



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

**Brussels, 11 February 2021
(OR. en)**

2020/0358 (COD)

PE-CONS 1/21

**AVIATION 18
COVID-19 14
CODEC 71**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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 Union airports due to the COVID-19 crisis

REGULATION (EU) 2021/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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

(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 Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ Opinion of 27 January 2021 (not yet published in the Official Journal).

² Position of the European Parliament of 11 February 2021 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) The COVID-19 crisis 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 spread of COVID-19. The impact on air carriers has been detrimental since 1 March 2020, and this is likely to continue in the years to come.
- (2) Those circumstances are beyond the control of air carriers and have led to the voluntary or obligatory cancellation of their air services. In particular, voluntary cancellations protect the financial health of air carriers and avoid the negative environmental impact caused by operating empty or largely-empty flights 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 in air traffic of around 74 % as of mid-June 2020.

- (4) It is not possible, on the basis of known forward bookings, Eurocontrol forecasts and epidemiological forecasts, to predict when the period of severely depressed demand caused by the COVID-19 crisis is likely to end. According to the latest Eurocontrol forecasts, air traffic in February 2021 will be around half of the level of February 2020. Forecasts extending beyond that date depend on a number of unknown factors, such as the availability of COVID-19 vaccines. Under these circumstances, air carriers that fail to use their slots in accordance with the slot utilisation rate set out in Council Regulation (EEC) No 95/93¹ should not automatically lose the precedence, in respect of the series of slots, laid down in Articles 8(2) and 10(2) of that Regulation that they might otherwise enjoy. This Regulation should establish specific rules to this effect.
- (5) Those rules should at the same time address potentially negative impacts on air carrier competition. In particular, it is necessary to ensure that air carriers prepared to provide services are allowed to take up unused capacity and that they have the 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.

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).

- (6) It is therefore necessary to lay down, in accordance with these principles and for a limited period, the conditions under which air carriers continue to be entitled to series of slots under Articles 8(2) and 10(2) of Regulation (EEC) No 95/93, and to establish requirements for air carriers concerned to release unused capacity.
- (7) For the period during which air transport is negatively affected by the COVID-19 crisis, the definition of the term ‘new entrant’ should be broadened in order to increase the number of air carriers covered, thereby giving more air carriers the opportunity to establish and expand their operations if they so wish. However, it is necessary to restrict the privileges corresponding to air carriers covered by that definition to genuine new entrants by excluding any air carrier which, together with its parent company, or with its own subsidiaries or subsidiaries of its parent company, holds more than 10 % of the total number of slots allocated on the day in question in any given airport.
- (8) During the period for which the relief from the slot utilisation rules is applied, the system of slot allocation should recognise the efforts of the air carriers that have operated flights using slots which are part of a series that another air carrier is entitled to under Articles 8(2) and 10(2) of Regulation (EEC) No 95/93, 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 those Articles 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 allowed to adapt the timing of slots allocated to air carriers under Article 8 of Regulation (EEC) No 95/93 or to cancel such slots for the scheduling period during which the specific COVID-19 sanitary measures apply.
- (10) To facilitate the use of airport capacity during the summer 2021 scheduling period, air carriers should be allowed to return historical slots to the coordinator before the beginning of the scheduling period so that they can be reallocated on an ad hoc basis. Air carriers returning a complete series of slots before the deadline set by this Regulation should retain their entitlement for the same series of slots at that airport for the summer 2022 scheduling period. In view of the other slot relief measures contained in this Regulation, air carriers with a significant number of slots at an airport should be allowed to return a maximum of half of their slots in this way.

- (11) Without prejudice to the obligation of Member States to comply with Union law, in particular with the rules laid down in the Treaties and in Regulation (EC) 1008/2008 of the European Parliament and of the Council¹, the negative consequences of possible measures, adopted by public authorities of Member States or third countries addressing the spread of COVID-19 and restricting the ability to travel at very short notice, cannot be imputed to air carriers and should be mitigated where those measures significantly impact the viability or the possibility of travel or the demand on the routes concerned. This should include measures which lead to a partial or total closure of the border or airspace or to a partial or total closure or reduction of capacity of the airports concerned, to restrictions on airline crew movements significantly hampering the operation of air services or to a severe impediment to passengers' ability to travel with any carrier on the route concerned, including travel restrictions, restrictions of movement or quarantine measures in the country or the region of destination or restrictions on the availability of services essential to support directly the operation of an air service. Mitigations should ensure that air carriers should not be penalised for failure to use slots where that failure is the result of such restrictive measures which had not yet been published when the slots were allocated. Specific relief from the effects of the imposition of such measures should be of limited duration and, in any event, should not exceed two consecutive scheduling periods.

