



2024/343

22.1.2024

COMMISSION DECISION (EU) 2024/343

of 13 December 2023

on the compliance of the corrective measures submitted by Luxembourg with Implementing Decision (EU) 2023/1336

(notified under document C(2023) 8560)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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), 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 15(7), second paragraph, thereof,

Whereas:

GENERAL CONSIDERATIONS

- (1) Following the detailed examination referred to in Article 15(3) of Implementing Regulation (EU) 2019/317, the Commission found that the cost-efficiency performance targets for the Belgium-Luxembourg charging zone were inconsistent with the Union-wide cost-efficiency performance targets for RP3.
- (2) Consequently, pursuant to Commission Implementing Decision (EU) 2023/1336 ⁽³⁾, Belgium and Luxembourg were required to define and communicate to the Commission corrective measures designed to achieve the consistency of their national cost-efficiency performance targets with the Union-wide cost-efficiency performance targets for the third reference period. Those corrective measures were to be put in place as part of draft final performance plans established at national level by Belgium and Luxembourg respectively.
- (3) On 16 September 2023, Luxembourg submitted to the Commission, for assessment, a first version of its draft final performance plan including corrective measures. Following a verification of completeness, the Commission requested Luxembourg to update its draft final performance plan in order to complement it with regard to certain missing elements and address certain identified shortcomings. This Decision assesses that updated, version of the draft final performance plan including corrective measures ('the draft final performance plan') which was submitted by Luxembourg to the Commission on 3 November 2023.
- (4) The Performance Review Body ('PRB'), assisting the Commission in the implementation of the performance scheme pursuant to Article 11(2) of Regulation (EC) No 549/2004, submitted a report to the Commission on the assessment of Luxembourg's draft final performance plan including corrective measures.

⁽¹⁾ OJ L 96, 31.3.2004, p. 1, ELI: <http://data.europa.eu/eli/reg/2004/549/oj>

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

⁽³⁾ Commission Implementing Decision (EU) 2023/1336 of 16 June 2023 on corrective measures to be taken by Belgium and Luxembourg regarding certain performance targets for the third reference period in accordance with Regulation (EC) No 549/2004 of the European Parliament and of the Council (OJ L 166, 30.6.2023, p. 119, ELI: http://data.europa.eu/eli/dec_impl/2023/1336/oj).

- (5) Luxembourg exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union, in conjunction with Article 3 of Regulation No 1 ⁽⁴⁾, and to have this Decision adopted and notified in English.

COMMISSION ASSESSMENT

Scope

- (6) Pursuant to Article 15(7), first paragraph, of Implementing Regulation (EU) 2019/317, the corrective measures set out in the draft final performance plan are to be assessed in order to determine whether they are sufficient to ensure compliance with the corrective measures set out in Implementing Decision (EU) 2023/1336 and hence ensure consistency of the cost-efficiency performance targets for the Belgium-Luxembourg charging zone with the Union-wide performance targets for RP3. Those corrective measures have been established jointly by Belgium and Luxembourg for their common charging zone.
- (7) The Commission notes that the safety, capacity and environment performance targets set in the revised draft performance plan remain unchanged in the draft final performance plan. The Commission did not raise any concerns regarding those performance targets in Implementing Decision (EU) 2023/1336. Therefore, the safety, capacity and environment performance targets should be considered consistent with the corresponding Union-wide performance targets.

Corrective measures designed to achieve consistency of the revised cost-efficiency performance targets with the Union-wide cost-efficiency performance targets subject to the Commission's assessment

Corrective measures

- (8) The Commission notes that the draft final performance plan includes, in essence, the following corrective measures in respect of the air navigation service providers concerned, namely skeyes and the Maastricht Upper Area Control Centre ('MUAC'):
- (a) review of the cost bases of skeyes and MUAC for years 2023 and 2024 ('Corrective Measure A');
 - (b) reimbursement to airspace users of the surplus from calendar year 2022 as a result of the difference between the determined and actual costs ('Corrective Measure B');
 - (c) reimbursement to airspace users of amounts charged in the second reference period ('RP2') in respect of postponed or cancelled investments in fixed assets ('Corrective Measure C').
- (9) As part of the draft final performance plan, Belgium tasked an independent consultant to conduct, during the summer of 2023, a compliance review of skeyes and of the MUAC ('the compliance review of skeyes and MUAC') in respect of the findings set out by the Commission in Implementing Decision (EU) 2023/1336. Belgium shared the final report of the compliance review with Commission services on 3 October 2023. Luxembourg indicates that the corrective measures set out in the draft final performance plan were prepared taking into account the results from that compliance review.

