) 2019/317, that any amount reported as 'actual cost' means a cost actually incurred in a calendar year for the provision of air navigation services as shown in certified accounts or, in the absence of such certified accounts, subject to a final audit of the air navigation service provider. Accordingly, the actual costs reported for the interest paid on loans financing the provision of air navigation services should not exceed the costs actually incurred by the air navigation service provider in this respect.

Findings on the cost risk sharing adjustments regarding new and existing investments

- (15) Italy has included, in its 2024 *en route* and terminal unit rates, adjustments deriving from unforeseen changes in costs of new and existing investments in fixed assets ⁽⁵⁾ of ENAV pursuant to Article 28(3), point (a), and Article 28(4) of Implementing Regulation (EU) 2019/317. Those costs include the cost of capital charged in respect of the new and existing investments.
- (16) The Commission notes that Italy has incorrectly reported, in its *en route* and terminal reporting tables submitted to the Commission on 2 November 2023 and 20 December 2024, and in the revised cost risk sharing report, the average weighted interest rate actually incurred by ENAV in 2022. Indeed, Italy has reported an average weighted annual interest rate of 2,64 % for ENAV for year 2022, which is considerably higher than the corresponding figure presented in the annual report of ENAV for year 2022, namely 1,47 %.
- (17) In its exchanges with the Commission, Italy did not contest the finding that the reported actual interest rate does not reflect the weighted average interest rate effectively incurred by ENAV in 2022 for the loans financing the costs arising from the provision of air navigation services. According to Italy, the reported 'actual' interest rate is composed of a 'risk free rate' and of a 'debt risk premium', which are not based on the effective weighted interest rate recorded by ENAV.
- (18) Such a discrepancy in comparison with the interest rate actually incurred by ENAV, according to its annual report, is unfounded and not compliant with the requirements of Article 22(4) and Article 23 of Implementing Regulation (EU) 2019/317.
- (19) As a result of the observed use of a wrong actual interest rate for the calculation of the cost risk sharing adjustments referred to in recital (4), point (a), those adjustments are incorrect.

Findings on the cost risk sharing adjustments regarding unforeseeable changes in interest rates on loans

- (20) Italy has included, in its 2024 *en route* and terminal unit rates, adjustments deriving from unforeseeable changes in interest rates on loans that finance costs arising from the provision of air navigation services by ENAV within the meaning of Article 28(3), point (d), and Article 28(6) of Implementing Regulation (EU) 2019/317. Those adjustments apply in respect of the debt financing the net current assets of the air navigation service provider, given that the costs for loans financing fixed assets are already covered under Article 28(3), point (a), and Article 28(4) which address the differences in the costs of new and existing investments.

⁽⁴⁾ The actual interest rate is reported in the reporting table on 'Total costs and Unit costs' ('Table 1') which is included in Annex VII to Implementing Regulation (EU) 2019/317.

⁽⁵⁾ In accordance with Article 2, point (15), of Implementing Regulation (EU) 2019/317, 'new and existing investment' means the acquisition, development, replacement, upgrade or leasing of fixed assets where depreciation costs, cost of capital, or in the case of leasing, operating costs, for that investment are incurred during the reference period covered by the performance plan.

- (21) In its revised cost risk sharing report, Italy has, in respect of the cost risk sharing adjustments for unforeseeable changes in interest rates on loans within the meaning of Article 28(3), point (d), and Article 28(6) of Implementing Regulation (EU) 2019/317, used the correct reported actual average weighted interest rate for ENAV in 2022, namely 1,47 %, which is in line with ENAV's annual report. The applied actual interest rate is hence different than for the cost risk sharing adjustment on the costs of new and existing investments, for which a higher interest rate, inconsistent with ENAV's annual report, was used, as explained in recital (16).
- (22) However, Italy has wrongfully modified, in the revised cost risk sharing report, the determined interest rate set in its performance plan for the third reference period ('RP3', 2020-2024) for the purpose of calculating the cost risk sharing adjustments for unforeseeable changes in interest rates on loans. Indeed, Italy has used a modified 2022 determined interest rate for ENAV of 0,69 % which significantly deviates from the determined interest rate of 1,86 % set out by Italy in its performance plan for RP3, which Italy submitted to the Commission 10 October 2022.
- (23) In its exchanges with the Commission, Italy argued that the determined interest rate has to be revised for the purpose of the cost risk sharing adjustments for unforeseeable changes in interest rates on loans, in order to ensure comparability with the actual interest rate of ENAV of 1,47 % for 2022.
- (24) Such an *ex-post* modification, during the reference period, of the determined interest rate established in the performance plan is however not legally permitted. It is possible for a Member State to request a revision of its performance plan, including a possible revision of the cost-efficiency performance targets and determined costs contained therein, under Article 18(1) of Implementing Regulation (EU) 2019/317, provided that the conditions set out in that Article are fulfilled and subject to the approval by the Commission. Italy has however not submitted any such request and any retroactive revision of the cost-efficiency performance targets, after the end of the calendar year concerned, is not allowed, as set out in Article 18(2) of Implementing Regulation (EU) 2019/317.
- (25) The Commission further notes that the non-compliant, *ex post* modification of the determined interest rate for 2022 distorts the calculation of the differences between the determined costs charged to users and the actual costs incurred by ENAV in respect of amounts for interest on servicing its loans. It is clear that Italy charged airspace users, as part of the determined costs for 2022, a cost of capital for ENAV established on the basis of a determined interest rate of 1,86 %. Those determined costs are therefore to be taken into account for the application of the cost risk sharing mechanism, without any modification, including in respect of the underlying determined interest rate parameters.
- (26) Therefore, Italy has incorrectly calculated the cost risk sharing adjustments referred to in recital (4), point (b), resulting from unforeseeable changes in interest rates on loans that finance costs arising from the provision of air navigation services.

