Regulation (EU) 2020/696 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community in view of the COVID-19 pandemic (Text with EEA relevance)

REGULATION (EU) 2020/696 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 May 2020

amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community in view of the COVID-19 pandemic

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

After consulting the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) The COVID-19 pandemic has led to a sharp drop in air traffic as a result of a significant reduction in the demand for transport and the adoption by Member States and third countries of direct measures such as border closing and air traffic bans to contain the pandemic.

(2) Figures published by Eurocontrol, which is the network manager for the air traffic network functions of the single European sky, indicate a fall in air traffic of around 90 % for the European region at the end of March 2020, as compared to March 2019. Air carriers are reporting large reductions in forward bookings as a result of the COVID-19 pandemic, and are cancelling flights for the winter 2019–2020 and summer 2020 scheduling periods. The sudden drop in demand and the unprecedented rate of cancellations has led to severe liquidity problems for air carriers. Those liquidity problems are directly linked to the COVID-19 pandemic.

(3) Union air carriers, which were financially healthy before the COVID-19 pandemic, face liquidity problems that could trigger the suspension or revocation of their operating licence, or its replacement by a temporary licence, without there being a structural economic need for this to occur. The granting of a temporary licence pursuant to Article 9(1) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council[(2)]

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2020/696 of the European Parliament and of the Council. (See end of Document for details)*

could send a negative signal to the market about the ability of an air carrier to survive, which in turn would aggravate any, otherwise temporary, financial problems. On the basis of the assessment carried out over the period from 1 March 2020 to 31 December 2020, it is therefore appropriate, provided that safety is not at risk and that there is a realistic prospect of a satisfactory financial reconstruction within 12 months, that the operating licence of such air carriers is not suspended or revoked. At the end of this 12#month period, the Union air carrier should be subject to the procedure laid down in Article 9(1) of Regulation (EC) No 1008/2008. The obligation provided in Article 9(2) of Regulation (EC) No 1008/2008 to inform the Commission should also apply to decisions not to suspend or revoke the operating licence.

(4) In addition to emergency measures that could be applied in case of sudden problems of short duration, resulting from unforeseeable and unavoidable circumstances, pursuant to Article 21 of Regulation (EC) No 1008/2008, Member States should be able to refuse, limit or impose conditions on the exercise of traffic rights in order to deal with problems resulting from the COVID-19 pandemic, which could be of extended duration. Such emergency measures taken in the context of the COVID-19 pandemic should respect the principles of proportionality and transparency, and should be based on objective and non-discriminatory criteria that apply in accordance with Article 21 of Regulation (EC) No 1008/2008.

(5) In airports where the number of suppliers of groundhandling services is limited pursuant to Article 6(2) and Article 9 of Council Directive 96/67/EC[(3)], suppliers may be selected for a maximum period of seven years. Suppliers for which this period is coming to an end may, consequently, experience difficulties obtaining access to financing. That maximum period should therefore be extended.

(6) As a result of the COVID-19 pandemic, in airports where the number of suppliers of groundhandling services is limited, one or several suppliers might cease to provide their services at a given airport before a new supplier can be selected on the basis of the procedure laid down in Article 11(1) of Directive 96/67/EC. In such circumstances, it is appropriate for the managing body of the airport to be able to choose a groundhandling service provider directly to provide the services for a maximum period of six months. It should be recalled that, where the managing body of the airport needs to procure groundhandling services as a result of the COVID-19 pandemic and is a contracting entity within the meaning of Article 4 of Directive 2014/25/EU of the European Parliament and of the Council[(4)], that Directive applies.

(7) Satisfactory financial reconstruction should be carried out with a plan which aims to prevent lay-offs and with guarantees that financial reconstruction will not be detrimental to workers' rights. The extension of authorisations for suppliers of ground handling services should aim to preserve jobs and workers' rights.

