

| Commission Proposal as of 16 Dec. 2020 amending Council Regulation (EEC) No 95/93 due to COVID-19 pandemic / COM (2020) 818 final / 2020/0358 (COD) | Comments | Evaluation if specific objectives of COM are met/not met | |
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| | | efficient airline operation | efficient use of airport capacity |
| <p>1) Article 2 is amended as follows:</p> <p>(a) the following point (ba) is inserted:</p> <p>'(ba) during the period referred to in Article 10a(2a) 'new entrant' shall mean:</p> <p>(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</p> <p>(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</p> | <p>General: even if the definition of “new entrant” is extended, this will most likely not lead to a significant increase of new entrant slot requests for S21 as the initial coordination is already finalized.</p> <p>At least for S21, the fragmented and short-term (“no less than 3 weeks...”) return of slots is not a sufficiently solid basis for new entrants’ decision-making with regard to investments in new services.</p> <p>In subsequent seasons, this provision might be helpful in facilitating new entry.</p> <p>Differentiation between European and Non-European destinations (fewer than 7 slots / 9 slots) might have detrimental effects with regard to <u>efficiency</u> (aircraft size) and <u>connectivity</u>; might also lead to problems in terms of <u>reciprocity</u> worldwide (especially China, USA).</p> | Not met at least for S21 | Not met at least for S21 |

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| <p><i>hold fewer than nine slots at that airport on that day for that non-stop service.</i></p> <p><i>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;’;</i></p> | Useful | Met | Met |
| <p><i>(b) point (m) is replaced by the following:</i></p> <p><i>‘(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;’;</i></p> | Correct | Neutral | Neutral |
| <p><i>(c) the following point (n) is added:</i></p> <p><i>‘(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.’;</i></p> | Useful | Met | Met |

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| <p><i>(b) the following paragraph 6a is inserted:</i></p> <p><i>‘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 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.’;</i></p> | Useful | Met | Met |
| <p><i>3) Article 10(4) is amended as follows:</i></p> <p><i>(a) point (d) is replaced by the following:</i></p> <p><i>‘(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;’;</i></p> | Relevant only where PSO routes apply | Neutral | Neutral |

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| <p><i>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.</i></p> | <p>2) the end of the phrase “only where the slots in the subsequent scheduling period are used for the same route.” may lead to confusion because it does not consider the seasonality of some routes.</p> | | |
| <p><i>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).</i></p> | <p>May force airlines to cancel all series/routes where there is already a measure in place.</p> | <p>Not met</p> | <p>Not met</p> |
| <p><i>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.</i></p> | <p>Useful</p> | <p>Met</p> | <p>Met</p> |
| <p><i>Point (e) of the first subparagraph shall apply for at most two consecutive scheduling periods.’;</i></p> | <p>Many flights are <u>seasonal flights</u>, for which such limitation would not apply.</p> | <p>Not met</p> | <p>Not met</p> |
| <p><i>(4) Article 10a is amended as follows: (a) paragraph 1 is replaced by the following: 1. For the purposes of Articles 8(2) and Article 10(2), coordinators shall consider slots allocated for the period from 1 March 2020 until 27 March 2021 as having been operated by the air carrier to which they were initially allocated.’;</i></p> | <p>The 40% usage requirement for <i>all</i> flights has <u>several detrimental effects</u>.</p> <p>Explanation:</p> <p>Industry proposal:</p> <ul style="list-style-type: none"> – When a carrier (before the pandemic) operated 10 daily flights on one route (city-pair), it is better to fully delete 6 daily flights and keep 4 | <p>Not met</p> | <p>Not met</p> |

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| <p><i>(b) the following paragraph 2a is inserted:</i></p> <p><i>'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 40% 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.</i></p> <p><i>In respect of the period referred to in the first subparagraph, the percentage values referred to in Article 10(4) and point (a) of 14(6) shall be 40%.'</i></p> | <p>than having to operate 40% of <i>each</i> flight series.</p> <p>Commission proposal:</p> <ul style="list-style-type: none"> – The 40% threshold for <u>all</u> flights is not realistic and will lead to the operation of “empty flights”. It will also lead to blocking capacity which could be reallocated to other carriers requesting full season series. – By obliging carriers to operate 40% of all their historic series instead of offering the possibility to operate the best schedules, the EU proposal increases costs and complexity for the whole chain of the industry including the end customers (passengers or cargo) – Problem of Reciprocity (EU/worldwide) | | |
| <p><i>(c) paragraph 3 is replaced by the following:</i></p> <p><i>'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.'</i></p> | - | - | - |

