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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EEC) No 95/93 as regards temporary relief from the slot utilisation rules at Community airports due to the COVID-19 pandemic – <i>Presidency compromise</i>

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Following the Aviation Working Party of 14 January 2021, and in view of the informal meeting of the Aviation Working Party of 20 January 2021, delegates will find below a Presidency compromise. The changes from the previous Presidency Compromise (in doc ST 5081/20 INIT) are highlighted in **bold** for the additions, while in ~~striketrough~~ for the deletions.

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<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The COVID-19 pandemic has led to a sharp drop in air traffic because of a significant fall in demand and direct measures taken by the Member States and third countries to contain the pandemic. The impact on air carriers has been detrimental since 1 March 2020, and looking ahead it is likely to continue to negatively impact air carriers up to and including winter 2024/2025.
- (2) Those circumstances are beyond the control of air carriers and have led them to voluntarily or involuntarily cancel air services in response to those circumstances. In particular, voluntary cancellations protect the financial health of air carriers while at the same time avoid the negative environmental impact of empty or largely-empty flights operated only to retain their slots.
- (3) Figures published by Eurocontrol, which is the network manager for the air traffic network functions of the single European sky, indicate a continued year-on-year fall of air traffic around 74% as of mid-June 2020.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (4) In terms of known forward bookings, Eurocontrol forecasts and epidemiological forecasts, it is not possible to predict when the period of severely depressed demand caused by the COVID-19 pandemic is likely to end. According to latest Eurocontrol forecasts, air traffic in February 2021 will be around half the level of February 2020. Forecasts extending beyond that date rely on a number of unknown factors, such as the availability of a COVID-19 vaccine. Under these circumstances, air carriers failing to use their slots in accordance with the slot utilisation rate as set out in Council Regulation (EEC) No 95/93<sup>3</sup> should not automatically lose 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 **by means of this Regulation**.
- (5) Those rules should at the same time address potentially negative impacts on air carrier competition. In particular, it should be ensured that air carriers prepared to provide services are enabled to take up unused capacity with any prospect of maintaining such slots in the long term. This should maintain air carriers' incentives to make use of airport capacity, which in turn would benefit consumers.
- (6) It is therefore necessary to define, in accordance with these principles and for a limited time period, the conditions under which air carriers continue to be entitled to slot series 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.
- (7) The definition of the term 'new entrant' should be adapted for the purposes of the period concerned, to increase the number of air carriers that may qualify as new entrants, thus giving more air carriers that so wish the opportunity to establish and expand their operations. At the same time, it is necessary to confine the corresponding privileges to genuine new entrants, by excluding carriers which, together with any parent company, or with own subsidiaries or subsidiaries of a parent company, hold more than 10 % of the total number of slots allocated on the day in question in **any** given airport.
- (8) During the period during which the relief from the slot utilisation rules is applied, the system of slot allocation should recognise the effort of 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 at least five slots of a series should receive priority for the allocation of those series in the next equivalent scheduling period provided the air carrier entitled to them under Article 8(2) and Article 10(2) **Regulation (EEC) No 95/93** does not request them.
- (9) The imposition of specific COVID-19 sanitary measures at airports may reduce available capacity, which may make it necessary to provide for specific COVID-19 coordination parameters. In such situations, and in order to enable the proper application of such parameters, coordinators should be empowered to adapt the timing of slots allocated to air carriers under Article 8 **of Regulation (EEC) No 95/93** or cancel such slots for the scheduling period during which the specific COVID-19 sanitary measures apply.

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<sup>3</sup> 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).

