

## **EUACA Position paper on temporary exemption to the EU Slot Regulation use-it-or-lose-it rule for the Winter 2020-2021 season due to the COVID-19 pandemic aftermath**

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### **Introduction**

EUACA, the association of officially appointed European airport coordinators and schedule facilitators of the EU, UK, Norway, Switzerland and Iceland, actively supported the decision of the European Commission, the EU Council and the EU Parliament to amend the Slot regulation EU95/93 in order to grant a temporary exemption to the use-it-or-lose-it rule for the Summer season. The sudden decrease of passenger bookings linked to the COVID-19 outbreak in many countries of the World forced air carriers to cancel a significant number of flights on very congested airports either putting at risk the carriers “historic rights” or forcing them to operate “empty flights”.

EU Regulation 2020/459 was adopted in March 2020 and gives the possibility to the European Commission to prolong the temporary exemption beyond the Summer 2020 scheduling season (S20) by mean of Delegated Act.

This paper provides the EUACA Members’ advice concerning this possible extension of the use-it-or-lose-it rule exemption for the Winter 2020-2021 scheduling season (W20).

### **The purpose of the airport slots use-it-or-lose-it rule**

1. First and foremost, it is important to remind that the prime objective of airport coordination is to ensure the most efficient use of airport infrastructure in order to maximize benefits to the greatest number of airport users.
2. The rationale of “historic rights” is to give certainty to airlines which make significant investments with aircraft and crew to operate a route, that they can use the airport capacity for how long they are able or want to, and as long as they make good use of this airport capacity. If the airline is unable to

use the allocated slot, then historic rights should not be provided, and the slot should be allocated to other carriers.

3. The “use-it-or-lose-it rule” was introduced by the regulator in order to condition the so-called air carriers’ “grand-father” right to a requirement of properly using this scarce airport capacity. A threshold of 80% for the use of air carriers’ slot series was introduced. The regulator also acknowledged that some reasons could be considered as unforeseeable and beyond the air carrier’s control and justify the non-usage of its slots without losing its “historic rights”. Airport or airspace closure are for instance already covered.
4. Low bookings are not considered as one of these “Force Majeure” reasons. When the COVID-19 outbreak started, the airlines’ S20 schedules were already finalized and the date for the reference to evaluate the 80% usage requirement was past (Historic Baseline Deadline date on January 31<sup>st</sup>).
5. At some point, the conditions caused by the Covid-19 pandemic should not be considered as unforeseeable any longer. Any alleviation from the use-it-or-lose-it rule should therefore be time limited, in order to keep the objectives of the Slot Regulations to facilitate competition and encourage entrance into the market.

### Conditional waiver and timing for a decision:

6. EUACA members consider that the Aviation Industry is now in the recovery phase and the “surprise” phase is over. They also acknowledge that the current “waiver regulation” EU2020/459 as it stands only give the possibility of a Delegated Act to extend the same waiver for W20.
7. Nevertheless, EUACA members consider that such an unconditional “blanket waiver” for W20 could lead to inefficient use of airport infrastructure and therefore reduced benefits to airport users.
8. For the upcoming W20 season the uncertainty related to the COVID-19 situation is known. The purpose of any W20 waiver should not simply consist in freezing the competition level at an airport by protecting the air carriers’ slots portfolios even when they do not intend to operate their slots at all or cannot any longer operate them because they decided to permanently reduce their fleet and their staff.
9. Rather a waiver for W20 to the use-it-or-lose-it rule should only aim at helping carriers to keep their “historic rights” when they genuinely try to operate their series of slots at busy EU airports but unfortunately have to cancel more than the usually accepted 20% as a consequence of a lower passenger demand than originally expected linked to the COVID-19 uncertainties.
10. **EUACA therefore urges the regulators to consider a new amendment to the EU95/93 regulation in order to introduce for W20 a conditional exemption to the “use-it-or-lose-it rule”.**  
These conditions should in EUACA’s opinion be contained in the Regulation rather than issued separately and should aim at:

### Ensuring cancelled slots are realistically available for reallocation:

11. EUACA believes that airports, travelers and shippers value greater certainty of schedules. Airlines also have to plan in advance both for operational and commercial reasons. In general, airlines plan their schedules sufficiently far in advance of operations to ensure that they have crew and other resources scheduled and available and to sell tickets. Airline schedules are usually firm some weeks in advance

of operation. Conversely, an airline wishing to use slots which become available needs a period of time in which to organize its operations and to sell the flight or confirm availability of the flight to a customer.