¹ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).

- (12) During periods where demand is significantly impacted as a result of the COVID-19 crisis, air carriers should be released, to the necessary extent, from the requirements to use slots in order to retain entitlement to those slots in the subsequent equivalent scheduling period. This should enable air carriers to increase services when circumstances allow. The lower minimum usage rate fixed for this purpose should take into account the air traffic outlook for 2021, as of the beginning of 2021, which was 50 % of 2019 traffic levels, the uncertainty surrounding the COVID-19 crisis and the return of consumer confidence and traffic levels.

- (13) In order to address the evolving impact of the COVID-19 crisis and the resulting lack of clarity concerning the evolution of the traffic levels in the mid-term, and to respond flexibly, where strictly necessary and justified, to the challenges the air transport sector is facing as a consequence, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the period of application of the relief from the slot utilisation rule and the percentage values of the minimum usage rate within a certain range. 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-Making¹. 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.

¹ OJ L 123, 12.5.2016, p. 1.

- (14) In order to be able to make the necessary preparations in time, air carriers and coordinators need to be aware of the conditions to be applied to the operation of slots in a given scheduling period. The Commission should therefore endeavour to adopt the delegated acts as early as possible and should adopt such acts in any event before the deadline for the return of slots laid down in Article 10(3) of Regulation (EEC) No 95/93.
- (15) Airports, airport services providers and air carriers need to have information on available capacity for the purpose of adequate planning. Air carriers should make available to the coordinator for possible reallocation to other air carriers any slot that they do not intend to use at the earliest possible opportunity and no later than three weeks before the planned date of their operation. Where air carriers repeatedly and intentionally fail to comply with that requirement, or with any other requirement of Regulation (EEC) No 95/93, they should be subject to appropriate penalties or equivalent measures.
- (16) 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.

- (17) Since the objective of this Regulation, namely the establishment of specific rules and the relief from the general slot utilisation rules for a limited period of time in order to mitigate the effects of the Covid-19 crisis on air traffic, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (18) In view of the urgency entailed by the exceptional circumstances related to the COVID-19 crisis, 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.
- (19) In order to allow for the prompt application of the measures provided for in this Regulation, it 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*,

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 is inserted:

‘(ba) during the period referred to in Article 10a(3) '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 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) the following point is added:

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

(2) in Article 7(1), the first subparagraph is replaced by the following:

‘1. Air carriers operating or intending to operate at a schedules facilitated or coordinated airport shall submit to the schedules facilitator or coordinator respectively all relevant information requested by them. All relevant information shall be provided in the format and within the time-limit specified by the schedules facilitator or coordinator. In particular, an air carrier shall inform the coordinator, at the time of the request for allocation, whether it would benefit from the status of new entrant, in accordance with Article 2(b) or (ba), in respect of requested slots.’;

(3) Article 8 is amended as follows:

(a) the introductory wording of the first subparagraph of paragraph 2 is replaced by the following:

‘2. Without prejudice to Articles 7, 8a and 9, Article 10(1) and (2a) and Article 14, paragraph 1 of this Article shall not apply when the following conditions are satisfied.’;

(b) the following paragraph is inserted:

‘2a. During the period referred to in Article 10a(3), a series of slots which was returned to the slot pool in accordance with paragraph 1 of this Article 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, provided that the series of slots has not already been allocated to the carrier originally holding that series for the next equivalent scheduling period in accordance with paragraph 2 of this Article.

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

(c) the following paragraph 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 Article 10a(3) or cancel them after having heard the air carrier concerned. In this context, the coordinator shall take into account additional rules and guidelines referred to in paragraph 5 of this Article, under the conditions set out therein.’;

(4) in Article 8a, paragraph 3 is replaced by the following:

- ‘3. (a) Slots allocated to a new entrant as defined in Article 2(b) or (ba) may not be transferred as provided for in paragraph 1(b) of this Article for a period of two equivalent scheduling periods, except in the case of a legally authorised takeover of the activities of a bankrupt undertaking.
- (b) Slots allocated to a new entrant as defined in Article 2(b)(ii) and (iii) or in Article 2(ba)(ii) may not be transferred to another route as provided for in paragraph 1(a) of this Article for a period of two equivalent scheduling periods unless the new entrant would have been treated with the same priority on the new route as on the initial route.
- (c) Slots allocated to a new entrant as defined in Article 2(b) or (ba) may not be exchanged as provided for in paragraph 1(c) of this Article for a period of two equivalent scheduling periods, except in order to improve the slot timings for these services in relation to the timings initially requested.’;

(5) Article 10 is amended as follows:

(a) the following paragraph is inserted:

