Consultation on revised draft Performance Plan for Air Navigation Services in Ireland for RP4

9 July 2025

IRISH AVIATION AUTHORITY
ÚDARÁS EITLÍOCHTA NA HÉIREANN

1. Executive Summary

1.1 This consultation document lays out our analysis and proposals in respect of a revised draft Performance Plan for Ireland for RP4. This consultation process is being run alongside the consultation on 2024 actual costs and 2026 Unit Rates. An online consultation meeting on both topics will be held on 29th July, at 1000 Irish Time. The deadline for written submissions is 5pm, Friday 1 August. Submissions should be sent to consultation@iaa.ie .

1.2 Section 2 summarises the process we have undertaken to date, the current draft Performance Plan, and the assessment of the PRB and subsequent decision of the European Commission. The targets for safety, capacity, and environment were found to be consistent with the Union-wide targets, but the targets for cost efficiency were found to be inconsistent. We have modelled a range of scenarios in relation to possible revisions of the draft Performance Plan, as outlined in Section 3.

1.3 As set out in Section 4, we propose to revise the draft Performance Plan in line with Scenario 1.2, as defined in Section 3, which includes a number of changes to the cost, baseline, and inflation inputs. We do not propose to change the traffic forecasts underlying the draft Performance Plan. As part of the revision, we also propose to include additional capacity targets relating to incentivising AirNav Ireland to deliver the additional ATCO and Engineer staffing levels, together with penalty-only incentive schemes to ensure that any material under-delivery will not lead to a financial reward.

1.4 Respondents are invited, in particular, to identify and motivate their preferred revision scenario, as well as outline their views in respect of the proposed additional capacity targets and incentive schemes. We will also consider any further evidence or submissions that respondents might wish to provide, including in respect of other potential changes to the draft Performance Plan, while ensuring that we comply with our obligations under the performance and charging regulation (including Article 39).

1.5 As also stated by the PRB, the IAA's position is that the assessment of whether deviations from the target cost efficiency trends are justified by the costs of capacity related measures is to be applied in the same manner as it was in RP3. On that basis, and as set out in Section 5, the capacity measures included in the draft Performance Plan justify the deviation from the short- and long-term trends (the benchmarking criterion already being met).

1.6 We do not propose to make any changes in respect of the performance targets in other KPAs, or in relation to the ATFM delay incentive schemes, which would remain as set out in the Final Decision of October 2024.

2. Background and Process for the RP4 Performance Plan

2.1 The IAA is the single fully independent civil aviation regulator for Ireland. It is responsible for the regulation of aviation safety, aviation security, and consumer interests. Specifically, with reference to the RP4 draft Performance Plan, the IAA's Economic Regulation division discharges the functions of the National Supervisory Authority ('NSA') under the performance and charging schemes of the Single European Sky (SES).[1] The safety oversight role (i.e. what is now the 'NCA' role under SES2+) is discharged by the IAA's Air Navigation Services Division (ANSD). [2]

2.2 The framework for RP4 is established at Union level through various legislative instruments, in particular:

- Regulation 594/2004, which lays down the framework for creation of the SES performance and charging system.[3]
- Regulation 317/2019 (the '2019 Regulation'), which lays down the detailed processes, rules, and principles for the performance and charging system.[4]
- An implementing decision which sets the Union-Wide targets for each KPA. The targets for RP4 have been set by Commission Implementing Decision (EU) 2024/1688.[5]

2.3 From a legal perspective, the IAA is required to ensure that all decisions are made in accordance with the relevant legislation, as well as the general legal obligations to which administrative decision-making bodies are subject. In particular, the following are precluded:

- Errors of law, such as incorrectly interpreting or applying a statutory provision or failing to comply with mandatory statutory requirements.
- Errors of fact which go to the root of the decision.
- Irrationality, such as treating the same situations differently without valid reasons, or making a decision which, in the view of the Court, is unsupported by evidence and/or no reasonable, competent, and independent regulator would have made.
- Failing to take account of relevant considerations, or taking account of irrelevant considerations.
- Failing to adopt fair procedures, including appropriate consultation and the provision of objective and evidence-based reasons for our decisions, and

[1] More information on the Single European Sky Performance and Charging Framework can be found in the RP4 Final Decision Document.
[2] https://www.iaa.ie/commercial-aviation/economic-regulation/air-navigation-charges
[3] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004R0549
[4] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0317
[5] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401688

where relevant, undertaking a proportionality analysis.

2.4 The applicability of these principles is reflected in Article 39 of the 2019 Regulation:

'*Member States shall ensure that decisions taken by their competent national authorities pursuant to this Regulation are duly reasoned and are subject to effective judicial appeal in accordance with national law.'*

Development of the RP4 draft Performance Plan

2.5 Our overall approach to the development of the RP4 draft Performance Plan is set out in Section 2 of the Draft Decision[6] and Final Decision.[7] Here we will lay out a summary of our approach; further details are available in those documents, the CEPA/Think reports, and the associated models.

2.6 We followed the timeline outlined below, which included two public consultation processes, and held the statutory consultation meeting in early August 2024.

Figure 2.2: Timeline for RP4 Draft Performance Plan

2.7 In July 2024, we published our proposals for the Irish draft Performance Plan for RP4 (the 'Draft Decision') for consultation. Our Draft Decision took into account the submissions received in response to the Issues Paper, the business plans submitted by AirNav Ireland and Met Éireann's Aviation Services Division ('Met ASD'), and the RP4 guidance material from the European Commission, the PRB, and EASA. We commissioned CEPA supported by Think ('CEPA/Think') to lead the forecasting of an efficient level of operating expenditure ('Opex') for AirNav Ireland over RP4. This draft report was published alongside our Draft Decision, along with our main Performance Plan financial model, and the AirNav Ireland and Met ASD business plans.

2.8 The draft CEPA/Think assessment was broadly supportive of AirNav Ireland's position that its operation is under-resourced in operational divisions, particularly with respect to ATCOs. As a result, we forecast staff costs to increase overall throughout RP4 in real terms, driven by an increase in forecast headcount. On the basis of the CEPA/Think draft assessment, we proposed staff costs of €460m for RP4, which was €18m lower than the AirNav Ireland proposal of €478m. We identified a larger variance with respect to AirNav

[6] rp4-draft-decision_final.pdf
[7] rp4-final-decision_final.pdf

Ireland's Other Opex over RP4, where our proposal was €216m compared to AirNav Ireland's own estimated requirement of €242m.

2.9 With respect to AirNav Ireland's capital costs, set out in Sections 5, 6 and Appendix 1 of the Draft Decision, we proposed an estimate of €21m in 2025, increasing to €35m in 2029, less than the AirNav Ireland proposal of €22m in 2025, increasing to €40m in 2029. The increased capital costs relative to RP3 were primarily driven by major investment in a new primary and contingency ATM system, where the existing ATM systems have been fully depreciated since approximately 2016 and consequently there are no associated costs in the current cost base.

2.10 The difference between our estimate, and the AirNav Ireland estimate, was driven by our proposals to make various adjustments to the proposed asset lives to reflect, in our assessment, the likely useful lives of the assets, a 20% reduction in the overall estimate of new investments which are likely to be delivered within RP4, in addition to a proposed lower WACC.

2.11 We proposed to set the real WACC at 4.26% for RP4, taking a centreline approach and based on upper and lower bound estimates of 5.26% and 3.30% respectively. In comparison, AirNav Ireland had proposed a real WACC of 4.91%, the variance with our estimate stemming from differences in the gearing, cost of debt, and asset beta components.

2.12 On 2 August 2024, we held a statutory consultation meeting in hybrid form. It was attended by both ANSPs (AirNav Ireland and Met ASD), airspace users, and staff representatives. We then received submissions from Aer Lingus, AirNav Ireland, the AirNav Ireland staff panel, IAG, Met ASD, and Ryanair.[8]

2.13 The final draft Performance Plan (the 'Final Decision') was submitted to the European Commission in October 2024, and published on the IAA website, alongside the other material which had been generated throughout the process. Following receipt of the Commission's verification of completeness letter in late October, an updated draft Performance Plan was submitted in mid-November.

Summary of the Draft RP4 Performance Plan

2.14 In total, in nominal prices, the current draft Performance Plan allows for determined costs of €1.08bn for all entities for the 5 years 2025 to 2029. Of that, approximately €922m relates to our forecast costs of AirNav Ireland, €58m to Met ASD, and the remaining €97m relates to EUROCONTROL, the IAA, and State policy costs.

2.15 For AirNav Ireland's operating costs, in real prices, we estimated Determined Costs at €131m in 2025, rising to €142m in 2029, compared to an outturn of €119m in 2023. Staff costs form the largest component of total Opex, contributing €465m to the determined costs over RP4, compared with €222m

[8] Despite requests, Ryanair failed to provide a publishable version of its submission.

in Other Opex.

2.16 The final CEPA/Think report identified an efficient but achievable level of Opex for AirNav Ireland over RP4, which is consistent with delivering a high-quality service in a safe manner. It consists of three main components, each of which was assessed separately and then combined; staff numbers, unit payroll costs, and Other Operating expenditure. CEPA/Think built up the estimate of efficient expenditure by separately examining the efficiency of historic trends in each cost component, before projecting each item forward using various cost drivers, elasticities and an assessment of suggested step-changes.

2.17 Staff costs are forecast to increase throughout RP4, significantly driven by an increase in ATCO headcount. CEPA/Think assessed the efficiency of ATCO staffing levels in 2023 to estimate an efficient base year headcount, finding in favour of AirNav Ireland's position that its operation was under-resourced. This led to, among other things, a deterioration in capacity performance, an over reliance on overtime with insufficient operational resilience, and was a contributing factor to the under-delivery by AirNav Ireland of its proposed investment programme. From the estimated efficient 2023 baseline, CEPA/Think projected forward using forecasts of traffic growth, estimates of productivity improvements from Capex initiatives, and estimates of how quickly AirNav Ireland could recruit new ATCOs. For certain other roles, CEPA/Think applied step-changes to the forecasts with reference to proposals within AirNav Ireland's business plan, assessing any proposed increases against the standard efficient forecasting three-part test: need, additionality, and efficiency.

2.18 An increase in Engineering headcount also contributes significantly to the total increase in Staff Opex. In arriving at the forecast of efficient Engineering headcount, CEPA/Think estimated a baseline derived from the average headcount from 2016 to 2023 and applied several adjustments to account for expected changes in AirNav Ireland's operations and regulatory requirements over RP4. Firstly, headcount was scaled to reflect the projected increase in AirNav Ireland's regulated asset base relative to 2016-2023 average using an elasticity of 0.5. Headcount was then adjusted based on expected capital investment levels in the upcoming years compared to the historical average, and to address safety requirements.

2.19 Details in relation to the other (smaller) staff categories are outlined in the reports.

2.20 With respect to Other Opex, CEPA/Think produced forecasts of efficient costs which were disaggregated into 24 cost categories. For each category, an efficient baseline was estimated for 2023 through trend analysis, benchmarking, expert judgment and other quantitative methods. These costs were then projected forward through RP4 using (where relevant) volume drivers, including traffic, Capex, and the forecast staffing levels. Although relatively insensitive to traffic levels, CEPA/Think forecast these costs to also increase in real terms, although to a lesser extent than proposed by AirNav Ireland.

2.21 AirNav Ireland's business plan proposed a substantial capital investment programme. However, in considering the overall deliverability of the investment programme, we noted that AirNav Ireland significantly under-delivered in RP3 which followed a significant under-delivery in RP2 as well. Recognising the challenges faced in delivering Capex plans to date, we applied a 20% programme level reduction in the assumption of total capitalisations (excluding the planned new ATM system, TopSky ATC One, which we included in full).

2.22 Overall, Met ASD's Determined Costs are forecast to remain relatively flat in real terms across RP4. With respect to Staff Costs, in arriving at our forecasts we conducted a bottom-up assessment of Met ASD's staffing assumptions and forecast staffing level. Other Opex is forecast to remain flat following a slight step change which we assessed to meet the test of need, additionality, and efficiency.

