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Slot relief measures in light of the COVID-19 pandemic

Accompanying the

**Proposal for a Regulation of the European Parliament and of the European Council
amending Council Regulation (EEC) No 95/93 as regards temporary relief from the slot
utilisation rules at Community airports due to the COVID-19 pandemic**

{COM(2020) 818 final}

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This analytical document describes the challenges associated with full application of the ‘use-it-or-lose-it’ rule under Regulation (EEC) 95/93 on common rules for the allocation of slots at Community airports. It proposes ways to overcome these challenges and anticipates the likely consequences of taking the proposed way forward. Given the urgency of the matter, this document does not constitute an impact assessment under the Better Regulation rules.

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

The Slot Regulation¹ establishes a mechanism for allocating capacity (slots) at congested airports in a non-discriminatory and transparent manner.

The Regulation defines a slot as permission to use the full range of airport infrastructure necessary to operate an air service at a congested airport on a specific date and time, for the purpose of landing or take-off. When airlines request a slot on the same day of the week and time of the day for at least five weeks, the slots constitute a ‘series’. Air carriers must use at least 80% of a slot series allocated to them and then they are entitled to the same series the next equivalent season. This is known as ‘grandfathering’ slots or obtaining ‘historic’ rights to use them. The rule requiring airlines to use at least 80% of their slot series is called the ‘use-it-or-lose-it’ rule or the 80/20 rule.

Slots are essential for airlines at congested or coordinated airports. The Regulation defines ‘coordinated’ airports as those where demand exceeds capacity. Without a slot, airlines cannot operate to or from those airports. The number of slots at those airports is limited and therefore demand exceeds capacity, which creates entry barriers. To ensure that the aviation sector remains competitive, with benefits for EU consumers, it is therefore important that slots are allocated in a non-discriminatory manner to the airlines that make the best use of them. The provisions of the Slot Regulation aim to strike a balance between giving airlines the stability they need to run their operations (grandfathering rule) and ensuring slots are made available to competitors and/or new entrants if they are not used (use-it-or-lose-it rule).

Since the beginning of 2020, the COVID-19 pandemic has had a profound negative impact on air transport in Europe and worldwide. In June 2020, IATA announced that it expected airlines to suffer an unprecedented net loss of approximately EUR 71.2 billion (USD 83.4 billion) (3.2% net margin) in 2020.² The resulting public health protection measures and travel restrictions brought in by EU Member States and non-EU countries in response to the pandemic have heavily depressed consumer demand and confidence, which in turn has led to a record and enduring reduction in air traffic in the European Union.³ The number of flights operated in European airspace fell by up to 90% in March-April 2020 compared to the same period in 2019.⁴ Europe’s airports handled over 5

¹ Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, OJ L 14, 22.1.1993, p. 1.

² Economic Performance of the Airline Industry – Jun 2020.

³ The World Health Organisation declared it a “Public Health Emergency of International Concern” on 30 January and a pandemic on 11 March [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)) and <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

⁴ <https://www.eurocontrol.int/sites/default/files/2020-04/draft-performance-review-report-prr2019.pdf>; Cargo traffic also plummeted: IATA reported a 27.7% decrease in global cargo tonne kilometres between April 2019 and April 2020 (Alan Dron, Aviation Daily, 4 June 2020).

million passengers on 1 March 2020 but by 31 March, the volume fell to just 174 000 (down - 97.1% compared to the same day in 2019).

It quickly became apparent that airlines could not be expected to continue business as usual. As a response, on 30 March 2020, the EU adopted Regulation (EU) 2020/459 (Slot Waiver) amending the Slot Regulation to suspend the application of the use-it-or-lose-it rule until the end of the 2020 summer season, which runs until 24 October 2020. The aim of waiving the slot usage requirement was to allow airlines to make more financially sound decisions on which flights to operate and avoid the negative environmental impact of operating empty or largely empty flights only in order to maintain their airport slots. The amendment also enabled the Commission to extend the duration of the slot waiver by way of one or more delegated acts. This delegation of power ends on 2 April 2021.

The Commission is obliged under Regulation 2020/459 to monitor the traffic and COVID-19 situation to determine whether traffic has decreased due to the COVID-19 crisis and to issue a report by 15 September 2020. The Commission adopted this report on 14 September 2020⁵. Based on data in the report, the Commission adopted a delegated act extending the slot waiver under Article 10a(4) of the Slot Regulation until the end of the winter 2020/2021 scheduling season, i.e. until 27 March 2021⁶. The Commission report also described a number of shortcomings of the current slot waiver that warrant reflection on the next policy steps. Some of these shortcomings were also raised by major European airline, airport and slot-coordination associations in their joint agreement on 7 August 2020 on best practices for implementing the slot waiver over the winter 2020/2021 season.

Industry agreement between A4E, IATA, AIRE, ACI Europe, and EUACA on conditions that should be applied to an extension of a slot waiver to the full NW2020 season⁷

- The waiver extension should apply to series of slots held on 31 August 2020 (the historic baseline date⁸).
- The waiver should not apply to series of slots newly allocated from the pool for the NW20⁹ season. Slots newly allocated from the pool for the NW20 season, which an airline does not intend to use should be handed back prior to the historic baseline date.
- The waiver will not apply to series of slots of an airline that permanently ceases operations at an airport¹⁰. An airline that ceases operations at an airport must immediately return all the slots allocated to it for the remainder of the season and for the next season (if already allocated) and advise the coordinator whether or not it will use the slots in the future. If an airline fails to provide necessary information on its plans for a certain airport by a

⁵ COM(2020) 558 final.

⁶ Commission Delegated Regulation (EU) 2020/1477 of 14 October 2020 amending Council Regulation (EEC) No 95/93 as regards the temporary extension of exceptional measures to address the consequences caused by the COVID-19 pandemic, OJ L 338, 15.10.2020, p. 4.

⁷<https://www.euaca.org/up/files/NW20%20EU%20Slot%20Waiver%20-%20Common%20proposal%20airlines%20-%20airports%20-%20slots%20coordinators.pdf>.

⁸ The historic baseline date is the final date for airlines to confirm which slots they keep for the next scheduling season. As of this date, the use-it-or-lose-it rule applies.

⁹ NW20 denotes the northern winter 2020/2021 scheduling season.

¹⁰ According to the agreement, an airline with no intention of operating in NW21 following non-use of those slots in the NW20 period.

reasonable deadline date set by the coordinator, then the coordinator may withdraw and reallocate the slots after having heard the airline concerned.

- Where an airline does not intend to utilize slots, the series or part of a series, should be returned as soon as plans are known to allow reallocation. Where substantial changes to schedules are known, the airline should inform the airport and the coordinator of its intentions as soon as the waiver is granted and update the slots that have been allocated accordingly.
- An airline which suspends its operations at an airport should immediately return the slots allocated to it for the winter 2020/2021 scheduling season to the slot pool for reallocation.
- Airlines must hand back slots not intended for utilization as soon as possible, but not later than three weeks prior to planned operation for these slots to be considered as operated in the context of the waiver.
- Consideration for alleviation should be given to slots that are returned less than three weeks before operation should circumstances be outside the airline's control and related to the crisis. Requests for alleviation on this basis should be submitted to coordinators as promptly as possible for the coordinator to consider.
- Slots newly allocated and operated as a series may be considered for historic status only if they meet the 80% usage requirement. In the event of newly allocated slots being within the same capacity relevant time/period where the same carrier has been given alleviation against historic slots, that historic status will only be given to newly allocated slots where historic slots from W20 SHL within the same capacity relevant time/period have also met the 80% usage requirement.

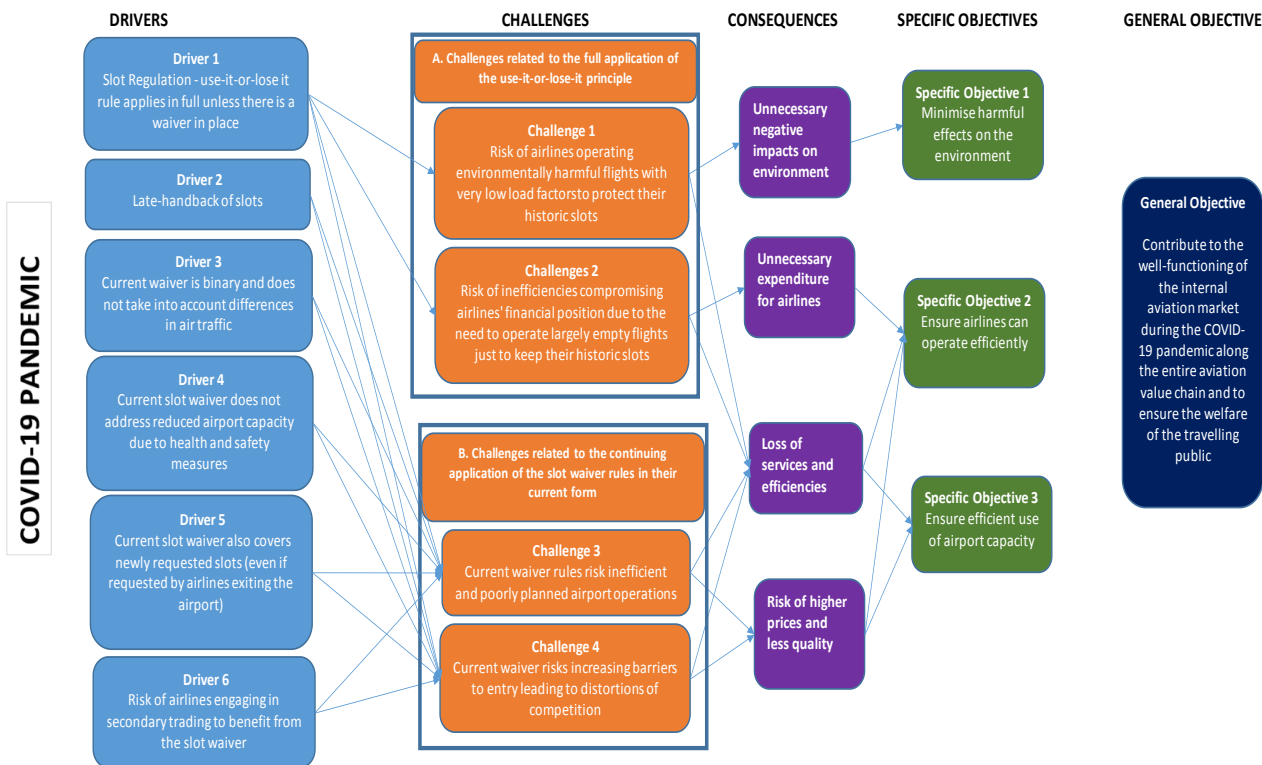
This staff working analytical document accompanies the Commission proposal to amend the Slot Regulation. It sets out the consequences and challenges of applying the use-it-or-lose-it rule during the COVID-19 pandemic, provides information on the operation of the slot waiver since its entry into force and describes the shortcomings and challenges that have emerged in the aviation market. In addition, it discusses phasing out the waiver, linked to the gradual return of air traffic. It presents a way forward to overcome the challenges identified and describes the likely consequences of the proposed action on the market.

