



Brussels, 23.7.2021
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COMMISSION DELEGATED REGULATION (EU) .../...

of 23.7.2021

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The COVID-19 crisis continues to have a negative impact on air transport in Europe and worldwide. The health risks associated with COVID-19 and the sanitary measures and travel restrictions introduced by some Member States and non-EU countries in response to the spread of COVID-19 have heavily depressed consumer demand and confidence. Eurocontrol reported that since the beginning of this year, air traffic in the EEA airspace has accounted for approximately 38% of 2019 air traffic in the corresponding period, but there is an upward trend in 2021. According to Eurocontrol, air traffic in the second week of June tracked at 48% of 2019 levels and is continuing to rise.

Under Article 8(2) of the Slot Regulation, read in conjunction with Article 10(2), air carriers must use at least 80% of a slot series allocated to them or they lose historical precedence for this slot series (the so-called “use-it-or-lose-it rule”). On 30 March 2020, following the outbreak of the COVID-19 crisis, the EU adopted Regulation (EU) 2020/459¹ amending Regulation (EEC) No 95/93² (‘Slot Regulation’) to suspend the use-it-or-lose-it rule until 24 October 2020 (‘slot waiver’). The amendment also granted delegated powers to the Commission until 2 April 2021 to extend the waiver if justified by the continued depressed air traffic levels due to the COVID-19 crisis. The slot waiver was extended until 27 March 2021, by Commission Delegated Regulation 2020/1477.³

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

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

Regulation 2021/250 also empowers the Commission until 21 February 2022 to adopt delegated acts to extend the period of application of the slot relief rules in case it finds, on the basis of figures published by Eurocontrol, that the reduction in the level of air traffic as compared to the level in the corresponding period in 2019 is persisting and is likely to persist, and also finds, on the basis of the best available scientific data, that this situation is the result of the impact of the outbreak of COVID-19.

¹ Regulation (EU) 2020/459 of the European Parliament and of the Council of 30 March 2020 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports, OJ L 99, 31.3.2020, p. 1

² 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

³ Commission Delegated Regulation (EU) 2020/1477 of 14 October 2020 amending Council Regulation (EEC) No 95/93 as regards the temporary extension of exceptional measures to address the consequences caused by the COVID-19 pandemic, OJ L 338, 15.10.2020, p.4

Further, the Commission is empowered to adopt, where strictly necessary in order to address the evolving impact of the COVID-19 crisis on air traffic levels, delegated acts to amend the slot use rate within a range between 30% and 70%. For this purpose, the Commission shall take into account changes that have occurred since 20 February 2021, on the basis of the following elements:

- (a) data published by Eurocontrol on traffic levels and traffic forecasts;
- (b) the evolution of air traffic trends during the scheduling periods, taking into account the evolution observed since the start of the COVID-19 crisis; and
- (c) indicators relating to demand for passenger and cargo air transport, including trends regarding fleet size, fleet utilisation, and load factors.

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

Regarding the extension of the slot relief period into the winter 2021/2022 scheduling period

The reduction in the level of air traffic as compared to the level in the corresponding period in 2019 is persisting: Eurocontrol data show that traffic is continuously lower compared to 2019. Since the first week of 2021, air traffic fluctuated between 32% at its lowest point and 48% in mid-June of 2019 levels during the corresponding time period with an upward trend.

The reduction of air traffic is likely to persist: The Eurocontrol 4-year traffic forecast of 21 May 2021 shows three traffic scenarios, depending on the timing and efficacy of vaccination against COVID-19.⁴ If the vaccines reach efficacy in 2021, the forecast is that the annual average air traffic level during 2021 will be 56% of 2019, and 84% during 2022; if the vaccines reach efficacy in 2022, the forecast is that annual average air traffic level during 2021 will be 50% of 2019, and 72% during 2022; if the vaccines do not reach efficacy and the infection lingers, the forecast is that annual average air traffic level during 2021 will be 43% of 2019, and 59% during 2022. Eurocontrol estimates that the second scenario is the most likely. In any case, under all three scenarios the reduction in air traffic persists.

The reduction of air traffic is the result of the impact of the outbreak of COVID-19: Many countries responded to the COVID-19 outbreak by introducing flight bans and travel restrictions, as well as imposing quarantine requirements for people returning from abroad and various lockdown measures shutting down retail, hospitality and entertainment services, some of which are still in effect today.