Corrective Measure A

- (10) Corrective Measure A consists of a real terms reduction of the determined costs of skeyes and MUAC in respect of years 2023 and 2024. That corrective measure is planned to result in a total cost reduction for year 2023 of EUR 12,9 million, expressed in real terms in 2017 prices ('EUR 2017'), and in a total cost reduction for year 2024 of EUR 9,1 million expressed in EUR 2017.
- (11) The following table presents the effect of Corrective Measure A on determined costs, broken down between skeyes and MUAC.

⁽⁴⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58, ELI: [http://data.europa.eu/eli/reg/1958/1\(1\)/oj](http://data.europa.eu/eli/reg/1958/1(1)/oj)).

Corrective Measure A	Impact on the 2023 determined costs, expressed in EUR 2017	Impact on the 2024 determined costs, expressed in EUR 2017
skeyes	EUR - 4,6 million	EUR - 4,0 million
MUAC	EUR - 8,2 million	EUR - 5,0 million
Total	EUR - 12,9 million	EUR - 9,1 million

- (12) The Commission notes that Corrective Measure A contributes to the overall reduction of the cost base for the Belgium-Luxembourg charging zone in 2023 and 2024 and results specifically in a reduction of the operating costs, including staff costs and other operating costs, of both skeyes and MUAC, as required by Article 1(2) of Implementing Decision (EU) 2023/1336.

Corrective Measure B

- (13) Corrective Measure B concerns the reimbursement to airspace users of the surplus from calendar year 2022 resulting from the difference between determined and actual costs. That surplus comprises specifically the balance between the determined and actual costs related to the staff costs and other operating costs of skeyes and MUAC for 2022. Cost differences for 2022 related to depreciation costs and the cost of capital are excluded from the scope of Corrective Measure B, given that those differences are subject to the cost risk sharing rules set out in Articles 28(3)(a) and 28(4) of Implementing Regulation (EU) 2019/317.
- (14) Corrective Measure B is planned to produce effects through a one-off cost reduction of EUR 7,7 million expressed in EUR 2017 for year 2024, broken down between skeyes and MUAC in accordance with the following table:

Corrective Measure B	Impact on the 2024 determined costs, expressed in EUR 2017
skeyes	EUR - 0,1 million
MUAC	EUR - 7,6 million
Total	EUR - 7,7 million

- (15) The Commission notes that Corrective Measure B contributes to the overall reduction of the determined costs of skeyes and MUAC for 2024, as required by Article 1(2) of Implementing Decision (EU) 2023/1336.

Corrective Measure C

- (16) Corrective Measure C concerns the reimbursement to airspace users of unspent capital expenditure in RP2 concerning postponed or cancelled investments in fixed assets.
- (17) The Commission found that, during RP2, both skeyes and MUAC postponed or cancelled several planned investments in fixed assets which were part of the RP2 performance plan. Airspace users were partially charged for those investments as part of the RP2 cost base for the Belgium-Luxembourg charging zone, despite the fact that those investments were not executed and therefore did not provide the expected operational benefits. Pursuant to Implementing Decision (EU) 2023/1336, the Commission therefore requested the national supervisory authorities of Belgium and Luxembourg to verify that the costs charged in RP2 for the cancelled and delayed investments in fixed assets were not double-charged to airspace users in the event that those investments materialised at later stage.