Due to the need to act quickly, and since the measures to provide further relief from the slot rules during the COVID-19 pandemic will be temporary, no impact assessment was carried out. However, the Commission has been in close contact with the main stakeholder groups, in particular airlines, airports and slot coordinators, to monitor implementation of the slot waiver adopted in March 2020. It published a roadmap for feedback and ran a public consultation from 1 September until 28 September 2020. The Commission received 18 replies to the roadmap, 71 replies to the public consultation (from 47 airlines, 9 airports, 8 slot coordinators and 7 other), and 42 replies to the targeted consultation (from 17 airlines, 13 airports and 12 slot coordinators). This working document draws on the information provided in response to the consultation, available air traffic data (Eurocontrol), market monitoring and experience to present the Commission's findings.

2. CHALLENGES

The challenges below are grouped under two headings: (A) challenges related to full application of the use-it-or-lose-it rule during the COVID-19 pandemic and (B) challenges with the current slot waiver.

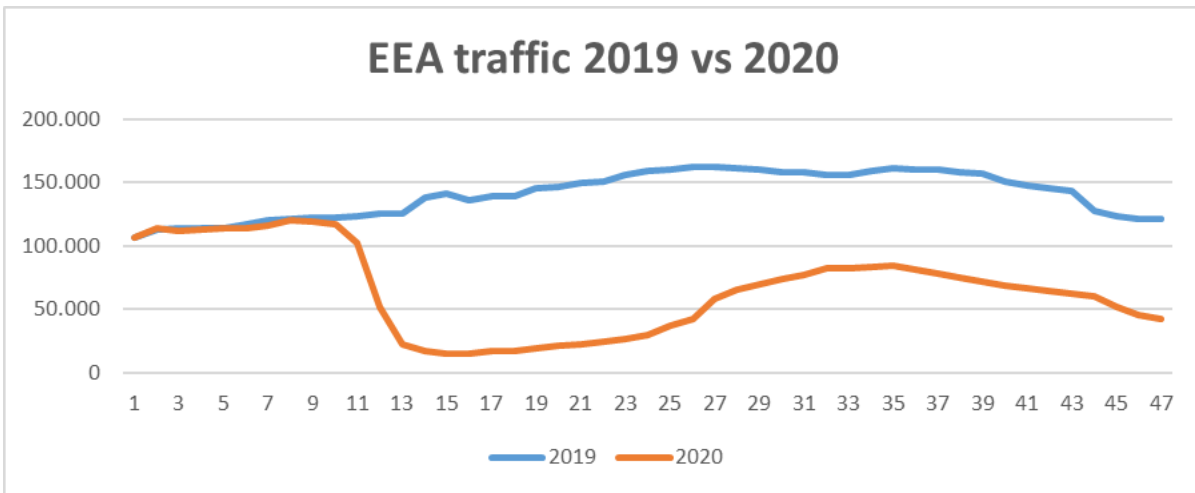
Figure 2.1 Intervention logic



A. Challenges related to full application of the use-it-or-lose-it principle

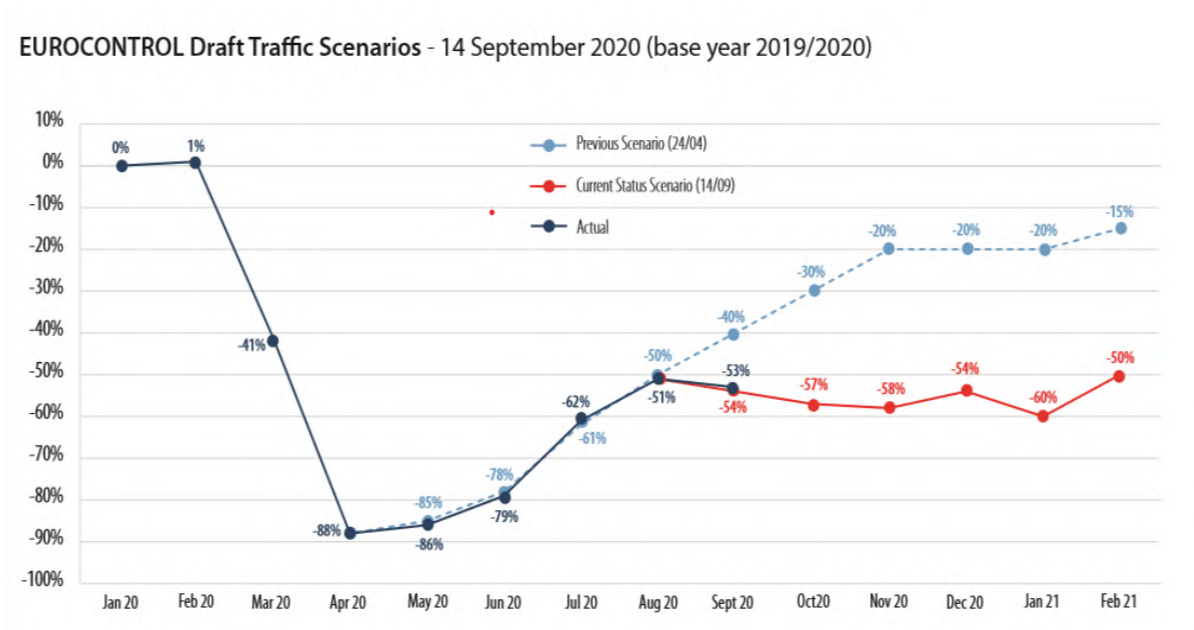
The volume of air traffic in autumn 2020 remains at historically low levels. The period of severely depressed demand for air transport is lasting longer than previous crises affecting air traffic levels. Although April to August 2020 saw a steady increase, air traffic in Europe was still down 47% in August, year-on-year. The new restrictions brought in by Member States amid a resurgence in the pandemic since August 2020 resulted in the slow recovery stalling, with traffic once again falling below 50% of pre-pandemic levels. In week 47 (starting 16 November 2020) air traffic levels were down 65% compared to the same week in 2019.

Figure 2. 2 Number of flights in a given week of 2020 compared to 2019 (source: Eurocontrol)



The timing and strength of the recovery for the aviation sector is uncertain. It will depend, among other factors, on the success of the response to the COVID-19 pandemic, on changes to restrictions on air transport and on the degree of passenger confidence, both in terms of air travel as a safe mode of travel, and in the economy. The economy will affect business travel in particular. Air traffic will not recover to the 2019 levels before the end of the winter 2020/2021 scheduling period. Eurocontrol’s forecast of 14 September 2020 predicts that by February 2021, traffic will still be 50% lower than it was in February 2020¹¹, worse than a previous forecast that estimated only a 15% decrease in February 2021.

Figure 2. 3 Eurocontrol draft traffic scenarios (source: Eurocontrol)

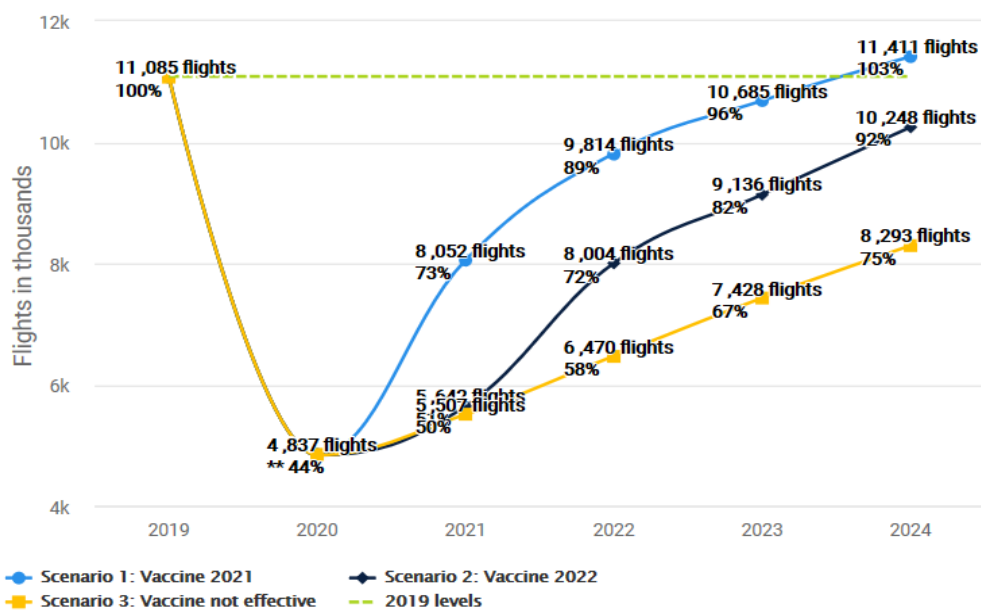


A more recent Eurocontrol forecast of 4 November 2020 spans several years and shows scenarios.

Figure 2. 4 Eurocontrol draft traffic scenarios (source: Eurocontrol)

¹¹ For the purposes of year-on-year comparisons, February 2020 is the last month for which air traffic in Europe was largely unaffected by the COVID-19 crisis. For this reason, comparisons beyond March 2021 would need to be made in reference to March 2019 in order to gauge the impact of COVID-19 on air traffic.

Forecast for *Europe 2020-2024 Actual and % change compared to 2019



EUROCONTROL STATFOR 2020

*Europe = ECAC 44 Member States

Given the actual and the forecast level of air traffic linked to COVID-19¹², the Commission extended the period of application of the slot waiver until the end of the winter 2020/2021 scheduling season (i.e. 27 March 2021) by issuing a delegated act on 14 October 2020.

Looking ahead to after the winter 2020/2021 scheduling season, the industry (IATA and ACI Europe) predicts that the sector will need at least until 2024/25 to recover to 2019 levels. However, despite such forecasts there is no Eurocontrol or scientific data available for the Commission to extend the slot waiver to cover this timeframe by the time the Commission's delegated power to extend the slot waiver expires on 2 April 2021. This is because more robust actual traffic data would be necessary to extend the waiver, rather than forecasts spanning several years. Once the Commission's delegated power ends on 2 April 2021, it will not be able to react quickly to extend the waiver beyond what is justified by the data available at that time.

Challenge 1: Risk of some airlines operating environmentally harmful flights at very low load factors to protect their historic slots

Airport slots are essential, valuable assets for airlines, particularly slots at heavily congested hubs. Despite the heavily depressed demand, and if no relief protects airlines' historic rights over slots, air carriers may operate empty or largely empty planes just to maintain their slot portfolio. Such flights, flown predominantly to avoid the consequences of the use-it-or-lose-it principle, would generate unnecessary and avoidable emissions of carbon dioxide and other pollutants. The data submitted to the Commission indicates that, in the early weeks of the pandemic and before the slot waiver was granted, airlines continued to operate flights despite the load factor dropping from 80% to 38%

¹² Paragraph 4 of Article 10a of the Slot regulation states: 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 COVID-19 pandemic, the Commission shall adopt delegated acts in accordance with Article 12a to amend the period specified in paragraph 1 accordingly.