This has severely impacted international air travel as restrictions authorising only “essential travel” suppress demand to a level where most routes can no longer be operated commercially. These types of measures are closely linked to the incidences of cases. For example, in mid-March 2021, the number of cases reached a new peak in Europe (around 1.7 million new cases) with the emergence of new strains of the virus that are more contagious. Shortly afterwards, Member States tightened rules on non-essential travel, quarantine obligations and national or regional lockdowns. During that time passenger numbers were down 87% at European airports represented by ACI-Europe. Air traffic levels were down 63% compared to the same week in 2019. These measures together with the uncertainty

⁴ Source: <https://www.eurocontrol.int/sites/default/files/2021-05/eurocontrol-four-year-forecast-2021-2024-full-report.pdf>

around their start and end dates (sometimes such measures are introduced or removed with one or two days' notice) also severely impacted consumer confidence. For example, according to IATA's air passenger market analysis, bookings for one-month forward travel were 73% lower compared to the same period of 2019.⁵ Since the start of the COVID-19 crisis, consumers tend to book much closer to the date of the flight compared to 2019, although there are indications that the trend for forward travel bookings is currently improving.

Despite the encouraging air travel recovery signs, there remains uncertainty on the evolution of the COVID-19 crisis and the Eurocontrol forecasts. As a result, airlines cannot be expected to comply with the normal 80% slot utilisation rate over the forthcoming winter 2021/2022 scheduling period, running from 31 October 2021 to 26 March 2022. With an 80% use-rate, airlines would potentially lose a significant portion of the slots necessary to service the network they established for normal demand. This may lead to the exit of some airlines from the market causing instability and uncertainty for passengers and other aviation stakeholders (airlines, airports, ground-handlers). Some airlines would likely try to operate flights even at very low load factors to avoid the risk of losing historic rights in their slots, thereby increasing financial pressure on the industry that has already been hit severely by the COVID-19 crisis. Flights at very low load factors also pose an unnecessary burden on the environment and climate.

It is therefore necessary to extend the period of slot relief laid down in Article 10a(3) of the Slot Regulation, from 31 October 2021 to 26 March 2022.

Regarding the slot use rate:

To decide on the appropriate use-rate, the Commission is required to take into account the following:

- (a) data published by Eurocontrol on traffic levels and traffic forecasts;
- (b) the evolution of air traffic trends during the scheduling periods, taking into account the evolution observed since the start of the COVID-19 crisis; and
- (c) indicators relating to demand for passenger and cargo air transport, including trends regarding fleet size, fleet utilisation, and load factors.

(a) Based on the most likely Eurocontrol traffic forecast scenario, which assumes that the vaccine will become fully effective in 2022, it is reasonable to estimate a traffic level in the winter 2021/2022 scheduling period of approximately 70% of 2019 levels. This estimate has been derived from the available forecast monthly averages for November 2021 (68%) and December 2021 (70%)⁶ and the available Eurocontrol annual average for 2022 that is 72% of 2019 levels. Considering the demonstrated effectiveness of vaccines and the sustained production levels and rollout of vaccination campaigns, there appears currently to be more upside than downside risk to deviate from this scenario, with the possible exception of certain specific third country markets.

⁵ IATA: [Air Passenger Market Analysis, March 2021 \(iata.org\)](https://www.iata.org/en/pressroom/2020/03/03-air-passenger-market-analysis-march-2021)

⁶ Source: <https://www.eurocontrol.int/press-release/updated-eurocontrol-traffic-scenarios-2021-clear-hope-some-recovery-summer-and-beyond>

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

(b) Past experience has shown that the varying levels of air traffic broadly coincide with evolving numbers of cases and new waves or variants of the virus, as countries respond with measures restricting mobility, with a direct impact on passenger air travel. At the same time, it should be noted that air cargo transport increased, even above 2019 levels.