- (18) Luxembourg indicates, in the draft final performance plan, that the compliance review of skeyes and MUAC, which was conducted by Belgium, found that certain amounts comprised in the RP3 cost bases are indeed to be refunded to users in order to avoid double-charging for investments cancelled or postponed in RP2. To that end, a one-off cost reduction of EUR 6,1 million expressed in EUR 2017 is to be applied for the year 2024, broken down between skeyes and MUAC in accordance with the following table:

Corrective Measure C	Impact on the 2024 determined costs, expressed in EUR 2017
skeyes	EUR - 4,4 M
MUAC	EUR - 1,6 M
Total	EUR - 6,1 M

- (19) In respect of skeyes, the Commission notes that Corrective Measure C only leads to a partial reimbursement of the unspent costs charged to users in RP2 for the cancelled and delayed investments in fixed assets. In accordance with the analysis conducted by the PRB and set out in Implementing Decision (EU) 2023/1336, skeyes charged a total of EUR 7,8 million in RP2 in respect of investments which did not materialise during that reference period.
- (20) Nonetheless, the Commission notes that Corrective Measure C contributes to the overall reduction of the determined costs of skeyes and MUAC for 2024, as required by Article 1(2) of Implementing Decision (EU) 2023/1336.

Revised cost-efficiency performance targets

- (21) The following table sets out the *en route* cost-efficiency performance targets for RP3 for the Belgium-Luxembourg charging zone included in the revised draft performance plan and the corresponding revised performance targets contained in the draft final performance plan.

En route charging zone of Belgium-Luxembourg	2014 baseline value	2019 baseline value	2020 – 2021	2022	2023	2024
<i>Cost-efficiency performance targets contained in the revised draft performance plan, expressed as determined unit cost (in real terms in 2017 prices)</i>	EUR 81,78	EUR 83,26	EUR 189,52	EUR 104,47	EUR 94,18	EUR 89,87
Revised cost-efficiency performance targets contained in the draft final performance plan, expressed as determined unit cost (in real terms in 2017 prices)	EUR 81,78	EUR 83,26	EUR 189,52	EUR 104,47	EUR 90,34	EUR 80,26

- (22) The Commission observes that Luxembourg revised downwards its cost-efficiency performance targets for 2023 and 2024 in the draft final performance plan. That downward revision represents an approximate reduction of the determined unit cost ("DUC") of 4,1 % for 2023 and of 10,7 % for 2024. The Commission notes that the baseline values for 2014 and 2019 remain unchanged in the draft final performance plan as compared to the revised draft performance plan.
- (23) The traffic forecast underlying the cost-efficiency performance targets for the Belgium-Luxembourg charging zone was updated as part of the draft final performance plan and is in conformity with the Eurocontrol Statfor March 2023 base traffic forecast. The following table sets out the traffic assumptions, which were revised downwards for 2023 (with a negative effect on the DUC) and revised upwards for 2024 (with a positive effect on the DUC).

En route charging zone of Belgium-Luxembourg	2023	2024
Traffic forecast contained in the revised draft performance plan, expressed in thousands of en route service units	2 445	2 542
Updated traffic forecast contained in the draft final performance plans , expressed in thousands of en route service units	2 404	2 560
Difference	-1,7 %	+ 0,7 %

Determined costs for calendar years 2023 and 2024

- (24) The revised determined costs in real terms, expressed in EUR 2017, for calendar years 2023 and 2024, resulting from the application of the corrective measures referred to in recitals 8 to 19 and from other adjustments applied in the draft final performance plan, are indicated in the following table:

En route charging zone of Belgium-Luxembourg	2023	2024
Determined costs in EUR 2017, as set in the revised draft performance plan	EUR 230,2 million	EUR 228,5 million
Revised determined costs in EUR 2017, as set in the draft final performance plan	EUR 217,2 million	EUR 205,5 million
Difference expressed in EUR 2017 and in percentage	EUR - 13,1 million - 5,7 %	EUR - 23,0 million - 10,1 %

