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PROPOSAL

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Delegations will find attached document COM(2022) 334 final.

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EUROPEAN
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Brussels, 12.7.2022
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2022/0214 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Regulation (EEC) No 95/93[1] (the 'Slot Regulation') lays down rules on the allocation of slots at EU airports. Its Article 10 sets out the 'use-it-or-lose-it' rule, according to which air carriers must use at least 80% of slots in an allocated slot series in a given scheduling period (summer or winter) to retain their entitlement to the same slot series in the next equivalent scheduling period (i.e. grandfather or historic rights).

The COVID-19 pandemic caused a sudden and unprecedented decline in passenger demand (the lowest points were reached in April 2020, with an 89% decrease compared to the same weeks in 2019). As airlines could no longer comply with the normal use-it-or-lose-it rule without risking significant financial or environmental harm, the EU amended the Slot Regulation twice to adjust this rule[2]. The amended Regulation also gave the European Commission delegated powers to extend slot relief and adjust the use threshold if the reduction in air traffic due to COVID-19 persisted and was likely to continue to persist. The Commission used this empowerment three times[3]. Current slot-relief rules will expire on 29 October 2022. The Commission's delegated powers expired on 21 February 2022 and therefore the Commission cannot extend the EU slot relief beyond the summer 2022 scheduling period.

The use-it-or-lose-it rule was completely suspended from 1 February 2020 to 27 March 2021 (i.e. a full waiver). Given the subsequent recovery of air-traffic demand linked to the vaccination campaign and the introduction of the EU Digital COVID Certificate, the EU took the approach that slot relief should be targeted to what is necessary and balanced by introducing certain pro-competitive aspects. By its very nature, slot relief has the effect of giving a certain advantage to incumbent airlines to the detriment of new entrants that would potentially be able to provide air services but cannot access airport capacity. To reduce the risk of anticompetitive effects the slot use rate was gradually raised from 0% to 64% (for the summer 2022 scheduling period)[4]. When the slot use rate was raised above 0%, a number of new justified non-use of slots (JNUS) exceptions were introduced as an additional safeguard. These exceptions provide additional alleviation in specific cases where an airline cannot operate a flight because of measures imposed by public authorities to mitigate the spread of COVID-19 (for instance, flight bans, or lockdowns at either end of the route).

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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 Regulation (EU) 2020/459 of the European Parliament and of the Council of 30 March 2020 (OJ L 99, 31.3.2020, p. 1);; Regulation (EU) 2021/250 of the European Parliament and of the Council of 16 February 2021 (OJ L 58, 19.2.2021, p. 1).

3 Commission Delegated Regulation (EU) 2020/1477 of 14 October 2020 (OJ L 338, 15.10.2020, p. 4); Commission Delegated Regulation (EU) 2021/1889 of 23 July 2021 (OJ L 384, 29.10.2021, p. 20); Commission Delegated Regulation (EU) 2022/255 of 15 December 2021 (OJ L 42, 23.2.2022, p. 1).

4 In the summer 2021 scheduling season, the de facto slot use rate was 25% (the slot use rate was set at 50%, but airlines could also hand back up to 50% of their full slot series before the start of the summer season for temporary reallocation in exchange for full protection of those series). A use rate of 50% was adopted for the winter 2021/2022 scheduling season and 64% for the summer 2022 scheduling season.

Other rules to maximise the efficient and pro-competitive use of airport capacity were also introduced (e.g. a 3-week hand-back deadline for slots not intended for use, priority for ad hoc slot users under certain circumstances, etc.). These rules aim to maximise the benefits for the greatest number of users and allow passengers to reap the benefits of a competitive aviation market and connectivity.

The current air-traffic level in Eurocontrol states is around 86% of the level in the same period in 2019. Eurocontrol figures also show that traffic to other continents is recovering at similar rates[5]. Air traffic to North America is only 8% below 2019 levels and to Africa is 37% below 2019 (with a smaller reduction to North African countries). The air traffic to South America is 20% below 2019 and to the Middle East 8% below 2019 levels. The market lagging behind most is EU-Asia, which is at 65% of 2019 levels. This is attributable to remaining travel restrictions, especially in China[6], because of COVID-19 (slots on affected routes are protected by JNUS exceptions), and the fact that many carriers have to fly around Russian airspace to reach Asian countries. This adds significantly to flight duration on affected routes and requires airlines to reduce flight frequency.

Eurocontrol's traffic outlook (base scenario, currently outperformed) sets traffic at 90% at the start of the winter 2022/2023 scheduling period. Based on the same forecast, air traffic at the end of 2022 will be at 92% (base scenario), 96% (high scenario) or 83% (low scenario). In June 2022, year-to-date air traffic stands at 75% of 2019, with an upward trend. In May 2022, Airports Council International Europe revised their forecast on passenger numbers upward: the previously predicted -32% passenger-traffic loss for the year is now -22%. In an analysis published in May 2022, the CAPA – Centre for Aviation (which provides market intelligence) predicts that seat capacity offered may reach 2019 levels in Q3-2022. While the number of passengers is still lagging behind, the gap between seat capacity offered and passenger numbers is closing. Given this robust air-traffic recovery, it is proposed not to modify the standard 80% use rate as of the winter 2022/2023 scheduling period.

