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**TEN/711**

**Allocation of slots at Community airports**

**POSITION PAPER**
European Economic and Social Committee

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports**[COM(2020) 111 final - 2020/0042 (COD)]

Rapporteur-general: **Thomas KROPP**

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| Legal basis | Articles 100(2) and 304 of the Treaty on the Functioning of the European Union  |
| Section responsible | Transport, Energy, Infrastructure and the Information Society |
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# **Conclusions and recommendations**

## Regulation (EEC) No 95/93[[1]](#footnote-1) determines the procedures and rules for the allocation of slots at EU airports. Article 10 of this Regulation specifies that air carriers must use at least 80% of their allocated slots within a given scheduling period in order to maintain these slots for the corresponding scheduling period of the following year.

## The outbreak of the SARS-CoV-2 virus is having a historically unprecedented and exponentially growing impact on supply and demand for air services on a global scale. For European carriers, this first became evident for flights to and from China in January 2020, but within two months the virus had spread to all the regions of the world. To reduce the rate of growth of the virus, governments have imposed severe restrictions on international air traffic and on the mobility of their respective citizens; lack of demand combined with government measures have reduced air services to an all-time low, placing severe pressure on the financial viability of all aviation stakeholders, notably the social partners, who all have justified concerns about the future of their employment in this normally fast-growing sector. Air carriers have increasingly had to reduce capacity and ground aircraft. In several EU Member States, entire airlines have been grounded. It is not possible to predict the duration and scale of the impact of the virus.

## Under the current Slot Regulation, air carriers lose their slots if they do not continue to operate their services at least 80% of the time. To maintain their slots in the absence of a provision neutralising this so-called "use-it-or-lose-it" clause, air carriers would be obliged to continue operating flights with an extremely low seat-load, exacerbating the financial losses and posing an unnecessary environmental burden.

## The Commission therefore proposes to amend Regulation (EEC) No 95/93 to enable air carriers to apply grandfather rights to slots which they have not used. The Commission proposes to suspend Article 10(a) of Regulation 95/93 for the period beginning March 2020 until June 2020 for all flights, and retroactively from 23 January 2020[[2]](#footnote-2) until June 2020 for flights to and from the Republic of China and to and from Hong Kong.

## The EESC supports the proposed suspension of EU rules on airport slot allocation. However, it believes that the proposed suspension should apply for at least the entire duration of the 2020 summer-time schedule, i.e. until 24 October. This would provide planning stability for airlines. It is highly unrealistic to assume that air carriers could already at the present time plan for a resumption of their full summer schedule effective as of June. On the contrary, many are still reducing capacity in the absence of advance bookings; on certain routes demand has completely collapsed and operations are being shuttered. It will take a long time to reinstate flights, something will depend on the return of passenger confidence. What is crucial, over the next few weeks and months, is that the aviation market should be able to react swiftly and flexibly to market developments without the loss of the slots required to re-establish functioning networks.

## The EESC recommends that the slot waiver be seen as integral element of a much wider package of urgently required measures to enable the recovery of the EU aviation sector post-COVID-19. Airlines in particular have had to cope with an unprecedented and unexpected decline in demand, coupled with the effects of flight bans, closure of national borders and the ongoing uncertainty about the further escalation of the crisis. The Commission already adopted a Stimulus Package on 13 March 2020. But given that all airlines are reporting severe cashflow problems, a far more comprehensive approach is required which would address all additional financial burdens – burdens which the sector cannot currently shoulder[[3]](#footnote-3).

## The EESC recommends that developments with respect to capacity cuts should also be closely monitored as part of the European Aviation Crisis Coordination Cell activities, so as to enable optimal communication between stakeholders.

# **General comments**

* 1. Demand for air services is rapidly declining.On 21 March 2020[[4]](#footnote-4) there were 66% fewer flights than on the same day in the preceding year. On that day, traffic dropped in the major European aviation markets as follows: Italy -91%, Spain -76%, France -74%, Germany -66%, the Netherlands -57%, Turkey -60% and the UK -59%.
	2. As a result of the decline in demand, the largest airline groups reduced capacity: easyJet saw the steepest drop, down 87%, followed by Ryanair and the Lufthansa Group on -78%, IAG on -66% and Air France-KLM on -62%.