- (25) In comparison with the revised draft performance plan, the combined effect of the corrective measures established in the draft final performance plan on the cost base of the Belgium-Luxembourg charging zone amounts to EUR – 12,8 million expressed in EUR 2017 for the year 2023 and to EUR – 22,7 million expressed in EUR 2017 for year 2024. Further residual cost reductions of EUR 0,3 million expressed in EUR 2017 for 2023 and of EUR 0,2 million expressed in EUR 2017 for 2024 ensue from adjustments made with regard to the cost bases of Luxembourg's Air Navigation Administration and of the national supervisory authorities of Belgium and Luxembourg respectively.
- (26) Pursuant to Implementing Decision (EU) 2023/1336 the Commission concluded that the determined costs set in respect of Luxembourg's Air Navigation Administration and of the national supervisory authorities of Belgium and Luxembourg did not give rise to concerns. The related findings set out in Implementing Decision (EU) 2023/1336 remain valid, given that no major changes have been made in the draft final performance plan with regard to those cost components.

Assessment of the revised performance targets

Assessment of the revised performance targets on the basis of the assessment criteria set out in points 1.4(a), (b) and (c) of Annex IV to Implementing Regulation (EU) 2019/317

- (27) The Commission assessed the consistency of the revised cost-efficiency performance targets set in the draft final performance plan in accordance with the criteria laid down in points 1.4(a), (b), and (c) of Annex IV to Implementing Regulation (EU) 2019/317.
- (28) 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 at charging zone level of $-0,9\%$ over RP3 outperforms the Union-wide trend of $+1,0\%$ over the same period.
- (29) 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 at charging zone level over RP2 and RP3 of $-0,2\%$ underperforms the long-term Union-wide trend of $-1,3\%$ over the same period.
- (30) 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 83,26 of the Belgium-Luxembourg charging zone expressed in EUR 2017 is $13,2\%$ higher than the average baseline value of EUR 73,53 expressed in EUR 2017 of the relevant comparator group.

Assessment of the capacity-related measures invoked by Luxembourg to justify the observed deviations from the Union-wide cost-efficiency trends

- (31) It is necessary to examine whether the deviations from the criteria set out in points 1.4(b) and 1.4(c) of Annex IV to Implementing Regulation (EU) 2019/317, referred to in recitals 29 and 30, may be deemed necessary and proportionate in accordance with point 1.4(d) of that Annex, 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.
- (32) Having regard to the calculations made by the PRB, the Commission notes that the estimated difference between the determined costs for RP3 set in the draft final performance plan for the Belgium-Luxembourg charging zone for year 2024 and the determined costs that would be required to meet the long-term Union-wide DUC trend is approximately EUR 19,4 million expressed in EUR 2017.
- (33) In respect of the assessment criterion set out in point 1.4(d)(i) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission notes that the draft final performance plan contains seven measures for the achievement of capacity targets ('capacity-related measures'), which are regarded by Luxembourg as necessary for the achievement of capacity targets and which according to Luxembourg would justify the deviations of the local cost-efficiency performance targets from the Union-wide cost-efficiency performance targets. Two of those capacity-related measures ('Measures 1 and 2') concern skeyes and five of those capacity-related measures ('Measures 3 to 7') concern MUAC. The Commission already assessed those capacity-related measures, as included in the revised draft performance plan, as part of the detailed examination referred to in recital 1. The related findings were set out Implementing Decision (EU) 2023/1336.
- (34) Measures 3 to 7 remain unchanged in the draft final performance plan therefore the findings made by the Commission during the detailed examination with regard to those measures remain valid. Consequently, Measures 3 to 7 are deemed to be necessary and proportionate for the achievement of the capacity performance targets, on the basis of the detailed findings presented Implementing Decision (EU) 2023/1336. On the other hand, Measures 1 and 2 have been modified in the draft final performance plan therefore those measures needed to be re-assessed.

