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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	14 October 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 14.10.2020 amending Council Regulation (EEC) No 95/93 as regards the temporary extension of exceptional measures to address the consequences caused by the COVID-19 pandemic

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Delegations will find attached document C(2020) 6916 final.

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Encl.: C(2020) 6916 final



Brussels, 14.10.2020  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 14.10.2020**

**amending Council Regulation (EEC) No 95/93 as regards the temporary extension of exceptional measures to address the consequences caused by the COVID-19 pandemic**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Since the beginning of 2020, the COVID-19 outbreak has had a profound negative impact on air transport in Europe and worldwide. The health risks associated with COVID-19, sanitary measures and travel restrictions introduced by some Member States in response to the pandemic have heavily depressed consumer demand and confidence which in turn led to a record and enduring drop in air traffic in the European Union. The number of flights operated in European airspace has fallen by up to 90% in March-April 2020 compared to the same period in 2019 and the recovery has been partial since then. Eurocontrol reported that the number of flights operated in European airspace in August 2020 was 47% below the level in August 2019. It is expected that the Union will face a lengthy recovery of air traffic.

On 30 March 2020, the EU adopted Regulation (EU) 2020/459<sup>1</sup> amending Regulation (EEC) No 95/93<sup>2</sup> ('Slot Regulation') to provide airlines with relief from the so-called "use-it-or-lose-it" rule. Under Article 8(2) of the Slot Regulation, read in conjunction with Article 10(2), air carriers must use at least 80% of a slot series allocated to them, or lose historical precedence for these slots. The aim of the amendment was to protect the financial health of air carriers and avoid the negative environmental impact of empty or largely-empty flights operated only for the purpose of maintaining underlying airport slots.

The amendment introduced by Regulation (EU) 2020/459 established that slot coordinators should consider slots allocated for the period from 1 March 2020 until 24 October 2020 as having been operated by the air carrier to which they were initially allocated.

The amendment also granted delegated powers to the Commission until 2 April 2021 to amend the period during which the slots allocated should be considered as having been operated by the air carrier to which they were initially allocated ('the slot waiver'). The Commission may adopt such delegated acts in case where it finds, on the basis of figures published by Eurocontrol, which is the network manager for the air traffic network functions of the single European sky, that the reduction in the level of air traffic as compared to the level in the corresponding period in the previous year is persisting and is likely to persist, and also finds, on the basis of the best available scientific data, that this situation is the result of the impact of the outbreak of COVID-19. The Regulation empowers the Commission to adopt a delegated act, possibly under the urgency procedure, to extend the slot waiver.

Pursuant to Article 10a(5) of the Slot Regulation, the Commission presented a summary report on this matter to the European Parliament and to the Council by 15 September 2020. The report concluded that the reduction in the level of air traffic is persisting and is most likely to persist as the result of the impact of the outbreak of COVID-19 and consequently the duration of the slot waiver should be prolonged.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with Article 12a(4) of the Slot Regulation, before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-

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<sup>1</sup> Regulation (EU) 2020/459 of the European Parliament and of the Council of 30 March 2020 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports, OJ L 99, 31.3.2020, p. 1

<sup>2</sup> Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, OJ L 14, 22.1.1993, p. 1

Making. The draft of the delegated act has been presented at the meeting of the Commission expert group (E01111, European Observatory on Airport Capacity & Quality) including representatives from the Member States.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

In order to prevent a risk of serious legal uncertainty, in particular for slot coordinators and air operators, it is appropriate to adopt this delegated Regulation under the urgency procedure detailed under Article 12b of Council Regulation (EEC) No 95/93, as amended by Regulation (EU) 2020/459. This delegated Regulation shall therefore enter into force without delay, the day following that of its publication in the Official Journal, and shall apply as long as no objection is expressed.

Either the European Parliament or the Council may object within a period of two months of notification of that act to the European Parliament and the Council. That period may be extended by two months at the initiative of the European Parliament or of the Council. In case of objection, the Commission shall repeal the delegated Regulation immediately following the notification of the decision to object by the European Parliament or by the Council.

Article 1 amends the period during which coordinators should consider slots allocated as having been operated by the air carrier to which they were initially allocated.

COMMISSION DELEGATED REGULATION (EU) .../...

of 14.10.2020

**amending Council Regulation (EEC) No 95/93 as regards the temporary extension of exceptional measures to address the consequences caused by the COVID-19 pandemic**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 95/93, of 18 January 1993, on common rules for the allocation of slots at Community airports<sup>3</sup>, and in particular Article 10a(4) thereof,

Whereas:

- (1) The COVID-19 pandemic has led to a sharp drop in air traffic as a result of a significant fall in demand and direct measures taken by the Member States as well as third countries to contain the pandemic.
- (2) These circumstances are beyond the control of air carriers and the consequent voluntary or obligatory cancellations of air services by air carriers is a necessary or legitimate response to those circumstances.
- (3) In order to protect the financial health of air carriers and avoid the negative environmental impact of empty or largely-empty flights operated only for the purpose of maintaining underlying airport slots, Regulation (EU) 2020/459 amended the Council Regulation (EEC) No 95/93. That amendment provides that slot coordinators are to consider slots allocated for the period from 1 March 2020 until 24 October 2020 as having been operated by the air carrier to which they were initially allocated.
- (4) Regulation (EU) 2020/459 also granted delegated powers to the Commission to amend the period specified in Article 10a of Regulation (EEC) No 95/93 in case the Commission finds, on the basis of figures published by Eurocontrol, which is the network manager for the air traffic network functions of the single European sky, that the reduction in the level of air traffic as compared to the level in the corresponding period in the previous year is persisting and is likely to persist, and also finds, on the basis of the best available scientific data, that that situation is the result of the impact of the outbreak of COVID-19.
- (5) In accordance with paragraph 5 of Article 10a of Regulation (EEC) No 95/93, the Commission presented a summary report on this matter to the European Parliament and to the Council by 15 September 2020, which found that the conditions listed in paragraph 4 of Article 10a to amend the period specified in paragraph one of the same article are met.
- (6) Despite a gradual increase, air traffic levels are still low in comparison to the same period in 2019 as based on Eurocontrol data, air traffic in August 2020 was still down by -47% compared to August 2019. Despite the difficulties in accurately predicting

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<sup>3</sup> OJ L 14, 22.1.1993, p. 1.

the recovery path of air traffic levels, it is reasonable to expect that the situation will persist in the near future. Based on a Eurocontrol coordinated approach scenario (assuming a common approach to putting in place operational procedures and lifting national restrictions), it is expected that in February 2021 air traffic will be -15% lower compared to February 2020. For the uncoordinated approach scenario (no common approach to putting in place operational procedures and lifting national restrictions), the air traffic drop in the same corresponding period is expected to be -25%.

- (7) The persistent reduction of air traffic is the result of the impact of the COVID-19 pandemic. Based on the available data concerning consumer confidence in the wake of COVID-19, while in April 2020 around 60% of respondents indicated that they would be likely to return to air travel within a few months after the pandemic subsided, this percentage dropped to 45% in June 2020. The available data shows a link between the COVID-19 pandemic and consumer demand for air traffic.
- (8) The World Health Organisation data shows that the number of daily recorded cases in Europe had reached a peak on 1 April 2020 with 43,326 new cases. In the period from May to mid-July 2020 the rate decreased with most days recording less than 20,000 new cases. However, towards the end of August 2020 the number has picked up again with a considerable number of days recording more than 30,000 new cases.
- (9) The weekly surveillance report by the European Centre for Disease Control (ECDC) shows that as of 26 August 2020, the 14-day case notification rate for the EU/EEA and the UK was 46 (country range: 2–176) per 100 000 population. The rate has been increasing for 38 days. Hospital and/or ICU occupancies and/or new admissions due to COVID-19 have recently increased in Bulgaria, Czechia, Greece, Poland, Romania and Slovakia.
- (10) In September 2020, the ECDC estimated that the risk of further escalation of COVID-19 across all EU or EEA countries and the United Kingdom is moderate (for countries that continue to implement and enforce multiple measures, including physical distancing and have sufficient contact tracing and testing capacity) and very high (for countries that do not implement or enforce multiple measures, including physical distancing and have insufficient contact tracing and testing capacity).
- (11) The air flight restrictions introduced by some Member States, as a result of sanitary and health measures linked to COVID-19, also influence the consumer confidence and resulting demand for air traffic. While the number of such air flight restrictions reduced in the early summer 2020, some Member States introduced new air flight restrictions as of September 2020, which coincide with the resurgence of COVID-19 cases in a number of Member States.
- (12) In light of existing flight bookings and epidemiological forecasts, it can reasonably be expected that a significant number of cancellations attributable to the COVID-19 pandemic should occur over the forthcoming winter scheduling season, running from 25 October 2020 until 27 March 2021. The non-utilisation of slots allocated for that period should not lead to air carriers losing the possibilities they would otherwise enjoy under Articles 8(2) and 10(2) of Regulation (EEC) No 95/93.
- (13) It is therefore necessary to extend the exception from the requirement contained in those provisions, of having operated the series of slots in question to a certain extent, beyond the summer 2020 scheduling season to the entirety of the 2020/2021 winter

scheduling season, i.e. to the period running from 25 October 2020 until 27 March 2021.

- (14) This delegated Regulation is foreseen to enter into force after the end of the period currently envisaged in paragraph 1 of Article 10a of Regulation (EEC) No 95/93. In order to avoid legal uncertainty, in particular for slot coordinators and air operators, this Regulation should be adopted under the urgency procedure detailed under Article 12b of the Slot Regulation, and should enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union.

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 95/93 is amended as follows:

In Article 10a paragraph 1 ‘is replaced by the following:

“1. For the purposes of Articles 8(2) and 10(2), coordinators shall consider slots allocated for the period from 1 March 2020 until 27 March 2021 as having been operated by the air carrier to which they were initially allocated.”.

*Article 2*

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14.10.2020

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*