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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Regulation (EEC) No 95/93 as regards temporary relief from the slot
utilisation rules at Community airports due to the COVID-19 pandemic**

(Text with EEA relevance)

{SWD(2020) 341 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Regulation (EEC) No 95/93¹ (the ‘Slot Regulation’) lays down the rules on the allocation of slots at EU airports. Its Article 10 sets out the ‘use-it-or-lose-it’ rule, according to which air carriers must use at least 80% of their allocated slots within a given scheduling period (summer or winter) in order to retain precedence in respect of the same series of slots for the next equivalent scheduling period (‘grandfather’ or ‘historic’ rights).

Due to the decline in passenger demand caused by the COVID-19 pandemic, air carriers have made major changes to their schedules since 1 March 2020, which have resulted in a slot utilisation rate at coordinated airports falling far below the 80% threshold imposed by the Slot Regulation.

To address this, on 30 March 2020 the European Union adopted an amendment to the Slot Regulation to waive the ‘use-it-or-lose-it’ rule for the entire summer 2020 scheduling period, ending on 24 October 2020. That amendment also empowered the Commission to extend the period covered by the waiver, by adopting one or more delegated acts. On 14 October 2020, the Commission adopted a delegated act extending the period waiving the ‘use-it-or-lose-it’ rule until the end of the winter 2020/2021 scheduling season on 27 March 2021.

As expected, the drop in passenger demand has persisted throughout the summer 2020 scheduling period. Eurocontrol data sets the start of the downturn in traffic in the European Economic Area (EEA) in week 11 with a drop of 17% compared to the same week in 2019. Traffic continued to drop sharply to a 59% and 82% decrease compared to 2019 in weeks 12 and 13 respectively. The lowest points were recorded in weeks 15 and 16 (89% decrease). Average load factors among a sample of 10 European air carriers dropped from 80% in week 9 to 26% in week 15. Not only were air carriers flying less frequently, but the remaining flights were underbooked compared to 2019. By week 23, when intra-EU air travel had been reopened to a large extent, the average load factor recovered to 44%. During the same week in 2019, the average load factor of the same air carriers ranged from 75% (week 4) to 86% (week 16). By mid-November 2020, air traffic was down 65% compared to the same week in 2019.

Latest Eurocontrol forecasts indicate that air traffic in February 2021 is expected to be only half the level of February 2020. What will happen beyond that is uncertain, but there are no indications that demand will return, in the summer 2021 season, anywhere close to the level of recent years.

At the same time, it should be recalled that the objective of the ‘use-it-or-lose-it’ rule is to ensure the most efficient use of airport capacity to maximise the benefit to the greatest number of users and allow passengers to reap the benefits of a competitive aviation market and connectivity. The waiver to the ‘use-it-or-lose-it’ rule has indeed provided relief to air carriers during the current unprecedented lack of demand and restrictions on air travel while also avoiding the negative environmental impact of empty or largely-empty flights operated

¹ 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.

only for the purpose of maintaining underlying airport slots. However, the negative impact of further extending the waiver should also be taken into account. The effect of the current waiver is to freeze competition at 2019 levels without there being any requirement that capacity is actually used efficiently, because the provisions of that waiver have turned out insufficient to ensure that other air carriers able to operate can obtain the necessary slots. For the period starting after more than a year of waiving the ‘use-it-or-lose-it’ rule (from 1 February 2020 to 27 March 2021), which preserves air carriers’ 2019 grandfathered slots until the end of the winter 2021/2022 scheduling season, it is time to establish a pathway to return to a normal application of the ‘use-it-or-lose-it’ rule. The return to normal should not be sudden to avoid destabilising the aviation market to the detriment of air carriers, connectivity, EU consumers, and the environment. The return to normal should take place in line with future increases in traffic levels toward 2019 levels or by a stabilisation of air traffic to a new market situation.

It is therefore proposed that from the start of the summer 2021 scheduling period, the normal application of the slot utilisation requirements under the Slot Regulation should reapply, but that the rate should be set at 40/60 instead of 80/20. That is to say that air carriers would be required to operate 40% of a given series of slots, in order for them to retain priority for a given operated series of slots for the following equivalent scheduling period. This adjustment would proportionately protect historic rights during the sharp drop in demand for air travel caused by the COVID-19 pandemic and would contribute to avoiding the environmental impact of empty or largely-empty flights operated only for the purpose of maintaining underlying airport slots. It would also contribute to a more efficient use of airport capacity for the benefit of passengers and connectivity.

