



**Outcome of Consultation on
Work Plan to Establish an Irish Performance Plan Containing Revised Targets for the
Third Reference Period 2020-2024 ('RP3')**

Commission Paper 11/2020

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Table of Contents

- 1. Introduction..... 2
- 2. Submissions from stakeholders 3
- 3. CAR responses to stakeholders 6
- 4. Outcome to the consultation 9

1. Introduction

- 1.1 On 4 November 2020, The Commission for Aviation Regulation ('CAR') issued Commission Paper 10/2020 ('CP 10/2020') on the work plan to establish an Irish Performance Plan ('PP') containing revised targets for the third Reference Period 2020-2024 ('RP3').
- 1.1 CAR was seeking feedback on the timeline and methodologies proposed in the work plan by 20 November 2020, and received five responses from stakeholders, namely:
- Aer Lingus;
 - Irish Air Line Pilot's Association ('IALPA');
 - Irish Aviation Authority ('IAA') ANSP;
 - Irish Congress of Trade Unions ('ICTU'); and
 - Ryanair
- 1.2 This document addresses the matters brought forward by the stakeholders and sets out the outcome of our consultation on the workplan to establish an Irish PP containing revised targets for RP3.
- 1.3 The remainder of this document is divided in three sections:
- Submission from stakeholders;
 - CAR responses to stakeholders; and
 - Outcome to the consultation.
- 1.4 The adopted work plan is laid out in Annex 1.

2. Submissions from stakeholders

Introduction

2.1 In this section, we summarise the submissions received on the intended work plan to establish an Irish PP containing revised targets for RP3 we laid out in CP10/2020.

Proposed timeline

2.2 In CP10/2020, we proposed the following work plan timeline to establish an Irish PP containing revised targets for RP3.

- 15 December 2020 – publication of initial traffic forecast and initial cost estimates;
- November 2020 to September 2021 – CAR Assessment:
 - December 2020 to June 2021 – Stakeholder workshops on preliminary findings;
 - Early June 2021 – Final proposals of IAA ANSP, MET, and NSAs costs;
 - End of July 2021 – CAR to circulate cost-efficiency consultation documents;
 - August 2021 – Stakeholders to submit written responses;
 - September 2021 – CAR to finalise cost-efficiency targets
- 1 October 2021 – Ireland’s submission of draft RP3 PP to the European Commission.

Proposed methodology

2.3 As part of the methodology we proposed in CP10/2020, we stated that we will consider the following items:

- Covid-19 response –review the extent to which the ANSP took practical and achievable steps in 2020 and 2021 in response to the Covi-19 crisis with respect to operating and capital costs;
- The interaction between cost efficiency and safety, capacity, and environmental targets;
- Cost allocation between regulated and non-regulated activities, and en route and terminal services;
- Staff costs efficiency, taking into account appropriate benchmarks, and adjusted for the current market situation;
- Non-staff costs efficiency, taking into account appropriate benchmarks;
- Capital costs efficiency with regards to pricing and their timing;
- The appropriateness of the depreciation profile of the ANSP’s assets; and
- The appropriateness of the ANSP’s cost of capital.

- In addition, we stated that we would consider and assess the ANSP financeability, ANSP restructuring costs, costs associated with the IAA ANSP/SRD split and the CAR/IAA SRD merger, and MET and NSA costs.

Summary of stakeholder's responses

Ryanair

- 2.4 Ryanair expressed the view that the IAA ANSP should provide a detailed assessment of their cost containment plan including the savings achieved and expected over RP3.
- 2.5 Ryanair indicated that IAA ANSP had generated a surplus on both en route and terminal services over RP2, and these surpluses should be used to mitigate the impact of Covid-19 through lower ATC charges over RP3.
- 2.6 Ryanair requested that final consultation for the Irish PP be held in July 2021 instead of August 2021, to ensure there is enough time for stakeholders to provide and for CAR to process feedback.

IALPA

- 2.7 In its response, IALPA welcomed the work plan proposed by CAR, and noted that the NSA, CAR and IAA SRD remits must be adequately resourced to fulfil their legal oversight mandate.