- (10) **Without prejudice to the obligation of Member States to comply with EU law, in particular with the rules laid down in the Treaty and in Regulation 1008/2008,** ~~t~~The negative consequences **on air carriers** of possible measures adopted by public authorities of Member States or third countries intended to address the spread of the COVID-19 pandemic and restricting the ability to travel at very short notice cannot be imputed to air carriers. ~~They and~~ should thus be mitigated **[when they significantly impact the viability or the possibility of travel or the demand on the routes concerned.]** This should concern ~~where those measures which~~ lead to a partial or total closure of the border **or airspace [or a partial or total closure or reduction of capacity] of the airport(s) concerned** ~~or airspace;;~~ **to restrictions on airline crew movements significantly hampering the operation of air services or to a severe impediment to passengers' ability to travel with any carrier on the route concerned, including** travel restrictions, ~~to~~ ~~restrictions of movement or quarantine measures in the country or the region of destination, to restrictions on airline crew movements significantly hampering the operation of air services or to a severe impediment to passengers' ability to travel with any carrier on the route concerned, including~~ severe restrictions related to COVID-19 on the maximum number of arriving or departing passengers on a specific flight or through a specific airport and measures which make the operation of an air service practically or technically impossible through the imposition of **[or restrictions on the availability of services essential to support directly the operation of an air service]**. Therefore, air carriers should not be penalised for failure to use slots where such failure results from such restrictive measures which had not yet been published when the slots were allocated. Under such circumstances, air carriers should remain entitled to such series in the next equivalent scheduling season. Specific relief from the effects of the imposition of such measures should **have a limited duration** ~~be restricted in time~~ and, in any event, **not exceed**~~to~~ a maximum of two consecutive scheduling periods.
- (11) Air carriers should be relieved, to the necessary extent, from the requirements regarding slot utilisation, relevant to the entitlement to slots in the subsequent equivalent scheduling period, during periods where demand is significantly impacted due to the effect of COVID-19 pandemic. This should enable them to increase services when circumstances allow. The lower minimum usage rate fixed to this effect should take into account the current air traffic outlook at the end of 2020, which is at 50% of 2019 traffic levels, the uncertainty surrounding the COVID-19 pandemic and the return of consumer confidence and traffic levels.
- (12) To minimise entry barriers and prevent that the relief from the general slot utilisation requirements negatively impacts the competitive position of air carriers beyond what is justified, the application of the relief should be restricted to those slots which the air carrier had previously operated at the airports concerned. Similarly, the relief should not apply to slots which have been exchanged as part of a commercial arrangement, giving rise to monetary or other compensation, between carriers not part of the same group.

- (13) **In order to address the evolving impact of the COVID-19 pandemic on air traffic levels, and** Given the perspective of ~~traffic~~ those levels re-increasing in the mid-term and with a view to phasing out at one point the temporary relief from the general slot utilisation requirements laid down in this Regulation, the **power to adopt acts** ~~Commission should be granted~~, in accordance with Article 290 Treaty on the Functioning of the European Union **should be delegated to the Commission in respect of amending, the power to amend by means of delegated acts**, where strictly necessary ~~in order to address the evolving impact of the COVID-19 pandemic on air traffic levels~~, the minimum usage rate within a range between 50 and 80%. In order to respond flexibly, where necessary and justified, to the challenges the air transport sector is facing due to the COVID-19 pandemic, **the power to adopt acts in accordance with Article 290 Treaty on the Functioning of the European Union should be delegated to the Commission in respect of prolonging should also be empowered to prolong, by means of delegated acts**, the period of application of the relief from the slot utilisation rule envisaged by this Regulation. Air carriers and coordinators should be enabled to engage in time into the necessary preparations, in view of the conditions to be applied to the operation of slots in a given scheduling period. Therefore, the Commission should endeavour to adopt the delegated acts as early as possible and should adopt such acts in any event before the deadline for the return of slots as laid down in Article 10(3) **of this Regulation**. The ~~delegation of~~ power to **adopt delegated acts** by the Commission should be limited in time, to ~~two~~ **one** years from the entry into force of this Regulation. When adopting a delegated act, it is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>4</sup>. 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.
- (14) Airports, airport services providers and air carriers need to have visibility over available capacity for the purpose of adequate planning. Air carriers should make the slots whose use is not intended available to the coordinator for possible reallocation as early as possible **and no later than three weeks** before the planned date of their operation. ~~They should be made subject to appropriate sanctions or equivalent measures in case of non-compliance.~~
- (15) Where a coordinator is satisfied that an air carrier has ceased operations at an airport, the coordinator should immediately withdraw the slots from the air carrier in question and place them in the pool for reallocation to other carriers.
- (15a) Since the objective of this Regulation, namely the establishment of specific rules and the relief from the general slot utilisation requirements for a limited time period **in order** to address the consequences of the Covid-19 pandemic on air traffic level, 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.

<sup>4</sup> OJ L 123, 12.5.2016, p. 1.

- (16) In view of the urgency entailed by the exceptional circumstances related to the COVID-19 pandemic justifying the measures set out in this Regulation, it ~~is~~**was** considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.
- (17) In view of the urgency entailed by the exceptional circumstances related to the COVID-19 pandemic justifying the proposed measures, ~~it is considered to be appropriate to provide for an immediate entry into force of this Regulation~~ **should enter into force as a matter of urgency on the date following its publication in the *Official Journal of the European Union*,**

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 95/93 is amended as follows:

(1) Article 2 is amended as follows:

(a) the following point (ba) is inserted:

‘(ba) during the period referred to in Article 10a(2a) ‘new entrant’ shall mean:

- (i) an air carrier requesting, as part of a series of slots, a slot at an airport on any day, where, if the carrier's request were accepted, it would in total hold fewer than seven slots at that airport on that day; or
- (ii) an air carrier requesting a series of slots for a non-stop scheduled passenger service between two European Union airports, where at most two other air carriers operate the same non-stop scheduled service between those airports on that day, and where, if the air carrier's request were accepted, the air carrier would nonetheless hold fewer than nine slots at that airport on that day for that non-stop service.