Experience during the pandemic has shown that the COVID-19 epidemiological situation is unstable and unpredictable. Some public-health authorities have already warned that COVID-19 cases may intensify again during northern autumn and winter seasons. It is not possible to anticipate the impact of potential new variants or an increased number of cases on passengers' ability to travel. Further, Russia's military aggression against Ukraine may continue to be a disruptive factor.

To mitigate the potential negative consequences on air-traffic levels if these scenarios materialise, it is important that the legal framework for slot allocation is sufficiently resilient to enable proportionate, pro-competitive and speedy slot relief. Therefore, it is proposed to grant the Commission delegated powers for a limited time to adjust the slot use rate if necessary if air traffic remains persistently below a certain threshold due to COVID-19 or direct effects of Russia's military aggression.

Further, airlines should continue to benefit from JNUS exceptions in case public authorities impose sanitary measures that restrict air travel or severely impede passengers' ability to

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5 eurocontrol-comprehensive-air-traffic-assessment-20220525_0.pdf

6 In 2021, EU and Chinese carriers operated around 74-76% fewer flights to China than in 2019. After the first half of 2022, the number of flights operated is 70% lower for Chinese carriers and 80% lower for EU carriers when compared to the whole of 2019. The carriers are thus likely on track to exceed 2021 operations, but it shows that air traffic to China is still significantly down.

travel. It is also proposed to extend the exception to cover measures imposed in response to all epidemiological situations (not limited to COVID-19), natural disasters and political unrest affecting airports. This proposed extension of the JNUS exceptions has received wide approval from all stakeholder categories (further described below).

While it is for slot coordinators to implement the Slot Regulation, experience has shown that closer cooperation between coordinators is necessary to uphold the objectives of the Slot Regulation, ensure consistent application of EU rules to similar situations, and maintain a level playing field. Therefore, it is proposed to strengthen the role of the European Airport Coordinators Association in issuing guidance. Transparency in the application of JNUS exceptions is very important for airlines, thus coordinators should publish to which destinations the exceptions apply. In addition, when a coordinator applies the exception to slots at one end of the route, the coordinator at the other end of the route should consider whether to apply it as well, provided it does not unduly prejudice airport operations or fair access to limited airport capacity, or both. Further, it is proposed that if a majority of the EU population is affected by measures severely impeding air travel, all slot coordinators may grant JNUS exceptions to all slots.

During its regular contact with stakeholders, the Commission has become aware of the need to address certain impacts of Russia's military aggression against Ukraine on air traffic. The prohibition on air carriers from the Union and other countries to enter the airspace of Belarus, Russia and Ukraine is having an impact on scheduled operations. The need to re-route flights may add significant duration to the flight-time making it impossible to comply with the originally allocated slot timing. Firstly, the Commission fully supports that coordinators use the flexibility granted under Article 8(4) of the Slot Regulation to retime slots used for direct routes affected by the prohibition to enter Russian, Belarusian and Ukrainian airspace Secondly, it is proposed to clarify that once Ukrainian airspace reopens, airlines whose slots on routes between the EU and Ukraine are protected by Article 10(4)(a) should be granted an additional recovery period of 16 weeks before slot-use requirements become applicable again. Thirdly, to aid the recovery of Ukraine and encourage airlines to restore connectivity between the EU and Ukraine, it is proposed to empower the Commission to adopt delegated acts to reduce the slot use rate on those specific routes between EU and Ukrainian airports. Lastly, it is proposed to explicitly clarify that air carriers subject to restrictive measures adopted under Article 215 of the Treaty on the Functioning of the EU (TFEU) or on the EU safety list cannot benefit from the application of Article 10(4) and (4a) of the Slot Regulation. Their slots should be withdrawn to avoid blocking airport capacity.

The Commission held a call for evidence from 26 April to 24 May 2022 and invited stakeholders to react to the proposed initiative to extend slot relief. The Commission received 43 replies in total, out of which 29 are publicly available on the Better Regulation portal.

All respondents support the continuation of slot relief, especially: (i) the continuous availability of JNUS exceptions; (ii) coordination among slot coordinators when applying these exceptions; and (iii) giving the Commission delegated powers to lower the use rate (which almost all stakeholders supported). Of all respondents, 5 stakeholders (3 airlines and 2 associations, representing most of the EU's airports) explicitly called for reinstating the 80% use rate, while 26 expressly called for a lower use rate (airlines mainly asked to maintain the current 64% use rate). Some stakeholders, mainly Member States, did not mention any preferred use rate but supported the proposal to empower the Commission to adopt delegated acts. Further, stakeholders broadly supported that airlines that used ad hoc slots during the period of slot relief should be given priority access to these slots, subject to available capacity.