(weeks 9-13 of 2020)¹³. Many flights were only cancelled after the waiver had been put in place and airlines had legal certainty regarding their historic rights in slots.

Stakeholder views. 63 out of 70 respondents to the public consultation (including IATA and the vast majority of airlines) replied that EU action is necessary to avoid negative environmental impacts of operating empty or largely empty flights for the sole purpose of maintaining their airport slots. As a result, IATA estimates 27 million additional tonnes of carbon dioxide could be avoided by extending the waiver to cover the winter 2020/2021 scheduling season. However, two stakeholders (one airline and one consumer organisation) questioned whether airlines would be in a financial position to operate empty or largely empty flights.

Challenge 2: Risk of inefficiencies compromising airlines' financial position due to the need for airlines to operate largely empty flights solely to maintain their historic slots

Slots are essential to operate to/from congested airports and important for air carriers to maintain their networks. Large hub carriers such as Lufthansa, Air France/KLM, Iberia, LOT Polish airlines to name a few have taken years to develop their networks and acquire slots for intra-European, intra-continental and feeder traffic. Losing these slots or significantly reducing their network could interfere with these airlines' business models of providing inter-continental services. The same applies to other airline business models where an airline has worked for years to build a significant market presence at specific congested airports.

In addition, interference with airlines' slots is highly contested due to the impact slots at congested airports have on the airline company's value as a result of the business opportunity these slots represent. Financial compensation for slot exchanges can be significant, even though only the UK has a transparent market for slots¹⁴. Other ways in which air carriers monetise their slots, which gives an indication of their value, is to declare them as intangible assets on their balance sheets¹⁵. Slots are also used as securities¹⁶ against loans.

Since slots are essential to maintain air carriers' networks and are an asset with intrinsic economic value, airlines have a high incentive to operate their slots, even with low demand. It is therefore reasonable to assume that airlines will try to maintain their slot portfolio despite high operating costs.

Given the persistent, heavily suppressed demand due to COVID-19, airlines' operational costs are not offset by revenue from the sale of tickets and cargo services¹⁷. The financial strain that airlines

¹³ Data gathered for Commission's summary report pursuant to paragraph 4 or Article 10a of Regulation 2020/459 of 14 September 2020, COM(2020) 558 final.

¹⁴ For example, one of the most expensive publically known deals reported in the media was the exchange in 2016 of a pair of slots at London Heathrow airport between Oman Air and Air France-KLM. The deal included financial compensation of US\$75 million from Oman Air. <https://simpleflying.com/inside-airport-slots/>

¹⁵ For example, the 2018 financial report for Lufthansa indicates slots as intangible assets at a value of EUR 112 million, and Ryanair's 2019 annual report indicates slots valued at EUR 146.4 million.

¹⁶ In 2015, Virgin Atlantic used its Heathrow slots to raise £220m. In September 2019, Norwegian successfully used its slot portfolio at Gatwick airport as part of an exchange package to delay repayment of unsecured bonds. Norwegian stated that the value of its Gatwick slot portfolio exceeded the US\$ 380m nominal value of the bonds.

¹⁷ In early October 2020, the IATA warned that the world's airlines were haemorrhaging cash at a rate of around \$300,000 per minute or \$13 billion per month, which could force large swathes of the industry into bankruptcy within months.

are under is evident from the high number of requests received for State aid¹⁸. Three airlines have already gone bankrupt since the beginning of the pandemic (Flybe, Level Europe, and German airways) and, according to IATA, more will follow¹⁹. In this context, full application of the use-it-or-lose-it principle may be an additional financial factor jeopardising the financial fitness of some airlines, to the detriment of their employees (risk of permanent job loss), passengers (less choice) and connectivity (permanently closed routes).

Stakeholder views. In its submission to the public consultation, IATA estimated that, in the absence of a waiver, global airlines could incur additional operating costs of EUR 10.6 billion (USD 12.6 billion) over the winter 2020/2021 season by operating flights they would not have otherwise operated. In this context and with lower passenger demand, revenue would be negligible and airlines would quickly burn through any government aid they received. By contrast, as for challenge 1, 2 some stakeholders argued that airlines would not be in a financial position to operate inefficient flights.

B. Challenges related to the application of the current slot waiver rules

Challenge 3: There is a risk that the current waiver rules lead to inefficient and poorly planned airport operations.

The current waiver suspending the application of the use-it-or-lose-it rule until 24 October 2020 has brought in inefficiencies and contributed to poor planning of airport operations.

In the short term, due to the late hand-back of slots (driver 2), airports, airport service providers and competing airlines cannot always plan operations in an effective and efficient way. Regulation (EU) 2020/459 states that, to benefit from the waiver, airlines must hand back the unused slots to the pool *without delay*. The aim is to make unused slots available to other operators who may be able to use them. With airlines not always handing back slots sufficiently in advance, other operators do not have sufficient visibility on which slots are available to determine whether they can set up operations. The consultation revealed that there is demand for these slots. Out of the 20 airlines that responded to specific questions on whether they have made use of the slots handed back to the pool, 15 stated that they had, either to operate new services or to obtain better/different timings. At the beginning of the pandemic, especially cargo operations made use of these slots, particularly important in the context of this crisis for the transport of essential goods, medicines and medical equipment. Cargo operations are more flexible than passenger operations and all-cargo operations can be set up faster than passenger operations²⁰. Several airlines were able to operate new routes due to the slots that became available. Amidst an increase in demand in the leisure traffic segment over the summer season, at least three carriers used new slots to holiday destination routes, for example, to the Greek islands, Italy and Spain.

Under the current rules, the slot waiver operates on a binary basis (driver 1). It can be either extended in full, therefore completely suspending the use-it-or-lose-it principle, or it can be removed and the principle will start reapplying in full (with the potentially detrimental

¹⁸ The Commission has received over 10 notifications from Member State since bringing in the temporary framework for State aid measures to support the economy during the COVID-19 outbreak. The purpose of the notifications was to seek approval of rescue packages for airlines.

¹⁹ <https://www.flightglobal.com/airlines/iata-warns-of-imminent-airline-bankruptcies/140493.article>

²⁰ One cargo association pointed out that this applies to all-cargo operations, except to those where cargo was planned to be carried in the belly of passenger flights.

consequences given the feeble recovery of air traffic levels). This risks that airlines are over-protected in relation to their slot portfolios, able to not use their slots without any consequences, and thus preventing other airlines from using them (link to challenge 4 and driver 4). This in turn prevents airports, ground-handling companies and competing airlines from optimising their operations and from making longer-term plans. This jeopardises their finances and staffing situation. This lack of efficiency can in turn be detrimental to consumers (uncertain flight schedules, higher prices and reduced connectivity).

Stakeholder views. The agreement reached by the industry (airlines, airports and slot coordinators), which aims to ensure the efficient use of airport capacity, shows that the stakeholders recognise the identified challenge (although they differ in terms of the drivers). However, in reply to the public consultation, although airline stakeholders recognised the problem did exist in the first place, they considered it sufficiently addressed by the industry-led agreement. However, airports and slot coordinators pointed out that the agreement is not legally enforceable under the Slot Regulation. Not all slot coordinators consider they have a legal basis to enforce the condition, which may lead to distortions in competition.

The airports that provided feedback to the Commission argued that the closer to the planned date of operations slots are returned, the more difficult and costly it is for them to plan their operations. Airports Council International Europe (ACI Europe)²¹ pointed out during the consultation that airports are not sufficiently informed of airlines' planned operations, cancellations or the slots handed back. Planning involves considerations about staff, including bringing staff out of furlough, opening infrastructure and related services (e.g. security equipment and staff, terminal capacity, air bridge operations, cleaning staff, electricity, IT systems). Unexpected lower traffic volumes due to a lack of adequate planning will result in unnecessary costs for airports, while higher traffic volumes at short notice may result in understaffing, bottlenecks and difficulty in planning social distancing and sanitary measures. Both outcomes result in significant costs and/or airports missing business opportunities.

Airlines represented by IATA²² stated that passenger booking behaviour has changed, and passenger decisions on whether to buy a flight ticket are made only a few weeks or days in advance of the scheduled flight²³. Airlines also pointed out the lack of predictability of external conditions and requirements such as government restrictions, which determine whether flights can be operated or not, making it difficult for airlines to offer certain schedules long in advance.

The industry agreement, settling on a three-week deadline for handing back slots in advance of their intended date of operations represents a compromise of a large number of stakeholders on this agreement.

Challenge 4: Current waiver risks increasing barriers to entry leading to distortions of competition.

The waiver currently applies to all slots allocated to airlines. This means that if airlines request more slots than they have grandfather rights in, they will manage to increase their presence at an airport without necessarily using the slots. This blocks airport capacity and makes new entry of airlines more difficult. The Commission asked slot coordinators to submit data on (i) the number of

²¹ As well as Royal Schiphol Group, Fraport, VINCI, and Gatwick.

²² IATA's reply to the consultation.

²³ IATA stated in its response to the public consultation that 41% of travellers buy tickets zero to three days in advance of travel.

historic slots airlines are entitled to, (ii) how many slots they requested, (iii) how many slots were received, and (iv) how many slots were handed back before the historic baseline date²⁴ for the winter 2019/2020 and winter 2020/2021 season. The Commission received data from 12 coordinators²⁵ for 63 coordinated airports. The data submitted shows that many airlines asked for more than their historic slots at all airports and received more than their historic rights at most of them. Airlines²⁶ stated that this is not a sign of ‘gaming’ the system with the awareness that the waiver may be extended. Airlines explained that any increased slot requests are partly a function of normal activities during the slot coordination process, in which airlines make the most requests at the initial submission in May 2020. They are then reduced by the slot return deadline²⁷ in mid-August and the historic baseline date²⁸ at the end of August, as schedules are refined and finalised. It is also partly a response made at the own commercial risk of airlines in market circumstances of continued uncertainty. In this context, these commercial decisions cannot be considered as speculative.

Indeed, the data of slot coordinators shows that airlines typically request more slots than they have historic rights in (data submitted for the winter 2019/2020 and summer 2020 season, for which slots were allocated before the outbreak of COVID-19 in the EU). Many airlines also handed back a substantial number of slots by the historic baseline date. There are also airlines that requested fewer than the number of historic slots to which they are entitled.

However, the data also shows that a number of airlines received more slots than they had historic rights in and did not hand back any or very few by the historic baseline date. For example, at one airport, an airline gained 4 257 additional slots. With the current waiver, all these slots will be counted as having been operated and the airline will be entitled to them in the winter 2021/2022 season. At this airport, 15.5% of total slots will be grandfathered in this way. This is especially problematic where airlines had announced that they did not intend to operate the slots or cannot any longer operate them due to a decision to permanently reduce the fleet and staff.

In the replies to the Commission’s targeted consultation, respondents reported that at least 15 air carriers had announced the reduction of their schedules by around 50% over the first months of the winter season. This reduction is not always reflected in the number of slots these airlines maintain at airports after the historic baseline date.