In light of experience, this slot relief proposal includes conditions to ensure that the period of relief remains compatible with the optimal use of scarce airport capacity and also contributes to the preservation of competition, in the interest of passengers. Relief should be targeted at air carriers whose intention is to operate their grandfathered slots as soon as demand sufficiently recovers and flights are once again economically viable. Therefore, slot series newly allocated to an air carrier for the first time, i.e. slot series to which the air carrier is not entitled as a result of having obtained grandfather rights, should not be covered by the relief as those air carriers would have applied for such additional slots knowing that demand for air travel was low due to COVID-19 pandemic and the underlying slot series are exempted from the normal application from the use-it-or-lose-it rule. Therefore, air carriers obtaining such slot series for the first time will have to use at least 80% of such newly allocated slot series to obtain priority for the next equivalent scheduling period. This approach corresponds to the voluntary agreement between airports, air carriers and slot coordinators on the operation of the current slot waiver for the winter 2020/2021 scheduling season and beyond².

The use-it-or-lose-it rule (i.e. the requirement to use at least 80% of the slot series) should also continue to apply in the event of slot exchanges under paragraph 1 (c) of Article 8a, where the exchange is accompanied by any financial or other compensation. The intention is to prevent the payment of remuneration for the value inherent in the relief. By contrast, exchanges without financial or other compensation, carried out to improve timings, for example, would not stand in the way of the relief being applied to the slots concerned. The

² “Joint agreement of airlines, airports and slot coordinators on conditions that should be applied to an extension of a slot waiver to the full NW2020 season”
<https://www.euaca.org/up/files/NW20%20EU%20Slot%20Waiver%20-%20Common%20proposal%20airlines%20-%20airports%20-%20slots%20coordinators.pdf>

same would apply for example to slots transferred as a result of decisions by public authorities under national or EU competition law (cf. Article 8b of the Slot Regulation).

The proposal includes a deadline for air carriers to return unwanted slots to the coordinator if they are to benefit from the relief. A deadline of three weeks before the scheduled date of operations for that slot will allow airports and other airport service providers to have visibility over how much capacity is required and the volume of operations expected to ensure that they make adequate infrastructure, facilities and staff available. It also allows other air carriers to estimate which airport capacity is available, should they wish to use it to operate flights. The earlier the slots are made available for reallocation, the more likely it is that other air carriers will be able to use them. The rules proposed herewith cover both reallocation on a temporary basis for the season in question (without the carrier to which these slots have been re-allocated gaining grandfather rights) or on a permanent basis, namely where the air carrier which returned the slots to the pool, does not envisage using them in the next equivalent scheduling period. In that case, air carriers that used at least five of such slots should be given priority, over other applicant carriers and new entrants, to the entire original slot series of the carriers that released them to the pool.

It is also necessary to clarify under which circumstances the coordinators could withdraw slots from air carriers. When a coordinator determines, on the basis of information at its disposal, that an air carrier has ceased its operations at an airport and is no longer able to operate the slots which it has been allocated, the slots in question should be immediately returned to the pool and made available for reallocation to other air carriers, entailing the loss of historic rights over those slots for the airline leaving the airport.

On the basis of the information currently available from Eurocontrol, it is reasonable to assume that the current situation, characterised by an exceptional fall in demand, will continue until at least the start of the summer 2021 scheduling period. Given the uncertainty, it is also possible that the period of exceptionally low demand could last at least up to and including the winter 2024/2025 scheduling period according to predictions from air carrier and airport associations, such as ACI-Europe and IATA.