The Commission recognises that the request to maintain a lower use rate is linked to uncertainties concerning COVID-19 and Russia's military aggression against Ukraine and resulting economic impacts. COVID-19 cases may rise again during the winter scheduling period, which is generally one of lower demand. However, Eurocontrol expects air-traffic to be at 90% of 2019 levels at the start of the winter scheduling period. Therefore, announcing a lower use rate at this stage is not justified. The Commission holds that there are sufficient safeguards against unanticipated adverse developments, namely the possibility to lower the use rate by adopting delegated acts at any time (if necessary by using the urgency procedure), coupled with the continuing availability of JNUS exceptions. The Commission has also repeatedly stated that air traffic does not need to return to 2019 traffic levels for normal slot-use rules to be reinstated as it is likely that consumer preferences will have changed, to which the market must adapt. It is essential that airport capacity is used efficiently and pro-competitively for the benefit of consumers and connectivity.

Many airlines were in favour of broadening the application of the JNUS exceptions, for example to cover public recommendations against travel, to cover not only directly affected routes but also feeder traffic, and to cover unavailability of essential ground-handling services or other business essential to support air operations.

The Commission recalls that the JNUS exceptions constitute an exception to the normal rules and, therefore, should be limited to what is strictly necessary not to unduly limit competition, which could in turn harm consumers. State recommendations against travel may affect passengers' willingness to travel; however, they do not as such constitute a severe impediment to travel and travel does still take place. If there are severe restrictions at the other end of the route, such as mandatory quarantine, lockdowns, etc., the exception applies and thus provides suitable protection.

On the request to broaden JNUS to cover feeder traffic, the Commission holds that this goes beyond what is necessary. Many passengers may be on a given flight to an airline's hub to connect to various destinations – some of these destinations being affected by travel restrictions or the need to reroute, others not. Therefore, it is not simple to determine for which route any given flight constitutes a feeder flight. Further, passengers may adapt their demand to the given circumstances. For example, while fewer passengers may choose to fly to Asian countries, they may choose to travel to North or South American destinations instead while still connecting through a hub in the EU. To accept the application of JNUS in these scenarios would go beyond the objective of JNUS under Article 10(4)(e) of the Slot Regulation and would contradict the principle that slots are not route specific. Airlines can adjust schedules and networks in line with demand, as many airlines have done during the pandemic.

Lastly, on staff shortages, the Commission notes that this may become a more serious problem during the current summer season. However, the proposal will not be adopted in time to cover the current season and other solutions are being explored by stakeholders together with the Commission. As is the case for airport capacity reductions due to sanitary measures, the Commission favours an open dialogue between the parties concerned and an orderly reduction of capacity to minimise the negative consequences for passengers. Resulting cancellations and/or re-timings should be presented to airlines and/or their associations transparently and should be spread across them proportionately to the number of slots or the capacity used by airlines at the airport concerned.

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

The Slot Regulation offers air carriers relief from the use-it-or-lose-it rule, that is currently problematic for air carriers due to the COVID-19 pandemic and Russia's military aggression against Ukraine. The Slot Regulation empowers the Commission to adopt delegated acts, that can only adjust the slot use rate for all routes in case of persistent air-traffic decline due to epidemiological situations or direct effects of Russia's military aggression against Ukraine, and/or specifically for routes between the EU and Ukraine to encourage airlines to restore connectivity. Extended periods of excessive relief from the slot-utilisation rules lead to distortions in competition that: (i) impact passenger connectivity and employment and quality of jobs in the aviation sector; and (ii) cause specific problems for airports and service providers. At the same time, returning to the normal slot-use requirements definitively with no possibility to rely on JNUS exceptions despite the possibility of future adverse events, would risk putting additional financial burden on airlines and could have an unintentional adverse environmental effect if airlines were to operate flights only to maintain underlying airport slots. Therefore, the Slot Regulation should be amended: (i) to mitigate the effects of the COVID-19 pandemic and Russia's military aggression against Ukraine; (ii) to provide legal certainty to air carriers, and (iii) to maintain the unity of the EU slot-allocation system.

`- **Consistency with other EU policies**

The effective functioning of the internal market in aviation and related services depends on the economic performance of air carriers and other parts of the aviation sector, including airports and other service providers. The negative economic consequences of the COVID-19 pandemic and Russia's military aggression against Ukraine are endangering their financial health and are having serious negative effects on the air-transport system and the economy as a whole. Therefore, amending the Slot Regulation is of utmost importance. This is also consistent with the EU's climate policy as it significantly reduces the risk of air carriers operating flights only to maintain underlying airport slots.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal is Article 100(2) TFEU. This Article provides the legal basis to adopt all appropriate air-transport legislation and serves as the legal basis for the Slot Regulation and its amendments.