4. CONCLUSION

- (27) On the basis of the analysis in recitals (10) to (26), the Commission notes that the observed irregularities in respect of the cost risk sharing adjustments lead to an over-compensation of ENAV under the cost risk sharing mechanism for costs which it did not actually incur and, conversely, to ineligible additional amounts being charged to users under the cost risk sharing mechanism as part of the unit rates for 2024.
- (28) The Commission therefore concludes that the unit rates for 2024 set by Italy for its *en route* and terminal charging zones are not in compliance with Article 25(2), point (d), of Implementing Regulation (EU) 2019/317, with regard to the calculation of the cost risk sharing adjustments under Articles 28(4) and 28(6) of Implementing Regulation (EU) 2019/317.
- (29) In accordance with Article 29(3), second subparagraph, of Implementing Regulation (EU) 2019/317, Italy is invited to submit revised unit rates for 2024 to the Commission. The Commission has proposed corrections to the calculation of the unit rates for 2024, set out in the Annex to this Decision. It is possible that, if additional factual elements substantiated by adequate evidence are available, Italy proposes corrections to the calculation of the unit rates for 2024 differing from those proposed by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The unit rates for 2024 set by Italy for its *en route* and terminal charging zones, as referred to in Annex I to this Decision, are not in compliance with the requirements set out in Article 25(2), point (d), of Implementing Regulation (EU) 2019/317.

Article 2

Italy is invited to submit to the Commission revised unit rates for 2024 for the charging zones referred to in Article 1.

In calculating its revised unit rates for 2024, Italy may take account of the proposed corrections of the cost risk sharing adjustments, which are set out in Annex II to this Decision.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 29 July 2024.

For the Commission
Wopke HOEKSTRA
Member of the Commission

ANNEX I

**Unit rates for 2024, which are not in compliance with the requirements set out in Article 25(2), point (d), of
Implementing Regulation (EU) 2019/317**

Charging zone	Unit rates for year 2024
Italy – <i>En route</i> charging zone	EUR 68,77
Italy – Terminal charging zone 1	EUR 193,05
Italy – Terminal charging zone 2	EUR 216,28

ANNEX II

Proposed corrections of the unit rates for 2024

Charging zone	Cost risk sharing adjustments deriving from calendar year 2022 and included in the unit rates for 2024 ⁽¹⁾		Resulting unit rates for 2024 after application of the proposed corrections (EUR)
	Amounts included by Italy in the 2024 unit rates ⁽²⁾ (thousand EUR)	Proposed corrected amounts for revised 2024 unit rates ⁽³⁾ (thousand EUR)	
Italy – <i>En route</i> charging zone	– 4 929,0	– 8 105,4	68,48
Italy – Terminal charging zone 1	– 103,7	– 438,5	191,59
Italy – Terminal charging zone 2	– 514,9	– 910,1	215,11

⁽¹⁾ Total amounts for the adjustments referred to in Article 25(2), point (d), of Implementing Regulation (EU) 2019/317, which comprises the differences in costs under Article 28(4) to (6) of that Implementing Regulation.

⁽²⁾ Amounts at charging zone level presented in the reporting tables submitted by Italy to the Commission.

⁽³⁾ Corrected amounts based on the following interest rate assumptions:

- a determined interest rate of 1,86 % for year 2022, as set out in Italy's performance plan for the third reference period;
- an actual effective weighted average interest for ENAV of 1,47 %, as presented in the annual report of ENAV for year 2022.