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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 15.12.2021 amending Council Regulation (EEC) No 95/93 as regards the extension of measures for temporary relief from the slot utilisation rules due to the COVID-19 crisis

Delegations will find attached document C(2021) 9105 final.

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

of 15.12.2021

amending Council Regulation (EEC) No 95/93 as regards the extension of measures for temporary relief from the slot utilisation rules due to the COVID-19 crisis

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

An increasingly positive trend in air traffic compared to the same period in 2020 in the European Economic Area (EEA) aviation market can be detected at the current stage of the COVID-19 crisis. Eurocontrol data shows that in October 2021 air traffic was overall at 71% of 2019 levels in terms of flight numbers, while during the same month in 2020, air traffic was only around 43% of 2019 levels. EEA air traffic levels have been consistently higher in 2021, compared to the same weeks in 2020 after the start of the COVID-19 crisis.

Progress has been made in the rate of vaccination campaigns and coordination among Member States in implementing the Digital COVID-19 Certificate is continuing to improve. Therefore, the positive trend in the EEA is likely to continue.

At the same time air traffic is not recovering at the same rate in all regions of the world and in a number of countries restrictive sanitary measures adopted by public authorities to mitigate the spread of COVID-19 remain, and continue to depress consumer demand. Further, while the vaccination campaign worldwide is progressing, the further evolution of COVID-19, including the possible emergence of new variants of concern remains uncertain.

Under Article 8(2) of the Regulation (EEC) No 95/93¹ ('Slot Regulation'), read together with Article 10(2), air carriers must use at least 80% of a slot series allocated to them or they lose historical precedence for this slot series (the so-called "use-it-or-lose-it rule"). From 1 March 2020 until 27 March 2021 the EU suspended the use-it-or-lose-it rule ('slot waiver')².

On 16 February 2021, and given the continuing impact of the COVID-19 crisis on air traffic, the EU adopted Regulation 2021/250 amending the Slot Regulation to grant airlines further relief from the normal use-it-or-lose-it rule during the summer 2021 scheduling period starting from 28 March 2021 to 30 October 2021 ('slot relief'). In order to avoid unintended negative consequences on the efficient use of airport capacity, the slot relief rules introduced pro-competitive and pro-efficiency slot use requirements.

For the summer 2021 scheduling period, the slot relief rules allowed airlines to get a full slot series waiver for up to 50% of slot series they hold at an airport, provided the slot series were handed back before 28 February 2021. In addition, airlines had to operate their remaining slot series at a 50% utilisation rate to retain their historic rights in those series. Furthermore, Article 10(4)(e) was introduced allowing airlines to justify the non-use of slots, without losing historic rights, if non-use results from measures adopted by public authorities to stop the spread of COVID-19, if they lead to a severe impediment to travel, and provided air carriers did not know about them at the time slots were allocated ("force majeure" clause).

Under Article 12a of the Slot Regulation, the Commission is empowered until 21 February 2022 to adopt delegated acts to extend the period of application of the slot relief rules in case

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

² 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

it finds, on the basis of figures published by Eurocontrol, that the reduction in the level of air traffic as compared to the level in the corresponding period in 2019 is persisting and is likely to persist, and also finds, on the basis of the best available scientific data, that this situation is the result of the impact of the outbreak of COVID-19.

Further, 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 to amend the slot use rate within a range between 30% and 70%. For this purpose, the Commission shall take into account changes that have occurred since 20 February 2021, 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 should 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.

On 23 July 2021, the Commission adopted a Delegated Act to extend the slot relief period until 26 March 2022, and set the slot use rate at 50%. The Delegated Act entered into force on 28 October 2021, after a two month scrutiny period of the European Parliament and Council during which no objections were notified.

Regarding the extension of the slot relief period into the summer 2022 scheduling period

Despite an overall positive trend in 2021 compared to 2020, the reduction in the level of air traffic as compared to the level in the corresponding period in 2019 is persisting: Eurocontrol data show that traffic remains lower compared to 2019. In week 43 of 2021 (starting 25 October) air traffic was 26% below 2019 levels compared to the same week in 2019.

