# COMMISSION IMPLEMENTING DECISION (EU) 2017/259

## of 13 February 2017

## concerning certain revised performance targets and appropriate measures included in the national or functional airspace block plans submitted pursuant to Regulation (EC) No 549/2004 of the European Parliament and of the Council that are not adequate in respect to the Union-wide performance targets for the second reference period and setting out obligations for corrective measures

*(notified under document C(2017) 729)*

**(Only the Dutch, English, French, German, Greek, Italian and Maltese texts are 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 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)(c) thereof,

Having regard to Commission Implementing Regulation (EU) No 390/2013 of 3 May 2013 laying down a performance scheme for air navigation services and network functions ([2]), and in particular Article 15(3) thereof,

Whereas:

(1) Pursuant to Regulation (EC) No 549/2004, the Member States are to adopt national or functional airspace block ('FAB') plans, including binding national targets or targets at the level of FABs, ensuring consistency with the Union-wide performance targets. That Regulation also provides that the Commission is to assess the consistency of those targets on the basis of the assessment criteria referred to in point (d) of its Article 11(6). Detailed rules in this regard have been set out in Implementing Regulation (EU) No 390/2013.

(2) Union-wide performance targets in the key performance areas of safety, environment, capacity and cost-efficiency for the second reference period (2015-2019) were adopted by Commission Implementing Decision 2014/132/EU ([3]).

(3) On 2 March 2015, the Commission adopted Implementing Decision (EU) 2015/347 ([4]) concerning the inconsistency of certain targets included in the initial performance plans with the Union-wide performance targets as well as setting out recommendations to revise those targets. This Decision was addressed to Belgium, Bulgaria, Czech Republic, Germany, Greece, Spain, France, Croatia, Italy, Cyprus, Luxembourg, Hungary, Malta, the Netherlands, Austria, Portugal, Romania, Slovenia and the Slovak Republic and required revisions of targets in the key performance areas of capacity and/or cost-efficiency.

(4) Belgium, Bulgaria, Czech Republic, Germany, Greece, Spain, France, Croatia, Italy, Cyprus, Luxembourg, Hungary, Malta, the Netherlands, Austria, Portugal, Romania, Slovenia and the Slovak Republic all submitted by 2 July 2015 revised national or functional airspace block plans including revised performance targets. Spain and Portugal submitted an amendment to the functional airspace block plan with further revised performance targets on 4 February 2016.

([1]) OJ L 96, 31.3.2004, p. 1.
([2]) OJ L 128, 9.5.2013, p. 1.
([3]) Commission Implementing Decision 2014/132/EU of 11 March 2014 setting the Union-wide performance targets for the air traffic management network and alert thresholds for the second reference period 2015-19 (OJ L 71, 12.3.2014, p. 20).
([4]) Commission Implementing Decision (EU) 2015/347 of 2 March 2015 concerning the inconsistency of certain targets included in the national or functional airspace block plans submitted pursuant to Regulation (EC) No 549/2004 of the European Parliament and of the Council with the Union-wide performance targets for the second reference period and setting out recommendations for the revision of those targets (OJ L 60, 4.3.2015, p. 48).

(5) The Performance Review Body, which is charged with assisting the Commission in the implementation of the performance scheme pursuant to Article 3 of Implementing Regulation (EU) No 390/2013, submitted its assessment report to the Commission on 15 October 2015.

(6) The assessment of the revised performance targets regarding their consistency with the Union-wide performance targets has been done by using the same assessment criteria and methodologies that were used in the assessment of the initially submitted performance targets and by considering the appropriate measures, if any, taken by Member States concerned to ensure consistency of performance targets with the Union-wide performance targets.

(7) Concerning the key performance area of capacity, the consistency of the revised targets submitted by the Member States for *en route* air traffic flow management (ATFM) delay has been assessed, in accordance with the principle laid down in point 4 of Annex IV to Implementing Regulation (EU) No 390/2013, by using the respective FAB reference values for capacity that, when applied, ensure at Union level that the Union-wide performance target is met, calculated by the Network Manager and set out in the Network Operations Plan (2014-2018/2019) in its most recent version ('Network Operations Plan'). That assessment has demonstrated that the targets submitted by Belgium, Luxembourg, France, Germany and the Netherlands as regards FABEC and by Cyprus, Greece, Italy and Malta as regards Blue Med FAB have not been revised and are not in conformity with the respective reference values and therefore not consistent with the relevant Union-wide performance target. In addition, the appropriate measures taken by Member States listed in this recital are insufficient since they lack concrete timelines with specific milestones and, thus, not adequate in respect to the revision of the targets to be achieved.