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

The objectives of the proposal cannot be sufficiently achieved by the Member States since the Slot Regulation does not allow Member States to require coordinators to: (i) set a different use threshold; (ii) impose conditions on slot relief; and (iii) change the slot-utilisation rate in response to changing traffic levels. This objective can only be achieved by the EU amending the Slot Regulation.

- **Proportionality**

The proposal does not go beyond what is necessary to achieve the objective of alleviating the economic impact of the COVID-19 pandemic on the operation of the Slot Regulation. The proposal strikes a balance between: (i) the need to grant airlines relief from the use-it-or-lose-

it rule in response to low demand for air travel resulting from the COVID-19 pandemic, other epidemiological situations, natural disasters, and political unrest such as Russia's military aggression against Ukraine; and (ii) the need to return to a normal application of slotallocation rules in proportion to recovering air-traffic levels. The proposal also includes a number of pro-competitive measures to address certain unintended negative effects of slot relief.

- **Choice of the instrument**

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

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

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

Due to the urgency to amend the Slot Regulation before the start of the winter 2022/2023 season, no evaluation was carried out. It should be noted that the Commission has gained significant experience with the application of slot relief since February 2020 and has had regular contact with airlines, airports, and slot coordinators on the matter. Further, more extensive data collection was carried out in August 2021 for the preparation of Regulation (EU) 2021/250, of which many aspects will be carried over (e.g. JNUS exceptions, delegated powers to lower the use rate, 3-week hand-back deadline for slots not intended for use).

- **Stakeholder consultations**

Due to the urgency of the matter, a formal stakeholder consultation has not been carried out. The Commission published a call for evidence for feedback on the Better Regulation portal to which stakeholders could reply from 26 April to 24 May 2022. The Commission received 29 replies on the portal and 43 replies in total (the ones not published were sent to the Commission services directly). The Commission received input from 31 airlines or their associations, out of which 12 non-EU ones, 2 airport associations, 1 slot coordinator and 1 coordinators' association, 1 organisation representing cargo, 1 environmental organisation against noise, and 5 Member-State authorities (from Germany, Italy, the Netherlands, Denmark and Sweden). While not legally obliged to do so when preparing new proposals, the Commission held an expert-group meeting of the Sub-Group on Airport Slots with Member State experts on 18 May 2022. The following Member States were represented: Bulgaria, Czechia, Denmark, Germany, Estonia, Ireland, France, Croatia, Italy, Malta, the Netherlands, Poland, Portugal, Finland and Romania.

- **Collection and use of expertise**

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

- **Impact assessment**

Due to the urgency of the situation, an impact assessment under better-regulation rules has not been carried out. The reasoning for the proposal and a summary of the outcome of stakeholder consultation are presented in this explanatory memorandum.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ASPECTS

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

The Commission should continue to follow the development of the COVID-19 pandemic and Russia's military aggression against Ukraine and their impact on air transport. As under Regulation (EU) 2021/250, the Commission should be empowered to adopt a delegated act to adjust the minimum slot usage requirement as necessary.

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

The amended definition of 'new entrants' in Article 2 of the Slot Regulation is maintained by extending its period of application to allow more air carriers to qualify as new entrants and obtain slots from the pool. The aim of this is to enable more competition at airports in light of the extended period of slot relief, which made it easier for incumbent carriers at the airport to maintain their slots.

In addition, the definition of 'COVID-19 coordination parameters' is maintained by extending its period of application and Article 8(6a) is modified.

During the period of slot relief, air carriers have used ad hoc slots returned to the pool by incumbents for temporary reallocation. Carriers that used such slots have helped use the relevant slot series efficiently and have provided connectivity for passengers. Hence, Article 8(2a) is added, which gives such air carriers priority for the allocation of the series in question in the next equivalent scheduling period, subject to airport-capacity availability. If more than one air carrier has used slots of the same series, priority is given to the carrier that has used the higher number of slots.

A subparagraph is added to Article 10(4) to specifically address the impact of Russia's military aggression against Ukraine. This subparagraph specifies that air carriers holding slots that they used to operate to/from Ukraine and that are currently protected by Article 10(4)(a), should be granted an additional recovery period of 16 weeks before any slot-use threshold applies to them after the Ukrainian airspace is reopened. This is because demand is likely to be severely depressed due to significant destruction of transport infrastructure. For the same reason, Article 10a grants the Commission delegated powers to lower the slot use rate for slots used on routes between the EU and Ukraine.