When considering the evolution of air traffic trends, the progress made since the start of vaccination campaigns must be considered when setting a new use threshold. According to the ECDC in week 26 of 2021, the cumulative uptake of at least one dose in adults (+18) in the EEA was at 58.7% and the cumulative uptake of full vaccination in adults was 36.1%. While it is too early to predict when/whether the vaccination campaigns will be fully effective in the fight against COVID-19, it is likely that, as progress is made, restrictions are scaled back further and demand for air travel increases across the EU. Further, the EU is finalising work on the COVID-19 certificate to unlock travel, which will likely increase confidence and safety of travel and encourage demand.

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

It should also be considered that, while it cannot be excluded that new variants may appear for which the effectiveness of the vaccine and/or number of doses necessary is unknown, it is likely that, countries would react to those circumstances with lockdown measures and travel restrictions that could fall under Article 10(4)(e) of the Slot Regulation, as has been the case since the beginning of the COVID-19 crisis. The non-use of slots under these circumstances will receive full alleviation from the use it or lose it rule. This may be particularly relevant for slots used on extra-EU routes. New travel restrictions on those routes may be covered by the force majeure safeguard and hence this risk does not need to be factored in ex ante in the setting of the use rate. Although use of the force majeure exception will depend on whether the future and new travel restrictions trigger the legal requirements established in Article 10(4)(e) of the Slot Regulation, it has already been proven to be a successful tool to deal with unexpected circumstances. For example, at the start of the summer 2021 scheduling period, the coordinated exemption from slot use has entirely protected airlines' historic slots that they could not use in the months of April and May 2021 in light of unforeseeable increase in measures impacting air travel adopted by Member States. As a result of using the force majeure clause, the 50% slot use rate applicable in summer 2021, effectively only started to be applicable from the end of June 2021.

(c) Data on passenger numbers from ACI-Europe shows that the number of passengers travelling in the first half of the year 2021 has been below 20% of 2019 levels during the corresponding period. Data submitted by airlines to the Commission showed that, on average 60%-70% of flights were cancelled monthly in the first half of 2021. Data on forward bookings collected from Sabre (EU27 origin airports) shows that advanced bookings made up until the end of May 2021 for journeys in Q3 2021 are, compared with the corresponding period of 2019, down by 83.9% for extra-EU flights, by 67.7% for domestic flights and by 81.5% for intra-EU flights. For Q4 2021, extra-EU flight advanced bookings are down by 75.6%, for domestic routes down by 76.3% and for intra-EU down by 73.4%. There is some overall reduction in the gap between 2019 and 2021, especially later in 2021.

This by itself is, however, is not indicative of future demand for air traffic, as the low passenger numbers are highly impacted by the restrictive measures adopted by Member States and non-EU countries that impede travel leading to a general climate of uncertainty. As travel is opened back up and vaccination campaigns progress, it is likely that bookings and consumer confidence returns. For example, in the UK bookings surged shortly after the government announced its exit strategy from lockdown. While, as recorded by IATA, the booking window shrunk severely during the COVID-19 crisis, a more recent Skyscanner report shows that in Europe and Middle East the window increased to 80 days on average again, which taken with other data seems to indicate improving consumer confidence.

In addition, passenger services do not by themselves account for air traffic levels. As mentioned above, demand for cargo increased and many carriers that usually operate passenger services, increased their offer for cargo. IATA reported in March 2021, that cargo-tonne-kilometres (CTKs) are estimated to rise in 2021 by 13.1% vs. 2020, and to be 2.8% higher than 2019 levels. Many of these services are operated using ad hoc slots released by incumbents.

Regarding fleet size and fleet utilisation, the data submitted by airlines shows that compared to 2020, 7 airlines decreased their fleet size (between -2,3% and 30%), 4 airlines increased their fleet, and one remained the same. Although this does not exclude that more efficient use is made of the available fleet or that new aircraft are added at short notice through leasing, a structural reduction of seat capacity is noticeable. The percentage of fleet utilised in 2021 varied widely between air carriers that submitted data: between 24% and 100%, depending on the overall size of the carrier and markets operated. Data collected by Eurocontrol shows that around February and March 2021 up to 4931 aircraft were parked and inactive. This number has been steadily declining since with less than 3400 inactive aircraft at the beginning of June 2021. It should however be noted, that the amount of active aircraft indicated does not necessarily correspond to the actual need for commercial operations but can be due to the need to operate aircraft for maintenance and continued airworthiness purposes or pilot certification requirements.