Therefore, under these circumstances, the Slot Regulation should be amended to further protect air carriers' grandfather rights in those slot series that have not been used at the normal 80% rate during the period when the aviation market has been adversely affected by the COVID-19 pandemic. Slot relief would be extended for a further season, beyond the extension provided for in Commission Delegated Regulation (EU) 2020/1477, and would thus cover the period from 28 March 2021 until 30 October 2021. This relief would reduce the slot utilisation rate from 80% to 40%. In addition, the amendment would give the Commission delegated powers to further extend the slot relief beyond the summer 2021 scheduling season and also to further adjust the rate of slot utilisation based on a number of indicators such as actual and forecast air traffic data, load factors and fleet utilisation. The Commission would adopt delegated acts, where required, to adjust the slot utilisation rate, for any scheduling period from winter 2021/2022 up to and including winter 2024/2025.

The slot allocation process takes place well in advance of the respective scheduling period. Air carriers, airports and other service providers would thus need to know in due time about the rules applicable to a given scheduling period. By the same token, early knowledge of those rules also encourages them to return slots they do not intend to use to the coordinator at an early stage. Therefore, the Commission should adopt the relevant delegated acts before the slot allocation process is finalised.

- **Consistency with existing policy provisions in the policy area**

The Slot Regulation provides air carriers with relief from the slot utilisation rules that are currently problematic for air carriers due to the COVID-19 pandemic. The Slot Regulation empowers the Commission to adopt delegated acts which can only amend the period during which the current waiver applies. Extended periods of relief from the slot utilisation rules lead to distortions in competition which impact passenger connectivity, employment and quality of jobs in the aviation sector and cause specific problems for airports and service providers. At the same time, a sudden change back to the normal use-it-or-lose-it rule, would risk causing additional financial burden on air carriers, and could have an unintentional adverse environmental effect of air carriers operating empty or largely-empty flights only for the purpose of maintaining underlying airport slots. The Slot Regulation should therefore be amended to mitigate the effects of the COVID-19 pandemic to provide legal certainty to air carriers and maintain the unity of the European slot allocation system.

- **Consistency with other Union policies**

The effective functioning of the internal market in aviation and related services depends on the economic performance of air carriers and other parts of the aviation sector, including airports and other service providers. The negative economic consequences of the COVID-19 pandemic is endangering their financial health and is having serious negative effects on the air transport system and the economy as a whole. The amendment of the Slot Regulation is therefore of utmost importance. Further it is also consistent with the EU's climate policy as it prevents air carriers from the incentive to operate empty or largely-empty flights operated only for the purpose of maintaining underlying airport slots.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal is Article 100(2) of the Treaty on the Functioning of the European Union. That Article provides the legal basis to adopt all appropriate air transport legislation and serves as the legal basis for the Slot Regulation and its amendments.

- **Subsidiarity (for non-exclusive competence)**

The objectives of the proposal cannot be sufficiently achieved by the Member States since the Slot Regulation does not allow Member States to require coordinators to impose conditions to slot relief, and change the slot utilisation rate in response to changing traffic levels. This objective can only be achieved by the Union amending the Slot Regulation.

- **Proportionality**

The proposal does not go beyond what is necessary to achieve the objective of alleviating the economic impact of the COVID-19 pandemic to the operation of the Slot Regulation. The proposal strikes a balance between the need to grant airlines relief from the 'use-it-or-lose-it' rule in response to low demand in air travel resulting from the COVID-19 pandemic and the need to return to a normal application of slot allocation rules in proportion to recovering air traffic levels. The proposal also includes a number of pro-competitive measures to address certain unintended negative effects from the current slot waiver.

- **Choice of the instrument**

To achieve its objective, the legal instrument must be of direct and general application, in the same way as is the Slot Regulation. Therefore, the appropriate legal instrument is a regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Article 10a(4) of the Slot Regulation, as amended by Regulation (EU) 2020/459, required the Commission to present to the European Parliament and the Council, by 15 September 2020, a summary report on the air traffic situation. In order to gather data and other information, the Commission services have been in regular contact with air carriers, airports, airport slot coordinators, as well as their associations to monitor the evolving air traffic situation, to assess the impact of the COVID-19 pandemic on demand for air transport and the level of air traffic, and determine the effectiveness of the slot waiver. The report published on 14 September 2020 assesses the implementation of the slot waiver and identifies certain shortcomings. An evaluation under the better regulation rules was not carried out due to the urgency to adopt rules providing carriers in due time with adequate relief from the ‘use-it-or-lose-it’ rule, in view of the persisting consequences of the COVID-19 pandemic on air traffic.