Whether this is due to a commercial strategy to circumvent the slot allocation system or due to the complexity of schedule planning, the result is the same: airlines can increase their market share through these means to the detriment of new entrants. This should be avoided, also in the interest of providing consumer choice and maintaining connectivity.

Stakeholder views: Similarly to challenge 3, airline stakeholders recognised the problem in the first place but considered that it is sufficiently addressed by the industry-led agreement with the condition to exclude newly allocated slots to which a carrier was not entitled due to grandfather rights before, from the application of the waiver. Some airports and slot coordinators stated that the agreement is not legally enforceable under the Slot Regulation.

²⁴ Date as of which the use-it-or-lose-it rule start to apply. Any slot series held at this date must be used 80% or will be lost, unless an exception applies.

²⁵ AT, CH, DE, EL, ES, FR, HU, IT, NL, PL, PT, UK.

²⁶ IATA, EasyJet, Lufthansa, British Airways.

²⁷ Date by when airlines should hand back the slots they will not be using in the next scheduling season.

²⁸ Date as of which the use-it-or-lose-it rule start to apply. Any slot series held at this date must be used 80% or will be lost, unless an exception applies.

Airports represented by the ACI and slot coordinators also pointed out that some slots have been blocked by airlines that have permanently ceased operations at an airport.

C. Specific concerns identified by stakeholders during the public consultation

- Changes to the status of coordinated airports:

The Member State expert group meeting on the extension of the delegated act, which was adopted on 14 October 2020, discussed whether the coordination status of airports should be changed.

Due to the current lack of demand for air traffic, it could be argued that airports should change their status from coordinated to schedule-facilitated. However, this would lead to the drastic consequence of terminating all historic rights. Under Article 3(3) of the Slots Regulation, a Member State must ensure that the capacity analysis at a coordinated airport is updated “*when there are changes at the airport influencing significantly its capacity and capacity usage*”. Moreover, Article 3(7) states that “*when a capacity sufficient to meet actual or planned operations is provided at a coordinated airport, its designation as a fully coordinated airport shall be lifted*”. There is little precedent for airports having their designation changed from coordinated to schedule-facilitated or non-coordinated as a result of changes in demand. Changes to airport designation have typically, occurred due to new capacity becoming available. The effect of removing the coordination status of an airport would be to ‘reset’ the allocation of airport capacity among airlines. Under this scenario, initially capacity would be allocated on the basis of real utilisation requests as expressed by airlines rather than previously grandfathered slots.

IATA raised another issue regarding changes to airport designation. Changes could be made where capacity restrictions at schedule-facilitated airports suddenly become congested due to health measures. In that case, it may be necessary to quickly change the coordination status from ‘schedule-facilitated’ to ‘coordinated’ airport.

2.1. What are the drivers for the challenges?

The problems and the drivers described in this document are rooted in the COVID-19 pandemic and the resulting negative impact on air traffic demand and levels. Member States have responded and continue to respond to the evolving number of cases by imposing flight, passenger and/or border restrictions. In addition, even where travelling is possible, passengers may be required to quarantine at their destination, which defeats the purpose of travelling for holidays or business.

As a result, consumers are deterred from flying because it is either considered unsafe and/or because they are not able to spend their time at their destination as planned given the current uncertainty. According to a survey carried out by the IATA in June, 55% of respondents did not intend to travel in 2020. Were it not for the COVID-19 pandemic and the reduction in air traffic, it would not be necessary to suspend the use-it-or-lose-it rule or address the corresponding shortcomings of doing so.

Driver 1: Slot Regulation: use-it-or-lose it rule applies in full unless slot relief applies

The Slot Regulation does not cater for periods of significantly depressed demand. This is why the EU has amended it on several occasions during previous crises affecting the aviation sector²⁹.

²⁹ This was also done in previous crises affecting air traffic levels, including the 2002 terrorist attacks, the Iraq war and the SARS outbreak in 2003, and the financial crisis in 2009.

In the context of the COVID-19 pandemic, facing the dramatic reduction in air traffic levels, airlines could not be expected to continue operating their full schedules as planned, since this would have led to flights at very low load factors with harmful environmental effects (challenge 1) and the risk of further deterioration of already weakened finances (challenge 2).

Driver 2: Late hand-back of slots

Article 10a(3) of the Slot Regulation in Regulation (EU) 2020/459 makes the waiver conditional on the air carrier concerned making unused slots available to the coordinator, for reallocation to other carriers. Although recital 7 refers to the concept of carriers acting ‘without delay’, Article 10a(3) sets no specific time limit. By letter of 16 April 2020 to airlines, airports and slot coordinators, the Commission strongly encouraged carriers to hand back slots at least two weeks before the originally planned day of operation. The aim was to fully meet the objective of the waiver, while optimising the use of airport capacity where possible. This is important in terms of giving airlines, airports and airport service providers sufficient visibility to plan their operations.

The European Airport Coordinators Association (EUACA) monitored the practice and timing of handing back slots at a number of airports.³⁰ The data shows that very late cancellations and hand-backs, less than one week in advance, were made predominantly by airlines for flights scheduled in March. Gradually air carriers started to hand back slots earlier, and by mid-June 2020, most slots at the selected airports had been handed back three weeks before the scheduled date of operations or earlier. Nevertheless, a significant portion (34.6%) was handed back later (less than three weeks in advance). In early September, the number decreased to 12%.³¹ During the public consultation, a number of airlines and the IATA stated that the sudden drop in demand and resulting changes to schedules led to backlogs in processing data and system updates for schedule planning. As a result, at the early stages of the pandemic, most flights were cancelled at short notice. This situation has changed and it is now more stable. This scenario was correlated by data from airports and slot coordinators.

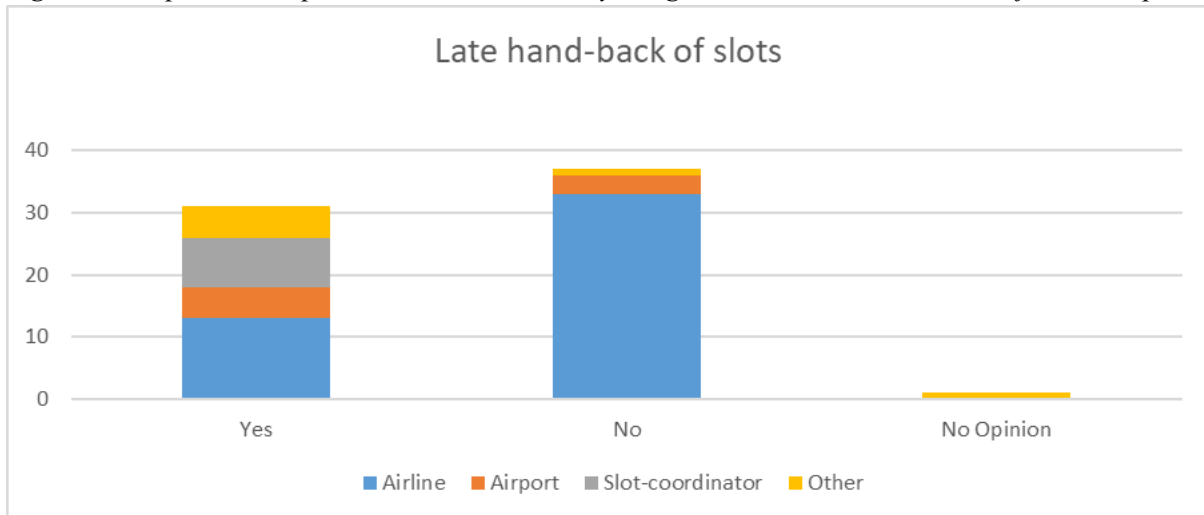
Airlines also pointed out that external factors such as flight bans, travel restrictions and crew restrictions had an impact on their ability to fly. Therefore, it is inevitable that some cancellations are made less than three weeks in advance due to circumstances outside airlines’ control.

Figure 1.5 shows that mainly airlines disagreed with the issue of the late handback of slots, arguing that most slots are handed back more than three weeks in advance and industry best practice resolved the problem. Indeed, the data shows that airline behaviour became more disciplined. However, industry best practice on its own may not be sufficient to ensure enforcement by all airlines. Not all EU airlines are part of the agreement on best practices and feel the requirement to comply with it. As explained in Section 1, not all coordinators feel confident to enforce the hand-back deadline, which creates distortion in competition.

³⁰ Data was collected by EUACA from the following airports: Amsterdam (NL); Stockholm Arlanda (SE); Barcelona, Palma de Mallorca, Madrid, Las Palmas (ES); Brussels (BE); Paris Charles de Gaulle, Lyon, Nice, Nantes (FR); Dusseldorf, Frankfurt (DE); Faro, Funchal, Lisbon, Porto, Ponta Delgada (PT); Graz Innsbruck, Klagenfurt, Linz, Vienna, Salzburg (AT); Helsinki (FI); Heraklion (EL); Krakow, Warsaw (PL); Larnaca (CY); London Heathrow, London Stansted (UK); Oslo (NO); Prague (CZ); Sofia (BG).

³¹ <https://www.euaca.org/FNewsDetail.aspx?id=388&popup=1>

Figure 2.4 Replies to the public consultation – Do you agree that the late hand-back of slots is a problem?



Source: Public consultation on the proposal to amend the Slot Regulation³²

Driver 3: The current slot waiver does not take into account variations in overall air traffic levels (binary waiver)

The current slot waiver is rigid in its application. Either the use-it-or-lose-it rule is suspended and all slots are handed back to the pool or none are. In the first half of 2020, the effects of the pandemic on air traffic were sudden and extreme and the application of the waiver was justified. It should be recalled that the objective of the use-it-or-lose-it rule is to ensure the most efficient use of airport capacity to maximise the benefit to the greatest number of users and allow passengers to reap the benefits of a competitive aviation market. Account should be taken of the negative impact of extending the slot relief. The effect of the waiver is to freeze competition at 2019 levels without any requirement to use that capacity efficiently and without making it available to other airlines that may make more efficient use of it. After over a year of fully suspending the use-it-or-lose-it rules (1 February 2020 to 27 March 2021), which preserves carriers' 2019 slot holdings until the end of the winter 2021/2022 scheduling season, a process of returning to normal application of the use-it-or-lose-it rule should be envisaged. Furthermore, as traffic may begin to slowly recover, it may no longer be justified to apply the current waiver. However, an immediate return to the use-it-or-lose-it rule may have negative consequences for air carriers, and put a significant number of their slots at risk. Air carriers suddenly losing large volumes of their market presence would also destabilise the market and have a negative impact on connectivity and for consumers.

The current rules do not allow for a middle ground to strike an adequate balance between protecting air carrier networks where they genuinely wish to operate but passenger demand falls short, and allowing new entrants to come in if they can make better use of the slots. The current rules only allow the Commission to extend the period of application of the waiver but not to attach any conditions or modulate the use-it-or-lose-it principle that could make the waiver more proportionate to the circumstances.

³² Many airlines did not agree with the problem as they consider it to have been addressed by the industry agreement. Although the agreement will indeed mitigate the risks leading to the identified problems, it is not yet legally enforceable.