The reduction of air traffic is likely to persist: The Eurocontrol 7-year traffic forecast of 15 October 2021 shows three traffic scenarios, depending on the timing and efficacy of vaccination against COVID-19.³ Under the optimistic scenario the assumption is that vaccination proves efficient within Europe and globally (including against variants) and that an effective test-trace-isolate programme is established. Under this scenario air traffic would recover to 2019 levels by mid-2023. Under the baseline scenario (deemed most likely) the vaccine roll-out reaches herd immunity level within Europe, vaccines prove to be efficient against variants and an effective test-trace-isolate programme is established. Under this scenario air traffic levels will reach 85% of 2019 levels by March 2022, and an annual average of 89% over 2022. Under the pessimistic scenario the assumption is that vaccine uptake is unequal on a global level, there is a need for updated vaccines and lockdowns and mask-mandates are frequently reintroduced. Under this scenario air traffic would recover to 2019 levels only in 2026 (around 70% as an annual average in 2022).

³ Source: Eurocontrol, <https://www.eurocontrol.int/publication/eurocontrol-forecast-update-2021-2027>

The reduction of air traffic is the result of the impact of the outbreak of COVID-19: Many countries responded to the COVID-19 outbreak and evolving number of cases during the COVID-19 crisis by introducing travel restrictions, as well as imposing quarantine requirements for people returning from abroad and various lockdown measures shutting down retail, hospitality and entertainment services, some of which are still in effect today. These measures together with the uncertainty around their start and end dates (sometimes such measures are introduced or removed with one or two days' notice) also severely impact consumer confidence, leading to reduced bookings and declining air traffic levels.

Despite the encouraging air travel recovery signs in the EEA market, the evolution of the COVID-19 crisis and easy accessibility for travel to certain regions of the world remains uncertain. As a result, airlines cannot be expected to fully comply with the normal 80% slot utilisation rate on all routes over the forthcoming summer 2022 scheduling period, running from 27 March 2022 to 29 October 2022. With an 80% use-rate requirement, airlines would potentially lose a significant portion of the slots necessary to service the network they established for normal demand. This may lead to the exit of some airlines from the market causing instability and uncertainty for passengers and other aviation stakeholders (airlines, airports, ground-handlers). Some airlines would likely try to operate flights even at very low load factors to avoid the risk of losing historic rights in their slots, thereby increasing financial pressure on the industry that has already been hit severely by the COVID-19 crisis. Flights at very low load factors also pose an unnecessary burden on the environment and climate.

It is therefore necessary to extend the period of slot relief laid down in Article 10a(3) of the Slot Regulation, from 27 March 2022 to 29 October 2022.

Regarding the slot use rate:

To decide on the appropriate use-rate, the Commission shall take into account the following:

- (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.

(a) Based on the baseline (most likely) Eurocontrol traffic forecast scenario, the annual average air traffic levels in 2022 will be 89% of 2019 levels. Historically, air traffic levels are higher during the summer season and also during the COVID-19 crisis the yearly peak occurred during the summer tourism months. Taking this into account, and the fact that the most likely scenario predicts that by March 2022 air traffic levels will be at 85% of 2019, it is reasonable to assume that during the summer 2022 scheduling season air traffic will be higher than 85% and possibly exceed 89% during the high tourism season. Considering the demonstrated effectiveness of vaccines (including according to the European Center for Disease Control (ECDC) against the Delta variant – see below under b)) and the sustained production levels and rollout of vaccination campaigns, there appears currently to be more upside than downside risk to deviate from this scenario, with the possible exception of certain specific third country markets.

The European Medicines Agency has concluded on 4 October 2021, that a third dose of the BioNTech/Pfizer COVID-19 vaccines may be administered to all adults six months after the second dose and many EU countries are preparing an extension of the vaccination campaign. However, in light of the gained experience in the roll-out of large scale vaccination campaigns, as well as the digital COVID-19 certificate (easing travel in case of full vaccination, confirmed recovery of COVID-19 during the first 180 days after a positive PCR test, or a negative PCR-test), which has eased travel within the EU, it is unlikely that the need for a booster dose will materially impact the air travel forecast.

The Eurocontrol forecast makes projections for all States of the European Civil Aviation Conference (EEA + Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Monaco, Montenegro, North Macedonia, San Marino, Serbia, Switzerland, Turkey, Ukraine, United Kingdom). However, despite covering a larger area, the forecast is still an adequate proxy for the purpose of setting the slot use rate for the EU. The data on air traffic levels since the beginning of 2021 for each, the EU27 and ECAC States, shows that the relative difference, when comparing the levels of each area to their respective 2019 air traffic levels, does not vary by more than 5%.

