



Council of the
European Union

Brussels, 1 February 2021
(OR. en)

5820/21

Interinstitutional File:
2020/0358(COD)

AVIATION 24
CODEC 121
COVID-19 28

COVER NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	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 [doc. 13806/20 - COM(2020) 818 final – Opinion of the European Economic and Social Committee

Delegations will find attached a copy of the above-mentioned opinion.

This opinion is available in all language versions on the following website:

<http://www.eesc.europa.eu/>



TEN/740

Airport slot relief proposal due to COVID-19

OPINION

European Economic and Social Committee

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
[COM(2020) 818 final - 2020/0358 (COD)]

Rapporteur-general: **Thomas KROPP**

Referral	European Parliament, 22/12/2020 European Commission, 16/12/2020 Council, 21/01/2021
Legal basis	Article 100(2) and Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted at plenary	27/01/2021
Plenary session No	557
Outcome of vote (for/against/abstentions)	224/1/4

1. Conclusions and recommendations

- 1.1 On 16 December 2020, the European Commission (EC) proposed a new amending regulation¹ regarding temporary relief from the "use-it-or-lose-it" clause for the period beyond 27 March 2021. In essence, the Commission proposed that the "use-it-or-lose-it" rule should reapply but that, for a limited period, the threshold for slot utilisation should be set at 40% instead of 80%. Furthermore, the EC proposed that it should have delegated powers to extend the slot relief, in accordance with a number of criteria related to the duration and intensity of the crisis.
- 1.2 The EESC commends the EC on its initiative to extend the temporary relief from the slot regulation rules of the European Community, and supports the proposal to mandate the Commission to adapt the threshold until the 2024/2025 winter season.
- 1.3 However, in order to create a truly flexible response mechanism, the proposal should also contain airlines' entitlement to return to a full series of slots in combination with a variable utilisation threshold.
- 1.4 The extension is justified because the global economic crisis experienced in early 2021 is worse than was anticipated 12 months ago, during the first quarter of 2020. Contrary to expectations, the COVID-19 pandemic has not yet been contained. In fact, the second wave of exponential increases of infections in the second half of 2020 has so far had even harsher health, social, economic and financial implications than the first wave across Europe. Transport, trade and tourism are among the hardest-hit economic sectors. Furthermore, a highly infectious mutation of the virus is currently spreading across Europe. The United Kingdom recently imposed a third lockdown to contain the "third wave" of the virus.
- 1.5 The EESC urges the EC and the Co-Legislators to reconsider the Commission's proposal in light of the recommendations developed by the World Airline Slot Board (WASB), which is composed of airlines, airports and slot coordinators, and which published its recommendations for slot relief for the summer 2021 scheduling season² on 20 November 2020 (IATA, A4E, ACI-Europe and EUACA support the WASB-recommendation). The recommendations consist of a combination of (i) a full waiver of the "use-it-or-lose-it" rule for full slot series that are returned to the pool before the start of the season and (ii) a utilisation threshold of 50% for slot series that airlines retain. It also contains certain conditions and provisions on the justified non-use of slots specific to the COVID-19 situation.
- 1.6 The EESC believes that it is imperative to maintain a balance between the need to avoid measures that negatively impact the aviation sector's ability to recover from this crisis, the long-term objective of airlines to maintain costly slots at airports, and the need to ensure an appropriate level of competition for such scarce slots.

¹ COM/2020/818 final

² WASB-Recommendation, Airport slot alleviation measures for Northern Summer 2021, <https://www.iata.org/contentassets/4820c05b19f148e2855db91f2a579369/wasb-northern-summer-21-recommendation-for-slot-use-relief.pdf>

- 1.7 Finally, the EESC regrets that the EC seems focused on addressing the relief measures from the EU slot allocation rules without bearing in mind that such measures will be mirrored globally by other parts of the world. It is therefore preferable to pursue modifications that are operationally feasible and agreed globally – such as the WASB recommendations.