(8) Concerning the key performance area of cost-efficiency, the targets expressed in *en route* determined unit costs submitted by the Member States have been assessed, in accordance with the principles laid down in point 5, in conjunction with point 1, of Annex IV to Implementing Regulation (EU) No 390/2013, by taking account of the trend of *en route* determined unit costs over the second reference period and the combined period of the first and the second reference period (2012-2019), the number of service units (traffic forecast) and the level of *en route* determined unit costs in comparison to Member States having a similar operational and economic environment. That assessment has demonstrated that the revised targets submitted by France, Germany and the Netherlands as regards FABEC are still not consistent with the relevant Union-wide performance target, for the below reasons. In addition, the appropriate measures taken by Member States listed in this recital are insufficient since they lack concrete timelines with specific milestones and, thus, not adequate in respect to the revision of the targets to be achieved.

(9) As regard France, its revised targets are based on a planned reduction of its *en route* determined unit costs over the second reference period by 1,1 % per year on average. This is significantly below the targeted reduction of the average Union-wide *en route* determined unit costs over the second reference period (– 3,3 % per year). Also over the combined period of the first and the second reference period the planned *en route* determined unit costs do not decrease in line with the Union-wide trend (– 0,4 %, compared to – 1,7 %). The revised target for 2019 is based on planned *en route* determined unit costs that are equal to the average *en route* determined unit costs of the Member States having a similar operational and economic environment to the one of France but around 22 % above the Union-wide performance target in 2019. Furthermore, the planned *en route* determined unit costs in 2015 are 7,9 % above the actual costs in 2014. In addition, in revising its targets, France did not revise downwards its *en route* determined costs and only revised upwards the forecasted traffic expressed in service units.

(10) As regard Germany, its revised targets are based on a planned reduction of its *en route* determined unit costs over the second reference period by 3,5 % per year on average. This is slightly above the targeted reduction of the average Union-wide *en route* determined unit costs over the second reference period (– 3,3 % per year). However, over the combined period of the first and the second reference period the *en route* determined unit costs do not decrease in line with the Union-wide trend (– 0,8 %, compared to – 1,7 %). The target for 2019 is based on planned *en route* determined unit costs in 2019 that are substantially above (+ 12,6 %) the average *en route* determined unit costs of the Member States having a similar operational and economic environment to the one of Germany and around 34 % above the Union-wide performance target in 2019. Furthermore, the planned *en route* determined unit costs in 2015 are 3,9 % above the actual costs in 2014.

(11) As regard the Netherlands, its revised targets are based on a planned reduction of its *en route* determined unit costs over the second reference period by only 0,4 % per year on average. This is significantly below the targeted reduction of the average Union-wide *en route* determined unit costs over the second reference period (– 3,3 % per year). Also over the combined period of the first and the second reference period the planned *en route* determined

unit costs do not decrease in line with the Union-wide trend (– 0,2 %, compared to – 1,7 %). The revised target for 2019 is based on planned *en route* determined unit costs that are slightly above (+ 1,3 %) the average *en route* determined unit costs of the Member States having a similar operational and economic environment to the one of the Netherlands and around 19 % above the Union-wide performance target in 2019. Furthermore, the planned *en route* determined unit costs in 2015 are 3,4 % above the actual costs in 2014. In addition, in revising its targets, the Netherlands did not revise downwards its *en route* determined costs, nor did it revise the forecasted traffic expressed in service units.

(12) It is therefore appropriate for the Commission to issue a Decision concerning the need for corrective measures to be adopted by the Member States concerned to ensure that their national supervisory authorities propose revised performance targets, which address the remaining inconsistencies identified in this Decision. Suggestions for such corrective measures should be specified, in accordance with Article 15(4) of Implementing Regulation (EU) No 390/2013, in light of the reasons for the shortcomings identified and the relevant Union-wide performance targets. Pursuant to Regulation (EC) No 549/2004 and Implementing Regulation (EU) No 390/2013, the Member States concerned should, in addition to adopting corrective measures, communicate to the Commission the elements demonstrating their consistency with this Decision. Both should be communicated to the Commission within two months of the notification of this Decision.

(13) In order to address the inconsistencies in relation to the key performance area of capacity, it should be ensured that the corrective measures lead to revised performance targets that are in line with the FAB reference values for capacity set out in the Network Operations Plan. In particular, this concerns the following area control centres (ACC): Maastricht UAC (Germany, Belgium, Luxembourg, the Netherlands), Bordeaux, Brest, Marseille and Reims (France) as regards FABEC; Nicosia (Cyprus), Athens and Makedonia (Greece) as regards Blue Med FAB.