An assessment of the situation should also address the risk that next seasons may also witness a structural reduction of airline capacity placed on the market. This may be a consequence of retiring aircrafts or as a result of market exit(s). The market may stabilise at a lower level than 2019 levels, which raises the question of at what point should airlines be required to adapt to the reduced traffic situation caused by the pandemic. Industry projections³³ indicate that air traffic may not recover before at least 2023/24. However, continued application of an unconditional waiver will effectively freeze 2019 airlines' market shares and risk excluding new entrants or preventing air carriers that are able to operate from growing. This scenario was raised by airports and slot coordinators³⁴.

Driver 4: The current slot waiver does not address reduced airport capacity due to health and safety measures

During the public consultation, slot coordinators and airlines also highlighted the need to 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.

IATA states that a recent Eurocontrol and ACI Europe study³⁵ highlighted that airports may need to reduce their declared capacity by up to 40% of previous capacity levels, which would devastate slot history and hinder their recovery. The report found that “for those airports already saturated before COVID-19, the general saturation capacity with COVID-19 measures is expected to be in the range of 60-75% of their pre-COVID-19 traffic volume, during peaks.”

New temporary capacity declarations are likely to be unpredictable and declared outside the slot coordination timeframes, whereby capacity must be declared by October for summer 2021 and by May for winter 2021/2022. How the pandemic develops and the measures governments take to prevent its spread have an impact on the visibility of available capacity. They also contribute to the difficulties airlines, airports and airport service providers face in planning ahead (challenge 3). The reduction in airport capacity will increase entry barriers and re-timing grandfathered slots can lead to competition distortions (challenge 4) if measures are not taken to ensure it is carried out according to clear, objective and non-discriminatory criteria.

Driver 5: The current slot waiver also covers newly requested slots (even if requested by an airline exiting the airport)

The current waiver covers all slots and assumes that airlines operate all the slots it holds for the season (until the end of the waiver's application). As a result, airlines will obtain the historic rights attached to those slots regardless of the decisions made to acquire them, whether they intended to operate them or to increase the airlines' market share by flouting the purpose of the slot waiver. Nevertheless, as described under challenge 4, airlines may have a genuine interest in requesting more slots than they are historically entitled to, despite reduced air traffic levels. However, the end result is an increased slot portfolio that may not be used, and that is detrimental to new entrants.

Driver 6: Risk of airlines engaging in secondary trading to benefit from the current slot waiver

³³ <https://www.iata.org/en/pressroom/pr/2020-07-28-02/>

³⁴ VINCI airports, ACL (UK, IE and PL slot-coordinator), Gatwick airport.

³⁵ Eurocontrol, Impact assessment of COVID-19 measures on airport performance – 29.08.2020.
<https://www.eurocontrol.int/sites/default/files/2020-09/eurocontrol-impact-assessment-covid-19-airport-performance-2020.pdf>

Slot coordinators³⁶ pointed out that there is a risk that trading and leasing slots in the knowledge that the current waiver applies will also distort competition and block capacity where slots are not used afterwards. The Slot Regulation includes rules on slot mobility. It allows slots to be exchanged one-for-one among air carriers and it allows slots to be transferred within airline groups. At a number of airports, slots have been traded among air carriers. This involves exchanging a valuable slot against a slot of no value (due to its time of the day or night), accompanied by a financial payment. Alternatively, the compensation could take the form of a commercial arrangement. Slot trades may also be of temporary duration, with a contractual obligation both for the ‘purchasing’ carrier to return the slot at some point in the future and to operate the slot under the current slot utilisation rules. This is known as ‘slot leases’.

Given that such slot transactions form part of the current system, it is also necessary to clarify under which conditions the relief continues to apply to slots that have been exchanged or transferred between different air carriers. The aim of slot relief, from the perspective of slot utilisation rules, is to assist air carriers as they adapt their operations in the light of the unprecedented fall in demand for air transport. It would not, however, be appropriate to allow an air carrier to benefit from this protection if it has no intention of operating the slot itself. Even if the likelihood of slot trades occurring at the current time is low, this could change as demand and air traffic picks up and the COVID-19 pandemic recedes. Allowing traded slots to be eligible for relief could also constitute a barrier to an airline exiting the market and it could distort competition, as this enables airlines to expand their slot portfolio without the need to subsequently operate the slots.

For air carriers under group ownership, it would seem reasonable to allow slots transferred within the group to be eligible for relief, since this might facilitate the most effective use of an airline group’s resources during the current difficult circumstances. Likewise, when slots are exchanged without financial compensation, i.e. secondary trading, (for example exchanges among air carriers to provide mutual improvements to schedules) slots could be exchanged with the slot waiver still to be applied.

2.2. What will happen if the challenges are not addressed?

The Commission’s empowerment to extend the waiver expires on 2 April 2021. As described in Section 2.1, the latest Eurocontrol forecasts indicate that air traffic in February 2021 will still be only 50% of February 2019 levels. Thereafter, it is assumed that traffic will only resume slowly. As pointed out previously, the IATA and ACI predict that air traffic levels will remain significantly lower than in 2019 at least until 2024/2025. Hence, it seems possible that the Commission could use its delegated power to extend the waiver to the summer 21 scheduling season, but by 2 April 2021 no sufficiently robust data would be available to extend the waiver beyond that.

Regarding challenges 1 and 2, this would mean that in summer 2021, airlines would not operate environmentally harmful and financially inefficient flights with very low load factors as their historic slots would be protected. For the winter 2021/2022 scheduling season, it will depend on the level of recovery. If demand and air traffic levels keep increasing, the risk of inefficient largely empty flights decreases. If there is another shock and demand decreases and no slot relief is in place, then the incentive for airlines to operate largely empty or empty flights increases. Ultimately, it will also depend on airlines’ financial situation and the prospect of recovery or further financial aid at that time.

³⁶ ACL, EUACA.

Regarding challenge 3, improving the planning of airport, airport service providers and airline operations will continue to depend on the goodwill of airlines to hand back the slots they do not use sufficiently in advance. A substantial volume of slots are already handed back three weeks and longer in advance of the scheduled date of operation. The industry agreement may have helped improve this practice. However, as mentioned above, the conditions agreed are not legally enforceable and some coordinators have said they would not withdraw historic rights of airlines in slots they do not hand back three weeks or more in advance. This will lead to competition distortions if some airlines hand back their slots later. Airports and airport services providers would continue to incur the cost of making too much capacity available or forego revenue where they did not plan for enough capacity and staff to match actual airline schedules. Airlines continue to lack full visibility of available airport slots sufficiently in advance to be able to offer the best services to passengers. After summer 2021, when no more slot relief would be granted and the original slot allocation rules apply, planning could become more certain again.

Regarding challenge 4, airlines that requested more than their historic slots gain historic rights in new slots as long as a waiver remains in place and can increase their slot portfolio, blocking new entrants. The same applies to airlines that do not use their slots, despite having ceased operations at an airport. The industry agreement contains conditions to prevent this outcome but they are contrary to the current rules of the Slot Regulation and cannot be enforced by slot coordinators. It will be up to airlines to decide whether to apply for the new slots they received in winter 2020/2021 scheduling season for the winter 2021/2022 season. Airlines that do not comply with the agreement will gain a competitive advantage and there will be no legally enforceable mechanism to maintain a competitive level playing field.

Airlines may also block capacity and thereby exclude competition by obtaining slots through secondary trading, thereby building up their slot portfolio without having to operate the slots.

Unless the Commission can ensure that slot relief can be extended relatively quickly if necessary, airlines will be faced with the application of the use-it-or-lose-it rule again, once the Commission's delegated powers expire. If the impact of COVID-19 on air traffic still persists at that time, airlines will feel the need to operate commercially unviable flights to maintain their slots. Such unviable flights would have unnecessary negative impacts on the environment and lead to extra expenditure for airlines in an already financially fragile state and a weakened economy, with risks of further bankruptcies. Airlines are also likely to focus their operations on their most valuable slots and routes, which will have a negative impact on the number of flights and the level of connectivity for EU citizens in certain regions.

At the same time under a full waiver air carriers are not required to use their slots at all. Thus, unless changes are made to be able to adjust the current slot waiver to actual market needs and make it subject to conditions that encourage competition, there is a potential risk of loss of service, with negative consequences for consumers, workers, airlines and airports. Reduced competition can in the long term lead to higher prices of flight tickets and reduced quality of service.

The airlines, airports and airport coordinators associations representing the majority of EU airlines, EU airports and all EU slot coordinators have come together and agreed on the conditions that, in their view, should apply to the slots waiver, from the beginning of the winter 2020/2021 scheduling period. These conditions are described in detail in Section 1.

The conditions are designed to remedy the late hand-back of slots, and the blocking of airport capacity by excluding newly allocated slots and slots of airlines ceasing operations at an airport.

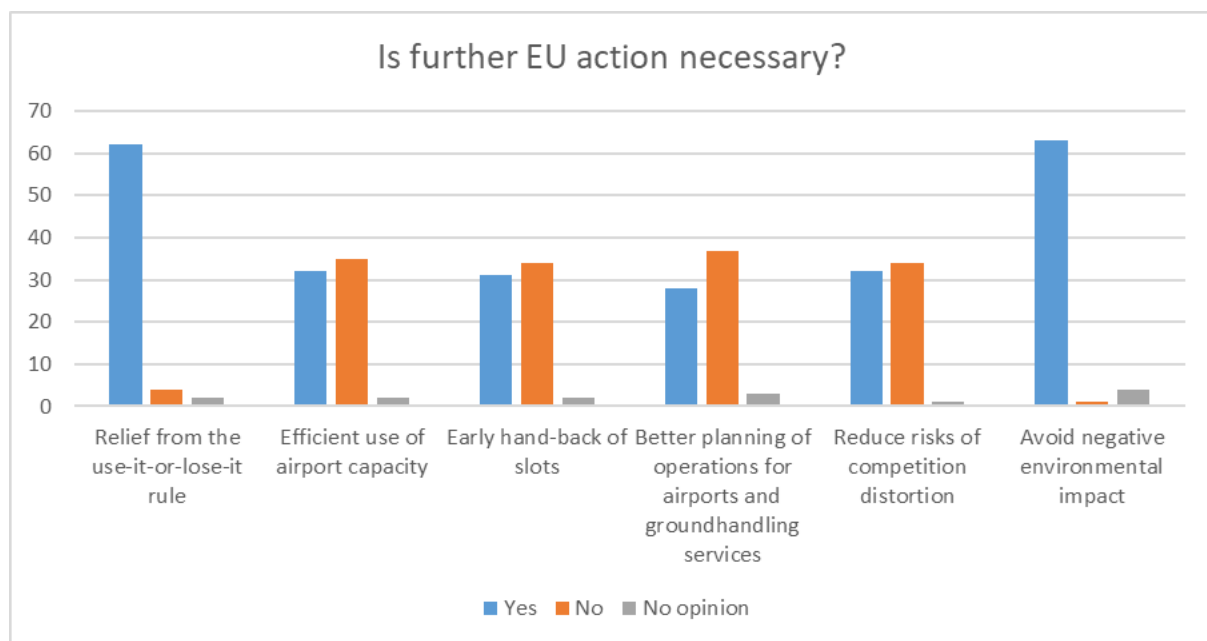
However, they are not legally enforceable by slot coordinators or regulators, which may compromise the effectiveness of the proposed action to prevent these shortcomings.