Aer Lingus

- 2.8 Aer Lingus stated that CAR should provide a longer timeframe to stakeholders to provide feedback on consultation documents once released in July 2021, extending the review period to 4 or 5 weeks.
- 2.9 Aer Lingus noted that CAR should consider whether the IAA ANSP made optimal use of the Government's Covid-19 staff support scheme.
- 2.10 Aer Lingus requested the CAR assessment of RP3 Capex and Opex plans should balance financeability of the IAA ANSP and affordability for airlines given the current financial health of airlines.

IAA ANSP

- 2.11 In its response, IAA ANSP requested that CAR reasonable expectations on RP3 unit costs level should be made available earlier in 2021, ideally at the same time as Union-Wide costs efficiency targets are published by the Commission; to minimise the time period subject to "retroactive" regulation.

ICTU

- 2.12 In its response, the ICTU submitted the following questions:
- Which article of EU 317/2019 or EU 2020/1627 confers the responsibility for the CAR to establish 'reasonable cost expectations'?

- Which article of EU 317/2019 or EU 2020/1627 confers the responsibility for the CAR to assess whether the IAA ANSP took ‘practical and achievable steps in 2020 and 2021 in response to Covid-19’?
- In respect of staff costs benchmarking, will the comparator nations used be in accordance with the 2018 PRB report (i.e. Finland, Sweden, Denmark, Norway) and will the framework used to assess the financial cost effectiveness be in accordance with Annex A of EUROCONTROL Specification for Economic Information Disclosure Edition 3? If this is not the case, please identify which comparator nations and which framework for financial cost effectiveness will be used.
- What metrics, methodologies, and benchmarks will be used to the assessment of MET and NSA operating and capital costs, and what regulatory provision allows for this assessment?
- What metrics, methodologies will be used to assess Government policy implementation costs (costs associated with the IAA ANSP/SRD split and the CAR/IAA SRD merger)?
- Article 29 of EU 317/2019 requires the Member State to set the unit rate. Who is acting as the Member State in this process?
- Article 39 of EU 317/2019 states that “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.” What process is in place for this step and to whom would an appeal be made?

3. CAR responses to stakeholders

Introduction

- 3.1 In this section, we discuss each of the questions or matters brought forward by stakeholders stated above in section 2.

Ryanair

- 3.2 We take note of Ryanair comments on the need for IAA ANSP to provide a detailed assessment of their cost containment plan over RP3 and confirm that this will fall under our scope of work to ensure that efficient costs are used in the determination of unit costs.
- 3.3 We take note of Ryanair comments on IAA ANSP financial surplus over RP2 and we confirm that we will ensure that the appropriate unit rates adjustments will be made from RP2 to RP3 in accordance with the relevant regulations. Determining to what extent, if any, this RP2 surplus will result in adjustments in RP3 will fall under our scope of work.
- 3.4 With regards to Ryanair's request to have the final consultation for the Irish PP held in July 2021 instead of August 2021, we understand that the timelines created by the regulations are tight which may be a challenge to stakeholders. We have reconsidered the timelines to allow additional time for stakeholders, but at this time cannot commit to amending our work plan timeline at this time as we need to have sufficient time to conduct the analysis to inform the consultation. Nevertheless, we will seek to ensure that consultation takes place as soon as possible, and that all stakeholders are kept informed throughout the process.

IALPA

- 3.5 We take note of IALPA comments.

Aer Lingus

- 3.6 We take note of Aer Lingus's request to be provided with a longer timeframe to provide feedback on consultation documents. However, as mentioned in paragraph 1.21, we are not able to amend our work plan timeline as of now. Nevertheless, we will seek to ensure that consultation documents are published as soon as possible, and that stakeholders are kept informed throughout the process.
- 3.7 With regards to Aer Lingus's request that our assessment of IAA ANSP's costs for 2020 reflect an optimal use of the Government's Covid-19 staff support scheme, we confirm that we will examine this.
- 3.8 In addition, we note Aer Lingus' comments on the need for CAR to assess RP3 Capex and Opex plans with a view to balance financeability of the IAA ANSP and affordability for airlines. We will seek to set targets and allowances which balance challenge with achievability to ensure fair pricing.