12. In order to increase the chance of achieving the use of slots cancelled during the season and thus to serve the needs of travelers and shippers, there needs to be a reasonable period between airport slots cancellation and day of operation. Based on the statistics published by the EUACA on the anticipation of slots cancellations since the beginning of the COVID-19 crisis, EUACA believes that slots should be cancelled not less than 4 weeks before operation.
13. The international coordination process provides the possibility for air carriers that do not meet the slot series 80% usage target to justify their case with the coordinator within a specified deadline. Coordinators should then be entitled by the amendment to decide during that period and based on the carrier's justifications whether a specific cancellation made within 4 weeks before the operation should count against this minimum usage threshold.

## Discouraging intentional non-use of slots

14. EUACA would also like to highlight the potential problem of intentional non-use that needs to be addressed, for example in cases where an airline announces that it will cease services at an airport but continues to retain slots. In such cases, it may seek to transfer slots by means of secondary trading (where allowed) to another carrier rather than place the slots in the pool for reallocation. This would be against the principles of allocating slots in a neutral, transparent and non-discriminatory way.
15. Furthermore, it would be difficult for coordinators to consider upfront that an airline which decided to permanently reduce its fleet and its staff should not be allocated all its historic portfolio on a specific airport since the carrier may well decide to dedicate all its fleet to operate the concerned airport slots and rather not use the slots on a different airport. EUACA therefore consider that it is more appropriate for the coordinators to enforce for this purpose EU95/93 article 14.6 (b) and to withdraw during the season the slots from a series that is not being operated. But in such a case those withdrawn series should then not fall under the scope of the waiver (i.e. be considered as operated) in order to give a clear incentive to return the whole series in a timely manner.

## EUACA proposals for conditions to be included in a W20 “Waiver Regulation”

16. EUACA believes that such conditions should be as simple as possible and should be practical for coordinators to implement. EUACA members consider that the following conditions for a waiver would meet the aims set out above:
  - a. In order not to encourage airlines to apply for more slots for W20 than they really intend to use just to gain historic rights thanks to the waiver, only slots which were granted historic rights from W19 and were reallocated for W20 should be granted a waiver from non-use and be eligible to be granted historic rights at the end of the W20 season. Slots newly allocated and operated as a series may be considered for historic status only if they meet the 80% usage requirement and if their availability was not resulting from cancellations which can benefit from the waiver and/or the carrier concerned has also operated its equivalent slots which have historic rights.

- b. Airlines should cancel slots subject to the waiver which they do not intend to use as soon as is practical and not later than four weeks before the date of operation in order for that slot to be considered as operated. Coordinators shall be entitled to decide based on a carrier's justification whether a given cancellation made within this 4-weeks deadline should actually be considered as operated or not.
- c. If after an allotted time corresponding to 20 % of the period of the series validity no slots of that series of slots have been used and the slots have not been cancelled in accordance with the point 16(b) above, the coordinator should place the remainder for that season of the series of slots in question in the pool, after having heard the airline concerned. The entire series concerned should then not be eligible for historic rights for W21.
- d. With regard to airlines that cease their operation on an airport and still hold an operating license but do not return the slots they do not intend to operate or cannot operate any longer, the coordinator should be entitled to withdraw slots if such airlines do not cancel their slots completely within a reasonable period requested by the coordinator.
- e. Series of slots transferred from one airline to another by ways of secondary trading (where allowed) should be treated as newly allocated slots in line with the procedure in 16(a) above.
- f. The new EU95/93 amendment regulation should also address the situation where, as a consequence of new or reduced coordination parameters due to specific sanitary measures, airports might be unable to handle all historic slots which air carriers intend to operate. In such case, coordinators must be able to temporarily change the timing of historic slots in a non-discriminatory manner and based on transparent priority rules. The previous historic timing should then be "protected" for the next equivalent season.