

## **EUSG 4**

**Effective from 15 June 2023**

### **Interpretation of the provisions under Art. 10 (4) (a) – (e) Regulation (EEC) No 95/93 on justified non-use of slots ("JNUS")**

#### **1. PURPOSE**

This document (the "Guidance") aims at providing guidance to slot coordinators and schedules facilitators (for simplification purposes hereinafter referred to as "Coordinators" only) how the provisions on the justified non-use of slots ("JNUS") under Art. 10(4) (a) to (e) Regulation (EEC) No 95/93 ("Slot Regulation") should be interpreted and applied. The Guidance does not claim to be exhaustive.

#### **2. REFERENCES**

Slot Regulation (amended<sup>1</sup>)

- Art. 8(1) and 8(2) – 'use it or lose it rule' and eligibility for historic precedence
- Art. 10(4) – justifications for the non-utilisation of slots

Worldwide Airport Slot Guidelines (WASG)

- Section 8.8 – "justified non-utilisation of slots" – covered by Art. 10(4) Slot Regulation and, therefore, not relevant for Coordinators who apply the Slot Regulation.

#### **3. PREAMBLE**

In order to qualify for entitlement to the same series of slots in the next equivalent scheduling period it is required that the air carrier demonstrates to the satisfaction of the Coordinator that a series of slots has been operated, as cleared by the Coordinator, for at least 80% of the time for which it has been allocated. Otherwise all the slots in that series will be placed in the slot pool, unless the non-utilisation can be justified by any of the reasons listed in the Slot Regulation (Art. 10(4)).

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<sup>1</sup> Last amended with REGULATION (EU) 2022/2038 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 amending Council Regulation (EEC) No 95/93 as regards temporary relief from the slot utilisation rules at Union airports due to an epidemiological situation or military aggression.

The Slot Regulation allows up to 20% cancellations of slot series after 31 January for a summer season and 31 August for the winter season. This 20% is made available to cover cancellations that are not covered by the alleviation afforded under the JNUS provisions of the Slot Regulation. It is for the carrier to determine how much of the 20% should be protected for unforeseen events. Cancellations for purely commercial reasons or due to events that can be reasonably expected to occur in every-day flight operation will, thus, not fall under the JNUS provisions but will be covered by the 20%.

For a consistent, transparent and comprehensible application of the relevant provisions, it is strongly advised that, where needed, Coordinators enter into dialogue with the air carriers concerned, e.g. to request additional information. Depending on the circumstances of the individual case, the Coordinator shall also exchange with other stakeholders, such as the airport managing body, the air navigation services provider (ANSP), the competent authority or other Coordinators.

Not included in this Guidance are the time-limited provisions Art. 10(4a) Slot Regulation, as newly introduced by Regulation (EU) 2022/2038. These provisions are only applicable in the period from 30 October 2022 to 28 October 2023 and are dealt with in separate EUACA guidance material.

## 4. RECOMMENDATIONS

EUACA believes that when interpreting the provisions under Art. 10(4) (a) to (c) Slot Regulation the following aspects should be taken into account:

### 4.1 Art. 10(4) (a) first dash Slot Regulation

*Unforeseeable and unavoidable circumstances outside the air carrier's control leading to:*

— *grounding of the aircraft type generally used for the air service in question*

EUACA considers the following aspects to be relevant for the interpretation of the provision:

- The grounding has to be decided and implemented either by the manufacturer of the aircraft or of the engine or by the competent authority (e.g. Civil Aviation Authority, EASA).
- Unexpected and compulsory short term maintenance work on an aircraft type (or engine type), if imposed on the air carrier by the manufacturer or by the competent authority, should be considered to also fall under the provision. What to consider as unexpected, compulsory and 'short term' should be determined by the Coordinator and discussed with the air carrier concerned, taking into account the details and specifics of the maintenance work. A one-time repair of an aircraft or

- engine should not be considered as a case of JNUS.
- In order to allow air carriers a certain flexibility to mitigate the impact of such grounding, also *consequential* impact resulting from the grounding should be considered as JNUS. However, the burden of proof that the consequential impact is a result of the grounding of that *particular* aircraft or engine type rests with the air carrier.

## 4.2 Art. 10(4) (a) second dash Slot Regulation

*Unforeseeable and unavoidable circumstances outside the air carrier's control leading to:*

— *closure of an airport or airspace;*

EUACA considers the following aspects to be relevant for the interpretation of the provision:

### Closure of an airport

- The closure of an airport can be either a total or a partial closure.
- The total or partial closure can be due to either planned events or unplanned events.
- Consequences of the airport closure should be evaluated by the Coordinator at the other end of the route.
- Examples for planned events are limited to: runway works, restructuring airport equipment or facilities leading to capacity reductions
- Examples for unplanned events are: extreme weather conditions, “acts of mother nature” or military conflict.
- Special cases:
  - In case of planned capacity reductions, those cancellations made in anticipation of the event at the request of the Coordinator or the relevant authority should be considered as justified when evaluating the non-utilisation of slots.
  - In case of capacity reductions resulting in cancellations for a prolonged period, the subsequent cancellations during a reasonable period following the opening, partial or total, should also be considered for alleviation. Such a reasonable period should be discussed between the air carrier and the Coordinator, taking into account the details of the event. In this regard, a transparent dialogue and exchange of information with the air carriers concerned and the airport managing body is highly advised.