- **Stakeholder consultations**

Due to the urgency of the matter formal stakeholder consultation has not been carried out. The Commission published a Roadmap for feedback and a public consultation on the better regulation portal to which stakeholders could reply from 1 to 28 September 2020. Due to the urgency of the matter, the consultation was shortened from the usual 12 weeks to 4 weeks. A targeted consultation and data requests were also launched during the same timeframe.

- **Collection and use of expertise**

As explained, an extended collection of expertise was not possible due to the urgency of the situation. However, the Commission has drawn on experience gained through the application of and amendments to the Slot Regulation that also included consultations with experts.

- **Impact assessment**

Due to the urgency of the situation, an impact assessment under better regulation rules has not been carried out. The proposal is accompanied by a staff working document. It presents the consequences of applying the ‘use-it-or-lose-it’ rule during the COVID-19 pandemic, information on the operation of the slot waiver since its entry into force, and describes the shortcomings that have emerged in the aviation market. In addition, it discusses the phasing out of slot relief that would be linked to the gradual return of air traffic. It presents a preferred way forward to address the shortcomings and assesses its likely consequences.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission should continue to follow the development of the COVID-19 pandemic and its impact on air transport. As under Regulation (EU) 2020/459, the Commission should be

empowered to adopt a delegated act extending the time periods concerned by the measure, as well as to adjust the minimum usage requirement, as necessary.

- **Detailed explanation of the specific provisions of the proposal**

A new temporary definition is added to Article 2 of the Slot Regulation for ‘new entrants’ to allow more air carriers to qualify as new entrants and obtain slots from the pool thus allowing more competition at airports in light of the reduced utilisation rate that makes it easier for incumbent carriers at the airport to maintain their slots.

In addition, a new definition for ‘COVID-19 coordination parameters’ is added and paragraph 6a is inserted in Article 8 to address the possibility that specific sanitary measures at an airport as a result of the COVID-19 pandemic may reduce the available capacity at that airport, meaning that not all slots can be operated at the times for which they were allocated. The coordinators should be able to re-schedule or cancel allocated or requested slots that cannot be accommodated after discussing this with affected air carriers. Air carrier, airport and slot coordinator associations have been discussing how best to address these situations taking the different business interests into account. Coordinators should take these best practices in the form of industry guidelines or local rules into account if they are in line with the principles of transparency and non-discrimination and do not put into question the coordinators’ independence.

Where slots have been made available, during a given scheduling period, by carriers holding historic rights to the relevant slot series, carriers which have made use of such slots are likely to contribute to the efficient use of the relevant slot series in subsequent scheduling periods. Hence, a new paragraph 2a is added to Article 8, which gives such air carriers priority for the allocation of the series in question in the next equivalent scheduling period, provided the air carrier originally holding historic rights in the given series does not request them and that the requesting carrier has operated five of the slots making up the series. In order to avoid the fragmentation of airport capacity and schedules, the air carrier receiving priority should be allocated the entire series of which the operated slots are a part. In case more than one air carrier has used slots of the same series, priority is given to the carrier that has used the higher number of slots.

A new point (e) is added to Article 10(4) to address a situation where the ability of passengers to fly on certain routes is impacted significantly by measures adopted by public authorities to contain the spread of the COVID-19 pandemic (e.g. restrictions on traffic rights, on passengers and/or crew, border closures), after the completion of slot allocation process for an upcoming season. In these cases, air carriers may be relieved from the application of the ‘use-it-or-lose-it’ rule (as amended). However, this advantage is confined so as to avoid any unintended effects (for details see the four new subparagraphs added to Article 10(4)).

Article 10a is modified in several ways. The period of the current waiver in Article 10a (enacted in Regulation (EU) 2020/459 in March 2020) was extended by Delegated Regulation (EU) 2020/1477 adopted on 14 October 2020, to 27 March 2021. During this period coordinators must, for the assessment of priority rights, consider that slots allocated for the period from 1 March 2020 until 27 March 2021 have been operated by the air carrier to which they had initially been allocated. A period of additional relief is maintained for slots used between the EU and China or between the EU and Hong Kong (from 23 January 2020).