An air carrier which together with its parent company, its own subsidiaries or the subsidiaries of its parent company, holds more than 10% of the total slots allocated on the day in question at a particular airport, shall not be considered as a new entrant at that airport;’;

(b) point (m) is replaced by the following:

‘(m) ‘coordination parameters’ shall mean the expression in operational terms of all the capacity available for slot allocation at an airport during each coordination period, reflecting all technical, operational and environmental factors that affect the performance of the airport infrastructure and its different sub-systems;’;

(c) the following point (n) is added:

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

(1a) Article 7 is amended as follows:

(a) the third sentence of paragraph 1 is amended as follows:

'In particular, an air carrier shall inform the coordinator, at the time of the request for allocation, whether it would benefit from the status of new entrant, in accordance with Article 2(b) or (ba), in respect of requested slots.'

(2) Article 8 is amended as follows:

(aa) the first subparagraph of paragraph 2 is amended as follows:

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

(a) the following paragraph 2a is inserted:

'2a. During the period referred to in Article 10a(2a), a series of slots which is returned to the slot pool in accordance with Article 8(1) at the end of the scheduling period (the "reference scheduling period"), shall, upon request, be allocated for the next equivalent scheduling period to an air carrier which has operated at least five slots of the series in question following the application of Article 10a(7) during the reference scheduling period provided that the series has not already been allocated to the carrier originally holding that series for the next equivalent scheduling period in accordance with Article 8(2).

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

(b) the following paragraph 6a is inserted:

'6a. Within the period during which COVID-19 coordination parameters apply and in order to enable the proper application of such coordination parameters, the coordinator may amend the timing of requested or allocated slots falling within the period specified in ~~paragraph 2a of~~ Article 10a(2a) or cancel them after hearing the air carrier concerned. In this context, the coordinator shall take into account additional rules and guidelines referred to in Article 8(5), under the conditions set out therein.';

(2a) ~~In Article 8a, is amended as follows:~~

(a) paragraph 3 is amended as follows:

'3.(a) Slots allocated to a new entrant as defined in Article 2(b) or (ba) may not be transferred as provided for in paragraph 1(b) of this Article for a period of two equivalent scheduling periods, except in the case of a legally authorised takeover of the activities of a bankrupt undertaking.

(b) Slots allocated to a new entrant as defined in Article 2(b)(ii) and (iii) or Article 2(ba)(ii) may not be transferred to another route as provided for in paragraph 1(a) of this Article for a period of two equivalent scheduling periods unless the new entrant would have been treated with the same priority on the new route as on the initial route.

(c) Slots allocated to a new entrant as defined in Article 2(b) or (ba) may not be exchanged as provided for in paragraph 1(c) of this Article for a period of two equivalent scheduling periods, except in order to improve the slot timings for these services in relation to the timings initially requested.'

(3) Article 10 is amended as follows:

(a) the following paragraph 2a is inserted:

'2a. Notwithstanding paragraph 2, a series of slots allocated for the scheduling period from 28 March 2021 until 30 October 2021 shall entitle the air carrier to the same series of slots for the scheduling period from 27 March 2022 until 29 October 2022 if the air carrier has made the complete series available to the coordinator for reallocation before **[OJ: 8 days after the entry into force of this Amending Regulation]**. This paragraph shall only apply to series which had been allocated to the same carrier for the scheduling period from 29 March 2020 until 24 October 2020. The number of slots for which the air carrier in question may benefit from this paragraph is limited to a number equivalent to ~~25~~**50**% of the slots which had been allocated to the same carrier for the scheduling period from 29 March 2020 until 24 October 2020 except for an air carrier allocated fewer than 15 slots per week on average during the previous equivalent scheduling period at the airport in question.'

(b) paragraph 4 is amended as follows:

(a) 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;';

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

'(e) during the period referred to in Article 10a(2a), the introduction, ~~after 31 January for the following summer season or after 31 August for the following winter season,~~ by public authorities of measures intended to address the spread of the COVID-19 pandemic at one end of a route for which the slots in question were used or planned to be used, on condition that the measures had not been published at the time the series of slots had been allocated, **that those measures significantly impact the viability or possibility of travel or the demand on the routes concerned** and that ~~the measures~~**they** lead to ~~either~~**any** of the following:

- a partial or total closure of the border, ~~airport~~ or airspace **or a partial or total closure or reduction of capacity of the airport;** during a substantial part of the relevant scheduling period,
- a severe impediment to passengers' ability to travel with any carrier on that direct route during a substantial part of the relevant scheduling period **including;**



-> travel restrictions based on nationality **or place of residence, closed borders, COVID-19 related interdiction by public authorities prohibition** of all but essential travel, or complete bans on flights from/to certain countries or geographical areas,

-> restrictions of movement or quarantine/isolation measures within the country or region where the airport of destination is located (including intermediate points),

**-> restrictions on the availability of services essential to support directly the operation of an air service.**

- restrictions on airline crew movements significantly hampering the operation of air services from/to the airports served, including sudden bans on entry or crew stranded in unexpected locations due to quarantine measures.'

