

COMMISSION IMPLEMENTING DECISION (EU) 2016/2296**of 16 December 2016****setting up the independent group of experts designated as Performance Review Body of the single European sky**

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(2) thereof,

Whereas:

- (1) The work of the Performance Review Body of the single European sky makes a positive contribution towards improving the European air traffic management (ATM) network, in particular by providing the Commission with impartial, evidence-based recommendations on the performance of air navigation services at Union and local levels as well as of network functions. The assistance provided by the Performance Review Body is indispensable to help attain the objectives of completing the single European sky, for which the performance scheme, established in accordance with Commission Implementing Regulation (EU) No 390/2013 ⁽²⁾, including further necessary developments in the light of experiences made during its application so far, and the closely linked charging scheme, established in accordance with Commission Implementing Regulation (EU) No 391/2013 ⁽³⁾, are key drivers, and of the Commission's Aviation Strategy more generally ⁽⁴⁾.
- (2) The designation of the present Performance Review Body will end on 31 December 2016, pursuant to Commission Implementing Decision 2014/672/EU ⁽⁵⁾. The Commission should designate a new Performance Review Body to continue assisting the Commission and the national supervisory authorities after that date. That designation should be for the period starting on 1 January 2017 and ending on 31 December 2024, so as to provide for a sufficiently long period, thus assuring continuity and stability, while also providing for a fixed term which is consistent with the reference periods, as required by Article 3(1) of Implementing Regulation (EU) No 390/2013.
- (3) Considering that that period extends from the second to the third reference period, any renewal of membership of the Performance Review Body should be such as to ensure a smooth transition and continuity of the experience and knowledge available.
- (4) With a view to strengthening the impartiality of the Performance Review Body an independent group of experts should be set up to assist in the implementation of the performance scheme and that group of experts should be designated as the Performance Review Body.
- (5) Article 11(2) of Regulation (EC) No 549/2004 specifies in a general manner what the role of the Performance Review Body is in the context of the performance scheme. Article 3 of Implementing Regulation (EU) No 390/2013 provides further details as regards its tasks and activities, in a non-exhaustive manner. Article 6(1) of Regulation (EU) No 598/2014 of the European Parliament and of the Council ⁽⁶⁾ also attributes certain tasks. For the sake of clarity and completeness, in accordance with those provisions, all tasks of the Performance Review Body should now be listed. The Performance Review Body should assist the Commission by providing

⁽¹⁾ OJ L 96, 31.3.2004, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 390/2013 of 3 May 2013 laying down a performance scheme for air navigation services and network functions (OJ L 128, 9.5.2013, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) No 391/2013 of 3 May 2013 laying down a common charging scheme for air navigation services (OJ L 128, 9.5.2013, p. 31).

⁽⁴⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: An Aviation Strategy for Europe COM(2015) 598 final.

⁽⁵⁾ Commission Implementing Decision 2014/672/EU of 24 September 2014 on the extension of the designation of the Performance Review Body of the single European sky (OJ L 281, 25.9.2014, p. 5).

⁽⁶⁾ Regulation (EU) No 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC (OJ L 173, 12.6.2014, p. 65).

advice, expertise and other services. For this purpose, it should coordinate with the national supervisory authorities. It should also assist the national supervisory authorities on their request.