A new proposed paragraph 2a of Article 10a stipulates that for a series of slots allocated for the period from 28 March 2021 until 30 October 2021, air carriers will be entitled to the same

series of slots in the next equivalent scheduling period, where they have used 40% of the slots in that series.

Point (a) of a new paragraph 3a of Article 10a restricts the scope of relief applicable to slots allocated under Article 10(2) of the Slot Regulation. Slots constituting a series and having been newly allocated for the respective scheduling period are proposed not to be eligible for relief and will have to be operated in accordance with the 80% slot utilisation rate for the carrier operating them to be entitled to the same series in the next equivalent scheduling period.

Point (b) of Article 10a(3a) excludes from the relief those slots that have been exchanged along with financial or other compensation. This is important to ensure that the value of the relief is not included in any secondary trade or lease of a slot to another air carrier. This provision has no retroactive effect, that is to say, slots that were traded and have been operated by the 'purchasing' air carrier with effect from the previous equivalent scheduling period (or earlier) are eligible for the relief.

A new paragraph 7 is inserted into Article 10a so that during the period of slot relief an air carrier not intending to use a slot must make it available for temporary reallocation to other air carriers no later than three weeks before the planned date of operation of the slot. This is to help other carriers who may wish to operate such slots on an ad hoc basis. Those other air carriers should have sufficient time to plan their operations and also to ensure that passengers, airports and airport service providers have advance notice of the planned operations of air carriers.

Paragraph 4 of Article 10a empowers the Commission to adopt delegated acts to extend further the period during which the relief applies if the COVID-19 pandemic is not resolved and continues to have a negative impact on the air transport sector, including on historic grandfather rights. The Commission is also empowered to amend the utilisation rate according to the evolution of traffic levels. Given how rapidly the outbreak spread, delegated acts should be adopted by urgency procedure.

A new subparagraph is added to Article 14(5) which provides for a system of sanctions and measures in the event the new paragraph 7 of Article 10a is not complied with.

A new point (c) of Article 14(6) allows the coordinator to take action and withdraw slots where an air carrier ceases operations at that airport. In such cases, the coordinator can withdraw the slots immediately for the remainder of the scheduling period, without having to wait until the end of that period, and make slots available for reallocation as early as possible.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EEC) No 95/93 as regards temporary relief from the slot utilisation rules at Community airports due to the COVID-19 pandemic

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The COVID-19 pandemic has led to a sharp drop in air traffic because of a significant fall in demand and direct measures taken by the Member States and third countries to contain the pandemic. The impact on air carriers has been detrimental since 1 March 2020, and looking ahead it is likely to continue to negatively impact air carriers up to and including winter 2024/2025.
- (2) Those circumstances are beyond the control of air carriers and have led them to voluntarily or involuntarily cancel air services in response to those circumstances. In particular, voluntary cancellations protect the financial health of air carriers while at the same time avoid the negative environmental impact of empty or largely-empty flights operated only to retain their slots.
- (3) Figures published by Eurocontrol, which is the network manager for the air traffic network functions of the single European sky, indicate a continued year-on-year fall of air traffic around 74% as of mid-June 2020.
- (4) In terms of known forward bookings, Eurocontrol forecasts and epidemiological forecasts, it is not possible to predict when the period of severely depressed demand caused by the COVID-19 pandemic is likely to end. According to latest Eurocontrol forecasts, air traffic in February 2021 will be around half the level of February 2020. Forecasts extending beyond that date rely on a number of unknown factors, such as the availability of a COVID-19 vaccine. Under these circumstances, air carriers failing to use their slots in accordance with the slot utilisation rate as set out in Council

³ OJ C , , p. .

⁴ OJ C , , p. .

Regulation (EEC) No 95/93⁵ should not automatically lose the precedence to slot series laid down in Article 8(2) and Article 10(2) that they would otherwise enjoy. Specific rules should be established to this effect.