3. THE NEED FOR THE EU TO ACT NOW

COVID-19 continues to have an impact on passenger confidence and air traffic levels. Relief for airlines from the slot usage requirements remains justified. The future impact of COVID-19 on air traffic and how it will develop is highly unpredictable. It is possible that relief from the use-it-or-lose-it rule may still need to be granted beyond what can be predicted by 2 April 2021. It is important for the aviation sector that action is taken to extend the waiver sufficiently in advance to enable the sector to plan ahead realistically, but through a process that allows rules to be put in place quickly and target them to the actual market needs.

Figure 1.6 shows that most stakeholders see a clear need for EU action to grant relief from the use-it-or-lose-it rule and to avoid negative environmental impacts from applying the slot rules. Stakeholder opinions on the other issues identified were more divided. As explained, many airlines did not agree with the description of the issues because they consider them sufficiently addressed through industry best practice, which lacks legal enforceability.

Figure 3.1 Replies from the public consultation – is further EU action necessary?



Due to the inherent cross-border nature of both aviation and the COVID-19 pandemic, the issue cannot be dealt with at national level and requires joint action at EU and international level. Leaving Member States to take action at national level would result in a patchwork of national measures that would result in market fragmentation and distortions of competition.

As presented in the summary report to the European Parliament and the Council on 14 September 2020, there are certain shortcomings in operating the current waiver. The industry indirectly recognised the urgent need to address these shortcomings and reached a voluntary agreement to improve the efficiency of airport capacity use. However, as explained above, the industry-led agreement is not fully enforceable given the provisions of the Slot Regulation. In addition, the Commission’s own market assessment, including the results of the open public consultation, indicates that there is a need for other conditions to ensure the most efficient use of

airport capacity. Although airlines will be eligible for the full slot waiver for the full winter 2020/2021 scheduling season, new conditions attached to any future slot relief are considered necessary, starting from the summer 2021 scheduling season. While air traffic is still suppressed compared to the 2019 level, it is also necessary to plan the gradual phase-out of slot relief and work towards restoring the use-it-or-lose-it principle. To ensure that all market players are given sufficient notice, it is necessary to act without delay.

4. OBJECTIVES PURSUED

4.1. General objectives

Until 27 March 2021, the sector benefits from full season waivers. As described in the previous sections a full season waiver led to certain shortcomings and challenges. Therefore, this initiative aims to promote the proper functioning of the internal aviation market during the COVID-19 pandemic along the entire aviation value chain and to ensure the welfare of the travelling public, while also aiming to encourage competition and facilitate a phase-out of slot relief by making it more flexible and targeted to the evolving impact of COVID-19 on air traffic levels.

4.2. Specific objectives

The specific objectives of this initiative are to i) minimise the harmful effects on the environment caused by operating flights with very low load factors ii) ensuring airlines can operate efficiently and iii) ensuring the efficient use of airport capacity.

5. PROPOSED WAY FORWARD

To address the challenges identified in Section 2, the Commission proposes to amend the Slot Regulation for a limited duration. The main changes concern the conditions required to remedy the identified shortcomings while slot relief is in place. They were modelled on (i) industry-agreed conditions, (ii) conditions suggested by stakeholders in the consultation and (iii) the conditions deemed necessary by the Commission to ensure that the general and specific objectives set for this intervention are met.

The proposal for an amendment includes extending slot relief to cover the summer 2021 scheduling season, subject to conditions necessary to minimise the undesirable side effects of the current waiver. These conditions include the following conditions agreed by industry:

- The slot relief would not apply to series of slots newly allocated from the pool. Only slots in which the airline had historic rights during the previous respective season would be eligible for slot relief.
- The slot relief would not apply to series of slots held by an airline that permanently ceases operations at an airport. If an airline fails to provide necessary information on its plans for a certain airport by a reasonable deadline date set by the coordinator, and after having heard the airline concerned, the coordinator may withdraw and reallocate the slots.
- Airlines must hand back any slots they do not intend to use as soon as possible and no later than three weeks prior to the date of planned operation.

During the public consultation, stakeholders were asked open questions about any further conditions or measures that should be brought in, in addition to slot relief. Based on the input received and the Commission's own assessment of the market conditions, the Commission

considers that it would be desirable to include some additional aspects when amending the Slot Regulation. These would be included in the proposal to ensure that the relief is fit for purpose for the entire period of severely depressed demand. It would provide a framework to tailor the relief once demand picks up again, with the ultimate goal of phasing out relief once air traffic either reaches 2019 levels or stabilises at a new market level, based on a list of set indicators. The aim is also to avoid, if possible, having to legislate to amend the Slot Regulation again over this period.

- A return to normal operations would be facilitated by granting the coordinator the authority to match capacity closely to slot requests. In many cases, airport infrastructure has been taken offline over the period marked by COVID-19 and it is possible that there will be periods during the recovery where bringing infrastructure back online (for example, in the form of temporarily closed airport terminals) does not keep pace with an uptick in demand for slots. In addition, certain health and safety measures imposed to limit the spread of the COVID-19 pandemic may have an effect on the capacity airports can offer. Rules should be put in place (for example local rules or industry guidelines) to address the situation where a reduction in airport capacity leads to the cancellation of some historic slots.
- The proposal would exclude traded or leased slots from the scope of the relief. Only slot exchanges accompanied by financial recompense would be excluded from the scope of the slot relief measures. If an airline is able to increase their slot portfolio during a period of depressed demand, it should be expected to use the acquired slots.
- The proposal would temporarily amend the new entry definition in order to increase the number of airlines that can qualify as new entrants.
- Recognising the benefit for consumers of air carriers operating air services using slots handed back for temporary re allocation, such air carriers would be given priority to those slots in the next equivalent season, if the carrier originally holding grandfathered rights to them does not request them.
- The proposal would be the occasion to anticipate a potential scenario in which demand recovers to some extent but not sufficiently to justify applying the 80/20 rule. It would seem beneficial to plan for this scenario by varying the 80/20 rule as a function of the level of air traffic and impose an appropriate degree of discipline on slot operation in this scenario. The usage rate should be set to a level that provides airlines with relief and prevents unnecessary negative environmental impacts caused by operating largely empty flights but also encourages the efficient use of slots or release of capacity where airlines can no longer sustain their slot portfolio. The latest Eurocontrol forecasts indicate that air traffic in February 2021 is expected to be only half the level it was in February 2020. What will happen beyond that is uncertain, but there are no indications that demand will return in the summer 2021 season to the level of recent years, which may warrant further slot relief measures. At the same time, the objective of the use-it-or-lose-it rule is to ensure the most efficient use of airport capacity to maximise the benefit to the greatest number of users and allow passengers to reap the benefits of a competitive aviation market and connectivity. The operation of the slot waiver has indeed provided relief to air carriers in the current unprecedented period of impacted demand and restrictions on air travel. However, account should be taken of the negative impact of extending the slot waiver. The effect of the current waiver is to freeze competition at 2019 levels without any requirement to use capacity efficiently and without making it fully available to other airlines that may make more efficient use of it, thereby also increasing connectivity. After more than a year of fully suspending the use-it-or-lose-it rules (1 February 2020 to 27 March 2021), which preserves air carriers' 2019 slot holdings until the end of the winter 2021/2022 scheduling season, it is

time to start the process of returning to a normal application of the use-it-or-lose-it rule. The return to normal should not come in a sudden manner that would destabilise the aviation market to the detriment of air carriers, connectivity and EU consumers. For example, while EEA air traffic levels are below 40-45% of 2019 levels, a full waiver should be in place, as the application for the 80/20 rule would have such a dramatic effect on airline slot portfolios and networks that could disrupt connectivity for EU passengers. This is especially important for intercontinental traffic, which is particularly affected at the moment and which requires considerable resources and planning to be set up and operated. Once air traffic levels rise above that level, and given that airlines will have had more than a year to restructure and adapt to the new situation, the use ratio should be increased in line with rising air traffic levels (or decreased if air traffic decreases again). Given the Eurocontrol forecast of 14 September 2020 (Figure 2.3) which predicts that by February 2021 traffic levels would be down 50% compared with the previous year the utilisation threshold should be set at 40% for the summer 2021 scheduling period as this seems to strike the right balance between to need to relieve the industry while encouraging the operation of the slots to re-establish connectivity and competition.

- Modulating relief in this way should be possible until either traffic levels reach similar levels of the corresponding period in 2019, or when traffic levels have stabilised to a ‘new normal’ situation³⁷, whichever comes first. This ‘new normal’ market equilibrium will be assessed based on a number of set indicators such as the development and stability over time of actual and forecast air traffic data, fleet size and fleet utilisation rate³⁸. Ex ante modulation should be incorporated in the legislative amendment for the summer season 2021 with the delegated powers given to the Commission to further extend the slot relief and to modulate the 80/20 rule based on actual and forecast air traffic data and the impact of COVID-19.
- The proposal would anticipate a potential scenario in which the speed of recovery is markedly uneven, potentially differing widely by region. For example, air traffic within the European Union may recover to close to historic levels, meaning that it would be appropriate for the slot utilisation criteria to be applied once again to intra-European flights. However, there might be continuing prevalence of COVID-19 in a specific country, giving rise to travel restrictions that continue to affect demand for air travel to and from that country significantly. In such cases, the proposal would include a provision whereby airlines would ask coordinators that slots used for such air services not be taken into account for the purposes of establishing compliance with the 80/20 rule, carried out ex post at the end of each season. The Regulation already provides, in Article 10(4), for non-operation of specific flights to be excluded in certain cases.

Modulating the slot use rate and giving airlines the possibility to justify the non-use of slots should have the effect of encouraging airlines to use slots for routes where there is demand, while protecting them in the event of sudden measures affecting air travel on certain routes, outside the airlines’ control. At the same time, the modulation would also result in capacity being released for reallocation and allowing competitors to gain historic rights in the released slot.

³⁷ It is possible that the long-term impact of the COVID-19 pandemic leads to structural changes in the market to which the industry will have to adapt. The industry projects that traffic will not reach 2019 levels before 2023/2024. It is difficult to justify that historic slots and airline market shares should necessarily be frozen at 2019 levels if demand does not keep pace, and has negative effects on competition and new entrants.