Point (e) of Article 10(4) is deleted. Instead, a new paragraph 4a is added, which includes the current JNUS exception in case of public measures severely impeding air travel to mitigate the spread of COVID-19. Further, this exception is extended to cover more situations where the ability of passengers to fly on certain routes is impacted significantly by measures adopted by public authorities, also in response to other epidemiological situations, political unrest, and natural disasters. In these cases, air carriers may be relieved from the application of the use-it-or-lose-it rule. However, this advantage is confined to avoid any unintended effects (for details, see the third, fourth and fifth subparagraphs of the new paragraph 4a).

The second subparagraph of the new paragraph 4a aims to clarify how slot coordinators should calculate slot usage when some slots in a series are protected under the first subparagraph: they should disregard the protected slots and determine whether 80% of the remaining slots of the series have been used. This addition is needed to ensure that the effect of the JNUS exception is limited to the period for which it was justified.

The sixth subparagraph of the new paragraph 4a aims to enable greater coordination on the application of the JNUS exception between slot coordinators. The emergence of the Delta variant in April 2021 and the Omicron variant in December 2021 showed that divergent application of the JNUS exception by various slot coordinators can significantly distort the level playing field between airlines. Therefore, the sixth subparagraph specifies that when a majority of Member States adopts measures severely impeding travel that impact the majority of the EU population, all coordinators may apply paragraph 4a to all slots for the duration of the measures. Further, paragraph 4c is added to Article 10 to strengthen the role of coordinators in issuing common guidance and to strengthen transparency.

A new paragraph 4b is added to Article 10 to clarify that the JNUS exceptions of Article 10(4) and (4a) do not cover air carriers on the EU safety list, subject to sanctions or registered in states subject to sanctions.

Article 10a is modified in several ways. Paragraphs 1 to 4 are deleted. The period during which the new slot-relief rules apply is set from 29 October 2022 until 26 March 2024. These dates correspond to the start date of the 2022/2023 International Air Transport Association (IATA) winter season and the end date of the 2023/2024 IATA winter season, respectively.

Paragraph 5 of Article 10a empowers the Commission to adopt delegated acts within the period of further slot relief to amend the utilisation rate according to the development of traffic levels, if air traffic drops below 80% of corresponding levels in 2019 for four consecutive weeks due to any epidemiological situation or Russia's military aggression against Ukraine. Given how rapidly the air-traffic situation may change, it should be possible to adopt these delegated acts by urgency procedure (paragraph 2).

Paragraph 5a empowers the Commission to adopt delegated acts within the period of further slot relief to amend the utilisation rate according to the development of traffic levels specifically for slots used on routes between the EU and Ukraine to encourage airlines to restore connectivity between the regions.

Paragraph 7 of the modified Article 10a stipulates that during the period of slot relief, an air carrier not intending to use a slot must make it available for temporary reallocation to other air carriers no later than 3 weeks before the planned date of operation of the slot. This is to help other carriers who may wish to operate such slots on an ad hoc basis. These other air carriers should have sufficient time to plan their operations and also to ensure that passengers,

airports and airport-service providers have advance notice of their planned operations. Where air carriers repeatedly fail to comply with this provision, they will not be able not benefit from any lower slot use rate than 80%, regardless at which level the Commission sets the use threshold.

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

Point (d) is added to Article 14(6) to allow the coordinator to take action and withdraw slots of carriers on the EU safety list subject to sanctions or registered in states subject to sanctions.

2022/0214 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[7],

Having regard to the opinion of the Committee of the Regions[8],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Council Regulation (EEC) No 95/93[9] was amended several times since the start of the COVID-19 pandemic as the requirement to use 80% of slots in a series to maintain the right to the same series in the next corresponding season became unsustainable for air carriers in light of highly reduced air traffic levels.

(2) Figures published by Eurocontrol show that the air traffic has had strong recovery since the beginning of the summer 2022 scheduling season and the air traffic at the start of the winter 2022/2023 scheduling season is expected to be approximately 90% of 2019 levels under the base forecast. Those figures justify a return to the 80% slot use threshold as a general rule, complemented with specific slot use alleviation in cases of justified non-use of slots.

(3) Nevertheless, as experience has shown, the COVID-19 situation remains highly uncertain. As was the case at the end of 2021 with Omicron, new variants can appear and cause sudden reactions from States and consumers that can in turn negatively

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7 OJ C , , p. .

8 OJ C , , p. .

9 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).

affect air traffic. Further, certain long-haul markets continue to be affected by sanitary measures severely impeding traffic.

(4) Russia's military aggression against Ukraine is also having an impact on air traffic and air carriers' ability to operate their slots as Union air carriers are prevented from entering the airspace of Belarus, Russia and Ukraine.

(5) State-imposed travel restrictions for sanitary reasons and the impossibility to enter airspace as a result of military conflict are beyond the control of air carriers and can lead them to voluntarily or involuntarily cancel air services or adjust schedules in response to those circumstances. In particular, voluntary cancellations protect the financial health of air carriers while at the same time avoiding the negative environmental impact of flights operated only to retain their slots.