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| <p><i>3a. Paragraph 2a shall not apply:</i></p> <p><i>(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;</i></p> | <p><u>General:</u> is the preferential treatment of historic slots vis-à-vis newly allocated slots for S21 justified? (also, from a competition point of view)</p> <p><u>Practical aspects:</u></p> <p>The <u>double threshold</u> (40/60 and 80/20) poses a major technical challenge (software) for some coordinators... . What about <u>re-timed</u> Historic? Does “80/20” apply?</p> <p>What about slots for S21 that have already been <u>transferred</u> from one route or type of service to another route or type of service (Art. 8a para. 1 (a)) or transferred within an airline group (Art. 8a para. 1 (b)).</p> <p>Additional remark:</p> <p>“...the same series of slots...” excludes all series that were requested with a change of argument that is “capacity relevant” like - but not only - aircraft type, aircraft capacity, route, timing.</p> | <p>Not met</p> | <p>Not met</p> |
| <p><i>(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.’;</i></p> | <p>Coordinators cannot control it.</p> | <p>-</p> | <p>-</p> |
| <p><i>(e) paragraph 4 is replaced by the following:</i></p> | | | |

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| <p><i>'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 accordingly</i></p> | - | - | - |
| <p><i>The Commission is empowered to adopt delegated acts in accordance with Article 12a to amend the percentage values referred to in paragraph 2a of this Article within a range between 0 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:</i></p> | - | - | - |
| <p><i>(a) data published by Eurocontrol on traffic levels and traffic forecasts;</i></p> | - | - | - |

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| <p><i>(b) the evolution of air traffic trends during the scheduling periods, also taking into account the evolution observed since the start of the COVID-19 pandemic; and</i></p> <p><i>(c) indicators relating to demand for passenger and cargo air transport, including trends regarding fleet size, fleet utilisation, and load factors.</i></p> | | | |
| <p><i>Delegated acts pursuant to this paragraph shall be adopted no later than 24 January for the following summer scheduling period and no later than 24 August for the following winter scheduling period.’;</i></p> | <p>Legal certainty necessary <u>prior to initial coordination</u>. Dates of 24Jan/Aug leave only 7 days before the hand back date (HBD) to eventually re-coordinate the full season, depending of the decision taken by EC and its consequences for air carriers and airports. Coordinators would prefer an earlier deadline.</p> | <p>Not met</p> | <p>Not met</p> |
| <p><i>(f) paragraph 5 is deleted;</i></p> | <p>-</p> | <p>-</p> | <p>-</p> |
| <p><i>(g) the following paragraph 7 is added:</i></p> <p><i>‘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.’;</i></p> | <p>The (short!) 3 weeks return deadline leads to <u>late and fragmented slot returns and adds unnecessary complexity</u></p> <p>In comparison, full series & early returns, lead to <u>more efficient reallocation</u> of returned series.</p> | <p>Not met</p> | <p>Not met</p> |

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| <p><i>(5) in Article 12a, paragraph 2 is replaced by the following:</i></p> <p><i>'2. The power to adopt delegated acts referred to in Article 10a shall be conferred on the Commission until 24 August 2024.'</i></p> | - | - | - |
| <p><i>(6) Article 14 is amended as follows:</i></p> <p><i>(a) in paragraph 5, the following subparagraph is added:</i></p> <p><i>'Member States shall establish and apply effective, dissuasive and proportionate sanctions or equivalent measures in the event an air carrier repeatedly and intentionally fails to comply with Article 10a(7). Such sanctions and measures shall include the possibility to withdraw the benefit of Article 10a(2a), where justified by the individual case.'</i></p> | <p>Possibly lengthy period of implementation into national law (and possibly distortion of competition due to inconsistent implementation by national legislators).</p> <p>Possible increase of legal proceedings between coordinators and airlines which could be avoided with an early and full series return concept.</p> | Questionable | Questionable |
| <p><i>(b) in paragraph 6, the following point (c) is added:</i></p> <p><i>'(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</i></p> | - | - | - |

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| <i>remainder of the scheduling period and place them in the pool, after having heard the air carrier concerned.'.</i> | | | |
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