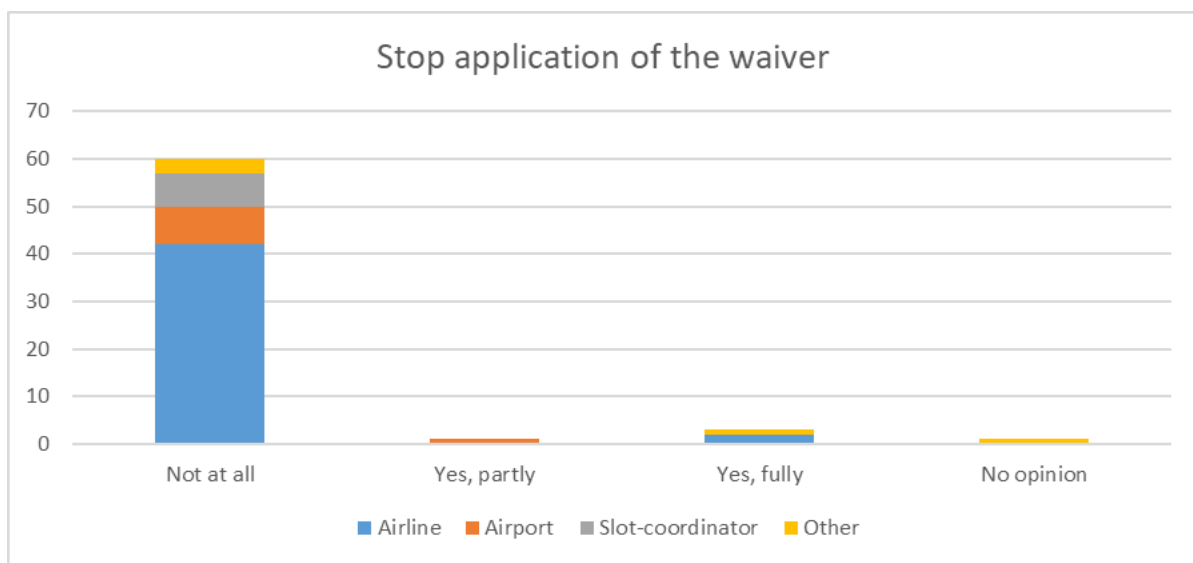
³⁸ With some airlines announcing a reduction in their fleet, it may well be that they will reach a fleet utilisation rate similar to 2019 levels despite an overall drop in air traffic.

5.1. Stakeholders' views

The open public consultation generated 71 replies (from 47 airlines, 9 airports, 8 slot coordinators, and 7 other respondents) from a broad range of stakeholders (airlines, airports, associations, slot coordinators, consumer organisations, trade unions, and public authorities).

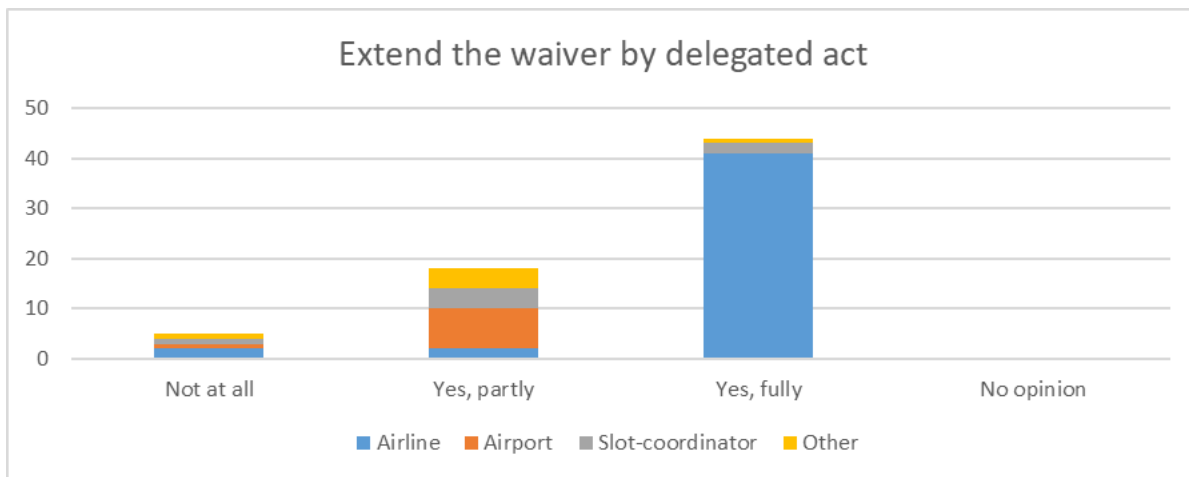
Stakeholders were consulted on three specific scenarios: a) stopping application of the waiver, b) extending the waiver by delegated act without any additional conditions, and c) extending the waiver subject to certain conditions. As mentioned above, stakeholders were also asked whether further measures could be taken to address the identified challenges. When commenting on the options during the public consultation, stakeholders assumed that the conditions attached to any future slot relief were those made in the industry agreement.

Figure 5.1 Replies to the open public consultation – Would the option to “stop application of the waiver” address the identified shortcomings?



A small minority of respondents (consumer organisations, two airlines and one airport respondent) preferred not to extend the current slot waiver at all. The respondents argued that suspending the use-it-or-lose-it principle in the current form protects incumbent airlines that already received substantial State aid and prevents new entrants from using the slots. The vast majority of respondents argued that, given the COVID-19 pandemic, it is impossible for any operator to comply with the use-it-or-lose-it principle without flying empty or largely empty planes. Many respondents pointed out that airlines would go bankrupt if the rule is not suspended. Stakeholders also pointed out that, in the absence of the slot waiver, airlines would be wrongly incentivised to operate empty or largely empty flights to the detriment of the environment and their already often fragile economic situation as a result of the pandemic.

Figure 5.2 Replies to the open public consultation – Would the option to “Extend the current waiver by delegated act” address the identified shortcomings?

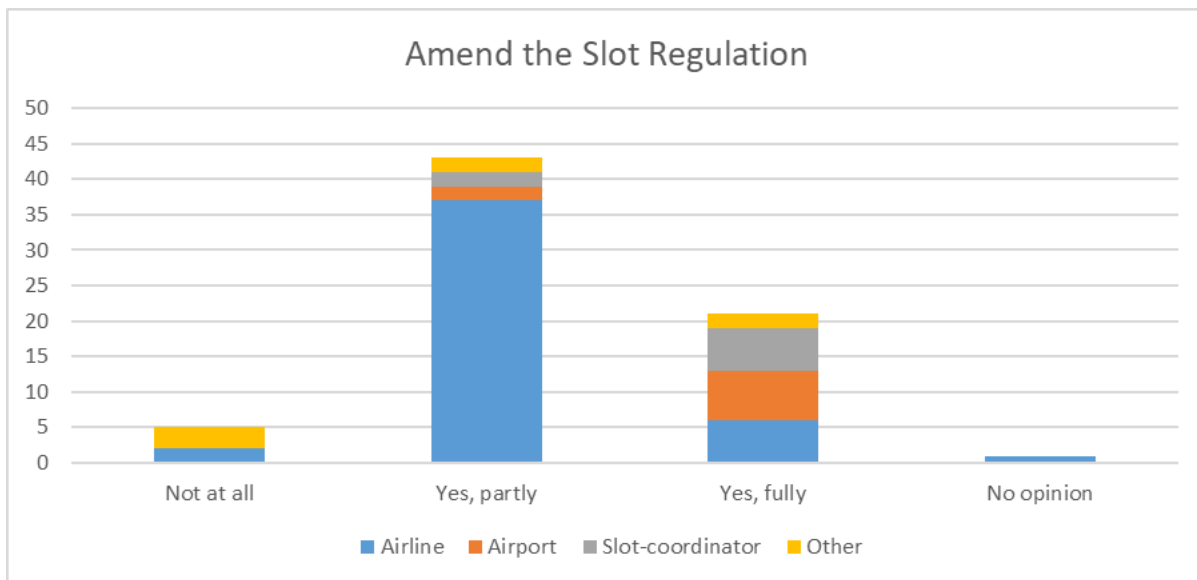


Stakeholder views were more split in response to the option to extend the blanket waiver to further seasons. The consultation question referred to the winter season 2020/2021. The Commission considers the replies of airline stakeholders also indicative of their views for the summer 2021 scheduling season, as Commission departments have been informally asked by airline associations to extend the waiver to the summer 2021 scheduling season.

The majority of airlines indicated that extending the blank waiver by delegated act would fully address the challenges identified. The responding airlines referred to the industry-agreed conditions as a way to remedy the shortcomings in operating the current waiver. The responding slot coordinators, however, stressed that, although they fully supported the industry-agreed conditions, the need for predictability and enforceability of the rules requires a formal amendment to the Slots Regulation. Thus, extending a blanket waiver is not sufficient.

The slot-coordinator and airport respondents noted that their views on the need to extend the waiver apply to the winter 2020/2021 season only.

Figure 5.3 Replies to the open public consultation – Would the option to “Amend the Slot Regulation” address the identified shortcomings?



The

respondents were generally in favour of the amendment to the Slots Regulation that would remedy the shortcomings in operating the current slot waiver. During the public consultation, the respondents had only received the industry-agreed conditions (presented to them) but not all other conditions that resulted from the consultation and the Commission’s subsequent assessment.

The vast majority of stakeholders in all categories considered that amending the Slot Regulation to include the industry conditions would address the problems either fully or partly. These respondents (predominantly airlines) argued that any amendment should be limited to putting the industry-driven conditions into a formal legislative basis.

A minority of respondents were opposed to the amendment. One airline argued that the existing use-it-or-lose-it rule could be waived based on the existing Slots Regulation if it included force majeure. The airline argued that there are differences in the way that slot coordinators interpret this provision. It argued that it would therefore be sufficient for the Commission to adopt interpretative guidelines rather than to amend the legislation, which would add further complexity. A trade union respondent argued that any amendment to the Slots Regulation should take into full account other provisions applicable to aviation employees.

In addition, some stakeholders (in particular slot coordinators) flagged the need for the Commission to look into alternatives to waivers as a way to gradually phase out relief and encourage more use of capacity when demand returns. In this context, some airport respondents suggested that the return of air traffic should not be measured against 2019 levels but should recognise a broader and longer-lasting change in the aviation market. Airports also pointed out that modulating the usage threshold should take into account the practice of ‘double dipping’ that airlines sometimes engage in. Air carriers can cancel up to 20% of slots allocated to them before the start of the season and subsequently, under normal rules, 20% during the season and still receive the whole series initially allocated to them, despite having only operated 64% of their slot series. This will apply also to the new threshold set, meaning that the rate proposed in the Regulation will in reality result in a lower rate.

A minority of respondents claimed that any amendment should also be backed up by financial penalties imposed on non-compliant parties.

After having assessed the replies to the consultation, the Commission decided to go forward with measures that would phase out the waiver and pave the way for a return to normal application of the use-it-or-lose-it rule. The Commission also decided to exclude traded and leased slots from further slot relief. Commission services contacted certain stakeholders (the IATA, A4E, ACI, EUACA, Ryanair and Wizz Air) to obtain their views on a framework of measures that would allow the Commission to modulate the 80/20 usage rate according to the level of air traffic set before the start of the season. They also sought their views on the option to justify the non-use of slots at the end of the season where airlines planned to use the slots on routes that were significantly affected by COVID-19 measures, such as travel restrictions.