For some of Europe's other major airlines (not part of the above groups), the reductions on 21 March were: LOT Polish -77%, Finnair -67%, TAP -73%, SAS -72%, Wizz Air -70%, Norwegian Air Shuttle -54% and TUI -39%. Airlines are estimated to be grounding about 80% of the world's fleet, equivalent to some 60 000 aircraft[[5]](#footnote-5). Some airlines are grounding all flights[[6]](#footnote-6).

* 1. Virtually all of Europe's major airports are now operating fewer than 50% of flights compared to last year. Examples are: Milan Malpensa -88%, Vienna -85%, Barcelona -84% and Madrid -78%.
	2. In order to guarantee the allocation of the same slots in the same season of the following year, airlines are obliged to use the slots at least 80% of the time over the scheduling period. This provision was introduced to prevent airlines from blocking valuable departure and arrival times even though they might not make use of them. From an airport's perspective, this means an unpredictable loss of revenue. For competitors, it means that they cannot gain access to those departure and arrival times.
	3. There are precedents for the suspension of this provision. Under unexpected and unforeseeable emergency conditions in the past, the Commission has also proposed similar amendments to Regulation (EEC) No 95/93[[7]](#footnote-7), notably:
* in 2002 in the aftermath of the 9/11 terrorist attacks (Regulation (EC) No 894/2002);
* in 2003 following the outbreak of SARS (Regulation (EC) No 1554/2003);
* in 2009 during the global financial crisis (Regulation (EC) No 545/2003).
	1. In view of the exponential spread of the virus and the increasing severity of measures proposed by governments to contain it, demand for air services is declining ever more rapidly, placing the aviation sector under significant pressure when it comes to maintaining liquidity. The slot waiver proposal would provide slot coordinators with clear guidance on how to proceed in the coming months of the summer schedule, which starts on 28 March 2020. The urgency is such that an expedited procedure is required to adopt this Commission proposal to enable airline planning stability in the coming months.

# **Specific comments**

* 1. Specifically, the Commission proposes[[8]](#footnote-8) replacing Article 10(a) with a new article to oblige slot coordinators to plan as if (for the purposes of assessing accrual of grandfather rights) slots allocated for the period from 1 March 2020 until 30 June 2020 had in fact been operated by the air carrier to which they were initially allocated. An additional, earlier period is included in respect of slots used for flights between the EU and the People's Republic of China and between the EU and the Hong Kong Special Administrative Region of the People's Republic of China (from 23 January 2020). Article 10(a) also empowers the Commission to adopt delegated acts if the crisis linked to the outbreak of SARS-CoV-2 is not resolved and continues to have a negative impact on air transport. Given the rapidity with which the outbreak is spreading, the delegated acts need to be adopted by means of an urgency procedure.
	2. The Commission bases its proposal on data available before the date of publication of its new regulation. However, at the time of writing the present draft opinion a mere 10 days later, that data is already outdated; this is a reflection of the speed which this crisis is unfolding[[9]](#footnote-9). Given the exponential spread of the virus globally, and its devastating effects on social life, its impact on air traffic cannot be compared with previous crises. Although the measure as such will facilitate airline planning, the expected initial duration – up until June 2020 – appears arbitrary and is not substantiated by any currently available data.
	3. In view of the time constraints, no hearings have been held with stakeholders. However, several stakeholders have made their views known publicly.

### In a statement issued on 13 March 2020, EUACA, the European Airport Coordinators Association, welcomed the Commission's proposal.

### In another statement, also issued on 13 March, the ACI airport association also welcomed the Commission's proposal, but stressed that any further extension of the waiver beyond June 2020 should be based on evidence and undertaken in consultation with the airport industry and slot coordinators. In further statements, ACI strongly opposed any extension for the time being, arguing that this would be premature given the impossibility of predicting developments beyond June; ACI does not exclude the possibility that the recovery of air traffic could well be underway before June 2020. ACI is particularly concerned that airports may be left in doubt as to which flights are being cancelled and when, thereby reducing planning stability for airports.