(6) Under those circumstances, air carriers failing to use their slots in accordance with the slot utilisation rate as set out in Regulation (EEC) No 95/93 should not automatically loose the precedence to slot series laid down in Article 8(2) and Article 10(2) of that Regulation that they would otherwise enjoy. Specific rules should be established to this effect.

(7) At the same time, it is important to recall the objectives of Regulation (EEC) No 95/93, namely to ensure the efficient use of airport capacity and to ensure fair access for all airlines to limited airport capacity thereby promoting competition. The adjustment of normal slot use requirements through a lower use-rate or extended justified non-use exceptions should be strictly targeted to situations where slot relief is necessary and not lead to unfair competitive advantages for those carriers holding historic slots.

(8) 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. That should maintain air carriers' incentives to make use of airport capacity, which in turn would benefit consumers in terms of connectivity.

(9) It is therefore necessary to lay down, in accordance with those principles and for a limited period, the conditions under which air carriers continue to be entitled to series of slots under Article 8(2) and Article 10(2) of Regulation (EEC) No 95/93, and to establish requirements for air carriers concerned to release unused capacity. The period should run from 29 October 2022 until 26 March 2024 in line with the recovery forecast of Eurocontrol.

(10) The definition of the term 'new entrant' should remain broad in order to increase the number of air carriers covered, thereby giving more air carriers the opportunity to establish and expand their operations.

(11) From 29 October 2022 until 26 March 2024, the system of slot allocation should continue to 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 Article 8(2) and Article 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 a series of at least five slots should receive priority for the allocation of those series in the next equivalent scheduling period, subject to airport capacity availability.

(12) To address the impacts of Russia's military aggression against Ukraine and to support the recovery of connectivity between the Union and Ukraine, it is necessary to extend the period when operators may rely on the reason set out in Article 10(4), point (a) of Regulation (EEC) No 95/93 to justify the non-utilisation of the series of slots on the routes between the Union and Ukraine.

(13) 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) No 1008/2008 of the European Parliament and of the Council[10], the negative consequences on passengers' ability to travel due to possible restrictions adopted by public authorities of Member States or third countries addressing epidemiological situations, natural disasters or political unrest, 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. Mitigations should ensure that air carriers should not be penalised for failure to use slots where that failure is the result of such restrictions.

(14) To reduce the risk of competition distortions and ensure the efficient use of airport capacity, specific relief from the effects of the imposition of restrictions referred to in recital 13 should be of limited duration and scope, to ensure that the effect of the mitigation is limited to the period for which it was justified. Therefore, slots covered by such mitigations of restrictions referred to in recital 13, should not count towards the slot use percentage referred to in Article 8(2) and Article 10(2) of Regulation (EEC) No 95/93.

(15) It is necessary to clarify that the provisions on the justified non-use of slots exceptions do not apply to air carriers that are the object of restrictive measures adopted pursuant to Article 215 of the Treaty on the Functioning of the European Union, or to air carriers subject to an operating ban within the Union which are listed in Annex A or B to Commission Regulation (EC) No 474/2006[11]. In order to ensure the effective application of those measures, the impossibility to invoke the provisions on the justified non-use of slots exceptions should apply also to the air carriers that are already the object of such restrictive measures in force on the date of entry into force of this Regulation.

(16) The cooperation between coordinators should be strengthened to ensure uniform implementation of Regulation (EEC) No 95/93 across the Union. The European Union Airport Slot Coordinators Association (EUACA) should continue to issue guidance to ensure a harmonious implementation of the Union rules, in particular regarding the provision on the mitigation of the restrictions referred to in recital 13. Whether the mitigation is applied or not is an important piece of information for air carriers when planning their schedules. Therefore, transparent communication from the side of coordinators should be ensured.

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[10] 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).

[11] Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (OJ L 84, 23.3.2006, p. 14).

(17) While the provision on the mitigation of the restrictions referred to in recital 13 should be interpreted strictly, as it is an exception to the normal slot use requirements, certain instances may require common action by all coordinators to ensure a level playing field across the Union. Under certain conditions and based on a unanimous decision, coordinators should apply that provision to all slots held at coordinated airports.

(18) In order to address the evolving impacts of COVID-19 and direct effects of Russia's military aggression against Ukraine on air traffic, 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 percentage values of the minimum usage rate within a certain range and for any scheduling period within the period from 29 October 2022 until 26 March 2024 in line with Eurocontrol's forecast recovery.

(19) Considering the devastating impact of Russia's military aggression against Ukraine and to support connectivity to or from Ukraine in the aftermath, 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 percentage values of the minimum usage rate within a certain range for the routes between the Union and Ukraine and for any scheduling period from 29 October 2022 until 26 March 2024.

(20) It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations are conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[12]. 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.