(14) In order to address the inconsistencies in relation to the key performance area of cost-efficiency, it should be ensured that the corrective measures lead to revised performance targets.

(15) The Single Sky Committee did not deliver an opinion. An implementing act was deemed to be necessary and the chair submitted the draft implementing act to the appeal committee for further deliberation. The appeal committee did not deliver an opinion,

HAS ADOPTED THIS DECISION:

*Article 1*

The performance targets concerning the key performance areas of capacity and cost-efficiency, listed in Annex I, and the appropriate measures included in the revised performance plans submitted pursuant to Regulation (EC) No 549/2004 are not adequate in respect to the Union-wide performance targets for the second reference period set out in Implementing Decision 2014/132/EU.

*Article 2*

Belgium, Luxembourg, France, Germany and the Netherlands as regards FABEC; Cyprus, Italy, Greece and Malta as regards Blue Med FAB shall take corrective measures regarding their performance targets in the key performance area of capacity, taking account of the suggestions set out in Part A of Annex II.

*Article 3*

France, Germany and the Netherlands as regards FABEC shall take corrective measures regarding their performance targets in the key performance area of cost-efficiency, taking account of the suggestions set out in Part B of Annex II.

*Article 4*

This Decision is addressed to the Kingdom of Belgium, the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, the Republic of Malta and the Kingdom of the Netherlands.

Done at Brussels, 13 February 2017.

*For the Commission*
Violeta BULC
*Member of the Commission*

*ANNEX I*

**Performance targets in the key performance areas of capacity and cost-efficiency included in the revised national or functional airspace block plans submitted pursuant to Regulation (EC) No 549/2004 that are not adequate in respect to the Union-wide performance targets for the second reference period**

**Key performance area of capacity**

*En route* air traffic flow management (ATFM) delay in min/flight

| Member State | FAB | FAB target *en route* capacity | | | | |
|---|---|---|---|---|---|---|
| | | 2015 | 2016 | 2017 | 2018 | 2019 |
| Belgium/Luxembourg | FABEC | **0,48** | **0,49** | **0,48** | **0,47** | **Consistent (0,43)** |
| France | | | | | | |
| Germany | | | | | | |
| The Netherlands | | | | | | |
| *[Switzerland]* | | | | | | |
| Cyprus | Blue Med | **0,35** | **0,36** | **0,37** | **0,37** | **0,38** |
| Greece | | | | | | |
| Italy | | | | | | |
| Malta | | | | | | |

**Key performance area of cost-efficiency**

Legend:

| Key | Item | Units |
|---|---|---|
| (A) | Total *en route* Determined Costs | (in nominal terms and in national currency) |
| (B) | Inflation rate | (%) |
| (C) | Inflation index | (100 = 2009) |
| (D) | Total *en route* Determined Costs | (in real 2009 prices and in national currency) |
| (E) | Total *en route* Services Units | (TSUs) |
| (F) | *En route* Determined Unit Cost (DUC) | (in real 2009 prices and in national currency) |

**FABEC**

| Charging Zone: France — Currency: EUR | | | | | |
|---|---|---|---|---|---|
| | 2015 | 2016 | 2017 | 2018 | 2019 |
| (A) | 1 290 640 175 | 1 296 576 851 | 1 328 676 964 | 1 340 098 296 | 1 343 820 915 |
| (B) | 0,1 % | 0,8 % | 1,1 % | 1,2 % | 1,5 % |
| (C) | 108,2 | 109,1 | 110,3 | 111,7 | 113,3 |

| Charging Zone: France — Currency: EUR | | | | | |
|---|---|---|---|---|---|
| | 2015 | 2016 | 2017 | 2018 | 2019 |
| (D) | 1 192 625 922 | 1 188 249 284 | 1 204 538 004 | 1 200 012 085 | 1 186 146 439 |
| (E) | 18 662 000 | 19 177 000 | 19 300 000 | 19 526 000 | 19 759 000 |
| (F) | **63,91** | **61,96** | **62,41** | **61,46** | **60,03** |

| Charging Zone: Germany — Currency: EUR | | | | | |
|---|---|---|---|---|---|
| | 2015 | 2016 | 2017 | 2018 | 2019 |
| (A) | 1 069 142 223 | 1 039 589 465 | 1 036 418 901 | 1 036 540 416 | 1 035 149 924 |
| (B) | 1,4 % | 1,6 % | 1,7 % | 1,7 % | 1,7 % |
| (C) | 109,9 | 111,7 | 113,6 | 115,5 | 117,5 |
| (D) | 972 517 385 | 930 743 590 | 912 394 284 | 897 248 041 | 881 066 280 |
| (E) | 12 801 000 | 13 057 000 | 13 122 000 | 13 242 000 | 13 365 000 |
| (F) | **75,97** | **71,28** | **69,53** | **67,76** | **65,92** |