2. General comments

- 2.1 Regulation (EEC) No 95/93³, which was partially amended by Regulation (EC) No 793/2004⁴, determines the procedures and rules for the allocation of slots at EU airports. Article 10 of this Regulation specifies that air carriers must use at least 80% of their allocated slots within a given scheduling period in order to maintain these slots for the corresponding scheduling period in the following year (hence, "use-it-or-lose-it").
- 2.2 On 30 March 2020, the European Union adopted an amendment to the Slot Regulation⁵ 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 EC to extend the period covered by the waiver until 4 April 2021. On 14 October 2020, the Commission adopted a delegated act⁶ 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.
- 2.3 The EESC supported the proposed suspension of the EU rules on airport slot allocation in its position paper, adopted on 25 March 2020. This report advocated planning stability for airlines and the possibility to react swiftly and flexibly to market developments without losing the slots required to re-establish functioning networks.
- 2.4 Citing the need to establish a pathway to return to normal application of the "use-it-or-lose-it" rule, the Commission proposed that from the summer 2021 scheduling period, the application of the slot utilisation requirements under the Slot Regulation should reapply, but that the threshold should be set at 40% instead of 80%. In addition, the Commission would have delegated powers up to and including the 2024/2025 winter season to further extend the slot relief by adjusting 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 proposal further contains certain conditions regarding, inter alia, exclusions for newly allocated and exchanged slots, as well as a time limit for the return of slots.

³ 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](#)

⁴ Regulation (EC) No 793/2004 of the European Parliament and of the Council of 21 April 2004 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports, [OJ L 138, 30.4.2004, p. 50](#)

⁵ 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](#)

⁶ Commission Delegated Regulation (EU) 2020/1477 of 14 October 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, [OJ L 338, 15.10.2020, p. 4](#)

- 2.5 On 20 November 2020, the WASB, composed of airlines, airports and slot-coordinators, announced that it had reached an agreement on recommendations for slot relief for the summer 2021 scheduling season⁷. IATA, A4E⁸, ACI-Europe and EUACA support the WASB-recommendation. In contrast to the EC's proposal, it recommends a combination of (i) a full waiver of the "use-it-or-lose-it" rule for full slot series that are returned to the pool long enough before the start of the season and (ii) a utilisation threshold of 50% for slot series that airlines retain. It also contains certain conditions and provisions on the justified non-use of slots specific to the COVID-19 situation.
- 2.6 The EESC supports continued relief from the EU's "use-it-or-lose-it" slot-regulation rule for the summer 2021 season. However, it believes that the EC's proposal should include the ability to return complete series of slots, in addition to a lowering of the threshold. Indeed, connectivity in the medium to longer term is better served if airlines are supported in their financial recovery and are able to re-establish their networks once traffic returns. In addition, waivers of slot utilisation rule in third countries are often conditional on reciprocity, suggesting the need for a globally compatible approach.
- 2.7 The EESC supports the thrust of the recommendations of the WASB, published, on 20 November 2020, which include an option for airlines to return entire strings of slots during the crisis. The EC seems focused on addressing the relief measures from the EU slot allocation rules without bearing in mind that such measures will be mirrored by all other regions in the world. It is therefore preferable to pursue modifications that are operationally feasible and agreed globally. The Committee urges the EC and the Co-legislators to consider the Commission's proposal in light of the recommendations of the WASB.

3. Specific comments

- 3.1 In total, by 31 December 2020, 6.1 million flights, or 1.7 billion passenger journeys, had been lost to European Air Traffic in comparison to the previous year⁹, as a result of the COVID-19 pandemic.
- 3.2 To reduce the virus's growth rate, governments imposed severe restrictions on international air traffic and on the mobility of their respective citizens. Air carriers had to severely reduce capacity and ground aircraft. In several EU Member States, entire airlines were temporarily grounded.
- 3.3 This situation continues unchanged into 2021, placing severe pressure on the financial viability of all aviation stakeholders, notably the social partners, who all have justified concerns about the future of their employment. While a vaccine has been found and has been administered in the EU since 27 December 2020, a rate of vaccinating the population sufficient to enable the

⁷ WASB-Recommendation, Airport slot alleviation measures for Northern Summer 2021, <https://www.iata.org/contentassets/4820c05b19f148e2855db91f2a579369/wasb-northern-summer-21-recommendation-for-slot-use-relief.pdf>

⁸ A4E member Ryanair does not share this position and will communicate its views separately.