(b) Past experience has shown that varying levels of air traffic broadly coincide with evolving numbers of cases and new waves or variants of the virus, as countries respond with measures restricting mobility that may also have a direct impact on passenger air travel.

When considering the evolution of air traffic trends to determine the slot use rate for the summer 2022 scheduling period, the progress made since the start of vaccination campaigns must be considered. The European Center for Disease Control (ECDC) reported in its Risk Assessment report of 4 November 2021 that 69,1% of the total population in the EU/EEA have been fully vaccinated to date. While initially the vaccination campaign's effectiveness was uncertain, especially in light of the new Delta variant, the ECDC has stated that full vaccination remains protective against severe outcomes such as hospitalisation, admission to intensive care and death. Currently available vaccines have played a crucial role in limiting viral circulation and in particular, limiting the impact of infections by the Delta variant.

Further, the COVID-19 certificate launched in July 2021, has proven to be a successful tool to facilitate travel.

Air traffic levels increased during the second half of the summer scheduling period coinciding with the summer tourism season in both 2020 and 2021, despite evolving COVID-19 case numbers and uncertainty. This demonstrates that there is pent-up demand for travel that quickly translates into increased air traffic when travel restrictions are lifted. For example, IATA noted a strong surge in bookings from European travellers to the U.S after the announcement that most vaccinated European travellers will be able to fly to the U.S. again from November.⁴ Experience during the summer 2021 scheduling period has also shown that airlines are agile in adding capacity on routes where new demand surges.

IATA also notes that there was a broad-based improvement in international markets in August 2021, led by growing vaccination rates and less stringent international travel restrictions in some regions. However, it also warned that while travel restrictions may continue to ease, there are some risks, notably from low vaccination in Africa and slowing economic activity.⁵

⁴ [chart-of-the-week \(iata.org\)](https://www.iata.org/en/pressroom/2021/11/04/chart-of-the-week)

⁵ [Air Passenger Market Analysis \(iata.org\)](https://www.iata.org/en/pressroom/2021/08/04/air-passenger-market-analysis)

Not all markets are recovering at the same pace. Unpredictable developments in the further evolution of COVID-19, including the possible emergence of new variants may lead to extending or new lockdown measures and travel restrictions. Such measures, may fall under Article 10(4)(e) of the Slot Regulation (“force majeure clause”) as has been the case since the beginning of the COVID-19 crisis. The force majeure clause allows airlines to receive alleviation from the use it or lose it rule in case of measures adopted by public authorities to mitigate the spread of COVID-19, where they severely impede passengers’ ability to travel. The force majeure clause is thus an important element in the slot relief measures granted to airlines.

It has already been proven to be a successful tool to deal with unexpected circumstances during the summer 2021 scheduling period. However, it must be stressed that the objective of Article 10(4)(e) is to target slot relief where it is strictly necessary due to circumstances outside airlines’ control. It is useful to remind slot-coordinators that the provision should be applied in a way that the exception from the use requirement under Article 10(4)(e) does not go beyond what is necessary.

When considering whether a measure adopted by a public authority falls within the scope of Article 10(4)(e), slot-coordinators should verify the impact of those measures on the viability or possibility of travel or the demand on the routes concerned. For example, measures previously categorised by coordinators as severely impeding travel on a route (e.g. the need to quarantine in a hotel) may, under evolving circumstances, lose their impact on air travel (e.g. because an increasing number of persons is fully vaccinated to which the quarantine obligation does not apply). The publication of guidance on the implementation of Article 10(4)(e) by the Association of European Slot Coordinators (EUACA) has been very beneficial for the industry.

It should be noted that if demand for travel remains low for market where the “force majeure clause” does not apply, and despite progress of vaccination campaigns, increased safety for travel, and countries’ scale back of measures impacting travel, it is likely an indication of more long term structural changes in the market and consumer behaviour. In that case, it is important that, in line with the Slot Regulation’s objective, unused capacity is released to the pool for possible permanent reallocation so it can be effectively used by competitors for the benefit of consumers (as opposed to ad hoc reallocation without the possibility of the actual slot users obtaining historic rights in them). Slot relief should not be continued until the market reaches the 2019 level, as it would prevent the release of structurally unused capacity to the market, thereby restricting the ability of airlines to compete for business to the detriment of consumers and connectivity.