- Air carriers may explore the feasibility of alternative routings if the airport at the other end of the route is disrupted for a prolonged period and amend their slots accordingly. The Coordinator should be flexible if revised slot times are required as a result of changed routings within the available capacity of the airport.

## Closure of an airspace

- The closure of an airspace can be either a total or a partial closure.
- The total or partial closure can be due to either planned events or unplanned events.

## General

- Cancellations at one airport of services to/from another airport by air carriers because of total or partial closure at that other airport or airspace should be considered as JNUS at both ends of the route.
- For this purpose, Coordinators are strongly recommended to exchange information with other Coordinators whenever a closure of an airport or airspace occurs at their airports. Air carriers may explore the feasibility of short term alternative routings if the airport at the other end of the route or the relevant airspace is closed for a longer period of time and amend their slots accordingly. The Coordinator should be flexible if revised slot times are required as a result of changed routings within the declared capacity of the airport. In case of capacity reductions resulting in cancellations for a prolonged period, the subsequent cancellations during a reasonable period following the opening, partial or total, should also be considered for alleviation. Such a reasonable period should be discussed between the air carrier and the Coordinator, taking into account the details of the event. In this regard, a transparent dialogue and exchange of information with the air carriers concerned and the airport managing body is highly advised.

### **4.3 Art. 10(4)(a) third dash Slot Regulation**

*Unforeseeable and unavoidable circumstances outside the air carrier's control leading to:*

- *serious disturbance of operations at the airports concerned, including those series of slots at other Community airports related to routes which have been affected by such disturbance, during a substantial part of the relevant scheduling period*

EUACA considers the following aspects to be relevant for the interpretation of the provision:

- An example of a serious disturbance is for instance a fuel system malfunction preventing aircraft from refueling (on time) or a damaged cable system preventing certain processes necessary for flight operation. The Coordinator decides after having entered into a dialogue with the stakeholders concerned if an event is regarded as a serious disturbance of operations. Depending on the circumstances, such alleviation is time limited and the period of alleviation is decided by the Coordinator after having a dialogue with the air carrier concerned.
- This includes those series of slots at other airports related to routes to/from the Community airports which have been affected by such disturbance.

#### 4.4 Art. 10(4) (b) Slot Regulation

*Interruption of air services due to action intended to affect these services which makes it practically and/or technically impossible for the air carrier to carry out operations as planned*

EUACA considers the following aspects to be relevant for the interpretation of the provision:

- Examples for “action intended to affect the services of air carriers” are:
  - Internal strikes which have been formally announced or declared (e.g. by a recognised Union following a ballot process) will be considered, if possible according to the local legislation (if any), for alleviation (not recognised as a case of JNUS should be staff ‘working to rule’, unless this action has been publicly declared).
  - External strikes by critical services (e.g. ATC, customs and immigration, aircraft manufacturers and any other critical service provider at the airport) that directly prevent an airline’s operation.
  - The withdrawal or suspension of traffic rights as a result of bilateral disputes. This depends on the individual case, e.g. it will generally not apply to sanctions imposed by the EU on third-countries/third-country air carrier. Temporary withdrawal of permission to operate by a State or any other regulatory authority on the grounds of safety or security (e.g. blacklist).
- In all these examples, the alleviation should be time-limited, giving the air carrier concerned a reasonable period to find solutions and/or alternatives in order to as soon as possible utilise the slots properly. Such a reasonable period is decided by the Coordinator after having a dialogue with the air carrier concerned, taking into account all the information available from other interested parties (e.g. the airport managing body, ANSP, the licensing authority, etc.).

- EUACA recommends to always carefully consider and evaluate the particular circumstance of the individual case. Moreover, in all cases the Coordinator should be flexible regarding the reactionary and rotational cancellations and delays arising from the disruptions outlined above which may affect many other flights on the same day. In this regard, air carriers should provide the Coordinator with information demonstrating that the consequential impact is directly a result of the event/action should it be requested by the Coordinator.