Assessment of modified Measure 1

- (35) Measure 1 comprises the recruitment and training of air traffic controllers ('ATCOs') by skeyes in order to maintain adequate ATCO staffing levels in RP3 and in the fourth reference period ('RP4').
- (36) The Commission already concluded, in Implementing Decision (EU) 2023/1336, that Measure 1 is necessary for the achievement of the local capacity performance targets. However, the Commission considered that Belgium, which is responsible for the supervision of skeyes and for its cost base, had failed to justify, in the revised draft performance plan, the entirety of the costs claimed to be incurred in relation to Measure 1. A portion of the costs of Measure 1 were therefore found to be unjustified in light of the achievement of capacity targets, given that Belgium had not substantiated those costs during the detailed examination referred to recital 1, including with regard to the claimed cost impact of inflation.
- (37) The Commission notes that increased cost estimates for Measure 1 have been presented in the draft final performance plan for 2023 and 2024. That increase is justified by the staff costs incurred by skeyes for the remuneration of air traffic controller trainees for *en route* services. The draft final performance plan indicates that those costs had been mistakenly omitted from the costs of Measure 1 in the previous draft performance plans which were submitted for RP3.
- (38) On the basis of the information provided in the draft final performance plan, the additional staff costs referred to in recital 37 are directly linked with the capacity-enhancement measures taken pursuant to Measure 1 which have already been found by the Commission, in Implementing Decision (EU) 2023/1336, to be relevant in view of achieving the local capacity performance targets. Those additional staff costs should furthermore be considered proportionate in light of the objective to ensure the safe and continuous provision by skeyes of the required air traffic control capacity in RP3. It is therefore appropriate, in respect of Measure 1, to include those staff costs in the calculation of the costs deemed to be necessary and proportionate for the achievement of capacity targets.
- (39) On all other aspects of Measure 1, the conclusions set out in Implementing Decision (EU) 2023/1336 are upheld, given that the draft final performance plan does not contain any argumentation or evidence which would require a re-opening of the Commission's analysis.

Assessment of modified Measure 2

- (40) Measure 2 concerns the modernisation by skeyes of its air traffic management ('ATM') system to support the integration of civil and military air navigation services and to improve capacity and operational efficiencies.
- (41) In Implementing Decision (EU) 2023/1336, the Commission observed that Measure 2 included two elements, namely the mid-life upgrade of the current ATM system of skeyes and the replacement, in the longer term, of that current ATM system by a single, integrated and harmonised airspace management system to be developed together with MUAC and the Belgian Defence as part of the 'Shared Air Traffic Services System 3' project ('SAS 3 project'). The Commission however noted, in light of credible information available at that time, that there were serious doubts about the actual implementation of the SAS 3 project. Furthermore, the Commission excluded certain costs presented under Measure 2 from the additional costs considered to be necessary and proportionate with regard to the achievement of capacity targets and thus justifying a deviation from Union-wide cost-efficiency performance targets.
- (42) The Commission notes that Measure 2 has been modified in the draft final performance plan both in respect of its content and costs. On the one hand, it is confirmed that the planned mid-life upgrade of the ATM system is due to be implemented in 2023–2024 as a transitional measure before the roll-out of a new ATM system expected to enter into operation at the end of RP4. On the other hand, it is recognised that the SAS 3 project, which objective was to develop the new ATM system, has been suspended because 'the risks of the project in terms of scope, planning and scope were too high for skeyes'. According to the draft final performance plan, 'skeyes is currently in discussion with Belgian Defence to define the best way forward for the modernisation of the system to be commissioned in 2028'. However, the draft final performance plan does not outline any options in view of either replacing or modifying the SAS3 project.

- (43) The Commission further notes that the costs associated with Measure 2 have been modified for 2023 and 2024 in the draft final performance plan. Those costs have been re-evaluated downwards in the light of the latest status of the planned ATM system investments.
- (44) On the basis of the analysis of the updated information and arguments presented in the draft final performance plan, the Commission upholds in respect of Measure 2, the conclusions set out in Implementing Decision (EU) 2023/1336. It is clear that the inclusion of any costs pertaining to the future new ATM system, either on the basis of the SAS3 project or any alternative technical solution to be selected by skeyes, would be premature, given that the related investment decision has not been made and the investment is not planned before the end of RP4. Furthermore, the Commission reiterates its observation that only the depreciation costs and cost of capital directly incurred for investments into the upgrade or replacement of an ATM system are to be taken into account to justify deviations from Union-wide cost-efficiency performance targets.
- (45) Therefore, as regards the additional costs deemed necessary and proportionate for the achievement of capacity performance targets, the costs to be taken into account in respect of Measure 2 are those related to the depreciation costs and the cost of capital incurred for the mid-life upgrade of the ATM system of skeyes, as specified in Implementing Decision (EU) 2023/1336.