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### In a joint open letter to the EU Transport Ministers published on 17 March 2020, the A4E and ERA airline associations likewise welcomed the Commission's proposal "as a first step", but urged that the waiver be extended to cover the entire summer schedule season in the light of the collapse of the air travel market, the effects of which will be felt well beyond June 2020. The airline associations believe that a waiver for the entire scheduling season would provide greater legal clarity and predictability, and also help avoid seeking extensions on a rolling basis.

## The legislative process has been accelerated. On 13 March, the Commission published its proposal. On 19 March, the EU Council approved a mandate to negotiate with the European Parliament a proposal to waive the use-it-or-lose-it rule until 24 October "to help air carriers cope with the sharp drop in demand". The European Parliament will debate the issue on 26 March.

## The EESC recommends that the Commission's proposal[[10]](#footnote-10) be accepted subject to the following amendment: Article 10(a), paragraph 1, should read:

## *For the purposes of Articles 8(2) and 10(2), coordinators shall consider slots allocated for the period from 1 March until 24 October 2020 as having been operated by the air carrier to which they had been originally allocated.*

## The reasons are threefold. Firstly, it appears very unlikely that sufficient data will be available in the near future to substantiate a limitation of this waiver to June 2020; developments are extremely fast-moving and trends are unforeseeable. Secondly, planning stability should be established for the upcoming summer season so as to enable air carriers to focus on meeting changes in demand without unintentionally risking the loss of slots. Thirdly, the understandable concerns of airports that their own planning stability should not be unduly undermined can be offset by establishing a regular dialogue between stakeholders on how to optimise communication, to be conducted by the European Aviation Crisis Coordination Cell.

* 1. The EESC is willing to contribute to further discussions on how best to re-establish a viable and competitive European aviation sector. Such an approach should be comprehensive and include discussions with all stakeholders, in particular the social partners, which are severely affected by the COVID-19 crisis. A comprehensive approach of this kind should include the review of any regulation or measure which places an undue burden on the aviation sector. Examples include, but are not limited to, care and attention paid to customers in the event of a flight cancellation during an extraordinary crisis of this nature, or prolonging licenses for crew members if training or training facilities are not available. Associations in other regions of the world are pursuing a comprehensive approach along such lines[[11]](#footnote-11). In order to maintain competitiveness and avoid distortions to international competition, similar approaches should be considered as a matter of urgency and importance.

Luca JAHIER
President of the European Economic and Social Committee

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**ANNEX 1**

**Latest traffic situation as of Saturday 21 March 2020 (compared with equivalent day in 2019)**

**Source: EUROCONTROL**

1. **1.       Summary points on the network situation:**
* NM Network flights:**7 961 representing  -66,3% (15,658 fewer flights)**
* Nearly all states are now experiencing traffic of less than 50% compared to last year. For the largest European aviation markets,  on 21 March, traffic dropped as follows: Italy -91%, Spain -76%, France -74%, Germany -66%, Netherlands -57%, Turkey -60% and the UK -59%.

 **2.       Airlines**

* Focus on largest airline groups: On 21 March, easyJet had the steepest drop, down 87%, followed by Ryanair and Lufthansa Group on -78%, followed by IAG on -66% and Air France-KLM on -62%.
* For some of Europe's other largest airlines (not part of the above groups), the reductions on 21 March were: LOT Polish -77%, Finnair -67%, TAP -73%, SAS -72%, Wizz Air -70%, Norwegian Air Shuttle -54%, and TUI -39%.

 **3.       Airports:**

* Virtually all of Europe's largest airports are now operating less than 50% of flights compared to last year, examples: Milan Malpensa -88%, Vienna -85%, Barcelona -84%, Madrid -78%, Munich and Zurich -74%, Frankfurt and Paris CDG -64%, Amsterdam -59%, Istanbul -62%, London Heathrow -54%, and Dublin -47%.