(c) the following subparagraphs are added:

**'The first subparagraph of p**Point (e) ~~of the first subparagraph~~ shall apply within the period during which the measures referred to therein apply and **during** up to ~~during~~ six additional weeks, within the limits referred to in the third, fourth and fifth subparagraphs. However, where the measure referred to in point (e) ceases to apply less than six weeks before the end of a scheduling period, point (e) 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.

**The first subparagraph of p**Point (e) ~~of the first subparagraph~~ shall only apply to slots used for routes for which they were already used prior to the publication of the measures referred to in point (e).

**The first subparagraph of p**Point (e) ~~of the first subparagraph~~ shall cease to apply where the air carrier, using the slots in question, changes to a route not affected by the measures of the public authorities.

**The first subparagraph of p**Point (e) ~~of the first subparagraph~~ shall apply for at most two consecutive scheduling periods.'

(c) subparagraph 2 of paragraph 6 is amended as follows:

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

(4) Article 10a is amended as follows:

(b) the following paragraph 2a is inserted:

‘2a. Without prejudice to Article 10(2a), in respect of the period from 28 March 2021 until 30 October 2021 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 for which it has been allocated, the air carrier shall be entitled to the same series of slots for the next equivalent scheduling period.

The first subparagraph of this paragraph applies to the series of slots which have not been made available to the coordinator for reallocation in accordance with Article 10(2a).

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%.’;

(c) paragraph 3 is replaced by the following:

‘3. In respect of slots with a date between 9 April 2020 and 27 March 2021, paragraph 1 shall only apply where the air carrier returned the relevant unused slots to the coordinator for reallocation to other air carriers.’;

~~(d) the following paragraph 3a is inserted:~~

~~‘3a. Paragraph 2a shall not apply:~~

~~(a) in respect of a series of slots allocated to an air carrier for a given scheduling period, where that carrier had not been allocated the same series of slots for the previous equivalent scheduling period;~~

~~(b) in respect of a series of slots which, with effect from the scheduling period in question, have been exchanged between air carriers in accordance with point (c) of Article 8a(1) and where the exchange has included monetary or any other kind of compensation.’;~~

(e) paragraph 4 is replaced by the following:

‘4. Where the Commission finds, on the basis of data published by Eurocontrol, which is the network manager for the air traffic network functions of the single European sky, that the reduction in the level of air traffic as compared to the level in the corresponding period in 2019 is persisting and, on the basis of Eurocontrol traffic forecasts, is likely to persist, and also finds, on the basis of the best available scientific data, that this situation is the result of the impact of the COVID-19 pandemic, the Commission shall adopt delegated acts in accordance with Article 12a to amend the period specified in paragraph 2a **of this Article** accordingly.

The Commission is empowered to adopt, where strictly necessary in order to address the evolving impact of the COVID-19 pandemic on air traffic levels, delegated acts in accordance with Article 12a to amend the percentage values referred to in paragraph 2a of this Article within a range between 50 and 80%. For this purpose, the Commission shall consider changes intervening since the entry into force of Regulation (EU) [2021/XXX reference to the present Regulation], having regard to 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 pandemic; and

(c) indicators relating to demand for passenger and cargo air transport, including trends regarding fleet size, fleet utilisation, and load factors.

Delegated acts pursuant to this paragraph shall be adopted no later than 31 December for the following summer scheduling period and no later than 31 July for the following winter scheduling period.’;

(f) paragraph 5 is deleted;

(g) the following paragraph 7 is added:

‘7. During the period referred to in paragraph 2a, air carriers shall make available to the coordinator for reallocation to other air carriers any slot they do not intend to use, **no less than three weeks** before the date of operation.’;

(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** [for a period of ~~two years~~ **one year** from the entry into force of this Regulation].’;

(6) Article 14 is amended as follows:

(a) paragraph 5 is replaced by the following:

‘Member States shall **establish and apply** ~~ensure that~~ effective, proportionate and dissuasive ~~sanctions~~ **penalties** or equivalent measures **addressed to air carriers who repeatedly and intentionally fail to comply with** ~~are available to deal with repeated and intentional infringements of~~ this Regulation.’;

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

‘(c) During the period referred to Article 10a(2a), when a coordinator determines, on the basis of information at its disposal, that an air carrier has ceased its operations at an airport and is no longer able to operate the slots which it has been allocated, the coordinator shall withdraw from that air carrier the series of slots in question for the remainder of the scheduling period and place them in the pool, after having heard the air carrier concerned.’.

## *Article 2*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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