Regarding load factors, the data submitted shows that it currently lies between 40% and 50% on average with a slight upward trend.

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

The slot use rate must be set to avoid unintended negative consequences on airlines' financial situation carriers and avoid the negative environmental impact of empty or largely-empty flights, but also either incentivise airlines to make efficient use of airport capacity, or give up the slots for other users. Especially because there are airlines that have made use of ad hoc

slots during 2020 and the beginning of 2021 (and thus made efficient use of airport capacity) but cannot obtain historic slots. The use rate should also ensure that a minimum amount of services is guaranteed to increase clarity for passengers, efficient use of airport capacity in the 2021/2022 winter scheduling period and connectivity. In case of more long-term structural changes in the market and consumer behaviour, the use rate should allow the market to gradually adapt to changing demand and unlock capacity for possible competitors that will make use of ad hoc slots for the winter 2022/2023 scheduling period. It should also be pointed out that slots are not route-specific. If there are routes for which demand may be still too low, airlines can use them to provide services on routes where there is demand. Press releases from airlines show, for example that slots that airlines are adding capacity to tourist destinations in the Mediterranean.

In light of these objectives, the most likely Eurocontrol traffic scenario of reaching approximately an average of 70% in winter 2021/2022 scheduling period, backed by the progress made in the vaccine rollout, would therefore justify a use rate of 50%.

This use rate is below the expected traffic level and thus would still give airlines a reasonable contingency margin in case planned flights would have to be cancelled at short notice. For example, to achieve the normal 80% use rate, airlines will aim to operate around 95% of slots.

It should be noted that airlines will no longer be able to set aside a certain number of slot series without losing grandfather rights in them by handing them back before the start of the period. However, a use threshold that is lower than the estimated traffic levels together with the fact that Article 10(4)(e) will grant full alleviation to slots that could not be used due to public measures adopted to contain the spread of COVID-19, and EU action to unlock travel and increase consumer confidence, should allow airlines to achieve 50% utilisation on routes which are sustainable in future scheduling periods as demand ramps up. If, not it would be reasonable to assume that longer term structural changes in the market occurred that do not justify the maintenance of the full 2019 slot portfolios. For example, while the number of leisure passengers and those visiting friends and family are likely to return quickly, the new ways of working acquired during the COVID-19 crisis may have a more enduring impact on business travel.

While it is generally assumed that air carriers will operate as soon as demand returns, a lower use threshold poses the risk that some carriers may limit operations at some airports to the minimum necessary just for the purpose of maintaining historic rights in those slots to the detriment of competitors (who are unable to access that airport), airport operators (who forego revenue) and consumers (who pay higher prices on fewer routes and frequencies). The possible release of some airport capacity due to this new use rate is not likely to cause a severe disruption to airlines' operations and networks, and in any event, all airlines may in future scheduling periods request new slots series from the pool in line with returning demand. The threshold rate of 50% for Winter 2021/22 strikes the balance between protecting airline networks and optimising the use of scarce airport capacity that is most favourable for consumers. Unexpected developments negatively affecting the market, or specific markets, can be addressed through the force majeure clause, which has demonstrated its effectiveness in the Summer 2021 scheduling period.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with Article 12a(4) of the Slot Regulation, before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. The draft of the delegated act has been presented at a meeting of the Commission

expert group (E01111, European Observatory on Airport Capacity & Quality) including representatives from the Member States.

The Commission services requested data from airlines and airports on the indicators required to monitor under Article 10a(4) (load factors, fleet size and utilization etc.). 13 submissions were made by air carriers representing 21 air carriers in total, out of which 4 are non-EU. IATA also provided submissions. 5 airport operators provided answers to questions sent by the Commission. ACI-Europe also provided submissions. Commission services have continuously monitored data released by Eurocontrol and have been in contact with stakeholders (airlines, airports, slot-coordinators) to monitor the situation of air traffic and implementation of slot allocation rules.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

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

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

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

Article 1 amends the period during which the slot relief rules are applicable, and sets a new slot utilisation threshold at 50%

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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 airports⁷, 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 OJ L 14, 22.1.1993, p. 1.

- (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.
- (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, 23.7.2021

For the Commission
The President
Ursula VON DER LEYEN