IAA ANSP

- 3.9 We take note of IAA ANSP's request that CAR reasonable expectations RP3 unit costs level be made available as early as 1 May 2021 to minimise the time period subject to "retroactive" regulation.
- 3.10 We note that the finalisation of the Irish PP will depend on how fast the Commission approves it. As per article 3 of EU 2020/1627, Member States are due to submit their draft national PP by 1 October 2021. Timelines for the stages after the 1 October 2021 have yet to be established.
- 3.11 We understand that the IAA ANSP may want to have a view on reasonable costs early in 2021, in order to adjust their business plan prior to the adoption of the Irish PP, if needed. However, as mentioned previously, we are not able to amend our work plan timeline as of now. Nevertheless, we will seek to ensure consultation documents on costs are published as early as possible, and that stakeholders, including the IAA ANSP, are informed of our work on costs throughout the process. In addition, we also expect our preliminary workshops on costs to provide stakeholders with an indication of our view on reasonable costs prior to consultation.

ICTU

- 3.12 With regards to ICTU's question on what regulation confers the responsibility for CAR to establish "reasonable cost expectations", we confirm that the responsibility assigned to us under EU 317/2019 with respect to cost determination, equates to establishing "reasonable cost expectation".
- 3.13 For example, under article 10 of EU 317/2019, NSAs are tasked with drawing up PPs at national or at FAB level, including a baseline value for determined costs which should be estimated by using the actual cost available for the preceding reference period, available costs estimate, and traffic variations and their relation to costs - this exercise feeds into the setting of reasonable cost expectations.
- 3.14 In addition, under article 24 of EU 317/2019, Member States are tasked with consulting with air navigation service providers, airport user's representatives, and where relevant airport operators' and coordinators on the intended establishment of the determined costs - establishing costs using a thorough assessment of cost drivers, and feedback from consultation with key stakeholders, will feed into establishing reasonable cost expectations.
- 3.15 With regards to ICTU's question on what regulation confers the responsibility for CAR to assess whether the IAA ANSP took 'practical and achievable steps in 2020 and 2021 in response to Covid-19, we refer to article 6 of EU 2020/1627, which requires that air navigation service providers submit to NSAs a report detailing the measures put in place in order to address the financial and operational impact of Covid-19 on their activities. It should also be noted that as mentioned above, article 10 of EU 317/2019 requires that our cost assessment consider traffic variation in relation to costs. Therefore, the effect of Covid-19 on traffic will be a key consideration in our assessment given the current context.

- 3.16 With respect to ICTU's question on which comparator nations will be used as part of our staff costs benchmarking exercise, we note the choice by the PRB to use Finland, Sweden, Denmark, and Norway, is strictly their decision. However, we do understand the significance of these comparators. We have yet to define the list of benchmark countries we will use but will ensure that stakeholders are being made aware of our choice of countries during consultation. These may or may not include those chosen by the PRB.
- 3.17 With regards to ICTU's question on which framework will be used to assess the financial effectiveness of staff costs as part of the benchmarking exercise, we can confirm that we will use the methodology described in Annex A of EUROCONTROL Specification for Economic Information Disclosure Edition 3, along with other relevant tools. In line with Annex A of EUROCONTROL Specification for Economic Information Disclosure Edition 3, we will analyse performance using ratios of outputs to inputs but have yet to define a definitive list of metrics we will use to conduct this analysis. We will ensure that stakeholders are being made aware of this during consultation.
- 3.18 On ICTU's question related to MET and NSA costs, we confirm that assessing the efficiency of these costs fall under our responsibility. As per article 10 of EU 317/2019, it is up to the NSA to draw PPs, include any costs which will form part of the unit rates. In order to perform such assessment, we will be using industry best practices and ensure costs recoverability in accordance with the regulation. We have not defined which comparators, if any, will be used to benchmark MET and NSA costs yet, or what other approaches may be taken but will ensure that stakeholders are informed of our choice during consultation. The same comment applies to the question regarding government policy implementation costs.
- 3.19 With regards to the last two questions put forward by ICTU listed above in this report, we would like to confirm that:
- The NSA, which is established by one or more Member States, as per the definition stated under article 2 of regulation EU 317/2019, acts on behalf of the Member State(s) in the process of setting unit rates - CAR is the NSA for this process; and
 - Decisions made by CAR under EU 317/2019 and EU 2020/1627 can be appealed by way of a judicial review to the Irish High Court pursuant to the Rules of the Superior Courts.

4. Outcome to the consultation

- 4.1 In view of our responses to stakeholders feedback laid out above in section 3, we confirm that we are adopting the work plan as proposed in CP10/2020, which is described in paragraph 2.2 and Annex 1.