2.23 With respect to supervision (State and NSA) and EUROCONTROL costs, which operate on a full cost recovery basis, costs are forecast to remain relatively flat in nominal terms across RP4 following an increase of c.€1.3m between 2024 and 2025, primarily from EUROCONTROL. We note that although supervision and EUROCONTROL costs are to be reported in nominal terms under Article 22(2) of the 2019 Regulation, for the purposes of the cost-efficiency target these are treated as if in 'real' terms, which negatively impacts the estimated 'real' DUC trend of the draft Performance Plan.

2.24 In the Safety KPA, we set local targets for AirNav Ireland consistent with the Union-wide targets. Similarly, we adopted the national reference values for Ireland as AirNav Ireland's Environment targets for RP4. We decided to adopt more ambitious En Route capacity targets than the corresponding reference values, as set out in the relevant sections of the draft and final decisions (and addressed further below).

2.25 For incentive schemes, we decided to set the maximum penalty at 1% of Determined Costs, with a small deadband, and a threshold of 0.05 minutes of delay per flight. For En Route, the pivot values are fixed and in line with our ATFM delay targets, whereas for Terminal, they are modulated for CRSTMP delay, but set below the capacity target. We decided to implement a penalty only incentive scheme for both En Route and Terminal capacity, on the basis that our cost forecasts for AirNav Ireland are already consistent with meeting our targets. Bonuses should only be awarded for exceptional performance beyond the forecasting assumptions and, further, only where, from the perspective of users, such exceptional performance would outweigh the cost of the bonus.

2.26 In respect of the Cost Efficiency KPA, we noted that the baseline DUC was (like in RP3) below the average of the comparator group, which for RP4 includes Cyprus, Malta, and Portugal. However, the short- and long-term trends were not in line with the target trends, primarily due to the assessed requirement to increase operational staffing levels and invest in the ATM systems and other capacity related infrastructure, together with associated costs such as training and maintenance.

2.27 We reviewed the criteria and the precedent in respect of the application of the legal tests specified by Annex IV(1.4(d)) of the 2019 Regulation in respect of other Performance Plans during RP3. We ultimately quantified 8 measures which we assessed to be necessary and proportionate in respect of achieving the capacity targets. We reviewed the DUC trends net of the costs of the capacity measures and calculated that, absent those costs, the draft Performance Plan was consistent with both the short- and long-term trends. Consequently, the draft Performance Plan was consistent with all three of the cost-efficiency criteria and thus with the Union-wide cost-efficiency target.

Verification of Completeness

2.28 There were no substantive changes made to the performance targets during the verification of completeness process pursuant to Article 13 of the 2019 Regulation, other than to reflect a significant increase in EUROCONTROL costs of approximately €1m per year as notified to all Member States in November, and the inclusion of the minor ICAO space weather costs line (approximately €100k per year). Notwithstanding these higher costs, the draft Performance Plan as submitted in November still met all three cost-efficiency criteria as outlined above.

Decision of the European Commission

2.29 In March 2025, the Performance Review Body ('PRB') of the Single European Sky published its assessment of the draft Performance Plans submitted on behalf of all Member States.

2.30 With respect to Safety, the PRB concluded that the Safety targets proposed by the IAA should be approved on the basis that the EoSM targets are consistent with the Union-wide performance targets, the measures are sufficiently described to demonstrate how AirNav Ireland will improve maturity levels over RP4, and that the change management practices aim to minimise any negative impact on network performance. In addition, the PRB assessed that the approach applied by both AirNav Ireland and the IAA supports the ambition that safety has the highest priority and that *'developments in other key performance areas should not compromise safety'*.

2.31 The PRB also concluded that the proposed Environment targets should be approved on the basis the targets are in line with the reference values, and asserted that AirNav Ireland seems to be on track to achieve the targets based on recent performance.

2.32 The proposed Capacity targets, which are more ambitious the Network Manager reference values, were also recommended for approval by the PRB, based on the greater level of ambition, and its assessment that *'Ireland is expected to have sufficient capacity to meet traffic demand during RP4'*. This assertion was based on the capacity measures included in the draft Performance Plan, including the proposed recruitment of new ATCOs and engineers to address the issue of understaffing, the improved flexibility of sectorisation and use of operational staff, and the proposed investments in the

main ATM system and infrastructure elements enabling further developments.

2.33 The PRB concluded that the cost-efficiency targets in the draft Performance Plan should not be approved by the European Commission on the basis that the short- and long-term DUC trend is inconsistent with the Union-wide targets. The PRB further considered that the deviation proposed for achieving the capacity targets is neither *'necessary nor proportionate'* to allow the achievement of the capacity targets, or exclusively due to additional determined costs related to measures to achieve the capacity targets.

2.34 Having regard to the findings and advice of the PRB, on 16 May 2025, the European Commission included the Irish draft Performance Plan among those found to be inconsistent with the Union-wide cost efficiency target.[9] The Commission concluded that '*it is not possible to conclude, without further detailed information and analysis, on whether the capacity measures presented by Ireland can be, in their entirety, deemed necessary and proportionate for the achievement of the local capacity performance targets for RP4.*' Consequently, it is necessary for the IAA to submit a revised draft Performance Plan pursuant to Article 14 of the 2019 Regulation. The deadline for this submission is 18 August 2025.

Consultation Details

2.35 This consultation is being held alongside the consultation on the 2024 actual costs. The Unit Rates for 2026 depend on the revised draft RP4 Performance Plan, and thus are set out in this document. An online consultation meeting on both topics will be held on 29th July at 1000 Irish Time. The deadline for written submissions is 5pm, Friday 1 August. Submissions should be sent to consultation@iaa.ie.

2.36 We may correspond with those who make submissions, seeking clarification or explanation of their submissions. Ordinarily we place all submissions received on our website. If a submission contains confidential material, it should be clearly marked as confidential and a redacted version suitable for publication must also be provided.

2.37 We do not ordinarily edit submissions. Any party making a submission has sole responsibility for its contents and indemnifies us in relation to any loss or damage of whatever nature and howsoever arising suffered by us as a result of publishing or disseminating the information contained within the submission.

[9] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32025D1040#:~:text=(1)%20Pursuant%20to%20Article%2011,air%20navigation%20services%20and%20network

3. Scenarios for Consultation

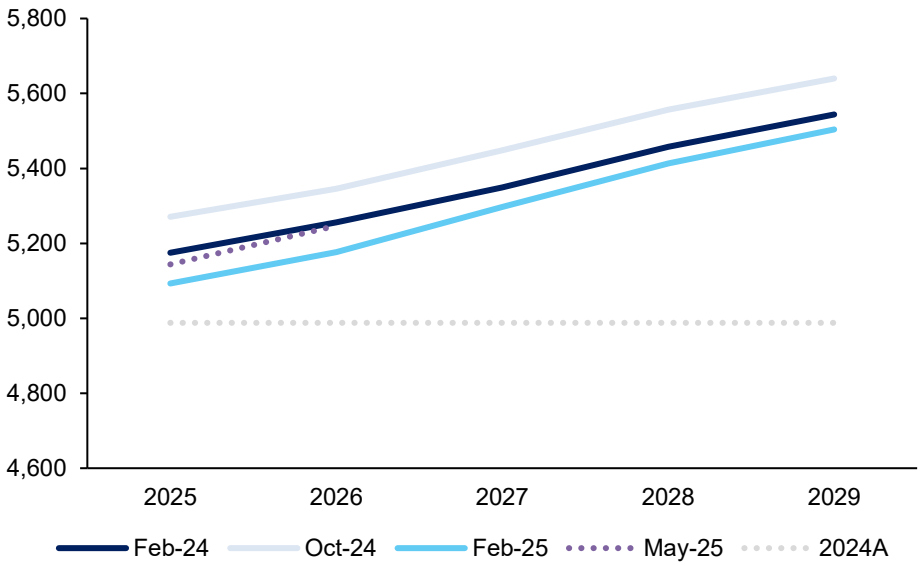
3.1 We have modelled a number of permutations in respect of possible revisions to the draft Performance Plan to assess, in each case, the impact such amendments would have on various aspects of the plan. The permutations can be grouped into two categories:

- Those which do not provide for *ex-post* risk and incentive reallocation.
- Those which do provide for *ex-post* risk/incentive reallocation (i.e. in particular by updating the traffic forecasts based on *ex post* developments).

Traffic forecasts

3.2 Figure 3.1 shows the various STATFOR base forecasts for En Route Service Units from February 2024 to February 2025 with reference to the 2024 outturn level, as well as the May 2025 update in respect of 2025 and 2026.

Figure 3.1: En Route Service Unit Forecasts



Source: STATFOR

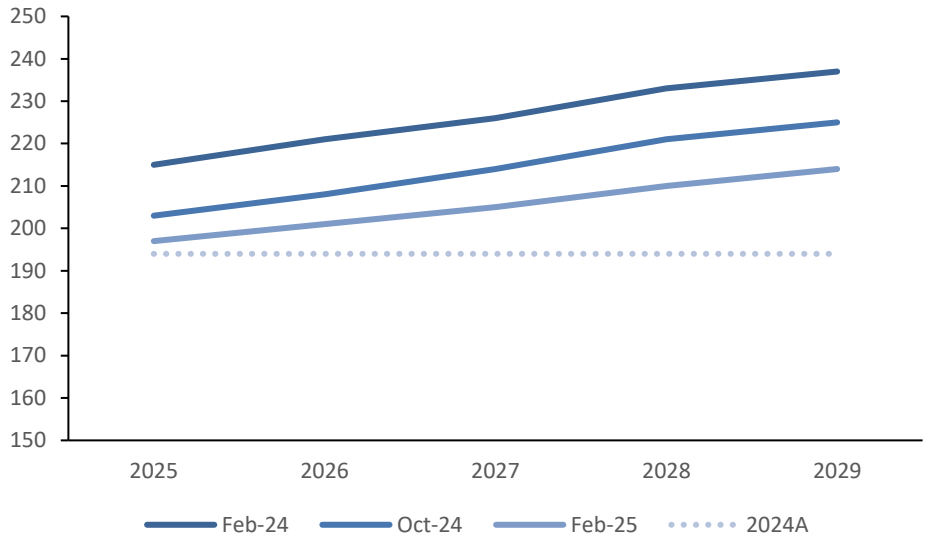
3.3 As appears from the chart, there has been a degree of volatility in the forecasting trend and traffic composition, with the October 2024 forecast being significantly higher than February 2024 in terms of Service Units (but lower in terms of IFR movements). Then the trend inverted in February 2025, with forecast Service Units falling back below even the February 2024 forecast. Finally, the May 2025 short-term update showed a further inversion, with traffic back closely in line with the original February 2024 forecast again (at least in terms of Service Units- the relative volume of IFR traffic remains somewhat lower).

3.4 Indeed, traffic in 2024 ultimately finished below the 'Low' scenario from the February 2024 forecast, hence the lower forecast in February 2025. We

understand from STATFOR that the dip in the trend in 2024 was primarily related to a shift in transatlantic flows, which has reverted in 2025 as now reflected in the May 2025 update.

3.5 As appears from Figure 3.2, Terminal traffic forecasts have been consistently revised downwards between February 2024 and February 2025, and there has been no forecast update since February 2025.

Figure 3.2: Terminal Service Unit Forecasts



Source: STATFOR

3.6 We consider that the more recent Terminal forecasts likely understate traffic over RP4, on our assumption that the current development consent issues at Dublin Airport are addressed.[10] In particular, and following a year of uncertainty, from October 2024 to March 2025 the IAA had to put in place a seasonal seat cap limitation in the slot capacity of Dublin Airport to take account of certain legacy planning conditions, which caused a reduction in aircraft traffic (and an increase in aircraft load factors). From Summer 2025, the Irish High Court has ordered the suspension of this seat cap coordination parameter, and the underlying legal issue has been referred to the CJEU. As a result, seat capacity at Dublin Airport has significantly increased during Summer 2025, and forward slot filings for Winter 2025-2026 show a similar trajectory.