(c) Data on passenger numbers from ACI-Europe shows that the number of passengers travelling in the first half of the year 2021 has been below 20% of 2019 levels during the corresponding period. The levels gradually increased as of May 2021 and reached between 60%-65% of 2019 levels from August to mid-October 2021. A clear improvement compared with the summer months of 2020 where passenger numbers were only around 40%. Data submitted by EU airlines (data received for 16 airlines) to the Commission showed that flight cancellations vs flights scheduled went down from, on average 84% in March to 43% of flights in July 2021. For non-EU carriers (data received for 12 airlines) cancellations were on

average between 60 and 70%. For individual carriers the numbers varied widely. For example, carriers with more intercontinental flights affected by travel restrictions would have to cancel more flights, sometimes 100%, whereas other carriers were able to provide more flights than initially scheduled. The percentage of cancelled flights is also affected by the stage at which the schedules were finalized (depending on information available and expectations at the time) and when the decision to cancel was made.

Data on forward bookings collected from Sabre (EU27 origin airports) shows that advanced bookings made up until the end of September 2021 for journeys in Q1 2022 are, compared with the corresponding period of 2019, down by 75,2% for extra-EU flights, by 69,9% for domestic flights and by 68,6% for intra-EU flights. For Q2 2022, extra-EU flight advanced bookings are down by 63,6%, for domestic routes down by 48,1% and for intra-EU routes down by 62,9%. This indicates that in general bookings may still be made closer to the actual time of flying than in 2019, however the situation is improving compared to data collected in June, and the overall reduction in the gap between 2019 and 2021 continues.

Regarding fleet size and fleet utilisation, the data submitted by EU airlines shows that compared to 2020, 14 airlines decreased their fleet size (between -2,3% and -9%), and one remained the same. Although this does not exclude that more efficient use is made of the available fleet or that new aircraft are added at short notice through leasing, a structural reduction of seat capacity is noticeable. The percentage of fleet utilised in 2021 varied widely between air carriers that submitted data: between 24% and 100%, depending on the overall size of the carrier and markets operated. It should however be noted, that the amount of active aircraft indicated does not necessarily correspond to the actual need for commercial operations but can be due to the need to operate aircraft for maintenance and continued airworthiness purposes or pilot certification requirements.

Regarding load factors, the data submitted shows that for EU carriers the load factor, on average, rose from 48% in March 2021 to 64% in July 2021. For non-EU carriers it varied, on average between 35,6% to 52,1%. Again, for individual carriers the numbers varied widely ranging from 22% to 91%.

While data on fleet size and utilisation and load factors show an accurate picture of current needs and demand, no trends relating to future developments could be extracted from this data. For example, recent experience has shown that fleet utilisation can be ramped up very quickly in those markets where demand returns.

In light of the improving air traffic situation and the fact that the force majeure clause has been an adequate tool to ensure slot relief is granted where necessary, the slot-use rate should increase compared to the summer 2021 and winter 2021/2022 scheduling periods.

The slot use rate must be set to avoid unintended negative consequences on airlines' financial situation and avoid the negative environmental impact of empty or largely-empty flights, but also either incentivise airlines to make efficient use of airport capacity, or give up the slots for other users. In case of more long-term structural changes in the market and consumer behaviour, the use rate should allow the market to gradually adapt to changing demand and unlock capacity for possible competitors that will make use of ad hoc slots for the summer 2023 scheduling period.

In light of these objectives, the most likely Eurocontrol traffic scenario of reaching approximately an average of more than 85% and a peak higher than 89% in summer 2022

scheduling period, backed by the progress made in the vaccine rollout, signs of pent-up consumer demand and increasing ease of travel, justify a use rate of 64%.

This use rate is below the expected traffic level and thus would still give airlines a reasonable contingency margin in case planned flights would have to be cancelled at short notice.