(21) Airports, airport services providers and air carriers need to have information on available capacity for the purpose of adequate planning. Air carriers should continue to 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 the slot use rate is lowered by delegated act, air carriers that repeatedly fail to comply with this requirement, should not benefit from the reduced threshold.

(22) Where a coordinator is satisfied that an air carrier has ceased operations at an airport, the coordinator should withdraw the slots from the air carrier in question and place them in the pool for reallocation to other carriers.

(23) The prohibition on air carriers to fly into Union airspace in application of restrictive measures adopted pursuant to Article 215 of the Treaty on the Functioning of the European Union or of an operating ban pursuant to Regulation (EC) No 474/2006 may result in the unjustified blocking of slots at Union airports. While slots previously used by such air carriers can be re-allocated on an ad hoc basis during the scheduling

[12] OJ L 123, 12.5.2016, p. 1.

season, this does not sufficiently incentivize the efficient use of slots enabling airlines to increase long-term competition and connectivity for the benefit of consumers. The slots should therefore be withdrawn from the air carriers concerned immediately.

(24) 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 and Russia's military aggression against Ukraine 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.

(25) In view of the urgency entailed by the exceptional circumstances related to the COVID-19 pandemic and Russia's military aggression against Ukraine, it is considered to be appropriate to invoke the exception to the eight-week period provided for 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.

(26) 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) in Article 2, point (ba), the introductory wording is replaced by the following:

'during the period referred to in Article 10a(5), 'new entrant' shall mean:';

(2) Article 8 is amended as follows:

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

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

(b) in paragraph 2a, the first subparagraph is replaced by the following:

'During the period referred to in Article 10a(5) and subject to capacity being available at the airport, 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.';

(c) paragraph 6a is replaced by the following:

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

(3) Article 10 is amended as follows:

(a) paragraph 2a is repealed;

(b) paragraph 4 is amended as follows:

(i) the first subparagraph is amended as follows:

– point (d) is replaced by the following:

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

– point (e) is deleted;

(ii) the second, third, fourth and fifth subparagraphs are deleted;

(iii) the following subparagraph is added:

‘Where the impact of Russia’s military aggression against Ukraine and the destruction of critical infrastructure affects the ability to provide air services as well as demand, coordinators shall apply the first subparagraph, point (a), to the routes between the Union and Ukraine for the duration of the airspace closure and an additional recovery period of 16 weeks. The coordinator shall notify the Commission of the start date and end date of the 16 week period.

(c) the following paragraphs 4a, 4b and 4c are inserted:

‘4a. During the period referred to in Article 10a(5), the non-utilisation of a slot may also be justified by the introduction, by public authorities of restrictions intended to address any major epidemiological situation, natural disaster, or political unrest at one end of a route for which the slot in question was used or planned to be used on condition that those restrictions significantly impact the viability or possibility of travel or the demand on the routes concerned and that the restrictions lead to any of the following:

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

(b) a severe impediment to passengers’ ability to travel with any carrier on that direct route during a substantial part of the relevant scheduling period, where the impediment is linked to any of the following reasons, but not limited to them:

– 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), unless quarantine can be avoided by a negative test, proof of recovery or proof of vaccination recognised by the Union,

– restrictions on the availability of services essential to support directly the operation of an air service, including the closure of hospitality and public services, including transport, leading to a severe downturn in demand at either end of the route,

– limitations on number of passengers per flight and frequencies per air carrier leading to a severe downturn in demand at either end of the route;

(c) 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 unexpected stranding of crew due to quarantine measures, unless quarantine can be avoided by a negative test, proof of recovery or vaccination recognised by the Union.

When the non-utilisation of a slot is justified by the restrictions referred to in the first subparagraph, the coordinators shall disregard that slot and apply the slot use percentage referred to Article 8(2) and Article 10(2) to the remaining slots of the series.

This paragraph shall apply within the period during which the restrictions referred to in the first subparagraph apply and during up to six additional weeks, within the limits referred to in the fourth and fifth subparagraphs. However, where those restrictions cease to apply less than six weeks before the end of a scheduling period, this paragraph shall apply to the remainder of the six weeks period only where the slots in the subsequent scheduling period are used for the same route.

This paragraph shall only apply to slots used for routes for which they were already used prior to the publication of the restrictions referred to in the first subparagraph.

This paragraph shall cease to apply where the air carrier, using the slots in question, changes to a route not affected by the restrictions referred to in the first subparagraph.

Based on an unanimous decision by coordinators and after notifying the Commission, coordinators may apply this paragraph to all slots held at Union coordinated airports when a majority of Member States representing the majority of the Union population applies restrictions referred to in the first subparagraph for a substantial part of the scheduling season, rendering air traffic in the Union to a large extent unviable or leading to an uneven level playing field.