| Charging Zone: Netherlands — Currency: EUR | | | | | |
|---|---|---|---|---|---|
| | 2015 | 2016 | 2017 | 2018 | 2019 |
| (A) | 184 921 748 | 184 103 594 | 187 392 113 | 194 163 267 | 198 569 117 |
| (B) | 1,00 % | 1,24 % | 1,44 % | 1,49 % | 1,51 % |
| (C) | 110,6 | 112,0 | 113,6 | 115,3 | 117,0 |
| (D) | 167 178 324 | 164 400 112 | 164 961 239 | 168 412 538 | 169 672 018 |
| (E) | 2 806 192 | 2 825 835 | 2 845 616 | 2 874 072 | 2 902 813 |
| (F) | **59,57** | **58,18** | **57,97** | **58,60** | **58,45** |

*ANNEX II*

## Suggestions for corrective measures

A. **Key performance area of capacity**

The following are suggestions for corrective measures in the key performance area of capacity at the level of an Area Control Centre (ACC) to address the underlying reasons for lack of capacity.

*BlueMed FAB*

**Cyprus (ACC Nicosia)**

Reasons for lack of capacity: Inflexible use of staff, low sector capacities, lack of flexibility in sector configurations, lack of flexibility in opening scheme, failure to fully implement capacity enhancement measures planned in the capacity plan.

Suggestions for corrective measures:

1. Expediting the implementation of a new air navigation services provider (ANSP) organisation;
2. Re-planning performance to provide the required capacity by considering:
   (a) implementation of re-sectorisation proposals;
   (b) sector capacities re-evaluations;
3. Implementation of:
   (a) flexible rostering allowing better alignment between traffic demand and sector opening times;
   (b) flexible configurations opening, according to the traffic flows;
4. Improved air traffic flow and capacity management (ATFCM) techniques.

In its performance plan Cyprus indicated that improvements in overall performance would not occur until the institutional changes needed for the establishment of a new air navigation services provider ANSP organisation were in place and therefore it is suggested that Cyprus establishes these changes as quickly as possible.

**Greece (ACCs Athens and Makedonia)**

Reasons for lack of capacity: Lack of investments in air traffic control (ATC), lack of ATCO recruitment.

Suggestion for corrective measures:

1. Implementing measures to improve performance by considering separation of the ANSP entity from the government;
2. Re-organisation of the ANSP to allow timely development and implementation of operational plans and staff recruitment;
3. Building a comprehensive restructuring plan to implement new techniques to improve flexibility, seasonal configuration changes and flexible rostering.

*FABEC*

**Germany, Belgium, Luxembourg, the Netherlands (ACC Maastricht UAC)**

Reasons for lack of capacity: Lack of capacity at sector group level following unexpected changes in the traffic patterns in 2015, capacity gains deriving from FABEC airspace projects are unlikely to be delivered during the planning period.

Suggestions for corrective measures:

1. Enhanced ATCO cross-training allowing better alignment between traffic demand and sector opening times at sector group level;

2. Development and implementation of re-sectorisation proposals;

3. Implementation of planned ATM system enhancements.

**France (ACC Bordeaux)**

Reasons for lack of capacity: Training and implementation of a new ATM system — ERATO.

Suggestions for corrective measures:

1. Improved ATFCM techniques;

2. Flexible transition plan for the new ATM system, coordinated with Network Manager, to include appropriate mitigation measures to reduce disruption.

**France (ACC Brest)**

Reasons for lack of capacity: Training and implementation of a new ATM system — ERATO, sectorisation and sector opening schemes could be better adapted to traffic demand.

Suggestions for corrective measures:

1. Implementation of re-sectorisation proposals;

2. Flexible rostering allowing better alignment between traffic demand and sector opening times;

3. Flexible configurations opening, according to the traffic flows;

4. Improved ATFCM techniques.

**France (ACC Marseille)**

Reasons for lack of capacity: Lack of capacity on weekends due to non-adapted sector opening schemes, training and implementation of a new ATM system — 4Flight (2017-2019).

Suggestions for corrective measures:

1. Flexible rostering allowing better alignment between traffic demand and sector opening times, especially at weekends;

2. Flexible configurations opening, according to the traffic flows;

3. Improved ATFCM techniques;

4. Actions for route design and sectorisation, with focus at the interface with Barcelona ACC;

5. Flexible transition plan for the new ATM system, coordinated with Network Manager, to include appropriate mitigation measures.