⁹ Idem

removal of general restrictions and measures aimed at reducing infections will not be attained until late 2021 or even 2022¹⁰. There are no indications that demand in the Summer 2021 season will return to anywhere close to the level of recent years. Existing uncertainty will remain and might even be increased by the appearance of new, even more infectious or deadly variants of COVID-19. Indeed, according to industry projections, the recovery period could last until at least 2024 or 2025¹¹.

- 3.4 Slots are essential to operate to and from congested airports and are important for air carriers to gain access to scarce airport capacity in order to maintain their networks and the connectivity they provide to their customers. Carriers have taken years to develop their networks and acquire the necessary slots for intra-European, intercontinental and feeder traffic. To maintain their slots in the absence of a provision neutralising the "use-it-or-lose-it" rule, air carriers would be obliged to continue operating flights with an extremely low seat-load, exacerbating financial losses and posing an unnecessary environmental burden.
- 3.5 All measures implemented in 2020 were based on the assumption that they would help secure effective control of the further spread of the virus within a short, at least foreseeable, period of time. These expectations have so far not been fulfilled; in fact, the process for recovery from this unprecedented crisis can as yet not be reliably forecast.
- 3.6 Demand for air services has not improved sustainably since the EU's implementation of the original COVID-19 waiver in March 2020. While there was a slight rise in traffic during the Summer months to -51% compared to the previous year, traffic slowed down after Summer 2020, as the second wave of the pandemic hit and Member States introduced new lock-down measures. On 14 September 2020, Eurocontrol significantly adjusted its forecast downward. However, even the revised traffic scenario is proving too optimistic. In November, traffic was at -62% and -60% in December compared to the previous year against Eurocontrol's forecast of -58% and -54% respectively. The Eurocontrol forecast is -60% and -50% in January and February 2021, respectively¹².
- 3.7 In view of the continued and repeated spread of the virus and the severity of the measures taken by governments to contain it, demand for air services continues to be at a very low level, continuing to place the aviation sector under significant, if not existence-threatening, financial pressure. In the EESC's view, relief from the burden of the "use-it-or-lose-it" rule is therefore justified and necessary.
- 3.8 The EESC commends the stakeholders – airlines, airports, and slot coordinators – on coming together to arrive at a compromise solution at the WASB. The EESC is aware that the general regulation of slots is a contentious issue for them. In the opinion of the EESC, the WASB

¹⁰ Questions and Answers: COVID-19 vaccination in the EU, 21 December 2020, https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2467

¹¹ Aviation Round Table Report on the Recovery of European Aviation, November 2019, <https://www.aci-europe.org/downloads/resources/Aviation%20Round%20Table%20DECLARATION%20FINAL%2016.11.2020.pdf>

¹² Eurocontrol, Think Paper #8: What COVID-19 did to European Aviation in 2020, and Outlook 2021, 1 January 2021. <https://www.eurocontrol.int/publication/what-covid19-did-european-aviation-2020-outlook-2021>

recommendation adequately addresses the general and specific objectives pursued by the Commission as stated in the Staff Working Document accompanying its proposal¹³.