4b. Paragraphs 4 and 4a shall not apply to air carriers whose operations are impeded by restrictive measures adopted pursuant to Article 215 of the Treaty on the Functioning of the European Union, including those in force on [*Date of entry into force of this Regulation*] and

to air carriers subject to an operating ban within the Union which are listed in Annex A or B to Commission Regulation (EC) No 474/2006*.

4c. Coordinators shall regularly exchange best practices on the implementation of paragraphs 4 and 4a with the aim of ensuring coherent and consistent application across the Union.

Coordinators shall publish and regularly update the list of destinations to which paragraphs 4 and 4a apply.

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* Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (OJ L 84, 23.3.2006, p. 14).';

(4) Article 10a is amended as follows:

(a) the heading is replaced by the following:

'*Article 10a*

Allocation of slots in response to the COVID-19 crisis and Russia's military aggression against Ukraine';

(b) paragraphs 1 to 4 are deleted;

(c) paragraph 5 is replaced by the following:

'5. During the period from 29 October 2022 until 26 March 2024, where data published by Eurocontrol clearly shows that weekly air traffic in each of four consecutive weeks falls below 80% of 2019 levels of the corresponding weeks, due to COVID-19, other epidemiological situations or as a direct effect of Russia's military aggression against Ukraine and that, on the basis of Eurocontrol traffic forecasts, the reduction in the level of air traffic as compared to the level in the corresponding period in 2019 is likely to persist, the Commission is empowered to adopt delegated acts in accordance with Article 12a to amend the percentage values set out in Article 8(2) and Article 10(2) within a range between 0% and 70% for any scheduling period within the period referred to in this paragraph. Where Eurocontrol air traffic forecasts are closer to 2019 levels and the majority of indicators show that air traffic has stabilised, the Commission shall choose a higher value set within that range. For this purpose, the Commission shall have regard to all the following elements:

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

(b) indicators relating to demand for passenger and cargo air transport, including trends regarding forward bookings, airlines planned schedules, fleet size, fleet utilisation, and load factors;

(c) measures by public authorities linked to an epidemiological situation resulting in an appreciable effect on air traffic levels to or from Union airports, forced re-routings due to airspace closures or prohibition on Union air carriers to enter a third country airspace taking into account advice from the European Union Aviation Safety Agency in its Conflict Zone Information Bulletin;

(d) data from the European Centre for Disease Control and the World Health Organisation on COVID-19 or other epidemiological situations characterised by being highly contagious and likely to induce a severe downturn in air travel.';

(d) the following paragraph 5a is inserted:

'5a. During the period referred to in paragraph 5, where the Commission finds that due to the destruction of infrastructure and impact on living conditions as a result of Russia's military aggression against Ukraine, the gradual restoration of air traffic between Ukraine and the Union requires a lower use rate for routes serving Ukraine, the Commission shall adopt delegated acts in accordance with Article 12a to amend the percentage values set out Article 8(2) and Article 10(2) within a range between 0% and 70% for slots used on routes to or from Ukraine for any scheduling period within the period referred to in paragraph 5. Where Eurocontrol air traffic forecasts are closer to 2019 levels and the majority of indicators show that air traffic has stabilised, the Commission shall choose a higher value set within that range. For this purpose, the Commission shall have regard to the following elements:

(a) data published by Eurocontrol on traffic levels and traffic forecasts on routes between the Union and Ukraine;

(b) indicators relating to demand for passenger and cargo air transport, including trends regarding forward bookings and airlines planned schedules;

(c) forced re-routings due to airspace closures or prohibition on Union air carriers to enter a third country airspace taking into account advice from the European Union Aviation Safety Agency in its Conflict Zone Information Bulletin.';

(e) paragraphs 6 and 7 are replaced by the following:

'6. Where, in the case of a prolonged impact of COVID-19, other epidemiological situations or direct effects of Russia's military aggression against Ukraine, 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 5, 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 intended operation. Where an air carrier fails to make available to the coordinator more than three slots in a series in accordance with this paragraph, that carrier shall be entitled to the entire series of slots in the next equivalent scheduling period only if the entire series of slots has been operated by the carrier for at least 80% of the time, regardless of whether Article 8(2) and Article 10(2) have been amended by the delegated act referred to in this Article.';

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

‘2. The power to adopt delegated acts referred to in Article 10a shall be conferred on the Commission until 26 March 2024.’;

(6) in Article 14, paragraph 6 is amended as follows:

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

‘(c) During the period referred to in Article 10a(5), 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.’ ;

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

‘(d) During the period referred to Article 10a(5), when a coordinator determines, on the basis of information at its disposal, that an air carrier that is subject to the restrictive measures adopted pursuant to Article 215 of the Treaty on the Functioning of the European Union, including those in force on [Date of entry into force of this Regulation] or an air carrier that is subject to an operating ban within the Union and is listed in Annex A or B to Regulation (EC) No 474/2006, is not able to operate slots for a substantial part of the season, 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	*For the Council*
The President	*The President*