- (6) With a view to ensuring the efficient and effective functioning of the Performance Review Body, it should be supported by a Secretariat provided by the Commission.
- (7) The members of the Performance Review Body should be highly qualified specialists, with appropriate competence in the key performance areas. The members, other than the chair, should be selected through a call for applications and a selection procedure, respecting the principles of objectivity, equal opportunities and transparency and providing for the detection of actual or potential conflicts of interests, and they should be appointed in their personal capacity. Considering his or her particular tasks and responsibilities, the chair should be appointed by the Commission in accordance with its internal administrative arrangements, while respecting those principles and providing for such detection.
- (8) In light of their qualifications and expertise and the requirements in terms of impartiality and absence of conflicts of interest, the fact that they are appointed in their personal capacity and the importance of their work, those members, other than the chair, should receive remuneration beyond reimbursement of expenses, which should be proportionate to the tasks attributed to them. The chair should be remunerated and reimbursed in accordance with the internal administrative arrangements of the Commission.
- (9) It is therefore also appropriate that the activities of the Performance Review Body, as well as the costs of its administrative and technical support, are financed from the budget of the Union.
- (10) The work of the Performance Review Body necessitates access to the performance-related data referred to in Implementing Regulation (EU) No 390/2013, available within Eurocontrol. Therefore, the Commission should establish appropriate arrangements with Eurocontrol to ensure access, including the collection, validation, pre-analysis and provision of this data. Those arrangements need to acknowledge the pan-European dimension of performance review, in accordance with the Council Decision (EU) 2015/2394 ⁽¹⁾.
- (11) In order to ensure the proper functioning of the Performance Review Body, appropriate rules should be set out on its rules of procedure and on its reporting to the Commission. Rules on disclosure of information should also be laid down.
- (12) Personal data should be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾.
- (13) This Decision should no longer apply once the period of the designation of the Performance Review Body, as set out in this Decision, has ended.
- (14) The measures provided for in this Decision are in accordance with the opinion of the Single Sky Committee established by Article 5(1) of Regulation (EC) No 549/2004,

HAS ADOPTED THIS DECISION:

Article 1

Designation of the Performance Review Body

1. The independent group of experts on the performance of air navigation services and network functions in the single European sky is hereby set up for the period from 1 January 2017 until 31 December 2024.

⁽¹⁾ Council Decision (EU) 2015/2394 of 8 December 2015 on the position to be taken by the Member States on behalf of the European Union, concerning the decisions to be adopted by the Permanent Commission of Eurocontrol, with regard to the roles and tasks of Eurocontrol and on centralised services (OJ L 332, 18.12.2015, p. 136).

⁽²⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

2. The group of experts referred to in paragraph 1 is hereby designated as the Performance Review Body of the single European sky, for the period from 1 January 2017 until 31 December 2024.

Article 2

Tasks

The tasks of the Performance Review Body shall be:

- (a) to assist the Commission in the implementation of the performance scheme, in particular as regards the activities listed in Article 3(3) and (6)(a) of Implementing Regulation (EU) No 390/2013;
- (b) to provide ad hoc information or reports on performance-related issues at the request of the Commission, in accordance with Article 3(4) of Implementing Regulation (EU) No 390/2013;
- (c) to assist the Commission, on its request, in defining the modalities of accessing performance-related data referred to in Articles 21 and 22 of Implementing Regulation (EU) No 390/2013;
- (d) to assist the national supervisory authorities on their request in the implementation of the performance scheme by providing an independent view of performance issues and determining ranges of indicative values for target setting, in accordance with Articles 3(6)(b) and (c) of Implementing Regulation (EU) No 390/2013;
- (e) to support the competent authorities on their request in assessing the noise situation at airports for which they are responsible, in accordance with Article 6(1) of Regulation (EU) No 598/2014.

Article 3

Advisory role

1. The Commission may consult the Performance Review Body on any matter relating to the performance of air navigation services and network functions in the single European sky.
2. The Performance Review Body may, at its own initiative, report and make recommendations to the Commission for improvement of the performance scheme, in accordance with Article 3(5) of Implementing Regulation (EU) No 390/2013.

Article 4

Composition and appointment of members and chair

1. The Performance Review Body shall be composed of nine members, including its chair.
2. Members, other than the chair, shall be individuals appointed in their personal capacity following their selection based on a call for applications.
3. Members, other than the chair, shall be appointed by the Director-General of the Commission's Directorate-General for Mobility and Transport, on behalf of the Commission, from specialists with appropriate competence who have responded to the call for applications, after consultation of Member States on the intended appointments. The selection and eligibility criteria shall include the criteria set out in the Annex.

4. The Director-General of the Commission's Directorate-General for Mobility and Transport, on behalf of the Commission, shall appoint, in accordance with its administrative arrangements and after consultation of Member States, a specialist with appropriate competence as the chair of the Performance Review Body. The chair shall act as the representative of the Performance Review Body and preside over its meetings.
5. The term of office of the chair and the other members shall be a period of 2 years, and may be renewed twice. No more than two thirds of the members shall be renewed at the same time.
6. A member who is no longer capable of contributing effectively to the Performance Review Body's deliberations, who resigns or who does not comply with the conditions set out in Articles 5 and 6 may be replaced, in accordance with paragraphs 2, 3 and 4, as appropriate, for the remainder of the term of office of that member.
7. The Director-General of the Commission's Directorate-General for Mobility and Transport, on behalf of the Commission, may establish a reserve list of suitable candidates that may be used to appoint replacements of members, other than the chair. It shall ask applicants for their consent before including their names on the reserve list.
8. The names of individuals appointed as members of the Performance Review Body shall be published in the *Official Journal of the European Union*.
9. Personal data shall be collected, processed and published in accordance with Regulation (EC) No 45/2001.