- (5) Those rules should at the same time address potentially negative impacts on air carrier competition. In particular, it should be ensured that air carriers prepared to provide services are enabled to take up unused capacity with any prospect of maintaining such slots in the long term. This should maintain air carriers' incentives to make use of airport capacity, which in turn would benefit consumers.
- (6) It is therefore necessary to define, in accordance with these principles and for a limited time period, the conditions under which air carriers continue to be entitled to slot series under Article 8(2) and 10(2), and to establish requirements for air carriers concerned to release unused capacity.
- (7) The definition of the term 'new entrant' should be adapted for the purposes of the period concerned, to increase the number of air carriers that may qualify as new entrants, thus giving more air carriers that so wish the opportunity to establish and expand their operations. At the same time, it is necessary to confine the corresponding privileges to genuine new entrants, by excluding carriers which, together with any parent company, or with own subsidiaries or subsidiaries of a parent company, hold more than 10 % of the total number of slots allocated on the day in question in a given airport.
- (8) During the period during which the relief from the slot utilisation rules is applied, the system of slot allocation should recognise the effort of air carriers that have operated flights using slots which are part of a series that another air carrier is entitled to under Article 8(2) and Article 10(2), but which have been made available to the slot coordinator for temporary reallocation. Therefore, air carriers that have operated at least five slots of a series should receive priority for the allocation of those series in the next equivalent scheduling period provided the air carrier entitled to them under Article 8(2) and Article 10(2) does not request them.
- (9) The imposition of specific COVID-19 sanitary measures at airports may reduce available capacity, which may make it necessary to provide for specific COVID-19 coordination parameters. In such situations, and in order to enable the proper application of such parameters, coordinators should be empowered to adapt the timing of slots allocated to air carriers under Article 8 or cancel such slots for the scheduling period during which the specific COVID-19 sanitary measures apply.
- (10) The negative consequences of possible measures by public authorities restricting the ability to travel at very short notice cannot be imputed to air carriers and should thus be mitigated. Therefore, air carriers should not be penalised for failure to use slots where such failure results from such restrictive measures which had not yet been published when the slots were allocated. Under such circumstances, air carriers should remain entitled to such series in the next equivalent scheduling season. Such measures could include, by way of example, severe government restrictions related to COVID-19 on the maximum number of arriving or departing passengers on a specific flight or through a specific airport, or measures which make the operation of an air service practically or technically impossible through the imposition of restrictions on airline

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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).

crew movements or on the availability of services essential to support directly the operation of an air service. Specific relief from the effects of the imposition of such measures should be restricted to a maximum of two consecutive scheduling periods.

- (11) Air carriers should be relieved, to the necessary extent, from the requirements regarding slot utilisation, relevant to the entitlement to slots in the subsequent equivalent scheduling period, during periods where demand is significantly impacted due to the effect of COVID-19 pandemic. This should enable them to increase services when circumstances allow. The lower minimum usage rate fixed to this effect should take into account the current air traffic outlook, which is at 50% of 2019 traffic levels, the uncertainty surrounding the COVID-19 pandemic and the return of consumer confidence and traffic levels. However, given the perspective of traffic levels re-increasing at one point, it should be possible to amend the minimum usage rate by way of Delegated Acts. Air carriers and coordinators should be enabled to engage in time into the necessary preparations, in view of the conditions to be applied to the operation of slots in a given scheduling period. Therefore, the Commission should endeavour to adopt the Delegated Act as early as possible and should adopt such acts in any event before the deadline for the return of slots as laid down in Article 10(3).
- (12) To minimise entry barriers and prevent that the relief from the general slot utilisation requirements negatively impacts the competitive position of air carriers beyond what is justified, the application of the relief should be restricted to those slots which the air carrier had previously operated at the airports concerned. Similarly, the relief should not apply to slots which have been exchanged as part of a commercial arrangement, giving rise to monetary or other compensation, between carriers not part of the same group.
- (13) In order to respond flexibly, where necessary and justified, to the challenges the air transport sector is facing due to the COVID-19 pandemic, the power to adopt acts in accordance with Article 290 Treaty on the Functioning of the European Union should be delegated to the Commission to amend Regulation (EEC) No 95/93 in respect of the prolongation of the period of application of the relief from the slot utilisation rule envisaged by this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁶. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (14) Airports, airport services providers and air carriers need to have visibility over available capacity for the purpose of adequate planning. Air carriers should make the slots whose use is not intended available to the coordinator for possible reallocation as early as possible and no later than three weeks before the planned date of their operation. They should be made subject to appropriate sanctions or equivalent measures in case of non-compliance.
- (15) Where a coordinator is satisfied that an air carrier has ceased operations at an airport, the coordinator should immediately withdraw the slots from the air carrier in question and place them in the pool for reallocation to other carriers.