While it is generally assumed that air carriers will operate as soon as demand returns, a lower use threshold poses the risk that some carriers may limit operations at some airports to the minimum necessary just for the purpose of maintaining historic rights in those slots to the detriment of competitors (who are unable to access that airport), airport operators (who forego revenue) and consumers (who pay higher prices on fewer routes and frequencies). The possible release of some airport capacity due to this new use rate is not likely to cause a severe disruption to airlines' operations and networks, and in any event, all airlines may in future scheduling periods request new slots series from the pool in line with returning demand. Unexpected developments negatively affecting the market, or specific markets, can be addressed through the force majeure clause.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with Article 12a(4) of the Slot Regulation, before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. The draft of the delegated act has been presented at a meeting on 16 November 2021 of the Commission expert group (E01111, European Observatory on Airport Capacity & Quality) including representatives from the Member States.

The Commission services requested data from airlines and airports on the indicators required to monitor under Article 10a(4) (load factors, fleet size and utilization etc.). 22 submissions were made by air carriers representing 33 air carriers in total, out of which 16 are non-EU. Airline associations (Arab Air Carriers' Organization, Airlines for America, Airlines International Representation in Europe, Association of Asia Pacific Airlines, European Regions Airline Association, International Air Transport Association) submitted a joint position. Airports Council International -Europe also provided a position and data covering 28 airports. Commission services have continuously monitored data released by Eurocontrol and have been in contact with stakeholders (airlines, airports, slot-coordinators) to monitor the situation of air traffic and implementation of slot allocation rules.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated Regulation shall be adopted under the procedure detailed under Article 12a of Council Regulation (EEC) No 95/93. As soon as the Commission adopts a delegated act, it shall notify the delegated act simultaneously to the European Parliament and to the Council.

The delegated act shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

In order to prevent a risk of serious legal uncertainty, in particular for slot coordinators and air operators, this delegated Regulation shall enter into force without delay, the day following that of its publication in the Official Journal.

Article 1 amends the period during which the slot relief rules are applicable, and sets a new slot utilisation threshold at 64%.

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

of 15.12.2021

amending Council Regulation (EEC) No 95/93 as regards the extension of measures for temporary relief from the slot utilisation rules due to the COVID-19 crisis

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports⁶, and in particular Article 10a(5) thereof,

Whereas:

- (1) Air traffic levels in the European Economic Area (EEA) have been consistently higher in 2021, compared to the same weeks in 2020 after the start of the COVID-19 crisis, showing that recovery is continuing. According to the Eurocontrol forecast, the annual average air traffic is expected to reach 89% in 2022, on the basis of the most realistic forecast scenario.
- (2) Air traffic is not recovering at the same rate in all regions of the world and in a number of countries restrictive sanitary measures adopted by public authorities to mitigate the spread of COVID-19 remain, and continue to depress consumer demand. Further, the evolution of COVID-19 and possible new variants of concern remains uncertain.
- (3) Such circumstances are beyond the control of air carriers and consequent voluntary or obligatory cancellations of air services by air carriers in line with evolving demand is a necessary or legitimate response to those circumstances.
- (4) Pursuant to Article 8(2) of Regulation (EEC) No 95/93, read in conjunction with Article 10(2), air carriers are to use at least 80% of a slot series allocated to them, or lose historical precedence for those slots, known as the ‘use-it-or-lose-it-rule’. In light of the COVID-19 crisis, and to protect the financial health of air carriers and avoid the negative environmental impact of empty or largely-empty flights operated only for the purpose of maintaining underlying airport slots, the ‘use-it-or-lose-it’ rule was suspended from 1 March 2020 until 27 March 2021, and reduced to 50% from 28 March 2021 until 26 March 2022.
- (5) Despite a continuing increase in EEA air traffic levels in 2021, they still remain below 2019 traffic levels. Eurocontrol data shows that in October 2021 air traffic was overall 27% below 2019 levels.

⁶ OJ L 14, 22.1.1993, p. 1.