3.7 Notwithstanding that the seat cap in effect until the end of March 2025 led to a year-on-year reduction in aircraft movements over the first three months of 2025, the sum of actual movements at Dublin Airport and Cork Airport from January to June 2025 together with scheduled aircraft movements from July to December 2025 is currently more than 5% higher than 2024. Unless there is some unexpected demand shock or exogenous development, the suggestion that the year-on-year increase will be just 1.5% in 2025 (as per the February 2025 forecast), and traffic will remain at such modest levels during RP4, can be

[10] And insofar as they are not addressed, an associated reasonable downside scenario is a matter of business risk for the service providers, for which they are remunerated through the cost of equity and, as applicable, the TRS mechanism.

ruled out.

3.8 Thus, in the case of both En Route and Terminal, it appears to us that, having regard to local circumstances and recent data, the February 2025 forecast represents a trough which understates the likely traffic growth over RP4.

Scenarios without ex-post incentive/risk reallocation

3.9 The scenarios which do not adjust the risk/incentive allocation retain the same traffic forecasts (February 2024) as used in the current draft Performance Plan. Equally, the cost forecasts remain based on these traffic forecasts. The scenarios we have modelled are:

- **Scenario 1.1:** This is the current draft Performance Plan as submitted in November 2024, which uses the February 2024 traffic forecasts and associated cost forecasts, and the IMF inflation forecasts of April 2024.

- **Scenario 1.2:** This is Scenario 1.1, but with the following adjustments:

    - IAA supervision costs are updated to take account of a new pension contribution rate, which reduces IAA pension costs by just under €0.5m per annum. This was the main driver of lower IAA costs in 2024, and is now expected to continue at this lower level over 2025-2029. As the IAA is a 'full cost recovery' entity, there is no difficulty with amending this based on the *ex post* information.

    - A baseline adjustment of c.€125k is included for both 2019 and 2024 to account for ICAO space weather costs. We note that this has been included in many other draft Performance Plans. This does not affect the cost forecasts for RP4, but does affect the short- and long-term trends relative to 2019 and 2024.

    - A baseline adjustment of c.€560k is also included for 2024 to account for a once-off EUROCONTROL CEF refund, which has artificially reduced the EUROCONTROL actual costs in 2024. This does not affect the cost forecasts for RP4, but does affect the 2024 DUC baseline and consequently the short-term trend.

    - As requested, all 2024 costs, traffic, and inflation figures now reflect the outturn values. This does not affect the cost forecasts for RP4, but does affect the 2024 DUC baseline and consequently the short-term trend. We note that correctly applying the inflation update requires some changes to the performance plan template, given that, for example, the template calculates the 2024 real DUC baseline with reference to hardcoded IMF forecasts of April 2024.

    - As requested, inflation forecasts for 2025-2029 are updated to reflect the most recent IMF forecasts, which are similar to, but generally somewhat lower than, the April 2024 forecasts. For costs which are estimated in real terms (i.e. AirNav Ireland and MET ASD Opex), the

forecast does not change in real terms, but does of course reduce somewhat in nominal terms. All else equal, this nominal reduction would be offset by the subsequent inflation adjustment applicable to the Unit Rate in year n+2 being of equivalently smaller magnitude (although the 2019 Regulation provides for a simple nominal adjustment which does not take account of the different price bases, or financing costs). For costs which must be included in nominal terms and in particular capital costs, the lower inflation forecasts generate a slightly lower nominal WACC overall.[11] Consequently, the change is significantly, but not entirely, Net Present Value (NPV) neutral.

- **Scenario 1.3:** This is Scenario 1.2, but with a further c10% reduction in the allowance for AirNav Ireland's new investments over RP4, bringing the total reduction to c30%, excluding the TopSky ATC One allowance.

With Ex-post incentive/risk reallocation

3.10 We have also assessed the effect of updating the draft Performance Plan in respect of *ex post* developments, and in particular the February 2025 traffic forecasts:

- **Scenario 2.1:** In addition to the amendments outlined under Scenario 1.2 above, the draft Performance Plan is updated based on the STATFOR February 2025 base traffic forecast. As a result of the new traffic forecast, our forecast of AirNav Ireland's Opex is updated. This has a material impact on the forecast number of ATCOs required over RP4, and on some Other Opex cost lines which are linked to ATCO headcount (e.g. training and certain corporate services), or which are directly linked to forecast IFR movements.

- **Scenario 2.2:** This is the same scenario as Scenario 2.1, but again with an additional cut to the allowance for new investments by AirNav Ireland, excluding TopSky ATC One. The total capital allowance reduction relative to AirNav Ireland's business plan is therefore c30% in this scenario.

- **Scenario 2.3:** This is Scenario 2.2, except using the STATFOR High February 2025 forecast. Consequently, the forecasts of AirNav Ireland's Opex requirements are updated again.

3.11 As usual, we will further consider any other specific points where there is objective evidence and/or a clear rationale for amendment which extends beyond the scope of the scenarios outlined above.

Determined Costs

3.12 Table 3.1 shows the changes to the Determined Costs for each of the scenarios listed above. In Scenario 1.2, updating the supervision cost forecasts over RP4

[11] No updated EUROCONTROL costs are available.

has the effect of reducing the total Determined Costs by €1.9m compared with the original draft Performance Plan. Scenario 1.3, which includes the update to the Supervision costs forecast and an additional reduction in the allowance for AirNav Ireland's new investments (excluding TopSky ATC One), reduces total Determined Costs across RP4 by €5.6m compared with the original draft Performance Plan.

3.13 Relative to the original draft Performance Plan, Scenario 2.2 results in a considerable decrease in total Determined Costs across RP4, leading to a decrease of €15.9m in real terms. This is largely due to the resulting update to our forecast for AirNav Ireland's Opex and the associated lower number of ATCOs, as outlined further below.

Table 3.1: En Route Determined Costs (€ Millions), 'Real 2022' Prices

	2019 B	2024 B	2025	2026	2027	2028	2029	Total RP4
Determined Costs (Totals)								
Scenario 1.1	127.1	137.7	148.1	156.2	159.1	162.9	167.1	793.4
Scenario 1.2	127.2	134.1	147.8	155.7	158.7	162.5	166.8	791.5
Scenario 1.3	127.2	134.1	147.6	155.3	157.9	161.4	165.5	787.8
Scenario 2.1	127.2	134.1	145.6	153.6	156.7	160.5	164.8	781.1
Scenario 2.2	127.2	134.1	145.5	153.2	155.9	159.4	163.5	777.4
Scenario 2.3	127.2	134.1	145.5	153.6	157.6	161.7	166.2	784.6
Determined Costs, net of Capacity Measures Costs								
Scenario 1.1	127.1	137.7	135.3	138.7	136.9	137.9	139.1	687.9
Scenario 1.2	127.2	134.1	135.0	138.3	136.5	137.6	138.8	686.2
Scenario 1.3	127.2	134.1	134.9	138.0	136.1	137.1	138.2	684.3
Scenario 2.1	127.2	134.1	133.7	138.8	137.0	138.0	139.2	686.6
Scenario 2.2	127.2	134.1	133.6	138.5	136.6	137.5	138.6	684.7
Scenario 2.3	127.2	134.1	133.6	138.3	136.2	137.2	138.2	683.4

Source: IAA Calculations

Unit Rates

3.14 Forecast Unit Rates under each of these scenarios are outlined below. Under the current draft Performance Plan (Scenario 1.1), the En Route Unit Rate in nominal terms is forecast to increase from €33.71 in 2025 to €36.24 in 2029, representing a 7.5% increase. Under Scenario 1.3, the increase between 2025 and 2029 is slightly lower, at 6.5%. For comparability across the scenarios, the 2026 Unit Rate adjustments arising from the 2024 outturn figures (e.g. return of unspent Capex, and inflation) are not included here. The draft 2026 Unit Rates inclusive of all such adjustments are laid out separately in Section 4.

3.15 Updating the traffic forecast to the February 2025 Base scenario generates En Route Unit Rates which remain broadly at the same level as scenarios 1.1 to 1.3, as reduced traffic and reduced Opex cancel each other out. When the draft Performance Plan is updated to take account of the high February 2025 traffic forecast under Scenario 2.3, this results in a materially lower unit rate, due

partly to the relative composition of traffic.

3.16 Thus, notably, in all scenarios apart from Scenario 2.3, the En Route Unit Rate remains relatively close to those forecast in the current draft Performance Plan. That is particularly so considering that, under each of scenarios 1.2 to 2.3, the lower inflation forecasts would ultimately flow through to the Unit Rates, putting upward pressure on them relative to the inflation forecasts underpinning Scenario 1.1. By 2029, the inflation index under the revised scenarios is c1.5% lower than Scenario 1.1, ultimately meaning that approximately 50c should be subtracted from the Scenario 1.1 Unit Rate to make it comparable with the others on an NPV basis.

3.17 However, with respect to the Terminal Unit Rate, updating to the February 2025 base traffic forecasts leads to a significant increase in the Unit Rates in each year relative to the current draft Performance Plan. Similarly, although more in line with the current draft Performance Plan, Unit Rates under Scenario 2.3 are also higher in each year of RP4. This is a feature of the lower Service Unit forecast, and the fact that Terminal costs are much less sensitive to traffic volumes than En Route, leading to a much smaller reduction in Opex. Further, the same point in respect of the inflation indices arises as in the case of En Route, meaning that the known disparity in overall NPV terms is larger again than appears in nominal terms from the table below.

Table 3.2: Unit Rates (€), Nominal

	2025	2026	2027	2028	2029
En Route					
Scenario 1.1	33.71	34.40	34.85	35.43	36.24
Scenario 1.2	33.37	33.95	34.35	34.92	35.75
Scenario 1.3	33.34	33.87	34.20	34.73	35.51
Scenario 2.1	33.45	34.01	34.26	34.79	35.57
Scenario 2.2	33.42	33.93	34.11	34.59	35.34
Scenario 2.3	32.54	32.55	32.66	32.88	33.34
Terminal					
Scenario 1.1	170.37	177.15	180.47	181.72	187.18
Scenario 1.2	168.74	174.90	178.01	179.42	185.02
Scenario 1.3	168.46	174.07	176.42	177.44	182.52
Scenario 2.1	181.77	190.77	194.93	197.27	203.79
Scenario 2.2	181.46	189.86	193.18	195.07	201.02
Scenario 2.3	179.64	185.42	185.59	184.60	188.14

Source: IAA Calculations.

Capacity Measures

3.18 As outlined above, insofar as relevant under each scenario, the Opex and Capex forecasts have been updated, along with the inflation forecasts for all scenarios apart from Scenario 1.1. Consequently, the measures required to meet the capacity targets must be recalculated.

3.19 As expected, updating to the (lower) February 2025 base traffic forecast has a significant impact on the scale of required measures, with the costs associated with capacity measures falling by €13.8m under Scenario 2.1 across RP4 relative to Scenario 1.1, and by €15.6m under Scenario 2.2 when the additional 10% reduction to AirNav Ireland's new investment allowance is taken into account. When the traffic forecasts are updated to the February 2025 high case, the Opex costs associated with capacity measures are more closely aligned with Scenario 1.1, while the capital costs are lower due to the additional 10% reduction in new investments.

Table 3.3: Capacity Measures Costs (€ Millions), Nominal Prices

		2025	2026	2027	2028	2029	Total RP4
Scenario 1.1	Opex	13.3	17.0	19.3	21.1	22.1	92.8
	Capex	0.8	2.4	5.5	6.9	9.4	25.1
	Total	**14.1**	**19.5**	**24.8**	**28.0**	**31.6**	**117.9**
Scenario 1.2	Opex	13.2	16.8	19.0	20.7	21.8	91.4
	Capex	0.8	2.4	5.5	6.9	9.5	25.0
	Total	**13.9**	**19.2**	**24.4**	**27.6**	**31.2**	**116.4**
Scenario 1.3	Opex	13.2	16.8	19.0	20.7	21.8	91.4
	Capex	0.8	2.2	5.0	6.4	8.8	23.2
	Total	**13.9**	**19.0**	**24.0**	**27.1**	**30.6**	**114.6**
Scenario 2.1	Opex	12.2	13.9	16.2	18.0	19.0	79.2
	Capex	0.8	2.4	5.4	6.9	9.5	25.0
	Total	**13.0**	**16.2**	**21.6**	**24.9**	**28.4**	**104.2**
Scenario 2.2	Opex	12.2	13.9	16.2	18.0	19.0	79.2
	Capex	0.8	2.2	5.0	6.4	8.8	23.2
	Total	**13.0**	**16.1**	**21.2**	**24.3**	**27.8**	**102.4**
Scenario 2.3	Opex	12.2	14.5	18.5	21.0	22.6	88.9
	Capex	0.8	2.2	5.0	6.4	8.8	23.2
	Total	**13.0**	**16.7**	**23.6**	**27.3**	**31.4**	**112.1**

Source: IAA Calculations. Note, figures in the table have been rounded, while the commentary above reflects calculations of the unrounded figures.

