Regulation (EU) 2020/459 of the European Parliament and of the Council of 30 March 2020 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports (Text with EEA relevance)

REGULATION (EU) 2020/459 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 March 2020

amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports

(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 outbreak of COVID-19 has led to a sharp drop in air traffic as a result of a significant fall in demand and direct measures taken by the Member States as well as third countries to contain the outbreak. The consequent serious impact on air carriers set in as early as January 2020 in respect of the People's Republic of China and Hong Kong Special Administrative Region of the People's Republic of China, has been pervasive since 1 March 2020, and is likely to affect at least two scheduling periods, those of winter 2019/2020 and summer 2020.

(2) Those circumstances are beyond the control of air carriers and the consequent voluntary or obligatory cancellation of air services by air carriers is a necessary or legitimate response to those circumstances. In particular, voluntary cancellations protect the financial health of air carriers and avoid the negative environmental impact of empty or largely-empty flights operated only for the purpose of maintaining underlying airport slots.

(3) Figures published by Eurocontrol, which is the network manager for the air traffic network functions of the single European sky, indicate a year-on-year fall of approximately 10 % in air traffic for the European region in the first half of March 2020. Air carriers are reporting large falls in forward bookings and are implementing

significant cancellations of flights into the 'winter 2019/2020' and 'summer 2020' scheduling periods as a result of the outbreak.

(4) Under Article 8(2) of Council Regulation (EEC) No 95/93[(2)], read in conjunction with Article 10(2) thereof, the failure by an air carrier to operate at least 80 % of a series of slots which it has been allocated at a coordinated airport threatens the historical precedence for these slots.

(5) Article 10(4) of Regulation (EEC) No 95/93 allows slot coordinators to disregard, for the purpose of calculating historical precedence, the non-operation of airport slots for periods during which the air carrier is unable to operate the planned air services due to, for example, airport closures. However, that Article does not address situations like the outbreak of COVID-19. It is therefore appropriate to amend Regulation (EEC) No 95/93 accordingly.

(6) In light of known forward bookings and epidemiological forecasts, it can reasonably be expected at this stage that a significant number of cancellations attributable to the outbreak of COVID-19 will occur over the period between 1 March 2020 and at least 24 October 2020. The non-utilisation of slots allocated for this period should not lead to air carriers losing the historical precedence that they would otherwise enjoy. It is therefore necessary to define the conditions under which non-operated slots should be considered as having been operated for those purposes, in respect of the corresponding following season.

(7) Slots at coordinated airports are a valuable economic resource. Despite the general fall in air traffic, the cancellation of air services should, however, not prevent the use of airport slots by other air carriers which may wish to use them on a temporary basis without such slots accruing grandfather rights. Therefore, when they are not used by the air carrier to which they were allocated, slots should be returned to the coordinator without delay.

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

(9) Since the objective of this Regulation, namely to consider slots unused due to the outbreak of COVID-19 as having been operated, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

(10) In order to extend, if necessary and justified, the measures set out in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of prolonging the period during which the measures envisaged by this Regulation apply. It is of

particular importance that the Commission carry 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[(3)]. 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.

(11) In view of the urgency entailed by the exceptional circumstances caused by the outbreak of COVID-19, 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 European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(12) This Regulation should enter into force as a matter of urgency on the date following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 95/93 is amended as follows:

(1) Article 10a is replaced by the following:

Article 10a

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

2 For the purposes of Articles 8(2) and 10(2), coordinators shall consider slots allocated for the period from 23 January 2020 until 29 February 2020 as having been operated by the air carrier to which they were initially allocated, as regards air services between airports in the Union and airports either in the People's Republic of China or in the Hong Kong Special Administrative Region of the People's Republic of China.

3 In respect of slots with a date later than 8 April 2020, paragraph 1 shall only apply where the relevant unused slots have been made available to the coordinator for reallocation to other air carriers.

4 Where the Commission finds, on the basis of figures 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 the previous year is persisting and 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 outbreak of COVID-19, the Commission shall adopt delegated acts in accordance with Article 12a to amend the period specified in paragraph 1 accordingly.

5 The Commission shall continuously monitor the situation using the criteria set out in paragraph 4. 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