- (6) Based on the seven-year Eurocontrol forecast of 15 October 2021, under the most likely scenario, traffic levels would in 2022 reach an annual average of 89% of the corresponding 2019 levels. On the basis of the available Eurocontrol monthly forecasts for 2021 and the available Eurocontrol annual average for 2022, air traffic during the summer 2022 scheduling period is expected to be between 85% and more than 89% of 2019 levels. However, 2019 levels would only be achieved by the end of 2023. Therefore, it is reasonable to assume that the decrease compared to 2019 air traffic levels is likely to persist during the summer 2022 scheduling period.
- (7) Data compiled by the World Health Organisation (WHO) and the European Centre for Disease Control (ECDC) demonstrates that the persistent reduction of air traffic is the result of the impact of the COVID-19 crisis. The available data shows a correlation between the evolving numbers of cases and the Member States' and third countries' responses to those evolving numbers, by adopting measures that have an impact on air travel, and result in a decline in air traffic. Such measures, which can be implemented or lifted at a very short notice contribute to a climate of uncertainty and negatively impact consumer confidence and booking behaviour. That shows that the persistent reduction of air traffic is the result of the impact of the COVID-19 crisis.
- (8) While data from the ECDC of 30 September 2021 shows that 61,1% of the total population in the EEA have been fully vaccinated, data from the WHO's website shows that the vaccination rate in a large number of countries remains low. Further, uncertainty about the possibility of new variants of concern emerging in different regions remains. Air traffic levels will thus not recover at the same rate on a global level.
- (9) Member States and third countries may continue to respond to new variants by imposing measures that could significantly impact air travel. It is therefore reasonable to still expect a significant number of cancellations, in particular on routes to countries with very stringent sanitary measures or where vaccination rates remain low, as a consequence of the COVID-19 crisis over the forthcoming summer scheduling period. As a result, air carriers cannot be expected to comply with the normal 80% slot utilisation rate on all routes.
- (10) It is therefore necessary to extend the period laid down in Article 10a(3) of Regulation (EEC) No 95/93 to cover the summer 2022 scheduling period running from 27 March 2022 to 29 October 2022.
- (11) Data on flight cancellations, load factors, fleet size and utilisation varied very widely between individual air carriers depending on their business model and market served. On average an improving trend could be detected from March 2021 until July 2021 based on data submitted for 16 Union and 16 non-Union carriers. Air carriers providing operations on long-haul routes affected by sanitary measures severely impeding passenger travel, showed a less positive trend in the indicators monitored, further justifying the extension of the slot relief period laid down in Article 10a(3).
- (12) The overall encouraging air travel recovery signs in the EEA market, the reopening of important international markets (for example the United States of America as of November 2021) and increasing ease of travel due in countries that recognize the COVID-19 certificate, justify increasing the slot use rate to 64%.

- (13) Data on forward bookings indicates that passengers still book flights closer to the date of departure in 2021, than they did in 2019. However, the trend is gradually improving.
- (14) The slot use rate should be set at a level that contributes to the objective of granting air carriers relief in the present circumstances, but also to the objective of ensuring efficient use of airport capacity. The slot use rate should also take into account more long-term structural changes in the market and consumer behaviour, in order to allow the market to gradually adapt to changing demand and unlock capacity for the summer 2023 scheduling period. Further, the possible release of some airport capacity due to that new use rate is not likely to cause a severe disruption to air carriers' operations and networks, which a higher use rate would.
- (15) The most likely Eurocontrol air traffic forecast scenario sets air traffic level in the summer 2022 scheduling period at a level higher than 85% and possibly exceeding 89%. The use-rate of 64%, therefore still gives air carriers a reasonable contingency margin in case planned flights would have to be cancelled at short notice.
- (16) The lower air traffic levels to other global regions do not have to be factored into the use-rate as adequate relief from the use-it-or-lose-it rule can be granted on such affected routes under Article 10(4), point (e) of Regulation (EEC) No 95/93.
- (17) While it is generally assumed that air carriers would operate as soon as demand returns, a lower use threshold poses the risk that some carriers could limit operations at some airports to the minimum necessary just for the purpose of maintaining historic rights in those slots to the detriment of competitors, airport operators and consumers. A use rate of 64% will mitigate these risks.
- (18) For the purposes of legal certainty, in particular for slot coordinators and air operators, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 10a of Regulation (EEC) No 95/93, paragraph 3 is replaced by the following:

“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 29 October 2022 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 50% of the time during the scheduling period of 28 March 2021 to 30 October 2021, 50% of the time during the scheduling period of 31 October 2021 to 26 March 2022, and 64% of the time during the scheduling period of 27 March 2022 to 29 October 2022, 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 Article 14(6), point (a) shall be 50% for the

scheduling period of 28 March 2021 to 30 October 2021, 50% for the scheduling period of 31 October 2021 to 26 March 2022, and 64% for the scheduling period of 27 March 2022 to 29 October 2022.”.

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, 15.12.2021

For the Commission
The President
Ursula VON DER LEYEN