(8) The further development of the COVID-19 pandemic and its impact on the air transport sector are difficult to predict. The Commission should continuously analyse the impact of the COVID-19 pandemic on the air transport sector and, if the adverse conditions persist, the Union should be in a position without undue delay to prolong the period during which the measures envisaged by this Regulation apply.

(9) In order to extend, where necessary and justified, the period during which the competent licensing authorities may decide not to suspend or revoke the operating licences, the period during which Member States may refuse, limit or impose conditions on the exercise of traffic rights, and the period during which contracts of suppliers of groundhandling services may be prolonged and during which the managing body of an airport may choose a supplier of groundhandling services directly, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amending Regulation (EC) No 1008/2008. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(5)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(10) In view of the urgency entailed by the exceptional circumstances caused by the COVID-19 pandemic justifying the proposed measures, and more particularly in order to adopt the necessary measures quickly so as to address the severe and immediate problems faced by the sector, it was considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the Union, annexed to the Treaty on European Union (TEU), to the TFEU and the Treaty establishing the European Atomic Energy Community.

(11) Since the objective of this Regulation, namely to amend Regulation (EC) No 1008/2008 in view of the COVID-19 pandemic, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale or effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(12) The unforeseeable and sudden outbreak of COVID-19 and the legislative procedures required for the adoption of relevant measures meant that it was impossible to adopt such measures in time. For that reason, the provisions of this Regulation should also cover a period before its entry into force. Given the nature of those provisions, such an approach does not result in a violation of the legitimate expectations of the persons concerned.

(13) Regulation (EC) No 1008/2008 should therefore be amended accordingly.

(14) In view of the urgency entailed by the exceptional circumstances justifying the measures established, 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*,

HAVE ADOPTED THIS REGULATION:

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2020/696 of the European Parliament and of the Council. (See end of Document for details)*

Article 1

Regulation (EC) No 1008/2008 is amended as follows:

(1) in Article 1, paragraph 1 is replaced by the following:

1. This Regulation regulates the licensing of Community air carriers, the right of Community air carriers to operate intra-Community air services and the pricing of intra-Community air services. It also lays down temporary rules on the supply of groundhandling services at Union airports.;

(2) in Article 9, the following paragraphs are inserted:

1a. Based on the assessments referred to in paragraph 1 carried out from 1 March 2020 until 31 December 2020, the competent licensing authority may decide before the end of that period not to suspend or revoke the operating licence of the Union air carrier provided that safety is not at risk, and that there is a realistic prospect of a satisfactory financial reconstruction within the following 12 months. It shall review the performance of this Union air carrier at the end of the 12-month period and decide whether the operating licence shall be suspended or revoked and a temporary licence shall be granted on the basis of paragraph 1.

1b 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 is likely to persist, and also finds, on the basis of the best available scientific data, such as data from the European Centre for Disease Prevention and Control, that this situation is the result of the impact of the COVID-19 pandemic, the Commission shall adopt delegated acts in accordance with Article 25a to amend this Regulation by extending the period of 1 March 2020 to 31 December 2020 referred to in paragraph 1a of this Article accordingly.

1c The Commission shall continuously monitor the situation using the criteria set out in paragraph 1b. Based on the information available to it, the Commission shall present a summary report on this matter to the European Parliament and to the Council by 15 November 2020. Where the criteria referred to in paragraph 1b are fulfilled, the Commission shall adopt the delegated act provided for in paragraph 1b as soon as possible.

1d Where, in the case of a prolonged impact of the COVID-19 pandemic on the air transport sector in the Union, imperative grounds of urgency so require, the procedure provided for in Article 25b shall apply to delegated acts adopted pursuant to this Article.;

(3) the following Article is inserted:

Article 21a

Emergency measures linked to the COVID-19 pandemic

1 Notwithstanding Article 21, for the period from 1 March 2020 until 31 December 2020, Member States may, without the agreement of the Commission referred to in Article 21(1), refuse, limit or impose conditions on the exercise of traffic rights if this action is necessary in order to address the COVID-19 pandemic. Such