Conclusions on the capacity-related measures invoked by Belgium and Luxembourg to justify the observed deviations from the Union-wide cost-efficiency trends

- (46) In respect of the criterion set out in point 1.4(d)(i) of Annex IV to Implementing Regulation (EU) 2019/317, the Commission concludes on the basis of the findings set out in recitals 31 to 45, that the costs presented in the draft final performance plan for Measures 1 and 2 are partially necessary and proportionate for the achievement of capacity performance targets, whilst in respect of Measures 3 to 7 the presented costs are fully necessary and proportionate for the achievement of those targets.
- (47) Having regard to the analysis made by the PRB, the following table indicates the computed monetary impact of the capacity-related measures on the DUC trend for the Belgium-Luxembourg charging zone with regard to the relevant year, namely 2024:

Capacity-related measures presented in the draft final performance plan	Monetary impact on the DUC trend for the Belgium-Luxembourg charging zone for the year 2024, expressed in EUR 2017, taking into account the costs deemed by the Commission to be necessary and proportionate for the achievement of capacity targets ⁽¹⁾
Measure 1	EUR 8,2 million ⁽²⁾
Measure 2	EUR 0,3 million ⁽³⁾
Measure 3	EUR 4,3 million
Measure 4	EUR 0,3 million
Measure 5	EUR 4,7 million
Measure 6	EUR 1,4 million
Measure 7	EUR 0,3 million
Total	EUR 19,5 million

⁽¹⁾ Calculations based on the updated inflation index used in the draft final performance plan.

⁽²⁾ Revised amount reflecting the share of the costs of Measure 1 which was found by the Commission to be necessary and proportionate for the achievement of the local capacity performance targets, in accordance with recitals 38 and 39.

⁽³⁾ Amount reflecting the share of the costs of Measure 2 which was found by the Commission to be necessary and proportionate for the achievement of the local capacity performance targets, in accordance with recital 56. That amount has not changed after Implementing Decision (EU) 2023/1336.

- (48) The capacity-related measures indicated in the table in recital 52 represented a total excess of EUR 19,5 million expressed in EUR 2017 in relation to the 2024 cost base. Consequently, the observed deviation of EUR 19,4 million expressed in EUR 2017 from the Union-wide long-term DUC trend, outlined in recital 32, should be considered as justified entirely by the additional determined costs related to the capacity-related measures presented in the draft final performance plan.
- (49) Therefore, the Commission concludes that the criterion set out in point 1.4(d)(i) of Annex IV to Implementing Regulation (EU) 2019/317 is fulfilled.

Conclusion on the assessment of the corrective measures designed to achieve consistency of the revised cost-efficiency performance targets with the Union-wide cost-efficiency performance targets

- (50) On the basis of the findings set out in recitals 6 to 49, the Commission concludes that the corrective measures set out in the draft final performance plan result in a reduction of the determined costs for the Belgium-Luxembourg charging zone. Therefore the revised cost-efficiency performance targets should be considered consistent with the Union-wide performance targets for RP3.

Review of the incentive schemes referred to in Article 11 of Implementation Regulation (EU) 2019/317

- (51) In Implementing Decision (EU) 2023/1336, the Commission concluded that Luxembourg is to revise its incentive schemes for achieving *en route* and terminal capacity targets in such a way that the maximum financial disadvantage stemming from those incentive schemes has a material impact on the revenue at risk. The Commission notes that Luxembourg has nonetheless kept its incentive schemes unchanged in the draft final performance plan.
- (52) Therefore, the Commission concludes that the *en route* and terminal capacity incentive schemes set out by Luxembourg in the draft final performance plan continue to give rise to concerns. The Commission therefore reiterates its view that Luxembourg should revise, in connection with the adoption of its final performance plan pursuant to Article 16, point (a) of Implementing Regulation (EU) 2019/317, its incentive schemes for achieving *en route* and terminal capacity targets in order for the maximum financial disadvantage stemming from those incentive schemes to be at a level having a material impact on the revenue at risk, as required by Article 11(3), point (a) of Implementing Regulation (EU) 2019/317. In the Commission's view, that revision should lead to a maximum financial disadvantage equal to or higher than 1 % of the annual determined costs.

