

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2022/255

of 15 December 2021

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

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports ⁽¹⁾, and in particular Article 10a(5) thereof,

Whereas:

- (1) Air traffic levels in the European Economic Area (EEA) have been consistently higher in 2021, compared to the same weeks in 2020 after the start of the COVID-19 crisis, showing that recovery is continuing. According to the Eurocontrol forecast, the annual average air traffic is expected to reach 89 % in 2022, on the basis of the most realistic forecast scenario.
- (2) Air traffic is not recovering at the same rate in all regions of the world and in a number of countries restrictive sanitary measures adopted by public authorities to mitigate the spread of COVID-19 remain, and continue to depress consumer demand. Further, the evolution of COVID-19 and possible new variants of concern remains uncertain.
- (3) Such circumstances are beyond the control of air carriers and consequent voluntary or obligatory cancellations of air services by air carriers in line with evolving demand is a necessary or legitimate response to those circumstances.
- (4) Pursuant to Article 8(2) of Regulation (EEC) No 95/93, read in conjunction with Article 10(2), air carriers are to use at least 80 % of a slot series allocated to them, or lose historical precedence for those slots, known as the 'use-it-or-lose-it-rule'. In light of the COVID-19 crisis, and to protect the financial health of air carriers and avoid the negative environmental impact of empty or largely-empty flights operated only for the purpose of maintaining underlying airport slots, the 'use-it-or-lose-it' rule was suspended from 1 March 2020 until 27 March 2021, and reduced to 50 % from 28 March 2021 until 26 March 2022.
- (5) Despite a continuing increase in EEA air traffic levels in 2021, they still remain below 2019 traffic levels. Eurocontrol data shows that in October 2021 air traffic was overall 27 % below 2019 levels.
- (6) Based on the seven-year Eurocontrol forecast of 15 October 2021, under the most likely scenario, traffic levels would in 2022 reach an annual average of 89 % of the corresponding 2019 levels. On the basis of the available Eurocontrol monthly forecasts for 2021 and the available Eurocontrol annual average for 2022, air traffic during the summer 2022 scheduling period is expected to be between 85 % and more than 89 % of 2019 levels. However, 2019 levels would only be achieved by the end of 2023. Therefore, it is reasonable to assume that the decrease compared to 2019 air traffic levels is likely to persist during the summer 2022 scheduling period.

⁽¹⁾ OJ L 14, 22.1.1993, p. 1.

- (7) Data compiled by the World Health Organisation (WHO) and the European Centre for Disease Control (ECDC) demonstrates that the persistent reduction of air traffic is the result of the impact of the COVID-19 crisis. The available data shows a correlation between the evolving numbers of cases and the Member States' and third countries' responses to those evolving numbers, by adopting measures that have an impact on air travel, and result in a decline in air traffic. Such measures, which can be implemented or lifted at a very short notice contribute to a climate of uncertainty and negatively impact consumer confidence and booking behaviour. That shows that the persistent reduction of air traffic is the result of the impact of the COVID-19 crisis.
- (8) While data from the ECDC of 30 September 2021 shows that 61,1 % of the total population in the EEA have been fully vaccinated, data from the WHO's website shows that the vaccination rate in a large number of countries remains low. Further, uncertainty about the possibility of new variants of concern emerging in different regions remains. Air traffic levels will thus not recover at the same rate on a global level.
- (9) Member States and third countries may continue to respond to new variants by imposing measures that could significantly impact air travel. It is therefore reasonable to still expect a significant number of cancellations, in particular on routes to countries with very stringent sanitary measures or where vaccination rates remain low, as a consequence of the COVID-19 crisis over the forthcoming summer scheduling period. As a result, air carriers cannot be expected to comply with the normal 80 % slot utilisation rate on all routes.
- (10) It is therefore necessary to extend the period laid down in Article 10a(3) of Regulation (EEC) No 95/93 to cover the summer 2022 scheduling period running from 27 March 2022 to 29 October 2022.
- (11) Data on flight cancellations, load factors, fleet size and utilisation varied very widely between individual air carriers depending on their business model and market served. On average an improving trend could be detected from March 2021 until July 2021 based on data submitted for 16 Union and 16 non-Union carriers. Air carriers providing operations on long-haul routes affected by sanitary measures severely impeding passenger travel, showed a less positive trend in the indicators monitored, further justifying the extension of the slot relief period laid down in Article 10a(3).
- (12) The overall encouraging air travel recovery signs in the EEA market, the reopening of important international markets (for example the United States of America as of November 2021) and increasing ease of travel due in countries that recognize the COVID-19 certificate, justify increasing the slot use rate to 64 %.
- (13) Data on forward bookings indicates that passengers still book flights closer to the date of departure in 2021, than they did in 2019. However, the trend is gradually improving.
- (14) The slot use rate should be set at a level that contributes to the objective of granting air carriers relief in the present circumstances, but also to the objective of ensuring efficient use of airport capacity. The slot use rate should also take into account more long-term structural changes in the market and consumer behaviour, in order to allow the market to gradually adapt to changing demand and unlock capacity for the summer 2023 scheduling period. Further, the possible release of some airport capacity due to that new use rate is not likely to cause a severe disruption to air carriers' operations and networks, which a higher use rate would.
- (15) The most likely Eurocontrol air traffic forecast scenario sets air traffic level in the summer 2022 scheduling period at a level higher than 85 % and possibly exceeding 89 %. The use-rate of 64 %, therefore still gives air carriers a reasonable contingency margin in case planned flights would have to be cancelled at short notice.
- (16) The lower air traffic levels to other global regions do not have to be factored into the use-rate as adequate relief from the use-it-or-lose-it rule can be granted on such affected routes under Article 10(4), point (e) of Regulation (EEC) No 95/93.
- (17) While it is generally assumed that air carriers would operate as soon as demand returns, a lower use threshold poses the risk that some carriers could limit operations at some airports to the minimum necessary just for the purpose of maintaining historic rights in those slots to the detriment of competitors, airport operators and consumers. A use rate of 64 % will mitigate these risks.

- (18) For the purposes of legal certainty, in particular for slot coordinators and air operators, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

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

“3. In respect of slots which have not been made available to the coordinator for reallocation in accordance with Article 10(2a), during the period from 28 March 2021 until 29 October 2022 and for the purposes of Article 8(2) and Article 10(2), if an air carrier demonstrates to the satisfaction of the coordinator that the series of slots in question has been operated, as cleared by the coordinator, by that air carrier for at least 50 % of the time during the scheduling period of 28 March 2021 to 30 October 2021, 50 % of the time during the scheduling period of 31 October 2021 to 26 March 2022, and 64 % of the time during the scheduling period of 27 March 2022 to 29 October 2022, the air carrier shall be entitled to the same series of slots for the next equivalent scheduling period.

In respect of the period referred to in the first subparagraph of this paragraph, the percentage values referred to in Article 10(4) and in Article 14(6), point (a) shall be 50 % for the scheduling period of 28 March 2021 to 30 October 2021, 50 % for the scheduling period of 31 October 2021 to 26 March 2022, and 64 % for the scheduling period of 27 March 2022 to 29 October 2022.”.

Article 2

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

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

Done at Brussels, 15 December 2021.

For the Commission
The President
Ursula VON DER LEYEN