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OJ L 123, 12.5.2016, p. 1.

- (16) In view of the urgency entailed by the exceptional circumstances related to the COVID-19 pandemic justifying the measures set out in this Regulation, it is considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.
- (17) In view of the urgency entailed by the exceptional circumstances related to the COVID-19 pandemic justifying the proposed measures, it is considered to be appropriate to provide for an immediate entry into force of this Regulation,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) Article 2 is amended as follows:

(a) the following point (ba) is inserted:

‘(ba) during the period referred to in Article 10a(2a) ‘new entrant’ shall mean:

- (i) an air carrier requesting, as part of a series of slots, a slot at an airport on any day, where, if the carrier's request were accepted, it would in total hold fewer than seven slots at that airport on that day; or
- (ii) an air carrier requesting a series of slots for a non-stop scheduled passenger service between two European Union airports, where at most two other air carriers operate the same non-stop scheduled service between those airports on that day, and where, if the air carrier's request were accepted, the air carrier would nonetheless hold fewer than nine slots at that airport on that day for that non-stop service.

An air carrier which together with its parent company, its own subsidiaries or the subsidiaries of its parent company, holds more than 10% of the total slots allocated on the day in question at a particular airport, shall not be considered as a new entrant at that airport;’;

(b) point (m) is replaced by the following:

‘(m) ‘coordination parameters’ shall mean the expression in operational terms of all the capacity available for slot allocation at an airport during each coordination period, reflecting all technical, operational and environmental factors that affect the performance of the airport infrastructure and its different sub-systems;’;

(c) the following point (n) is added:

‘(n) ‘COVID-19 coordination parameters’ shall mean revised coordination parameters resulting in a reduction of available airport capacity at a coordinated airport because of specific sanitary measures imposed by Member States in response to the COVID-19 pandemic.’;

(2) Article 8 is amended as follows:

(a) the following paragraph 2a is inserted:

‘2a. During the period referred to in Article 10a(2a), a series of slots which is returned to the slot pool in accordance with Article 8(1) at the end of the scheduling period (the “reference scheduling period”), shall, upon request, be allocated for the next equivalent scheduling

period to an air carrier which has operated at least five slots of the series in question following the application of Article 10a(7) during the reference scheduling period.

In the event that more than one applicant fulfils the requirements of the first subparagraph, priority shall be given to the air carrier having operated the greater number of slots of that series.’;

(b) the following paragraph 6a is inserted:

‘6a. Within the period during which COVID-19 coordination parameters apply and in order to enable the proper application of such coordination parameters, the coordinator may amend the timing of requested or allocated slots falling within the period specified in paragraph 2a of Article 10a or cancel them after hearing the air carrier concerned. In this context, the coordinator shall take into account additional rules and guidelines referred to in Article 8(5), under the conditions set out therein.’;

(3) Article 10(4) is amended as follows:

(a) point (d) is replaced by the following:

‘(d) judicial proceedings concerning the application of Article 9 for routes where public service obligations have been imposed according to Article 4 of Regulation (EEC) No 2408/92 resulting in the temporary suspension of the operation of such routes;’;

(b) the following point (e) is added:

‘(e) during the period referred to in Article 10a(2a), the introduction, after 31 January for the following summer season or after 31 August for the following winter season, by public authorities of measures intended to address the spread of the COVID-19 pandemic at one end of a route for which the slots in question were used or planned to be used, on condition that the measures had not been published at the time the series of slots had been allocated and that the measures lead to either of the following:

- a partial or total closure of the border, airport or airspace during a substantial part of the relevant scheduling period,
- a severe impediment to passengers’ ability to travel with any carrier on that direct route during a substantial part of the relevant scheduling period.’

(c) the following subparagraphs are added:

‘Point (e) of the first subparagraph shall apply within the period during which the measures referred to therein apply and during six additional weeks, within the limits referred to in the third, fourth and fifth subparagraphs. However, where the measure referred to in point (e) ceases to apply less than six weeks before the end of a scheduling period, point (e) shall apply to the remainder of the six weeks period only where the slots in the subsequent scheduling period are used for the same route.