## 4.5 Cases which should not be considered as JNUS under Art. 10(4) (a) to (b)

- EUACA holds that, amongst others, the following cases are examples of cancellations which should not be considered as “JNUS”:
  - Cancellations due to public holidays unless the holiday is declared post SRD resulting in the closure or partial closure of an airport
  - On-the-day technical/mechanical cancellations within the airline’s control (e.g. one-time repairs/ AOG).
  - Commercial cancellations within the airlines discretion
  - Cancellations to avoid infringements of curfew/night curfew restrictions
  - Late delivery of aircraft
  - Air Bridge breakdown
  - Lack of parking stands
  - Lack of operational crew
  - Lack of standby aircraft
  - Late return of aircraft from maintenance
  - ATC slot restrictions
  - Infeasible schedules
  - Religious festivals such as Ramadan, Easter, Christmas, etc.
  - Tour operators ceasing trading
  - Tour operators hotels not being ready

## 4.6 Art. 10(4)(c) Slot Regulation

*serious financial damage for a Community air carrier concerned, with, as a result, the granting of a temporary license by the licensing authorities pending financial reorganisation of the air carrier in accordance with Article 5(5) of Regulation (EEC) No 2407/92;*

EUACA considers the following aspects to be relevant for the interpretation of the provision:

- “**Serious financial damage**” should be understood as any situation where the competent licensing authority “is no longer satisfied that this Community air carrier can meet its actual and potential obligations for a 12-month period” pursuant to Article 9(1) Regulation (EC) No 1008/2008 of 24 September 2008 on common rules for the operation of air services in the Community (so-called Licensing Regulation) and the competent licensing authority has granted a temporary licence.<sup>2</sup> Typically, such a case is associated with the company filing for insolvency.
- The provision expressly only refers to “**Community air carriers**”. Pursuant to Article 2(e) Slot Regulation ‘Community air carrier’ shall mean an air carrier with a valid operating license issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers.<sup>3</sup> Since this Regulation has meanwhile been replaced by Regulation (EC) 1008/2008, the provision has to be read to mean an operating license issued in accordance with Regulation (EC) 1008/2008 (see Article 3 et seq.).<sup>4</sup>
- Non-Community air carriers thus are not to be granted JNUS based on Art. 10(4)(c) Slot Regulation
- JNUS is granted as long as the temporary operating license is valid.

## 4.7 Art. 10(4)(d) EU Slot Regulation

*judicial proceedings concerning the application of Article 9 of this Regulation 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;*

EUACA considers the following aspects to be relevant for the interpretation of the provision:

- Pursuant to Art. 10.4(d) Slot Regulation JNUS is also to be granted in the case of judicial proceedings concerning the application of Art. 9 Slot Regulation (Public Service Obligation – “PSO”).<sup>5</sup> The conditions and the requirements for PSOs are

<sup>2</sup> The competent licensing authority may at any time assess the financial performance of a Community air carrier which it has licensed. Based upon its assessment, the authority shall suspend or revoke the operating licence if it is no longer satisfied that this Community air carrier can meet its actual and potential obligations for a 12-month period. Nevertheless, the competent licensing authority may grant a temporary licence, not exceeding 12 months pending financial reorganisation of a Community air carrier provided that safety is not at risk, that this temporary licence reflects, when appropriate, any changes to the AOC, and that there is a realistic prospect of a satisfactory financial reconstruction within that time period.

<sup>3</sup> That definition corresponds to the definition in Art. 2.11 Regulation (EC) 1008/2008: “‘Community air carrier’ means an air carrier with a valid operating licence granted by a competent licensing authority in accordance with Chapter II;”

<sup>4</sup> See Recital 1 of Regulation (EC) 1008/2008.

<sup>5</sup> Where public service obligations have been imposed on a route in accordance with Article 4 of Regulation (EEC) No 2408/92, a Member State may reserve at a coordinated airport the slots required for the operations envisaged on that route. If the reserved slots on the route concerned are not used, they shall be made available to any other air carrier interested in operating the route in accordance with the public service obligations, subject to paragraph 2. If no other carrier is interested in operating the route and the Member State concerned does not issue a call for tenders under Article 4(1)(d) of Regulation (EEC) No 2408/92, the slots shall either be reserved for another route subject to public service obligations or be returned to the pool.



now set out in Articles 16 to 18 of Regulation No 1008/2008 and no longer in Article 4 of Regulation (EEC) No 2408/92.

- Referring to Article 9, this applies to air carriers selected for PSO (which also have to operate at 80%).

## 5. IMPLEMENTATION

The air carrier concerned is highly encouraged to contact the Coordinator and request alleviation from the 80/20 rule as early as possible (i.e. as soon as the non-utilisation of the slot can be anticipated or, alternatively, as soon as possible after the non-utilisation or disruption has occurred), and to discuss how the Coordinator intends to treat the historic rights for the affected services, so that there can be certainty about the process. Air carriers must make their requests for JNUS at the latest before SHLs are sent out to advise the Coordinator.

Slots made available by circumstances justified under Article 10(4) Slot Regulation (e.g. serious disturbance of operations at Community airports for a substantial part of the season) may be reallocated to other air carriers on a non-historic basis.

## 6. COOPERATION BETWEEN EUACA MEMBERS

In order to as far as possible harmonise the application of JNUS according to Art. 10(4) (a) to (d) Slot Regulation among EUACA members, Coordinators should regularly exchange information and strive for a high level of cooperation. It is recommended that EUACA members follow the application of JNUS as informed and applied by the Coordinator in charge of the respective airport whenever this application appears plausible.