ATCO Requirements

3.20 As En Route ATCO requirements are particularly sensitive to changes in traffic volumes, the decrease in IFR movements in the February 2025 base case relative to the February 2024 base case would result in a lower ATCO headcount forecast in each year 2026-2029. On average, across 2026-2029, the estimated efficient ATCO requirement falls by c.15 relative to using the February 2024 forecast.

Table 3.4: ATCOs (Full Time Equivalent)

	2025	2026	2027	2028	2029
No ex-post traffic adjustment (Feb '24 traffic and costs)					
Scenario 1.1	326	343	348	361	364

Scenario 1.2	326	343	348	361	364
Scenario 1.3	326	343	348	361	364
Ex-post traffic adjustment (Feb '25 traffic and costs)					
Scenario 2.1	326	328	333	347	350
Scenario 2.2	326	328	333	347	350
Scenario 2.3 (High Traffic)	326	332	343	360	367

Source: IAA

3.21 Using the February 2025 high traffic forecast, under Scenario 2.3, the total ATCO requirement remains below the requirement using the February 2024 base forecast in all years, except for 2029 when efficient ATCO headcount estimate exceeds the Scenario 1.1 requirement by 3 ATCOs.

Determined Unit Cost (DUC) Trend

3.22 The Union-wide short term target trend is -1.2% per year, while the long-term target trend is -1.0% per year. The short- and long-term trends generated by each of the above scenarios, in 'Raw' form and then after the costs associated with the capacity measures have been excluded, are shown in Table 3.5 below. Net of the capacity measures, Green indicates that the target trend is outperformed, Yellow indicates performance in line with the target trend or missing it by .1 percentage points (which has previously been accepted by the PRB/EC as an immaterial deviation), and Red indicates that the target trend is underperformed.

Table 3.5: En Route DUC 'Real' Trends

	2019 B	2024 B	2029D		2029D vs. 2019 (CAGR)	2029D vs. 2024B (CAGR)
Raw Trends (€)						
Scenario 1.1	27.59	27.29	30.14		1.0%	2.0%
Scenario 1.2	27.61	26.89	30.09		1.0%	2.3%
Scenario 1.3	27.61	26.89	29.86		0.9%	2.1%
Scenario 2.1	27.61	26.89	29.94		0.9%	2.2%
Scenario 2.2	27.61	26.89	29.70		0.8%	2.0%
Scenario 2.3	27.61	26.89	28.03		0.2%	0.8%
Net of Capacity Measures (€)						
Scenario 1.1	27.59	27.29	25.10		-1.0%	-1.7%
Scenario 1.2	27.61	26.89	25.04		-1.1%	-1.4%
Scenario 1.3	27.61	26.89	24.93		-1.1%	-1.5%
Scenario 2.1	27.61	26.89	25.29		-1.0%	-1.2%
Scenario 2.2	27.61	26.89	25.18		-1.0%	-1.3%
Scenario 2.3	27.61	26.89	23.29		-1.9%	-2.8%

Source: IAA

3.23 As appears from the table, all of these scenarios generate both a short- and

long-term trend which matches or outperforms the target trend. Relative to the current draft Performance Plan, Scenario 1.2 shows a slight improvement in the long-term trend, as a result of somewhat lower 2029 costs combined with a slightly higher 2019 baseline (as a result of the ICAO space weather adjustment). However, Scenario 1.2 shows a disimprovement in the short-term trend. This is primarily a result of the 2024 actual unit cost of €26.89 being slightly below the forecast of €27.29, driven by lower outturn costs outweighing the lower outturn traffic. Scenario 1.3 shows a slight improvement on Scenario 1.2, as a result of lower 2029 Determined Costs.

3.24 A similar pattern, but with deteriorated trends, is observed in respect of Scenarios 2.1 and 2.2, where the reduction in traffic volumes by 2029 outweighs the significant reduction in costs. Scenario 2.3 shows the strongest DUC trends, as a result of being based on the STATFOR 'High' scenario.

3.25 In relation to the Terminal DUC trend for 2024 to 2029, which falls to be assessed with reference to the short-term actual RP3 Terminal trend (2019 to 2024) and the short-term forecast RP4 En Route trend, this shows significant improvement in Scenarios 1.2 (+0.8%) and 1.3 (+0.5%) relative to Scenario 1.1 (+1.9%). This is primarily because the 2024 outturn real unit cost was considerably higher than the 2024 DUC baseline as was forecast last year; actual costs for 2024 were closely in line with our forecast, but 2024 Terminal traffic was considerably lower than the STATFOR forecast as described above.

3.26 Under both new scenarios 1.2 and 1.3, the Terminal trend now outperforms the corresponding raw En Route trend, and also further outperforms the actual RP3 trend (as it already did under Scenario 1.1).

3.27 By contrast, as a result of the significantly lower traffic, the Terminal DUC trend deteriorates to +2.8% under Scenario 2.1 and to +2.5% under Scenario 2.2. Scenario 2.3 shows a Terminal DUC trend of +1.1%.

4. IAA Draft Decision on Revised Draft Performance Plan

4.1 The IAA believes that the most appropriate revision to the draft Performance Plan would be to apply Scenario 1.2, together with adding further local capacity targets and associated incentive schemes (as proposed further below). We consider that there is also a reasonable case for Scenario 1.3 (i.e. a further cut in new investments). There are two main (related) reasons for this assessment, and in particular for not updating the traffic forecasts based on *ex post* developments:

- It is better aligned with the interests of current and future airspace users.
- It is consistent with general principles of incentive based economic regulation, and appears to be better aligned with the scheme of the 2019 Regulation.

4.2 Without prejudice to the second point above, insofar as the 2019 Regulation is instead interpreted to mean that the default position is that traffic forecasts should be updated based on *ex post* developments when the draft Performance Plan is being revised pursuant to Article 14, the IAA also considers that local factors would justify the retention of the higher traffic forecast rather than replacing it with the STATFOR February 2025 forecast.

4.3 We note that there is precedent from RP3 both approaches, i.e. there are examples where draft Performance Plans have retained the original traffic forecast when a revised draft Performance Plan was submitted pursuant to Article 14. For example, the FABEC states other than Belgium/Luxembourg in 2022:

'*The cost-efficiency targets of France have not been revised as part of the revised FABEC RP3 draft performance plan submitted in July 2022. The PRB conclusions from the FABEC draft RP3 performance plan submitted in November 2021 remain valid.'*

4.4 Equally, the Netherlands slightly changed the cost efficiency targets in the 2022 revised draft Performance Plan, but retained the 2021 traffic forecasts.

4.5 We are also open to considering and/or modelling other changes such as may be advocated by stakeholders. Ultimately, however, the underlying assumptions must remain objectively assessed and reasoned, internally consistent, consistent with the general principles and objectives of the 2019 Regulation, and fair procedures.

Interests of Users

4.6 In respect of En Route, the result of changing the traffic forecasts to reflect the February 2025 base scenario would be to set essentially the same unit rates, but expect AirNav Ireland to deliver fewer ATCOs (and potentially less investment) in return for that same revenue stream, under the centreline scenario. For Terminal, the result would be to set significantly higher unit rates,

i.e. to increase the revenue stream at the expense of users.

4.7 These outcomes would arise from AirNav Ireland benefitting from the Traffic Risk Sharing (TRS) mechanism by a total of €15m, as a result of reallocating the traffic risk within the period (€7m in En Route and €8m in Terminal). The TRS parameters were set in line with the standard TRS parameters when the draft Performance Plan was drawn up under Article 10. These values reflect the differences between the February 2024 and February 2025 base forecasts, and are known now, given that actual traffic figures will ultimately materialise regardless of whether or not we now update the forecast (i.e. the figure of €15m will definitely materialise, as either an absolution from materialised downside risk or as an additional benefit from materialised upside risk).

The 2019 Regulation does not require ex post *traffic updates when revising the draft Performance Plan under Article 14*

4.8 The proper interpretation of EU legislation is to be ascertained by considering not just the language used, but also the overall statutory context and the general objectives of the legislator. When interpreting a provision of EU law, the Court of Justice considers '*not only its wording, but also the context in which it occurs and the objects of the rules of which it is a part*'.[12] Consequently, like other EU legislation, the 2019 Regulation falls to be interpreted by reference to its text, structure, context and purpose.

4.9 The chronology of the 2019 Regulation lays out a number of specific and discrete steps. The 'drawing up' of the draft Performance Plan is governed by Article 10, whereas the 'revision' is governed by Article 14 (and then potentially Article 15). Article 10(2)(a) states that the baseline value for the short-term DUC trend must be calculated based on the *'latest available traffic forecast expressed in service units for the year preceding the start of the reference period.'* While not express, it must be understood that Article 10(2)(f) and 10(2)(g) also refer to the same latest available STATFOR forecast as at the date of submission of the adopted draft Performance Plan as drawn up by the NSA (being no later than three months prior to the start of the reference period).

4.10 The wording of Article 14 contains no express text in respect of amending the traffic forecast which has been set, following the required consultation process, under Article 10. Article 14 contemplates that revised performance targets are to be established, meaning that it contemplates the potential to amend the cost forecasts and/or traffic forecasts. However, there is no suggestion that this is to be done based on *ex post* developments. For example, if the traffic forecast has been set on the basis of local factors without sufficient justification, the correction required would be to revert to the STATFOR base forecast which ought to have been used originally, not to use an *ex post* forecast which was unavailable at the time when the draft Performance Plan was drawn up under Article 10. Equally, if the cost forecasts were erroneously high, or a legal provision was misapplied, this could only be established based on the information which was available when the decision was made, and not

[12] C-292/82 Merck v Hauptzollamt Hamburg-Jonas EU:C:1983:335 (§12); C-570/19 Irish Ferries EU:C:2021:664 (§§52-53)

subsequently procured data or developments, in light of which any point-in-time forecast will always change to some extent.

4.11 It is standard for review or appeal mechanisms of economic regulatory decisions to proceed in this way. *Ex post* evidence is typically inadmissible; the question to be answered is: What decision ought to have originally been made? In this way, the appeal or review does not impact the incentive mechanisms or the internal consistency of the decision. This interpretation is long established in a similar context in relation to the IAA's airport charges price controls in Ireland, dating from High Court decisions more than 20 years ago, and in various other regulated sectors.

4.12 An interpretation to the effect that a revision of a draft Performance Plan under Article 14 or Article 15 requires or permits *ex post* developments to be taken into account, thereby changing the traffic and cost risk allocation and associated incentives, runs contrary to this principle and standard regulatory practice, thus creating a number of interpretative difficulties for the 2019 Regulation. For example:

- It is clear from Article 11 that cost efficiency incentives (as specified in Article 28) must *'apply during the entire period covered by the performance plan'*. Yet, if during a revision process, the Determined Costs are replaced with actual costs incurred within the period, or otherwise take account of *ex post* developments within the period, then this provision is not complied with. Instead, the incentive-based regulatory scheme is progressively replaced with a full-cost-recovery model, until the Performance Plan is adopted (which could mean that a *de facto* full-cost-recovery model is in place for half of the regulatory period or potentially longer, where, for example, corrective measures pursuant to Article 15 are required). This is inconsistent with the clear purpose and wording of the 2019 Regulation.

