

**COMMISSION DELEGATED REGULATION (EU) 2021/1889****of 23 July 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 airports <sup>(1)</sup>, and in particular Article 10a(5) thereof,

Whereas:

- (1) The COVID-19 crisis continues to cause a drop in air traffic as a result of a significant fall in demand for air travel and direct measures taken by the Member States as well as third countries to contain the spread of COVID-19. Eurocontrol reported that in the first half of 2021, air traffic in the EEA airspace has been rather stable and accounted for approximately 38 % of 2019 air traffic in the corresponding period with an upward trend. According to the Eurocontrol forecast, the annual average air traffic is expected to reach 50 % and 72 % in 2021 and 2022 respectively, on the basis of the most realistic forecast scenario.
- (2) 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.
- (3) 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 28 March 2021.
- (4) On 16 February 2021, and given the continuing impact of the COVID-19 crisis on air traffic, the Union amended Regulation (EEC) No 95/93 to grant airlines further relief from the 'use-it-or-lose-it' rule during the summer 2021 scheduling period by suspending the rule for a further period from 28 March 2021 to 30 October 2021.
- (5) Pursuant to Article 10a(5) of Regulation (EEC) No 95/93, the Commission is empowered to adopt delegated acts to amend the period of suspension of the 'use-it-or-lose-it' rule set out in Article 10a(3).
- (6) Furthermore, pursuant to Article 10a(5) of Regulation (EEC) No 95/93, 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 %.
- (7) Despite a gradual increase, air traffic levels in the first half of 2021 are still low when compared to the same period in 2019, at approximately 38 % on average of 2019 air traffic in the corresponding period. While acknowledging the difficulties in accurately predicting the recovery path of air traffic levels, it is reasonable to expect the situation to persist in the near future with a steady narrowing of the gap between air traffic in 2021 when compared to 2019. Based on the four-year Eurocontrol forecast of 21 May 2021, under the most likely scenario, which assumes that vaccination should achieve efficacy in 2022, annual traffic levels would reach an annual average of 50 % to 72 % of the corresponding 2019 levels, in 2021 and 2022 respectively. On the basis of the available Eurocontrol monthly forecasts for 2021 and the available Eurocontrol annual average for 2022, air traffic during the winter 2021/2022 scheduling period is expected to be at 70 % of 2019 levels.

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

- (8) Data compiled by the World Health Organisation and the European Centre for Disease Control 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.
- (9) Due to the evolving numbers of COVID-19 cases and the possible spread of new variants, it is reasonable to expect a significant number of cancellations as a consequence of the COVID-19 crisis over the forthcoming winter scheduling period, running from 31 October 2021 to 26 March 2022, if airlines were required to operate their full 2019 slot portfolios in accordance with Article 8 of Regulation (EEC) No 95/93.
- (10) It is therefore necessary to extend the period laid down in Article 10a(3) of Regulation (EEC) No 95/93 from 31 October 2021 to 26 March 2022.
- (11) The demand for travel during the winter scheduling period from 31 October 2021 to 26 March 2022 could still remain low despite progress of vaccination campaigns, increased safety for travel, and countries' scale back of measures impacting travel. A persistent low demand during the winter scheduling period could likely be an indication of long term structural changes in the market and consumer behaviour. Therefore, the slot use rate should on the one hand avoid unintended negative consequences on airlines' financial situation and negative environmental impacts due to empty or largely-empty flights operated only to retain historical rights on slots, and on the other hand, either incentivise airlines to make efficient use of airport capacity, or release the slots to the pool for other users in order to ensure the efficient use of airport capacity.
- (12) Moreover, the slot use rate should be set at a rate which guarantees a minimum amount of services in order to increase passenger trust, efficient use of airport capacity during the 2021/2022 winter scheduling period and reliable connectivity.
- (13) 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 winter 2022/2023 scheduling period. In particular, since some airlines have made use of ad hoc slots during 2020 and the beginning of 2021 without obtaining historic slots.
- (14) Therefore, the slot use rate for the winter 2021/2022 scheduling period should be set to 50 %.
- (15) 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 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, airport operators and consumers. 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, which a higher use rate would.
- (16) 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 26 March 2022 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 of 28 March 2021 to 30 October 2021, and 50 % of the time during the scheduling period of 31 October 2021 to 26 March 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 point (a) of Article 14(6) shall be 50 % for the scheduling period of 28 March 2021 to 30 October 2021, and 50 % for the scheduling period of 31 October 2021 to 26 March 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, 23 July 2021.

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

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