**France (ACC Reims)**

Reasons for lack of capacity: Training and implementation of a new ATM system — 4Flight (2017-2019), traffic distribution with higher traffic demand on shortest routes, lack of predictability of traffic demand in certain sectors.

Suggestions for corrective measures:

1. Actions for route design and sectorisation;

2. Flexible rostering allowing better alignment between traffic demand and sector opening times;

3. Flexible configurations opening, according to the traffic flows;

4. Improved ATFCM techniques;

5. Flexible transition plan for the new ATM system, coordinated with Network Manager, to include appropriate mitigation measures.

The ATM system upgrades in France are required for long-term improvements and it is therefore suggested that France improves performance by better planning of phased implementation of the new system.

B. **Key performance area of cost-efficiency**

The following are suggestions for corrective measures in the key performance area of cost-efficiency that can be implemented in the short run, taking into account the interdependencies with the remaining key performance areas as well as essential system level investment capabilities. The suggestions are focused on three improvement considerations, namely the traffic forecast, rate of return on equity and interest rate on debt.

**France**

Suggestions for corrective measures:

1. Traffic: In July 2015, compared to the information provided in the initial performance plan, France already revised upwards the traffic planned over RP2 (by + 2,9 % on average), bringing the planned traffic forecast in line with the low-case Statfor February 2015 scenario. However, based on the actual 2015 traffic and the latest February 2016 forecast provided by Statfor, it is suggested that the planned traffic be further revised upwards to reflect the latest available information.

2. Interest rate on debt: France assumed an interest rate on debts of 2,7 % for its ANSP (DSNA) over RP2. However, the monetary conditions have significantly evolved. Currently, long-term 'risk-free' government bond interest rates for France are historically low and based on the European Central Bank data, the harmonised long-term rate is below 1 %. Moreover, DSNA is not a corporatised entity and its debt (and associated risk premium) can be more closely assimilated to the long-term government benchmark rate. It is therefore suggested that France uses a lower interest rate to compute DSNA cost of capital.

Adjusting the planned traffic for 2018 and 2019 and capping the interest rate on debt, for example, at 1,5 % for the years 2018 and 2019 would result in an *en route* determined unit cost trend over the second reference period of – 2,2 % per year which is closer to the Union-wide trend (– 3,3 % per year) and an *en route* determined unit cost trend over the combined period of the first and the second reference period of – 1,1 % per year which is closer to the Union-wide target (– 1,7 % per year).

**Germany**

Suggestions for corrective measures:

Traffic: In July 2015, compared to the information provided in the initial performance plan, Germany already revised upwards the traffic planned over RP2 (by + 2,7 % on average) bringing the planned traffic forecast in line with the low Statfor February 2015 scenario. However, based on actual 2015 traffic and the latest forecast provided by Statfor (February 2016), it is suggested that the planned traffic be further revised upwards to reflect the latest available information.

Apart from this short-term measure, it is recognised that Germany has significantly reinvested in its ANSP for the second reference period. However, there is a risk of significant cost increases at the end of the second reference period and it is therefore suggested that Germany considers long-term measures to address the underlying cost base issues that would result, for example, in an *en route* determined unit cost trend over the combined period of the first and the second reference period of – 1,5 % per year which is closer to the Union-wide target (– 1,7 % per year).

**The Netherlands**

Suggestions for corrective measures:

1. Traffic: In July 2015, compared to the information provided in the initial performance plan, the Netherlands did not revise the traffic growth planned over RP2, which was based on the Statfor February 2015 low scenario. Based on the actual 2015 traffic and the latest forecast provided by Statfor (February 2016), it is suggested that the planned traffic be revised upwards to reflect the latest available information.

2. Interest rate on debt: The Netherlands assumed an interest rate on debts of 3,2 % for 2019 for its ANSP (LVNL). However, the monetary conditions have significantly evolved. Currently, long term interest rates for the Netherlands are historically low and, based on the European Central Bank data, the harmonised long-term rate is well below 1 %. It is therefore suggested that the Netherlands use a marginally lower interest rate to compute LVNL cost of capital.

Adjusting the planned traffic for 2018 and 2019 and capping the interest rate on debt, for example, at 3,0 % for the year 2019 would result in an *en route* determined unit cost trend over the second reference period of – 2,5 % per year which is closer to the Union-wide trend (– 3,3 % per year) and an *en route* determined unit cost trend over the combined period of the first and the second reference period of – 1,5 % per year which is closer to the Union-wide target (– 1,7 % per year).