CONCLUSION

- (53) The corrective measures included in the draft final performance plan in respect of the revised cost-efficiency performance targets for the Belgium-Luxembourg charging zone should be found to be compliant with Implementing Decision (EU) 2023/1336. Following those corrective measures the revised cost-efficiency performance targets should be considered consistent with the corresponding Union-wide performance targets for RP3.
- (54) The Commission notes that Luxembourg has, however, not addressed, in connection with its draft final performance plan, the following issues relating to the findings made by the Commission during the detailed examination referred to in recital 1:
- (a) incorrect application of the respective legal provisions governing traffic risk sharing, cost risk sharing and incentive schemes in respect of MUAC;
 - (b) incorrect financing arrangements for the costs incurred for services provided by MUAC in cross-border areas;
 - (c) incorrect level of the maximum financial disadvantages in the incentive schemes of Luxembourg supporting the achievement of *en route* and terminal capacity targets, referred to in recitals 51 and 52.

- (55) Therefore, the Commission concludes that Luxembourg should address, without delay, the findings set out in recital 54. This conclusion is without prejudice to any infringement proceedings which the Commission may undertake in respect of those findings,

HAS ADOPTED THIS DECISION:

Article 1

The corrective measures, set out in the draft final performance plan submitted by Luxembourg to the Commission on 3 November 2023 pursuant to Regulation (EC) No 549/2004, in respect of its cost-efficiency performance targets for the third reference period are compliant with Implementing Decision (EU) 2023/1336.

The performance targets contained in the draft final performance plan submitted by Luxembourg on 3 November 2023, and set out in the Annex to this Decision, are consistent with the Union-wide performance targets for the third reference period set out in Commission Implementing Decision (EU) 2021/891 ⁽³⁾.

Article 2

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 13 December 2023.

For the Commission
Adina-Ioana VĂLEAN
Member of the Commission

⁽³⁾ 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, ELI: http://data.europa.eu/eli/dec_impl/2021/891/oj).

ANNEX

Performance targets included in the draft final performance plan submitted by Luxembourg 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

Luxembourg	Targets on the effectiveness of safety management , expressed as a level of implementation, ranging from European Aviation Safety Agency (EASA) level A to D		
Air navigation service provider concerned	Safety management objective	2023	2024
ANA Luxembourg	Safety policy and objectives	C	C
	Safety risk management	D	D
	Safety assurance	C	C
	Safety promotion	C	C
	Safety culture	C	C
MUAC	Safety policy and objectives	C	C
	Safety risk management	D	D
	Safety assurance	C	C
	Safety promotion	C	C
	Safety culture	C	C

KEY PERFORMANCE AREA OF ENVIRONMENT

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

Luxembourg	2023	2024
Targets in the key performance area of environment , expressed as the average horizontal <i>en route</i> flight efficiency of the actual trajectory	3,00 %	3,00 %

KEY PERFORMANCE AREA OF CAPACITY

Average *en route* ATFM delay in minutes per flight

Luxembourg	2023	2024
Targets in the key performance area of capacity , expressed in minutes of ATFM delay per flight	0,17	0,17

KEY PERFORMANCE AREA OF COST-EFFICIENCY

Determined unit cost for *en route* air navigation services

<i>En route</i> charging zone of Belgium-Luxembourg	2014 baseline value	2019 baseline value	2020 -2021	2022	2023	2024
<i>En route</i> cost-efficiency targets, expressed as determined <i>en route</i> unit cost (in real terms in EUR 2017)	EUR 81,78	EUR 83,26	EUR 189,52	EUR 104,47	EUR 90,34	EUR 80,26