- 3.9 The EESC is supportive of the Commission's general objective of overcoming certain shortcomings and challenges associated with a full season waiver, stimulating connectivity, encouraging competition and facilitating a phase-out of the slot relief. The EESC also supports the Commission's specific objectives, in particular to minimise the harmful effects on the environment caused by operating flights with very low load factors.
- 3.10 In its proposal to insert a new paragraph 2a in Article 10a, the Commission merely proposes 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. This means that carriers will need to service even uneconomical flights with extremely low load factors up to at least 40%, instead of being able to return such slots without the danger of losing them. Incentivising airlines to fly near-empty aircraft is not compatible with the Commission's stated aim of minimising harmful effects on the environment. This could be remedied if airlines were able to return full series of slots for which they know demand will be low (e.g. on weak traffic days or at off-peak times).
- 3.11 Similarly, the EC's proposal does not meet its stated aim of ensuring efficient airline operations and the efficient use of airport capacity. By not allowing the return of full slot series, airlines are not incentivised to return slots early, which allows for the optimised reallocation of slots and planning for airports, airlines and consumers. The ability to return full slot series enables airports to better adjust their own operations. Above all, it makes slots available for reallocation and ad hoc use, for example, for cargo flights, depending on changes in demand. The proposed addition of a paragraph 7 in Article 10a of the regulation providing for a three-week deadline for the return of slots cannot have a similar effect¹⁴. Instead, there is a danger that a lower threshold on its own may lead to significantly fragmented schedules, to the detriment of the few remaining customers.
- 3.12 While the EESC is supportive of the Commission's general objectives of promoting connectivity, encouraging competition and facilitating a phase-out from the slot relief, it believes that a longer-term perspective must be maintained. Connectivity and competition (especially with non-EU carriers) is best served in the medium to long term by ensuring that otherwise viable enterprises survive the current crisis without losing assets they require once traffic returns. At the same time, regulation must not be over-protective, in order to avoid complacency and to safeguard competition. Given the uncertain development of demand in the summer season and the Commission's own assumption of a traffic level of 50% compared to 2019¹⁵, the EESC finds it too early to reapply the slot utilisation requirements under the Slot Regulation, even at 40%. At the same time, the continuation of the full waiver would not counter the challenges and meet the objectives correctly set out by the Commission. The EESC

¹³ SWD/2020/341 final

¹⁴ In addition, this particular provision is ineffective as the non-observance has no consequences. Slot allocation in the following season depends on airlines reaching the threshold, irrespective of whether they return slots within the three-week period or not.

¹⁵ See Footnote 7, recital 11.

finds that the recommendation made by the WASB, combining the alleviation effects of a full waiver with the controlling effects of a threshold is a solid basis from which a return to the normal application of the slot usage requirements can begin.

- 3.13 The delegated act proposed in paragraph 4 of Article 10a should empower the Commission not only to amend the percentage values referred to in paragraph 2a of Article 10, but also to extend the option to return full series of slots at the beginning of the respective season. While the Commission's proposal allows for a full slot utilisation waiver (i.e. 0%), it does not provide for the possibility of combining the two elements. Only this will constitute a truly flexible response mechanism.
- 3.14 Slot coordination is a global issue. An EU Regulation on slots must therefore be compatible with the regulations of third countries, which often require reciprocity. With a full waiver, this is not an issue, as it is the widest possible means of alleviating the conditions for the utilisation of slots. The WASB recommendation is similarly likely to achieve global recognition¹⁶.
- 3.15 The EESC is of the view that, in the interests of resilience and smart regulation, consideration should be given to the introduction of provisions that allow for alleviation of the slots usage regulations under Regulation (EEC) No 95/93, not only for cases relating to COVID-19, but also for future events that have a significant effect on the aviation industry. The current situation is not the first time that amendments to the slot utilisation rule in Regulation (EEC) No 95/93 have been necessary:
- in 2002, in the aftermath of the 9/11 terrorist attacks (Regulation (EC) No 894/2002);
 - in 2003, following the outbreak of SARS (Regulation (EC) No 1554/2003);
 - in 2009, during the global financial crisis (Regulation (EC) No 545/2003).

Such arrangements should entail the ability to respond quickly, without the need for additional regulation and with the possibility of a flexible response, ranging from full waivers and adjusted thresholds to a combination of early slot returns and thresholds, as suggested by the WASB for the 2021 summer season.

¹⁶

At the time of this report, New Zealand, Malaysia and Canada (Vancouver) have already adopted the WASB-proposal for Summer 2021. Brazil has prolonged the existing Slot Waiver of Winter 2020/2021. The [FAA](#) in the US launched a consultation regarding (only) these two options: extension of the existing (full) waiver and the WASB-proposal.

3.16 The EESC reaffirms its willingness to contribute to further discussions on how best to re-establish a viable and competitive European aviation sector. Such an approach should be comprehensive and include discussions with all stakeholders, in particular the social partners, who are being severely affected by the COVID-19 crisis. A comprehensive approach of this kind should include the review of any regulation or measure that places an undue burden on the aviation sector.

Brussels, 27 January 2021

Christa SCHWENG

The president of the European Economic and Social Committee