- The TRS (Article 27) requires that no less than 4.4% of traffic risk is assigned to the ANSP, which again pursuant to Article 11 must '*apply during the entire period covered by the performance plan'*. Where traffic forecasts are updated *ex post,* the actual traffic risk allocated to the ANSP falls below this level; the ANSP is progressively de-risked in respect of traffic, in favour of a full-cost-recovery result. A clear example of this arises here in the case of AirNav Ireland, as outlined above.

- Article 22, which states that the Determined Costs are to be set prior to the start of the reference period, is expressly without prejudice to Article 18 but not Article 14 or Article 15, which reinforces the distinction between '*drawing up*' a draft Performance Plan, and *'revis[ing]*' the performance targets following the assessment of the PRB/EC.

- Article 10 states that *'The baseline value for the determined unit costs shall be derived by dividing the baseline value for the determined costs with the latest available traffic forecast expressed in service units for the year preceding the start of the reference period.'* Consequently, it is contemplated that the short-term DUC baseline value is to be based on a

forecast (not outturn) level of traffic in respect of the year preceding the start of the reference period (2024 in this case). It is not apparent that Article 14 (or Article 15) permits the replacement of the express requirement for a '*forecast*' of 2024 traffic with the outturn value, where that outturn values happens to have become available because the draft Performance Plan in question was the subject of an inconsistency decision (and where the DUC baseline in other draft Performance Plans, which were found to be consistent, will remain based on the '*forecast*' of 2024 traffic even if they would have been inconsistent had outturn 2024 traffic been used).

- The 2019 Regulation specifies a five-year regulatory period. This is a relatively common timeframe for a multiannual price control, aimed at balancing a sufficiently lengthy period to enable the incentives to be effective, with ensuring the benefits of materialised risk are passed to users without undue delay and that pricing assumptions are not based on excessively outdated circumstances. It must be understood that the legislator specified this reference period length for a reason. However, in substance, updating assumptions based on *ex post* developments shortens the regulatory period and progressively replaces incentive regulation with cost passthrough, contrary to the purpose of the 2019 Regulation.

- We understand that the capacity incentive scheme continues to be applicable even in a year where the Performance Plan has not yet been adopted. It is not apparent why the cost or traffic incentive schemes would be treated differently.

4.13 Such an interpretation also generates various internal inconsistencies which, in order to address properly, would make the process unwieldy and potentially unworkable. For example, where an asset beta has been estimated on the basis of five years of cost and traffic risk, but then this five years of cost and traffic risk is not fully applied, it must follow that this will lead to an amended asset beta too, and so on.

4.14 We also note that an October 2025 traffic forecast may be available during the verification of completeness update later this year, which may lead to the question of why a February 2025 forecast should not then be replaced with the October 2025 forecast. Again, such approaches make it very difficult to meaningfully consult stakeholders on traffic or cost efficiency KPA performance, as this may again change with new forecasts.

4.15 Read harmoniously, in context, and in light of its clear purpose to establish a system of incentive based economic regulation, the 2019 Regulation thus suggests that *ex post* developments are to be taken account of only where the conditions specified by Article 18 are met, and not as a by-product of an inconsistency decision in respect of a draft Performance Plan. At a minimum, we do not see anything to suggest that the 2019 Regulation requires or mandates us to take into account such *ex post* developments.

4.16 We note that the Commission/PRB identified the following non-compliance as part of the detailed examination during RP3:

'*Thus, despite being an air navigation service provider falling within the scope of application of the performance and charging scheme in accordance with Article 1(2) of Implementing Regulation (EU) 2019/317, MUAC does not bear the financial risks or apply the financial incentives deriving from the traffic risk sharing mechanism set out in Article 27 of Implementing Regulation (EU) 2019/317, the cost risk sharing mechanism set out in Article 28 of that Implementing Regulation 2019/317.*'

'The arrangements between the MUAC Member States do not reflect the principles of the Regulation, this may even lead to a situation contradictory to the objectives of performance and charging scheme.'

4.17 We agree that the purpose of the 2019 regulation was clearly to impose incentive regulation, over a five-year time horizon, in place of full cost recovery charging mechanisms. This same effect is observed, in part, if *ex post* developments are taken into account when a draft Performance Plan is being revised or corrective measures are being implemented.

General Principles

4.18 An important principle of incentive regulation, regardless of the sector, is that there should be consistency in the timing of the forecasting assumptions used within the Building Blocks. In practice, forecasts should all be finalised shortly before the Final Decision is adopted, based on information and data available at that time. They should be as up to date as reasonably possible/proportionate, having regard also to the time required to complete and quality assure the analysis and draft the decision documents.

4.19 The IAA would not subsequently change one aspect of the Building Block assumptions while ignoring the fact that other aspects will also have evolved since the decision was made. All forecasts would inevitably change in the context of subsequent relevant developments and new input data which is more up to date than the input data previously relied upon.

4.20 A key principle to avoid undermining incentive regulation and the internal consistency of the decision is that we should be very slow to change or update the building blocks and the within-period pricing, even if developments are moving significantly away from the decision forecasts.

4.21 On the basis that the purpose of the 2019 Regulation is to impose a system of incentive-based economic regulation, these key principles of such systems are relevant to the interpretation of that regulation, reinforcing the interpretation outlined above.

Local Factors

4.22 In any event, if, contrary to the above, the 2019 Regulation were to be interpreted as requiring *ex post* traffic forecasts to be taken into account when revising a draft Performance Plan pursuant to Article 14, such that the 'default' forecast here would be the STATFOR February 2025 Base forecast, we

consider that a deviation is warranted based on local factors not sufficiently addressed[13] by the STATFOR February 2025 Base forecast. As outlined above, the STATFOR February 2025 forecast represented a trough in the case of both Terminal and En Route traffic, which did not sufficiently address the following local factors:

- In 2024 and Q1 2025, ongoing uncertainty and then the necessity for the IAA to impose a seat cap at Dublin Airport led to a fall in Terminal traffic and a discontinuity in the traffic trend, such that it did not reflect the underlying demand. Despite Q1 2025 still being affected by the seat cap, causing a year-on-year decline relative to Q1 2024, Terminal traffic in 2025 will be considerably higher than STATFOR's February 2025 forecast.

- En Route Service Units were below-trend in 2024, recently explained by STATFOR as being related to a temporary shift in transatlantic flows, which shift has reverted in 2025. This is reflected in the fact that the STATFOR May update for 2025 and 2026 now shows Service Units almost exactly back in line with the February 2024 Base forecast again.

Additional Incentive Schemes

4.23 We have considered how the revised draft Performance Plan could be substantively improved relative to that which was submitted in November, particularly in relation to enhanced assurance or incentivisation in relation to the delivery by AirNav Ireland of the capacity measures. In that regard, we propose to include additional capacity targets and associated financial incentive schemes. We note that capital costs associated with any unrealised investments are already, in substance, subject to cost-related financial incentives, given that they are clawed back through Unit Rate adjustments. However, there is a risk that, if AirNav Ireland is not able to fully deliver on the Opex-related measures, this may lead to a financial reward rather than detriment.

4.24 Consequently, we propose to include capacity targets to deliver actual staffing levels in line with our ATCO and Engineer forecasts, together with associated financial incentive schemes. Alongside this paper, we have published an excel model, with (editable) simulated actual performance, to show how the schemes as currently proposed would operate.

Legal Basis

4.25 We note the legal basis for this proposal. Article 10(3) states that:

'The performance plans may contain additional performance targets set on the basis of the key performance indicators referred to in Article 8(4). Those targets shall support the achievement of the performance targets referred to in Article 9(3) and in point (a) of paragraph 2 of this Article.'

[13] Within the meaning of Article 10(2) of the 2019 Regulation.

4.26 Article 8(4) states that:

'Member States may establish key performance indicators and indicators for monitoring in addition to those referred to in paragraph 2 as regards, in particular, civil-military or meteorological aspects.'

4.27 Those key performance indicators and indicators for monitoring referred to in paragraph 2 of Article 8 are:

'The key performance indicators and the indicators for monitoring the performance of air navigation services at national level or at the level of functional airspace blocks shall be those established in Section 2 of Annex I.'

4.28 Section 2 of Annex 1 comprises the KPIs and Indicators for Monitoring at local level.

4.29 Then, the performance targets referred to in Article 9(3), in respect of which the additional performance targets are required to support the achievement of, are '*the Union-wide performance targets for the key performance indicators referred to in Article 8(1)',* which are *'those established in Section 1 of Annex I'* which are the Union-wide KPIs (and Indicators for Monitoring) in respect of each KPA.

4.30 Then, point a) of paragraph 2 of Article 10 also refers to performance targets set on the basis of the same key performance indicators referred to in Article 8(2).

4.31 Article 11(4) states that:

'The incentive schemes contained in the performance plans as adopted by the Member States may also set out incentives of financial nature for the achievement of the performance targets in the key performance area of environment or for the achievement of the additional performance targets referred to in Article 10(3) in line with points (b) and (c) of paragraph 1, provided that they are effective and proportional. Those incentive schemes should be applied in addition to and independently from the incentive schemes referred to in paragraphs 2 and 3. The aggregated financial advantage or financial disadvantage from those incentive schemes shall not exceed 2 % and 4 % of the determined costs of year n respectively.'

4.32 In respect of the ATFM delay incentive schemes, under Article 11(3), the financial advantages shall not exceed 2%, and the disadvantages shall not exceed the value of the advantages.

4.33 Two conclusions arise:

- Additional performance targets may be included in respect of local key performance indicators and indicators for monitoring, other than those specified in Section 2 of Annex 1. The scope of such targets, KPIs, and indicators is not specifically limited, in that '*civil-military or meteorological aspects'* are given as examples, as opposed to limitations, in Article 8(4).

Such targets are limited only by the general requirement that they must support the achievement of the Union-wide targets. Consequently, such performance targets could include delivering particular staffing levels intended to support the achievement of the capacity targets and consequently the Union-wide targets. It can be noted that, where such additional capacity performance targets are set, the additional costs related to achieving them also fall within the scope of Annex IV(1.4(d)(i))). Then, pursuant to Article 11(4), financial incentive schemes may be implemented in respect of such targets, '*provided they are effective and proportional*'.

- In respect of additional incentive schemes under Article 11(4), those are to be applied in *'addition to and independently from'* the incentive schemes under Article 11(2) and Article 11(3) (which refer to the cost efficiency, and ATFM delay incentives, respectively). The context of the limitation of 4% in respect of financial disadvantages is that it sits within Article 11(4) only, and, further, relates to '*those'* incentive schemes, namely those which refer to the '*additional performance targets referred to in Article 10(3)'* which is what Article 11(4) is concerned with, and not also the incentive schemes specified under Article 11(3) or Article 11(2) (it cannot sensibly include Article 11(2)). This wording and context suggests that the 4% limitation does not include the financial disadvantage set under Article 11(3) either. Consequently, incentive schemes in relation to staffing levels could have up to a total of 4% financial disadvantage, independent of the level of financial disadvantages established in respect of ATFM delay targets under Article 11(3). We will further review the legal interpretation of the permissible maximum revenue at risk ahead of the consultation meeting and submission of the revised draft Performance Plan.

Proposed Additional Capacity Targets and Incentive Schemes

4.34 We propose the following general rules and principles:

- Targets to deliver actual ATCO and Engineer staffing levels in line with the IAA's final forecast efficient staffing levels, are to be set for each year 2025 to 2029.

- Actual performance will be measured as inclusive of the same staff business units as included in the estimation of the relevant cost line and capacity measure in the IAA's forecast (hence, for example, only fully trained staff and not trainees).

- Actual annual performance will be measured consistent with the Determined Cost forecast and capacity measures calculations, as an annual average headcount. Where the ratio of headcount to FTEs is different from the baseline year upon which the forecasts were estimated, same will be normalised with reference to the baseline year, for the calculation of actual performance (so that, for example, an increase in this ratio does not allow the target to be met without a fully commensurate increase in capacity/resourcing).

- In the event of any ambiguous situation which is not expressly addressed in the *ex ante* rules, and/or in the event of disagreement between stakeholders as to the correct calculation of the actual performance, the IAA will make the decision.