Article 5

Membership principles

1. When performing the duties under this Decision, the Performance Review Body and its members shall be impartial and act independently of any external influence and in the public interest. Members shall sign a statement to this effect, by which they undertake to exercise their functions within the Performance Review Body to this end.
2. Members shall not delegate their responsibilities to any other person.
3. Individuals applying to be appointed as members shall disclose any circumstances that could give rise to a conflict of interest by submitting a declaration of interests, as set out in the call for applications referred to in Article 4(2). The individual to be appointed as chair shall also disclose any such circumstances in due time before his or her appointment. In that declaration, all those individuals shall disclose at least any relevant professional and financial interests and any situation where their interests may compromise or may reasonably be perceived to compromise their capacity to act impartially and in the public interest as a member of the Performance Review Body.
4. For the purposes of assessing whether there could be any conflict of interest, a number of factors shall be taken into account, including the nature, type and importance of the individual's interest, as well as the degree to which the interest may be reasonably expected to influence the individual's advice and the overall decision making process of the Performance Review Body. An interest shall be considered to be insignificant or minimal where it is unlikely to compromise or to be reasonably perceived as compromising the individual's capacity to act impartially and in the public interest when advising the Commission.
5. The Commission shall make the declaration of interests form of appointed members publicly available via a dedicated website. Technical measures shall be taken to indicate to search engines that declaration of interest forms should not appear in search results.
6. Members are subject to the obligation of professional secrecy and to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443 ⁽¹⁾ and (EU, Euratom) 2015/444 ⁽²⁾.

⁽¹⁾ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁽²⁾ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

7. Members shall sign a written declaration of confidentiality at the beginning of each term of office.

Article 6

Working method

1. Subject to prior approval by the Director-General of the Commission's Directorate-General for Mobility and Transport, on behalf of the Commission, in particular with regard to the financing of the Performance Review Body, the Performance Review Body shall adopt the following documents:

- (a) its annual work programme and annual report;
- (b) its rules of procedure;
- (c) the modalities of its cooperation with the national supervisory authorities;
- (d) the working arrangements with the air navigation service providers, airport operators, airport coordinators and air carriers referred to in Article 3(8) of Implementing Regulation (EU) No 390/2013;
- (e) a data management plan.

2. The Performance Review Body shall adopt its reports and recommendations and the documents referred to in paragraph 1 by simple majority voting.

3. For the purpose of examining specific issues relevant to its work, the Performance Review Body may set up sub-groups from among its members, on the basis of terms of reference defined by the Performance Review Body and in agreement with the Director-General of the Commission's Directorate-General for Mobility and Transport, on behalf of the Commission. Sub-groups shall be dissolved as soon as their mandate is fulfilled.

4. The Performance Review Body, as well as its sub-groups, shall meet at the premises of the Commission. However, in exceptional cases meetings may be held elsewhere.

5. The attendance of members of Performance Review Body at meetings of the Performance Review Body, as well as its sub-groups, is mandatory. Justifications shall be sent to the chair and the Secretariat in case of absence.

6. The Performance Review Body shall ensure, with the support of the Secretariat, that its methodology reflects the latest scientific standards.

Article 7

Administrative and technical support

1. The Commission shall provide the necessary administrative and technical support for the functioning of the Performance Review Body, including the Secretariat for the Performance Review Body and its sub-groups, so as to ensure its efficient and effective functioning. The Secretariat shall convene and support the plenary meetings of the Performance Review Body and shall convene the meetings of the sub-groups.

The administrative and technical support shall be provided in a cost-efficient manner ensuring the Performance Review Body's functional and technical independence when accomplishing its tasks.