Annex 1 - Adopted Work Plan

Adopted timeline

- 1.2 In view of our responses to stakeholders feedback laid out above in section 3, we confirm that we are adopting the work plan timeline proposed in CP10/2020, and illustrated in the figure below:

By 15 December, 2020	CAR publication of the IAA ANSP cost control measures for 2020-2021, and initial traffic estimates and costs of the IAA ANSP, MET, and NSA
December 2020 to June 2021	CAR workshops on preliminary findings on cost efficiency
Early June 2021	Final proposals of the IAA ANSP, MET and NSAs costs that have regard to stakeholder feedback and revised EU-wide targets adopted on 1 May 2021
End of July 2021	CAR to circulate consultation documents on cost efficiency Targets/Draft Plan at least 3 weeks before consultation
August 2021	Consultation - Stakeholders to submit written responses
September 2021	CAR to finalise cost-efficiency targets based on the August consultation
By 1 October 2021	Ireland's submission of draft RP3 Plan to the European Commission

Adopted methodology

- 4.2 The purpose of the cost efficiency review is to define a unit cost level and trend for the ANSP rather than to specify or recommend how the ANSP should operate its businesses.
- 4.3 In determining the unit cost level and trend from 2020-2024, we will consider the appropriate level of costs for 2020 and 2021 and then the drivers of costs with respect to traffic for the rest of the period.
- 4.4 When reviewing the cost-control measures of the ANSP, we will assess whether it took practical and achievable steps in 2020 and 2021 in response to Covid-19 in respect of:
- reviewing existing and new operating costs, resulting in an efficient level in a
 - timely manner; and
 - reassessing the need for all capital expenditure, assessing if projects are still
 - required, could be delayed or re-sized and keeping such costs to an efficient level.
- 4.5 In assessing cost efficiency, we will be mindful of (among other criteria):
- the safe operation of the ATM system; and
 - the need to maintain ANS services and capabilities, and to be able to ramp up,
 - efficiently and in a timely manner, when the recovery occurs.
- 4.6 Working with the IAA SRD, we will consider the interrelation among the performance targets of cost efficiency, safety, capacity and the environment. We will work with the IAA SRD-NSA in line with the Memorandum of Understanding ('MOU') that we have in place. Under this framework, CAR and the IAA SRD will work together to effectively and efficiently achieve their respective goals and tasks under their respective NSA roles.
- 4.7 We will review the aspects below related to the cost efficiency performance area.

Cost eligibility and allocation

- 4.8 We will assess the justification of the criteria and methodology used for the allocation of costs between:
- Regulated and non-regulated activities (that is the eligibility of determined
 - costs); and
 - En route and terminal services within the regulated activities, in accordance with Article 22(5) of EU 317/2019.

ANSP opex – staff costs

- 4.9 We will assess efficient levels of staff costs at some level of granularity with elements of benchmarking as appropriate. We will assess whether the staff planning processes

are robust and dynamic as needed by the changing market situation.

ANSP opex – non-staff costs

4.10 We will assess efficient levels of non-staff costs at some level of granularity with elements of benchmarking as appropriate. We will assess various categories of non-staff costs, including:

- Rents and rates – Utilities – Maintenance (IT/other);
- Travel – Training;
- Facilities management (insurance, security, cleaning, building repairs); and
- Business support (consultancy, legal, professional fees, public relations)

4.11 We will assess how capital expenditure should feed into the opex assessment, for example changes in opex due to new capital projects, and how an efficient ANSP would allocate between capex and opex.

ANSP capex – capital costs

4.12 We will:

- ensure there is no double counting of projects financed during RP2;
- assess the timing of all projects proposed for RP3;
- assess the cost efficiency of projects; and
- assess the appropriate remuneration for depreciation and the cost of capital (WACC).

ANSP financeability

4.13 We will assess the impact of the revised RP3 plan on the financeability of ANSP. The financeability assessment will be an input which may be relevant for the establishment of the cost efficiency targets.

ANSP restructuring costs

4.14 We will assess the efficient level of restructuring costs which meet the requirements in the Regulation.

Government Policy to Split the IAA ANSP from IAA SRD and merge CAR with IAA SRD

4.15 We will assess the costs associated with implementing the Government policies and the appropriate method of recovery.

MET and NSA Costs

4.16 We will assess the efficient level of MET and NSA (CAR, SRD) operating and capital costs (in line with the above methodologies where appropriate).