- Incentive schemes are to be penalty only. No bonuses are appropriate, for the same reason as they are inappropriate for the ATFM delay incentive schemes.

- As an input rather than outcome-based target, it is appropriate to also scale the target or the penalty with reference to traffic volumes compared to the forecast underpinning the price control, in line with our expectation that AirNav Ireland would respond efficiently to unfolding circumstances.

- The incentive scheme penalty would not be further scaled according to the relative weight of new recruitment compared to the average staff cost. This will maintain a positive rather than just cost-offsetting incentive to meet the target (noting that where the rate of new recruitment exceeds attrition, this tends to bring down the average cost within a staff category relative to the baseline as more staff are on relatively lower pay).

- Performance relative to targets is to be included as part of the agenda for the quarterly IAA/AirNav Ireland capacity and environment performance review meetings.

Additional Capacity Target 1: ATCO Staffing Level

4.35 We propose a maximum penalty of 3% of Determined Costs (or 2%, if necessary, depending on the conclusion regarding the maximum permissible revenue at risk). We propose three bands with reference to actual traffic, measured by annual En Route Service Units:

- Band 1: In a year where traffic is above, in line with, or no more than 5% below the forecast:

    - A deadband of 5% of the incremental ATCO forecast (per Capacity Measure #1).

    - The maximum penalty becomes payable once the percentage of ATCO delivery performance, relative to the capacity measure assumption, falls below the level of the maximum penalty expressed as a percentage of the Determined Cost of Measure #1 (see model).

    - Within the range of the maximum and minimum penalty, the penalty is based on a sliding scale.

- Band 2: In a year where traffic is more than 5% but no more than 10% below the forecast:

    - A deadband of 10% of the incremental ATCO forecast (per Capacity Measure #1).

- The maximum penalty becomes payable once ATCO delivery performance falls below the baseline level assumed within Measure #1.

- Within the range of the maximum and minimum penalty, the penalty is based on a sliding scale.

- Band 3: In a year where traffic is more than 10% below the forecast, no penalty is payable.

Additional Capacity Target 2: Engineer staffing level

4.36 We propose a maximum penalty of 1% of Determined Costs. We propose two bands with reference to outturn traffic levels (annual En Route Service Units):

- Band 1: In a year where traffic is above, in line with, or no more than 10% below the forecast:

  - A deadband of 10% of the incremental Engineer forecast (per Capacity Measure #2).

  - The maximum penalty becomes payable once the percentage of Engineer delivery performance, relative to the capacity measure assumption, falls below the level of the maximum penalty expressed as a percentage of the Determined Cost of Measure #2 (see model).

  - Within the range of the maximum and minimum penalty, the penalty is based on a sliding scale.

- Band 2: In a year where traffic is more than 10% below the forecast, no penalty is payable.

2026 Unit Rates

4.37 The Determined Costs under our currently preferred Scenario 1.2 above, together with the complete set of Unit Rate adjustments applicable for 2026, generate the draft Unit Rates below. This version of the Performance Plan model is published alongside this paper.

En Route

4.38 The proposed 2026 Unit Rate for En Route services is €35.03, which is 4% higher than the 2025 Unit Rate of €33.71. This rate is approximately €2.96 higher per unit than would have been the case had adjustments not been applied to the total determined costs.

4.39 Row 11 of Table 4.1 shows that the total cost applicable for the En Route unit rate calculation is €184m after adjustments. This is 9% higher than the determined costs for 2026 (shown in row 1). Rows 2 to 10 show the applicable adjustments. The first set, as laid out in rows 2 to 9, are adjustments caried forward from RP3. The largest adjustments are in row 2 and row 10, and are

related to the inflation adjustment in accordance with Article 25 (2)(b) (row 2), and the recovery of permitted unrecovered revenues resulting from the COVID-19 emergency measures and which are spread over a seven-year period from 2023 to 2029 (row 10). Row 4 includes the return of unspent capex.

Table 4.1: Applicable En route Unit Rate for 2026

	Total	ANI	MET	NSA/State
1. Determined costs in nominal terms - VFR excl. (Art. 25(2)(a))	€168.6m	€141.2m	€9.1m	€18.3m
2. Inflation adjustment: amount carried over to year n (Art. 25(2)(b))	€ 9.8m	€9.2m	€0.6m	-
3. Traffic risk sharing adjustment: amounts carried over to year n (Art. 25(2)(c))	-	-	-	-
4. Differences in costs as per Art. 28(4) to (6): amounts carried over to year n (Art. 25(2)(d))	-€2.0m	-€3.2m	-	€1.2m
5. Financial incentives: amounts carried over to year n (Art. 25(2)(e))	-	-	-	-
6. Modulation of charges: amounts carried over to year n (Art. 25(2)(f))	-	-	-	-
7. Traffic adjustments: amounts carried over to year n (Art. 25(2)(g) and (h))	-€0.6m	-€0.2m	-€0.2m	-€0.3m
8. Other revenues (Art. 25(2)(i))	-€1.5m	-€1.5m	-	-
9. Cross-financing between charging zones (Art. 25(2)(j))	-	-	-	-
10. Difference in revenue from temporary application of unit rate (Art. 25(2)(k))	€9.8m	€7.4m	€1.1m	€1.4m
11. Grand total for the calculation of year n unit rate	**€184.1m**	**€153m**	**€10.87m**	**€20.4m**
12. Forecast total service units for year n (performance plan)	**5,256k**	**5,256k**	**5,256k**	**5,256k**
13. Applicable unit rate for year n	**€35.03**	**€29.11**	**€2.03**	**€3.90**

Source: IAA

Terminal

4.40 The proposed 2026 Unit Rate for Terminal services is €172.59. This is 1% higher than the 2025 Unit Rate of €170.37. This Unit Rate is €0.98 higher than would have been the case had adjustments not been applied to the total determined costs- showing that the adjustments here largely cancel each other out.

4.41 As with Table 4.1, row 11 of Table 4.2 shows that the total cost applicable for the Terminal unit rate calculation is €38.1m after adjustments. This is 0.6% higher than the determined costs calculated for 2026, as shown in Row 1 (€37.8m). Rows 2 to 10 show the applicable adjustments. The first set, as laid out in rows 2 to 9, are adjustments caried forward from RP3. The largest of these adjustments is in Row 2 and is again related to the inflation adjustment in accordance with Article 25 (2)(b). The figure in Row 10 is related to the unrecovered permitted revenues resulting from the Covid-19 emergency

measures and which will be spread over a seven-year period. Row 4 includes the return of unspent Capex.

Table 4.2: Applicable Terminal Unit Rate for 2026

	Total	ANI	MET	NSA/State
1. Determined costs in nominal terms - VFR excl. (Art. 25(2)(a))	€37.8m	€34m	€2.3m	€1.5m
2. Inflation adjustment: amount carried over to year n (Art. 25(2)(b))	€2.0m	€1.8m	€0.2m	-
3. Traffic risk sharing adjustment: amounts carried over to year n (Art. 25(2)(c))	-€0.8m	-€0.8m	-	-
4. Differences in costs as per Art. 28(4) to (6): amounts carried over to year n (Art. 25(2)(d))	-€1.3m	-€1.5m	-	€0.2m
5. Financial incentives: amounts carried over to year n (Art. 25(2)(e))	-€0.2m	-€0.2m	-	-
6. Modulation of charges: amounts carried over to year n (Art. 25(2)(f))	-	-	-	-
7. Traffic adjustments: amounts carried over to year n (Art. 25(2)(g) and (h))	-€0.3m	-€0.1m	-€0.1m	-€0.1m
8. Other revenues (Art. 25(2)(i))	-€0.8m	-€0.8m	-	-
9. Cross-financing between charging zones (Art. 25(2)(j))	-	-	-	-
10. Difference in revenue from temporary application of unit rate (Art. 25(2)(k))	€1.8m	€1.3m	€0.3m	€0.2m
11. Grand total for the calculation of year n unit rate	**€38.1m**	**€33.8m**	**€2.6m**	**€1.8m**
12. Forecast total service units for year n (performance plan)	221.0k	221.0k	221.0k	221.0k
13. Applicable unit rate for year n	**€172.59**	**€152.79**	**€11.85**	**€7.95**

Source: IAA

5. Capacity Measures and Response to PRB Report

5.1 In this section, we provide further detail in response to the PRB report of March 2025 which analyses the draft Performance Plans (the 'PRB Report').[14] While we agree with and welcome much of the analysis in respect of the draft Performance Plan, which essentially takes no issue with anything other than the capacity measures and consequently the DUC trend, we do not agree with the approach in the latter respect, for the reasons outlined here.

5.2 As then requested in the European Commission's inconsistency decision, we also provide further detail and background with respect to the capacity measures, and references to the supporting materials provided, to explain why they are necessary and proportionate in respect of meeting the capacity targets.

5.3 We note the following assertions/findings in the PRB Report, with underlining added in respect of a number of key points.

5.4 Page 14 of the main report[15]:

'Member States must ensure that all capacity improvement measures are realised as planned, especially the recruitment and training of ATCOs, new ATM system upgrades, and airspace reorganisations.'

5.5 Annex II, page 526:

'[AirNav] *Ireland seems on track to achieve the* [Environment] *targets based on recent performance.'*

5.6 Page 533:

'*Ireland's national capacity targets are below their the* [sic] *national reference values, which will support Ireland in achieving its environmental performance targets in RP4.'*

5.7 Page 535:

'The proposed national en route capacity targets are more ambitious than the national reference values in all years of RP4. Target values are largely in line with the delay forecast.'[16]

'The PRB concludes that the capacity targets proposed by Ireland should be approved.

- Ireland's capacity targets are more ambitious than the reference values.'

5.8 Page 536 then outlines the referenced capacity improvement plans:

[14] PRB assessment of RP4 performance plans - European Commission
[15] b789dcd3-e290-4e4d-8f38-26e6527b4165_en
[16] We note that they are slightly more ambitious also than the referenced NOP delay forecast in 2027 and 2028.

'*During RP3, Ireland registered very limited en route ATFM delays due to ATC capacity and ATC staffing, achieving targets in all years of the period. The performance plan describes the measures planned to improve capacity, which are in line with those included in the July 2024 edition of the NOP. The measures are as follows:*

- *Recruitment and training of ATCOs and engineers to address understaffing issues at Irish ACCs.*
- *Improved flexibility of sectorisation and use of operational staff.*
- *Investments into the main ATM system and infrastructure elements enabling further developments.*

The planned number of ATCOs in OPS FTEs show an overall increase of +15% over the period, which, if realised, would allow AirNav Ireland to address existing staffing issues.'

5.9 Page 539:

'Ireland currently has no capacity gap driven by limitations of the ATM systems. Nevertheless, new major investments into the 'COOPANS TopSKy ATC One' and the 'ASMGCS' are seen as direct contributors to improving capacity performance. The other new major investments included in performance plan are seen as enablers for capacity enhancement but not direct contributors to improving capacity.

The new major investments associated with infrastructure, namely 'Radar Upgrade Phase 2' and 'Ballycasey Building Extension', 'Dublin ATC Building Extension' and the back-up system investment 'CASDS' may contribute to resilience in terms of improved facilities and ATM-system availability. The new major investment 'ASMGCS' may contribute to resilience in low visibility operations and is also a direct capacity enhancement contributor as noted above. 'COOPANS TopSky ATC One' investment contributes to flexibility, scalability and resilience.'

5.10 Page 545 [conclusion of the review of the WACC we estimated in relation to AirNav Ireland]: '*No major issues identified.'*

5.11 Page 549:

'The measures presented by Ireland in the performance plan for RP4 represent more than 13% of the total costs for the en route charging zone. Significant investments in capacity could be deemed necessary for Member States with significant capacity gaps. A deviation from cost-efficiency targets for capacity reasons could then aim at delivering the adequate capacity to users and reducing the delays, which represent significant costs for them. Considering that the capacity targets set by Ireland are more stringent than the reference values for AirNav Ireland, that AirNav Ireland has consistently met the capacity targets set on reference values close to zero in the previous reference periods,

and that AirNav Ireland is expected to have sufficient capacity to meet traffic demand during RP4, the proposed deviation for achieving capacity targets is not deemed necessary and proportionate.