**Annex 2**

AACO Communicates with Governments to Adopt Measures that Could Ease the Burdens on Airlines under the COVID-19 Situation

Source: AACO

Mar 22, 2020

Given the rapid spread of the COVID-19 pandemic where we are seeing travel bans adopted by a number of countries, while some countries are totally closed in the face of air transport, and where the demand on air travel is severely low across the globe, and in order to provide protection against job losses as well as to help jumpstart the economic  contribution of air transport when this crisis is over, the Arab Air Carriers' Organization (AACO) has communicated with the Arab governments through the Arab Civil Aviation Organization (ACAO) encouraging them to adopt the following measures:

1. Taxes: AACO encouraged Arab governments to provide tax relief to airlines for at least a period of two years.
2. Financial Situation of Airlines: AACO urged Arab governments to provide speedy financial support packages for airlines in order to shield more than 150 thousand families who rely for their livelihood on their airlines' employees and to help airlines overcome this crisis and jumpstart their natural contribution to economic sustainability and growth beyond the current difficult times.
3. Paying Lenders and Suppliers: AACO sought the support of Arab governments and other partners in aviation as well as other stakeholders to request lenders and suppliers to  provide a grace period to airlines and refrain from any measures against them in the current situation, until air transport is back to the start of normalcy.
4. User Charges: AACO encouraged governments to support airlines in requesting airport operators and air navigation service providers to exempt airlines from paying parking fees during this time of emergency and to cancel or reduce other user charges paid by airlines.
5. Liabilities under passenger rights regulations: AACO requested governments to temporarily exempt airlines from passenger rights regulations as the current situation is considered to be force majeure that obliges airlines to cancel or delay their flights with short notice.
6. Slots Regulations: AACO asked the support of governments to exempt airlines from any slot rules applied in Arab airports.
7. New Costs related to containing the spread of the virus: Many airlines have introduced sanitization measures and health monitoring devices. AACO requested governments to either compensate the airlines for the cost they are incurring under this category or to provide the tools needed for sanitization and monitoring.

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The rapporteur-general of the European Economic and Social Committee

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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. [↑](#footnote-ref-1)
2. This was the date of the first closure of an airport in China as a result of the virus. [↑](#footnote-ref-2)
3. This is reflected in the recently adopted Commission Guidelines on Denied Boarding Compensation, which recognise that cancellations of flights due to COVID-19 are extraordinary circumstances and therefore do not trigger compensation; however, air carriers would still have to provide unlimited care and assistance in the event of such cancellations. This poses an additional burden on the liquidity of air carriers. They are deprived of the option of offering rebooking or vouchers which would have a limited impact on cash-flow. [↑](#footnote-ref-3)
4. The following data is taken from a EUROCONTROL publication of 21 March 2020; the entire text of the publication is attached as Annex 1. [↑](#footnote-ref-4)
5. Financial Times, 23 March 2020, quoting the Centre for Aviation (CAPA). [↑](#footnote-ref-5)
6. On 18 March Austrian Airlines stopped flying until 28 March. LOT Polish suspended its flights from 15 March until 28 March. Air Baltic has suspended all flights from 17 March until 14 April. Brussels Airlines has suspended all flights from 24 March until 19 April. [↑](#footnote-ref-6)
7. Explanatory Memorandum of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports, paragraph 3. [↑](#footnote-ref-7)
8. Taken from the Explanatory Memorandum of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports, paragraph 6. [↑](#footnote-ref-8)
9. The Explanatory Memorandum of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports, paragraph 1, indicates that Eurocontrol predicted a 10% decrease in flights in the first two weeks of March 2002, compared to March 2019. As of 22 March 2020, the evaluation already needs to be revised upwards (see Annex 1). [↑](#footnote-ref-9)
10. Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports. [↑](#footnote-ref-10)
11. Approach pursued by AACO, see Annex 2. [↑](#footnote-ref-11)