‘2a. Notwithstanding paragraph 2, a series of slots allocated for the scheduling period from 28 March 2021 until 30 October 2021 shall entitle the air carrier to the same series of slots for the scheduling period from 27 March 2022 until 29 October 2022 if the air carrier has made the complete series of slots available to the coordinator for reallocation before ... [eight days after the date of entry into force of this Regulation]. This paragraph shall only apply to series of slots which had been allocated to the same carrier for the scheduling period from 29 March 2020 until 24 October 2020. The number of slots in respect of which the air carrier in question may benefit under this paragraph shall be limited to a number equivalent to 50 % of the slots which were allocated to the same carrier for the scheduling period from 29 March 2020 until 24 October 2020 except for an air carrier allocated fewer than 29 slots per week on average during the previous equivalent scheduling period at the airport in question.’;

(b) paragraph 4 is amended as follows:

(i) the following point is added:

‘(e) during the period referred to in Article 10a(3), the introduction by public authorities of measures intended to address the spread of COVID-19 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, that those measures significantly impact the viability or possibility of travel or the demand on the routes concerned and that they lead to any of the following:

(i) a partial or total closure of the border or airspace, or a partial or total closure or reduction of capacity of the airport, during a substantial part of the relevant scheduling period,

(ii) a severe impediment to passengers’ ability to travel with any carrier on that direct route during a substantial part of the relevant scheduling period including,

– travel restrictions based on nationality or place of residence, prohibition of all except essential travel, or bans on flights from or to certain countries or geographical areas,

- restrictions of movement or quarantine or isolation measures within the country or region where the airport of destination is located (including intermediate points),
 - restrictions on the availability of services essential to support directly the operation of an air service,
- (iii) restrictions on airline crew movements significantly hampering the operation of air services from or to the airports served, including sudden bans on entry or the stranding of crew in unexpected locations due to quarantine measures.’;
- (ii) the following subparagraphs are added:

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

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

Point (e) shall cease to apply where the air carrier uses the slots in question to change to a route not affected by the measures of the public authorities.

Air carriers may justify the non-utilisation of a slot in accordance with point (e) for a maximum of two consecutive scheduling periods.’;

(c) the second subparagraph of paragraph 6 is replaced by the following:

‘Among requests from new entrants, preference shall be given to air carriers qualifying for new entrant status under Article 2(b)(i) and (ii), Article 2(b)(i) and (iii) or Article 2(ba)(i) and (ii).’;

(6) Article 10a is replaced by the following:

‘Article 10a

Allocation of slots in response to the COVID-19 crisis

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.

2. For the purposes of Articles 8(2) and 10(2), coordinators shall consider slots allocated for the period from 23 January 2020 until 29 February 2020 as having been operated by the air carrier to which they were initially allocated, as regards air services between airports in the Union and airports either in the People's Republic of China or in the Hong Kong Special Administrative Region of the People's Republic of China.
3. In respect of slots which have not been made available to the coordinator for reallocation in accordance with Article 10(2a), during the period from 28 March 2021 until 30 October 2021 and for the purposes of Articles 8(2) and 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 50 % 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 of this paragraph, the percentage values referred to in Article 10(4) and in point (a) of Article 14(6) shall be 50 %.

4. In respect of slots with a date from 9 April 2020 until 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.
5. 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 crisis, the Commission shall adopt delegated acts in accordance with Article 12a to amend the period specified in paragraph 3 of this Article accordingly.

The Commission is empowered to adopt, where strictly necessary in order to address the evolving impact of the COVID-19 crisis on air traffic levels, delegated acts in accordance with Article 12a to amend the percentage values referred to in paragraph 3 of this Article within a range between 30 % and 70 %. For this purpose, the Commission shall take into account changes that have occurred since ... [the date of entry into force of this amending Regulation], on the basis of 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, taking into account the evolution observed since the start of the COVID-19 crisis; 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 31 December for the following summer scheduling period and no later than 31 July for the following winter scheduling period.

- 6. Where, in the case of a prolonged impact of the COVID-19 crisis on the air transport sector in the Union, imperative grounds of urgency so require, the procedure provided for in Article 12b shall apply to delegated acts adopted pursuant to this Article.
- 7. During the period referred to in paragraph 3, 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.’;

(7) 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 ... [one year after the date of entry into force of this Regulation].’;

(8) Article 14 is amended as follows:

(a) Paragraph 5 is replaced by the following:

‘5. Member States shall establish and apply effective, proportionate and dissuasive penalties or equivalent measures to air carriers who repeatedly and intentionally fail to comply with this Regulation.’;

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

‘(c) During the period referred to Article 10a(3), 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