In addition, the measures reported for AirNav Ireland include elements which should be considered as part of the standard activity of an ANSP and of the measures that would be necessary to achieve capacity targets in a business-as-usual scenario (e.g. implementation of CP1 functionalities) and the deviation is partially due to increases in costs that are not linked to capacity provision (e.g. increase in return on equity exceeding the PRB computation by +4.6M€ over RP4).

As a result, the deviation from the cost-efficiency criteria is neither considered necessary and proportionate to allow the achievement of the capacity targets, nor exclusively due to additional determined costs related to measures necessary to achieve the capacity targets.'

5.12 The conclusion of the European Commission, having taken account of the advice of the PRB, was distinct, in that it asserted that it was unable to conclude on the point without carrying out further analysis:

'Therefore, it is not possible to conclude, without further detailed information and analysis, on whether the capacity measures presented by Ireland can be, in their entirety, deemed necessary and proportionate for the achievement of the local capacity performance targets for RP4.'

5.13 In the verification of completeness phase, when we asked for further detail, we had received the following response:

'As regards the description of additional capacity measures, we are asking for information that describes the extent to which the different measures are to be regarded as additional (as opposed to the normal measures the ANSP would take). For example, we understand that there is an issue of understaffing and that, therefore, the training of controllers is ramped up. However, in such a case, not all ATCO training costs are to be regarded as additional capacity measures, as there is an element of that measure that is related to normal operations rather than additional measures (i.e. new ATCOs would be trained merely due to normal fluctuation, baseline traffic growth, etc.). Similar details are to be provided for all the measures listed under point 3.4.9. of the performance plan template.'

5.14 In the draft Performance Plan, we outlined how we sought to address this request. Based on the content quoted above, which is the entire analysis/substantiation provided, there are essentially two high level reasons as to why the PRB disagrees with our assessment:

1) The measures presented are not (or not fully) eligible capacity measures, because they include costs which are now asserted to be 'Business-as-usual', and further, the WACC exceeds the PRB estimate. The PRB did not assess or consider whether, absent any such 'Business-as-usual' costs, the

measures would still be sufficient to establish consistency with one or both of the DUC trends.

2) Given that En Route ATFM delay is already at a low level, and this is '*expected*' to continue in RP4, the measures are not necessary and/or proportionate. The PRB did not specify whether it is referring to some or all of the measures here, or provide any specific analysis or substantiation of this conclusion with reference to the material with which it was provided.

5.15 We will address these two points in the next two subsections, in doing so providing further detail and background as requested by the European Commission.

Point 1: The correct interpretation of Annex IV(1.4(d)(i)) of the 2019 Regulation is that which was applied by the PRB throughout RP3

5.16 Firstly, as noted by the PRB, the current draft Performance Plan is below the average of the comparator group, so the criterion 1.4(c) is met in all scenarios, but the DUC trends do not align with the short- or long-term target trends before considering Annex IV(1.4(d)). We note that, consistent with its approach in RP3, the PRB has recommended that it is sufficient to establish material consistency with any two of these three criteria.

5.17 In considering whether the deviations from the short and/or long-term target trends were justified, the IAA had careful regard to the proper interpretation of Annex IV(1.4(d)(i)), and the established decision-making precedent in respect of this provision, as applied by the PRB (and European Commission) to other Performance Plans in RP3. We also replicated the calculation approach applied by the PRB during RP3, based on unit costs. Annex IV(1.4(d)) states as follows:

'A deviation from the criteria referred to in points (a) to (c) may be deemed necessary and proportionate in order to:

(i) allow the achievement of the performance targets in the key performance area of capacity set at national level or the level of functional airspace blocks provided that the deviation from the Union-wide determined unit cost trend is exclusively due to additional determined costs related to measures necessary to achieve the performance targets in the key performance area of capacity.'

5.18 The legal interpretation of this provision can be distilled into a two-limb test:

- Firstly, whether the measure(s) are demonstrated to be necessary and proportionate in respect of measures to achieve capacity targets.

- Secondly, whether the quantum of the determined costs associated with any such measures is greater than the variance from the target trend. This is a standard and common 'but-for' legal test, i.e., 'but-for' the costs of the measures, would the target trend be met?

5.19 This is fully consistent with the PRB's previous interpretation. For example, in

2022, the application of the legal test was summarised as follows:

'In section 3.4.6 d) of the performance plan, Hungary provided detailed calculations. According to these, the DUC for Hungary would be consistent with the Union-wide RP3 and long-term DUC target trends, should the costs reported above be removed from the determined costs of RP3.'

5.20 In developing the draft Performance Plan, we had reviewed in detail, and documented, the legal precedent in respect of interpreting this provision. In its assessment of the RP4 draft Performance Plans, the PRB similarly reiterates that:

'The principles applicable to the assessment, such as those laid down in Annex IV of the Commission Implementing Regulation (EU) 2019/317, remain unchanged from RP3.'

5.21 However, the quotes above show that in practice, the PRB has, in 2025, applied a different interpretation of the same legal provision (the 'RP4 Interpretation'). The PRB has purported to add limbs to the test which do not feature in the 2019 Regulation, which are not consistent with the PRB's own established precedent when applying the same provision in RP3, and which ultimately does not appear to generate a practically workable or sensible interpretation.

5.22 Any such fundamental change in the interpretation of the same legislation by a decision-making body will always require clear substantiation as to why the previous interpretation was incorrect; for example, a court decision interpreting the provision in question, or interpreting an analogous one, differently. In that regard, regulatory stability and predictability (and the ability to recover efficient costs, including cost of capital) is a key driver of the relatively low cost of capital, and in particular the asset beta, which we impose on regulated aviation infrastructure providers.

5.23 We note that there does not appear to be any draft Performance Plan which has been deemed to pass the test under Annex IV(1.4(d)(i) where the RP4 Interpretation has been applied.[17] The PRB Report does not engage with the substance of our attempt to address the verification of completeness request. We cannot see how, for example, the costs associated with TopSky ATC One could be severed into those which are related to capacity enhancement, versus those related to CP1 enablement but not capacity enhancement, nor what is meant by '*normal*' fluctuation nor indeed what is meant by '*baseline'* traffic growth- none of which featured in the PRB's own previous analyses when it applied this provision.

5.24 In those circumstances, and as outlined in Annex R and as addressed further below, the IAA considers that the provision must continue to be interpreted as it was in RP3; in substance, it provides the necessary flexibility to allow the regulator distinguish efficient cost increases from inefficient ones. This is the

[17] Only the draft Performance Plan of Hungary was found to be consistent as a result of Annex IV(1.4(d)(i)), on the basis of an interpretation more in line with that of RP3.

correct legal interpretation, based on the same interpretative principles outlined above.

5.25 As it was in RP3, the provision must continue to be interpreted such that '*exclusively'* does not mean that a Performance Plan is required to sacrifice other eligible and efficient cost estimates before the article can be relied upon. It will always be possible to reduce the Determined Costs by sacrificing things which are necessary/beneficial, but may not impact ATFM delay performance. For example, by degrading safety and/or operational resilience relative to our assessment, by operating the runways in a sub-optimal manner, or by providing insufficient resourcing to non-operational activities. No overall result of any forecast is ever exclusively driven by any one component of the forecast.

5.26 Instead, the provision is to be interpreted as stipulating a 'but-for' test, fully consistent with the approach taken by the PRB in RP3. It is also similar to the PRB's approach in respect of DUC trends which have been impacted by the Russian invasion of Ukraine. Other cost estimates fall to be assessed on their own merits, in terms of eligibility and reasonability. There is no basis to suggest that other costs must be under-estimated to compensate for capacity measures:

- There is no such wording in the 2019 Regulation. All other costs, including the WACC, should continue to be fairly estimated on a centreline and internally consistent basis, and in line with Article 22.

- It would lead to a counterproductive situation where, for example, in order to be permitted to invest in an ATM system which all parties agree is necessary and beneficial, an ANSP must, for example, forgo some of the cost of capital to which it would otherwise be entitled. Having to choose between making a fair return on its assets, or investing in such a system, would be fundamentally at odds with building-block incentive regulation, which aims instead to incentivise such investment. Indeed it may also jeopardise the financeability of the project.

5.27 There is similarly no basis in the 2019 Regulation to suggest that a measure is to be excluded where it delivers benefits other than just 'non-normal' incremental capacity or productivity, because that is asserted to be 'Business-as-usual'. This would make the provision effectively inoperable, as it is difficult to think of any measure which would generate benefits in such a strictly narrow way, or how any such approach could be objectively applied in practice.

5.28 In any case, investments which enable CP1 compliance have been repeatedly accepted as being relevant in principle for the purposes of Annex IV(1.4(d)(ii)) - including in 2025 in the case of Hungary. In other cases, it now appears to be suggested that the investments in the ATM systems are not (or not fully) valid capacity measures, because they will enable CP1 compliance. This would lead to the illogical conclusion that the TopSky ATC One system is a valid capacity measure only if it fails to deliver CP1 compliance. It is important to incentivize the provision of investments which deliver benefits in a broad manner, across

the four KPAs. In any event, CP1 compliance is itself capacity related.[18]

5.29 Page 549 of the PRB report then references the cost of equity being higher than the PRB's computation. Aside from the fact that page 545 concludes that there are '*no major issues'* with our WACC estimate, and the fact that the PRB has repeatedly accepted capacity measures notwithstanding a WACC which is higher than the PRB's computation (including in 2025), we do not agree with the PRB's computation. The reason why the PRB has calculated a lower cost of equity is primarily because it has used a simple 10-year historic average input in respect of the Risk Free Rate (RFR). This is not an approach which could be taken by the IAA.[19] We agree with the PRB's assessment of the asset beta, which aligns with ours (AirNav's proposal was higher). The reasons underlying the estimation of the WACC parameters are set out in full in sections 5 of the Draft Decision and Final Decision.

Point 2: Capacity targets, necessity and proportionality

5.30 Given the above interpretation of Annex IV(1.4(d)(i)), the calculations we provided already show that the second limb of the test is met in respect of the both the short- and long-term trends in the current draft Performance Plan, as recognised by the PRB. The measures fall, in principle, within the scope of this legal provision. Consequently, the remaining substantive point is in relation to whether the measures are necessary and proportionate in respect of achieving the capacity targets set at national level. In concluding that they are not, the PRB Report makes three sub-points:

- The local capacity targets we set for AirNav Ireland are more stringent than the national reference values.
- AirNav Ireland has consistently met the capacity targets set on reference values '*close to zero'* in the previous reference periods.
- AirNav Ireland is expected to have sufficient capacity to meet traffic demand during RP4.

Local Capacity Targets set below national reference values

5.31 Firstly, we note that setting local capacity targets in line with the national reference values for RP4 would not in itself have any impact on cost. It would only do so if AirNav Ireland actively sets out to reduce operational resourcing in practice, in order to 'meet' those lenient targets by generating roughly five times as much En Route ATFM delay in RP4 as it did in RP3. There can be no serious question of such an approach:

- As we explained in the consultation and decision papers, the ATFM delay targets are also a proxy for the Environment (KEA) performance, noting in particular the detailed analysis undertaken by the PRB on this

[18] https://www.sesardeploymentmanager.eu/news/discover-6-benefits-of-atm-modernisation-through-cp1-deployment
[19] Our approach, as outlined in section 5 of the draft and final decisions, and consistent with our precedent, was based on the yield from ten-year Irish and German bonds, assessed over one-year, two-year, and five-year averaging periods.

interdependency. The PRB 2025 report also recognises the link between capacity and environment, correctly aligning itself with our assessment that '*Ireland's national capacity targets are below their the* [sic] *national reference values, which will support Ireland in achieving its environmental performance targets in RP4.'* The KEA targets are set in line with the reference values. This will require improvement on current performance, which will already be challenging to achieve. In this context, such a significant deterioration in ATFM delay performance relative to RP3 is untested in Irish airspace, but would likely be inconsistent with AirNav Ireland potentially achieving the Environment KPA targets.