Point (e) of the first subparagraph shall only apply to slots used for routes for which they were already used prior to the publication of the measures referred to in point (e).

Point (e) of the first subparagraph shall cease to apply where the air carrier, using the slots in question, changes to a route not affected by the measures of the public authorities.

Point (e) of the first subparagraph shall apply for at most two consecutive scheduling periods.’;

(4) Article 10a is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. For the purposes of Articles 8(2) and Article 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.’;

(b) the following paragraph 2a is inserted:

‘2a. In respect of the period from 28 March 2021 until 30 October 2021 and for the purposes of Article 8(2) and Article 10(2), if an air carrier demonstrates to the satisfaction of the coordinator that the series of slots in question has been operated, as cleared by the coordinator, by that air carrier for at least 40% of the time during the scheduling period for which it has been allocated, the air carrier shall be entitled to the same series of slots for the next equivalent scheduling period.

In respect of the period referred to in the first subparagraph, the percentage values referred to in Article 10(4) and point (a) of 14(6) shall be 40%.’;

(c) paragraph 3 is replaced by the following:

‘3. In respect of slots with a date between 9 April 2020 and 27 March 2021, paragraph 1 shall only apply where the air carrier returned the relevant unused slots to the coordinator for reallocation to other air carriers.’;

(d) the following paragraph 3a is inserted:

‘3a. Paragraph 2a shall not apply:

(a) in respect of a series of slots allocated to an air carrier for a given scheduling period, where that carrier had not been allocated the same series of slots for the previous equivalent scheduling period;

(b) in respect of a series of slots which, with effect from the scheduling period in question, have been exchanged between air carriers in accordance with point (c) of Article 8a(1) and where the exchange has included monetary or any other kind of compensation.’;

(e) paragraph 4 is replaced by the following:

‘4. Where the Commission finds, on the basis of data 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 2019 is persisting and, on the basis of Eurocontrol traffic forecasts, 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 COVID-19 pandemic, the Commission shall adopt delegated acts in accordance with Article 12a to amend the period specified in paragraph 2a accordingly.

The Commission is empowered to adopt delegated acts in accordance with Article 12a to amend the percentage values referred to in paragraph 2a of this Article within a range between 0 and 80%. For this purpose, the Commission shall consider changes intervening since the entry into force of Regulation (EU) [2021/XXX reference to the present Regulation], having regard to the following elements:

(a) data published by Eurocontrol on traffic levels and traffic forecasts;

(b) the evolution of air traffic trends during the scheduling periods, also taking into account the evolution observed since the start of the COVID-19 pandemic; and

(c) indicators relating to demand for passenger and cargo air transport, including trends regarding fleet size, fleet utilisation, and load factors.

Delegated acts pursuant to this paragraph shall be adopted no later than 24 January for the following summer scheduling period and no later than 24 August for the following winter scheduling period.’;

(f) paragraph 5 is deleted;

(g) the following paragraph 7 is added:

‘7. During the period referred to in paragraph 2a, air carriers shall make available to the coordinator for reallocation to other air carriers any slot they do not intend to use, no less than three weeks before the date of operation.’;

(5) in Article 12a, paragraph 2 is replaced by the following:

‘2. The power to adopt delegated acts referred to in Article 10a shall be conferred on the Commission until 24 August 2024.’;

(6) Article 14 is amended as follows:

(a) in paragraph 5, the following subparagraph is added:

‘Member States shall establish and apply effective, dissuasive and proportionate sanctions or equivalent measures in the event an air carrier repeatedly and intentionally fails to comply with Article 10a(7). Such sanctions and measures shall include the possibility to withdraw the benefit of Article 10a(2a), where justified by the individual case.’;

(b) in paragraph 6, the following point (c) is added:

‘(c) During the period referred to Article 10a(2a), when a coordinator determines, on the basis of information at its disposal, that an air carrier has ceased its operations at an airport and is no longer able to operate the slots which it has been allocated, the coordinator shall withdraw from that air carrier the series of slots in question for the remainder of the scheduling period and place them in the pool, after having heard the air carrier concerned.’.

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,

For the European Parliament
The President

For the Council
The President