2. Where Eurocontrol is identified as the appropriate data provider, the Commission shall establish appropriate arrangements with Eurocontrol for the collection, validation, pre-analysis and provision of this data and to ensure continuous access of the Performance Review Body to the performance-related data referred to in Article 21 of Implementing Regulation (EU) No 390/2013, available within Eurocontrol.

*Article 8***Reporting and transparency**

1. In accomplishing the tasks attributed to it in Article 2, the Performance Review Body shall issue reports and recommendations to the Commission.
2. The Performance Review Body shall offer the national supervisory authorities the possibility to check factual data related to the assessment and monitoring of the performance plans before issuing its reports.
3. The Commission shall publish all reports and recommendations of the Performance Review Body via a dedicated website.
4. Such publication shall not take place where the disclosure of the report or recommendation, or a part thereof, would undermine the protection of any public or private interest, as defined in Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁾.
5. The Performance Review Body shall adopt an annual report on its work, including on its cooperation with the European Aviation Safety Agency and the working arrangements with air navigation service providers, airport operators, airport coordinators and air carriers, referred to in Article 3(7) and (8) of Implementing Regulation (EU) No 390/2013, respectively, as well as the arrangement with Eurocontrol as regards the access to the performance-related data referred to in Article 7(2).
6. The Commission shall monitor the functioning of the Performance Review Body and regularly inform Member States on the progress of its work.

*Article 9***Allowances, expenses and remuneration**

1. Members of the Performance Review Body, other than the chair, shall be entitled to a special allowance of a maximum of EUR 600 in the form of a daily unit cost for each full working day. The total allowance shall be calculated and rounded upwards to the amount corresponding to the nearest half working day. The payment shall be made in euro.
2. Travel and subsistence expenses incurred by members, other than the chair, shall be reimbursed by the Commission in accordance with Commission Decision C(2007) 5858 ⁽²⁾. Those expenses shall be reimbursed within the limits of the available appropriations allocated under the annual procedure for the allocation of resources.
3. The chair of the Performance Review Body shall be remunerated and his or her travel and subsistence expenses shall be reimbursed by the Commission in accordance with its administrative arrangements.

*Article 10***Financing**

The costs of the activities carrying out the tasks referred to in Article 2, including the costs corresponding to the allowances and reimbursements of the members of the Performance Review Body referred to in Article 9, as well as the costs of the administrative and technical support referred to in Article 7, shall be financed from the budget of the

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

⁽²⁾ Commission Decision C(2007) 5858 of 5 December 2007 'Rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity'.

Union. The costs corresponding to the allowances and reimbursements referred to in Article 9(1) and (2) shall be financed in accordance with Article 204 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽¹⁾ and Article 287 of Commission Delegated Regulation (EU) No 1268/2012 ⁽²⁾.

Article 11

Repeal

Implementing Decision 2014/672/EU is repealed.

Article 12

Entry into force and application

This Decision shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2017 until 31 December 2024.

Done at Brussels, 16 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

⁽²⁾ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

ANNEX

Selection and eligibility criteria for the members of the Performance Review Body

The selection and eligibility criteria for the members of the Performance Review Body shall include the following:

- (a) proven and relevant expertise, competence and high-level professional experience of the applicant, in areas relevant to the key performance areas;
 - (b) balanced representation of competence and expertise for all key performance areas, as well as of gender and geographical origin;
 - (c) balanced representation of knowledge in areas related, but not limited to:
 - EU aviation policy and applicable legislation,
 - airline and/or airport management,
 - military mission requirements and military operations management,
 - aviation economic matters, SESAR deployment management and union funding mechanisms,
 - benchmarking, cost-benefit analysis techniques, and financial planning,
 - interdependencies between cost and the other performance areas as well as between civil and military requirements,
 - identification of safety risks and safety performance measurement,
 - emissions trading scheme (ETS) and measurement of environmental performance (addressing i.a. aviation environmental impact, fuel efficiency, CO₂ and noise emissions),
 - impact from interactions with adjoining airspace to the SES area including hot spots and flow management;
 - (d) the capability to analyse and assess interdependencies and interactions between the performance areas and to define future performance targets based on the planned operational and technological improvements;
 - (e) appropriate language skills, allowing the applicant to fully and effectively participate in the work of the Performance Review Body;
 - (f) independence and absence of conflicts of interest.
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