- AirNav Ireland can and should make a positive rather than merely neutral contribution to the achievement of the EU-wide capacity (and thus environment) targets, which will offset potential underperformance from some other ANSPs.

- The volatility in the national reference values being assigned under the 2019 Regulation (e.g. an increase of more than 100% from 2024 to 2025 for Ireland, when the Irish 2024 capacity target was met but the Union-wide 2024 target was missed) is instead indicative of issues with the EU-wide target setting and/or reference value setting processes. Unless there has been a large shift in the cost of delay from 2024 to 2025 (which there has not), those two sets of reference values cannot both be a correct reflection of the Total Economic Cost (TEC) of delay in the case of AirNav Ireland, and should not be imposed by a rational regulator. Having forecast, and then repeatedly and regularly monitored and encouraged, the delivery by AirNav Ireland of increased operational staffing levels and investment over RP3, we cannot suddenly switch to requiring reductions for RP4.

- Given training and investment lead times, capacity cannot be switched on and off like a tap. It may be that national capacity reference values for RP5 will be more in line with RP3 again, and the ATFM delay increase during RP4 would have to be undone over RP5, which may not be achievable or fully achievable.

5.32 We note the following in respect of the PRB Report:

- The capacity section specifically acknowledges and accords with our assessment in relation to ATCO and Engineer understaffing, and welcomes and relies upon the capacity enhancements included, as well as the investment in the ATM systems, which it notes are consistent with those included in the latest NOP. The NOP consequently forecasts that AirNav will be able to meet the targets that we have set.[20]

- The cost efficiency section then concludes that because *'AirNav Ireland is expected to have sufficient capacity to meet traffic demand during RP4, the proposed deviation for achieving capacity targets is not deemed necessary*

[20] While the NOP delay forecast was slightly higher than our target in some years, we expect AirNav Ireland to be able to meet our targets provided that it adopts the capacity measures.

and proportionate'. However, that conclusion from the NOP is **inclusive** of the capacity measures in the NOP, which the capacity section of the PRB report has already confirmed and relied upon (see page 536, as quoted and underlined above)**.** That is, there is expected to be no capacity gap on the assumption that AirNav Ireland progresses the capacity measures. In fact, as outlined in our reports that we provided, the measures included by AirNav Ireland in July 2024 were more extensive/costly than the measures ultimately assessed by us as being necessary and proportionate in striking the right balance between cost and resourcing.

Relatively strong ATFM delay performance

5.33 The other point made in the PRB Report is that AirNav Ireland is currently not generating significant levels of En Route ATFM delay, and has met its targets during RP3.[21] We agree that these are relevant considerations in respect of necessity and proportionality, as reflected in our analysis. However, the 2019 Regulation does not enumerate any general prerequisite that an ANSP must be generating significant ATFM delay, or for there to be an assessed 'capacity gap', in order for Annex IV(1.4(d(i))) to be engaged. It is necessary to consider the specific circumstances of a given ANSP. Further, there are various examples from RP3 where the PRB, applying the same provision, accepted capacity measures in respect of ANSPs with similar ATFM delay performance to AirNav Ireland, and/or where there was no assessed 'capacity gap'.

5.34 As noted above, while operational decisions are ultimately for AirNav Ireland to make, as a regulator applying the 'but-for' test under Annex IV(1.4(d(i))), we must assume that other costs which we assess to be necessary or beneficial will not be sacrificed. For example, it must not be assumed that AirNav Ireland could meet the capacity targets by continuing to over-rely on overtime and excessively tight rostering, or by underdelivering on its safety related objectives (potentially again not meeting the EoSM performance targets), or by again diverting resourcing from the investment programme to operations. Based on our assessment, if AirNav Ireland does not adopt these measures, it will not be able to simultaneously deliver on all of these objectives, each of which we find to be in the interests of airspace users:

- Maintain or improve ATFM delay performance relative to RP3, as per the local targets.

- Maintain ATCO staffing levels which permit AirNav Ireland to properly resource its rosters in a manner which provides adequate operational resilience, and to maintain a buffer against spikes in attrition and, as recommended by the Network Manager, a buffer against a higher traffic scenario materialising (which higher staffing levels will be partially offset by reduced ATCO overtime, all else equal, as reflected in our overtime forecast).

- Properly resource the delivery of, and finance, its investment programme,

[21] Although not meeting the arrival ATFM delay targets in 2023 or 2024.

the key focus of which is a new ATM system as part of the COOPANS alliance, which will deliver significant benefits into the future across all four KPAs.

- Operate all infrastructure in an optimal manner, with resilience to absorb reasonably foreseeable operational changes. This includes potential further extended operating hours of the North Runway at Dublin Airport (a decision has been made to extend these by a further 1.5 hours daily).[22] It might also include being able to facilitate dependent parallel runway operations, if that transpires to be necessary pursuant to Noise Mitigation Measures adopted under Regulation 598/2014, which would require further additional resourcing beyond our forecast assumptions.

5.35 While correct that ATFM delay is at low levels currently, it spiked in 2023 due to insufficient capacity, nonetheless remaining low relative to many other ANSPs. However, resourcing issues ('gaps') do not always show up as ATFM delay. ATFM delay is only one measure of whether optimal resourcing is available to operate and develop the provision of services. This has also been explained in the material provided:

- We and CEPA/Think have identified that one of the key factors which have led to Capex underdelivery has been insufficient engineer resource, and diverting trained ATCO resource into operations as part of AirNav's apparent priority of keeping ATFM delay low.

- Zero flow rates being temporarily imposed repeatedly in airspace controlled from the Dublin ACC during 2023.

- The North Runway at Dublin Airport was operating reduced hours for almost a year after opening in late 2022, because AirNav Ireland could not fully staff it across the full permitted operating hours (currently 0700 to 2300).

5.36 ATFM delay metrics are incomplete measures of capacity, given that, for example, the reduced operating hours of the North Runway did not impact En Route ATFM delay. It did impact various environmental indicators such as taxi-out times, time in terminal airspace, and likely also On Time Performance (OTP) of airlines. For example, in respect of taxi out times, an estimate of the difference between single runway and dual parallel runway operations can be observed by comparing our simulation modelling in respect of the Summer 2019 slot capacity declaration (fully single runway operations) with that of Summer 2024 (dual runway operations). With similar levels of traffic, daily average taxi out time for Summer 2024 was estimated below 13 minutes and peak taxi-out was 23 minutes, whereas for Summer 2019 the daily average estimate was just under 17 minutes, and the peak taxi-out was 29 minutes.[23] The PRB's 'traffic light' environmental report made similar findings in the

[22] This decision is currently under appeal, but is expected to be determined shortly.
[23] https://www.iaa.ie/commercial-aviation/economic-regulation/slot-allocation/documents---slots https://www.iaa.ie/docs/default-source/car-documents/summer-2019-capacity/helios-s19-report.pdf?Status=Master&sfvrsn=d8a514f3_0 , slide 38 https://www.iaa.ie/docs/default-source/1c-economic-regulation/s24-final-assessment---egis.pdf?sfvrsn=f59feef3_1 , slide 30

relevant periods.

5.37 Further, as identified by CEPA/Think, the impositions of zero flow rates during 2023 were symptomatic of the identified insufficient roster resilience, linked also to more ATCO attrition than AirNav Ireland had expected. As reflected in the links in the footnote below, this situation led to significant public and political concern and criticism.[24]

5.38 All of these are issues which the relevant parties (including AirNav Ireland, the IAA, the PRB, and the European Commission) must aim to avoid a repetition of during RP4 and beyond.

Measures in the draft RP4 Performance Plan

5.39 We considered that the measures as proposed by AirNav Ireland in its Business Plan to increase its operational staffing levels and invest in its ATM systems, to be only partly necessary and proportionate. The measures which we included in the draft Performance Plan reflect the associated lower costs as determined by the IAA to be necessary and proportionate. This is set out in extensive detail in the CEPA/Think reports, and in our reports.

5.40 In respect of this first limb of the test, the whole purpose of the IAA's approach is to ensure that our cost forecasts for AirNav Ireland are necessary and proportionate in delivering the required services, at an appropriate service standard, and in a safe and resilient manner. Our key finding was that AirNav Ireland is understaffed in operational domains (ATCOs and Engineers). This was accepted/agreed by all stakeholders during the consultation process, a factor to which significant weight must be afforded in any assessment or review process by the IAA/PRB/European Commission. In summary, airspace users supported our forecasts in those regards, whereas AirNav Ireland and the AirNav Ireland staff representatives claimed that they were insufficient.

5.41 We noted that the PRB has previously set out its views in respect of the types of projects which provide capacity benefits. The IAA took account of this when developing the draft Performance Plan for RP4, as well as the precedent in respect of measures accepted previously under the same legal provision. Those measures previously accepted by the PRB include:

- The recruitment of ATCOs and associated costs such as training, and also overheads. Notably, in some cases, this measure has previously been applied by the PRB on the basis of all new ATCOs intended to be recruited, including those required to replace existing ATCOs. Following the verification of completeness request, we amended the calculation to include

[24] See for example:
https://flyinginireland.com/2023/04/dublin-airspace-to-close-again-overnight/
https://www.irishexaminer.com/news/arid-41264779.html
https://www.dublinlive.ie/news/dublin-news/dublin-airport-forced-close-twice-28066491
https://www.rte.ie/news/ireland/2023/0428/1379727-dublin-airport/
https://www.independent.ie/business/irish/air-traffic-control-staff-crisis-is-major-threat-to-services-says-trade-union/a227321768.html

only additional staff above the baseline level, excluding those required due to attrition. If we were to calculate this in the way in which it was done in RP3, the value of the measures would increase significantly. We have also not included general overheads such as the incremental corporate services costs, in the current calculations.

- Costs associated with improving the flexibility of employee terms and conditions, and operations analysis and review programmes.

- A wide range of investments in ATM systems, including projects which will also enable CP1 compliance as well as projects to deliver capacity resilience, scalability and flexibility.

- A wide range of indirect contributors or facilitators of capacity, such as a new/expanded ACC building, and various smaller scale investments which are related to En Route capacity (in line with or similar to those we have estimated in Measure #8).

5.42 We also note that such measures have still been accepted by the PRB where:

- The relevant ANSP met the En Route ATFM delay targets in the previous period and/or generates relatively low levels of En Route ATFM delay and/or is forecast to meet the ATFM delay targets in the upcoming period.

- The WACC is higher than the PRB's estimate.

5.43 Annex R set out the summary of our conclusions in respect of each measure, and provides references to the more detailed analysis contained in our reports and/or the CEPA/Think reports. As evident in Annex R, the majority of the measures are direct investments in ATCO staffing levels, and the capacity/resilience of the ATM system, and associated Other Opex costs. These are the same measures and costs which the PRB has accepted before, but which we have now calculated more conservatively than the PRB did during RP3.

5.44 A number of the smaller measures are indirect contributors to or facilitators of capacity, which are in line with, or analogous to, measures which have previously been calculated/accepted by the PRB:

- The primary basis upon which we concluded an increase in engineers (Measure #2) was necessary and proportionate is to deliver the investment programme, in particular the major investments in the ATM systems. We found the further increase suggested by AirNav Ireland not to be fully necessary and proportionate.

- The incremental OMS staff (Measure #3) is to free up ATCOs from such administrative tasks, enabling the productivity and efficiency of trained ATCOs to be maximised in relation to the provision of capacity and delivery of the investment programme. CEPA/Think assessed this to be the most cost-effective approach, and this was taken into account in our ATCO

forecast (i.e. it reduced it, all else equal).

5.45 In line with the PRB's RP3 interpretation, it is necessary to interpret Annex VI(1.4(d)) as inclusive of such indirect measures in principle. Aside from the fact that this is supported by the text of the 2019 Regulation, the alternative approach would be to further increase ATCO staffing levels, which would be a direct but more costly measure. This would lead to the absurd and counterproductive conclusion that Annex VI(1.4(d)) requires the more costly direct measure to be included in the Determined Costs, instead of the less costly indirect measure- a conclusion which would run contrary to the purpose of the 2019 Regulation.