Airlines did not support the proposal to exclude traded and leased slots from the scope of further slot relief. They claimed that first, secondary trading occurs mainly in the UK, which would no longer be subject to the EU Slot Regulation by the time the amendment enters into force. Secondary trading of slots and leasing is an important aspect of the schedule optimisation process for airlines, and excluding these slots from relief measures would reduce slot mobility and the efficient use of slots.

The associations lacked an official position supported by their members, but they did not reject the proposed measures to phase out the waiver. Regarding the precise usage rate to be set for the summer 2021 scheduling season, airports seemed to prefer a ratio of around 60/40, while airlines would support a ratio of 20/80 or 30/70. The EUACA did not comment on the appropriate threshold but did not raise any technical objections to modulating the ratio. Wizz Air and Ryanair, by contrast, opposed further slot relief for 2021, stating that competition should be opened again, and airlines able to enter new markets or to expand should be entitled to gain historic rights in new slots. All stakeholder groups stressed the need to put rules in place well before the start of the scheduling season, preferably at or before the historic baseline date (usually around 2-3 months before the start of the season) when allocation for the coming season is finalised.

On 26 November 2020, the Worldwide Airport Slot Board composed of airlines, airports and slot-coordinators announced having reached an agreement on recommendations for slot relief for the summer 2021 scheduling season.³⁹ The recommendation is supported by IATA, A4E (except Ryanair), ACI-Europe and EUACA. It shows that stakeholders agree that a full season waiver covering all slots is no longer justified for the summer 2021 scheduling season. The recommendation includes, among other, a provision granting airlines a full waiver for slot series that are returned to the pool within a specified timeframe before the start of the season. For slot series airlines retain, a utilisation threshold is set at 50%. Airlines will have an incentive to return slot series, which will free capacity for the summer 2021 well in advance of the season, allowing competing carriers to adequately plan operations they wish to set up. However, it would still largely freeze the 2019 market position of carriers into summer 2022 despite air carriers having announced structural reductions in their operations.

6. WHAT ARE THE LIKELY CONSEQUENCES OF THE PROPOSED WAY FORWARD?

This section summarises the main expected economic, air traffic, social and environmental consequences of the proposed way forward over the next few years when the expectation is that the COVID-19 pandemic (or its economic aftermath) will continue having impact on demand for air

³⁹<https://www.iata.org/contentassets/4820c05b19f148e2855db91f2a579369/wasb-northern-summer-21-recommendation-for-slot-use-relief.pdf>

travel and air traffic. Given the urgency of this initiative and the aim to ensure the efficient use of airport capacity during the pandemic, the consequences set out in this document have not been quantified but are presented in a qualitative manner only. They are based on the results of open public and targeted consultations, ongoing dialogue with stakeholders and the Commission's own market monitoring and assessment. An important limitation to the analysis is the scarcity and incompleteness of relevant data, also due to the rapidly changing situation and forecasts estimating the length and extent of the pandemic. Again, the stakeholders' views on the consequences of the proposed way forward were presented with the assumption that the amendment to the Slot Regulation would extend the waiver and contain only the conditions of the industry agreement.

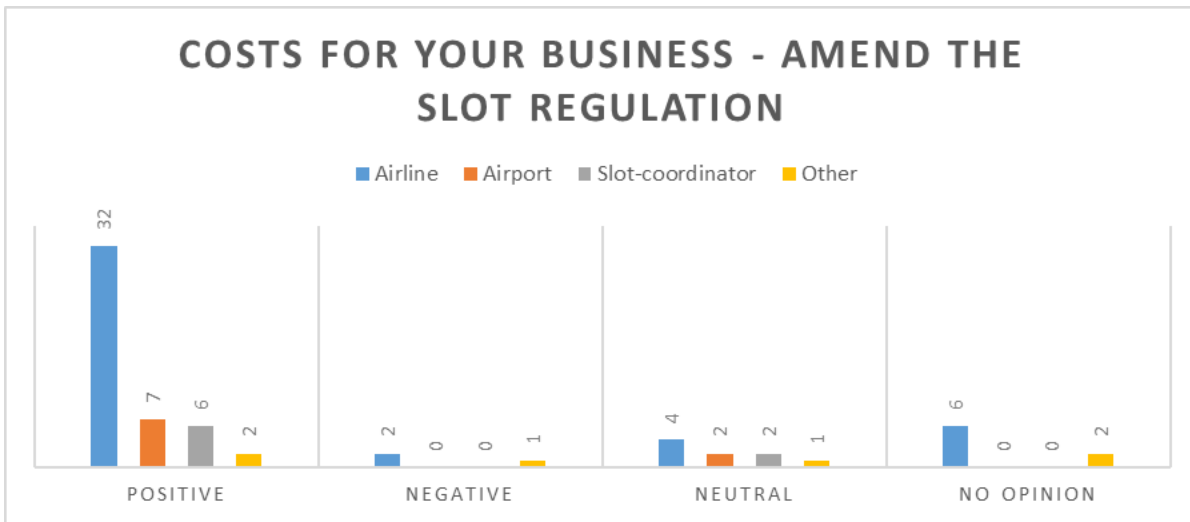
6.1. Economic consequences

Amending the current slot waiver rules is expected to benefit airlines whose historic rights will be protected in proportion to the actual and forecast level of air traffic. In addition, slots these airlines cannot use will be returned to the pool sufficiently in advance so they can be used by other carriers, allowing competition to return. This in turn will also benefit airports and ground-handling companies, who can improve operational efficiency and generate revenue or at least avoid incurring unnecessary costs due to inaccurate resource planning.

Without slot relief, airlines would have an incentive to operate flights to protect key slots for their business. In the long term, this would come at a high financial loss to a majority of airlines and would not be driven by renewed demand for air travel. Such losses may threaten the economic survival of some airlines that would be able to survive under normal market conditions and compete on the market, with benefits to EU consumers and connectivity. The economic impact has not been quantified. However, over 25 airline respondents, 6/8 airport respondents and one other service providers are of the opinion that they would incur significant additional costs if no action is taken. As mentioned in Section 2.1, the IATA estimated that in the absence of a waiver, worldwide airlines could incur additional operating costs of USD 12.6 billion during the winter 2020/2021 season by operating flights they would not have otherwise operated. Although the data provided by IATA refers to the winter 2020/2021 scheduling season, it could be assumed that airlines will continue incurring financial losses of a similar magnitude unless slot relief is extended into the summer 2021 scheduling season (and possibility beyond). One respondent stated that stopping application of the current waiver was the only way forward with positive consequences on costs for their business, as they would be allowed to operate and enter new airports they can currently not access.

Therefore, it can be concluded that the economic consequences of the proposed way forward would have economic benefits for stakeholders in the form of preventing further losses. As shown in figure 6.3, the majority of stakeholders considers that extending slot relief with pro-competitive measures would generate positive effects on the costs for their business.

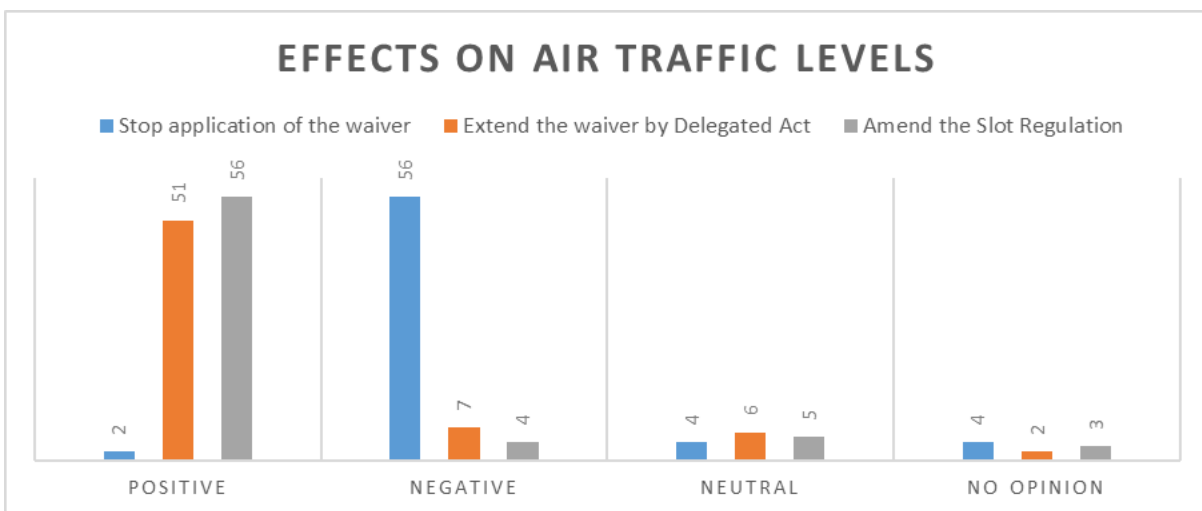
Figure 6.1 – Stakeholder views on amending the Regulation



6.2. Consequences for air traffic levels

It is expected that the amendment that will, on the one hand, provide relief from the use-it-or-lose-it principle and, on the other hand, include a number of pro-competitive conditions with the aim of ensuring the efficient use of airport capacity and increase air traffic in line with growing demand for air travel. In addition, the aim of phasing out the current waiver is to increase air traffic levels by encouraging airlines to operate slots. It also aims to stabilise schedules as the number of flights that can be cancelled and slots that can be handed back at short notice decreases. The lower usage requirement and ex post justification of non-use of slots could result in airlines serving routes and markets that they would have otherwise abandoned, while also ensuring a continuous, albeit possibly reduced, frequency of service to the benefit of consumers.

Figure 6.2 – Stakeholder views on the effects of different options on air traffic levels



Overall, the majority of airlines replied that further slot relief is essential to restore air traffic levels in the long term. This is because slots are at the core of airline operations and business. In particular, an airline noted that by protecting slots and extending the current slot waiver through a delegated act, airlines can maintain their slots for long-haul travel, mainly international flights, which are lagging behind in terms of air traffic, for the recovery. A4E replied that extending the current waiver would have a positive effect on the level of air services in the EU by preserving connectivity and consumer choice, while allowing airlines to rebuild schedules in response to

fluctuations in demand. The same reasoning can be extended to measures that would extend slot relief even if they do not amount to a full waiver as slots on certain strategic routes can still be protected and future connectivity maintained, especially if those routes continue to be affected by measures such as flight bans or passenger restrictions.

ACI replied that discontinuing slot relief could have positive effects for passengers and airports in the short term, as airlines would be required to operate more flights. However, there could be negative consequences in the long term as the recovery will be impacted by the loss of historic slots. In ACI's view, extending the current waiver would lead to fewer flights, due to the protection offered by waiving the 80/20 rule, but if the conditions of the waiver are implemented, then it would ensure stability in the schedule and reallocation of unused slots.

6.3. Social consequences

It is expected that the amended slot relief will result in airlines making better use of airport capacity. Due to pro-competitive conditions and a closer link between slot relief and air traffic, both airlines, airports and ground-handling companies will be able to improve their operational efficiency. This in turn is expected to lead to greater job security for aviation sector employees.

Airline associations (the IATA and A4E) stated that, in the absence of slot relief, the cost of operating a full schedule against unprecedented low demand could irreversibly affect the viability and continuity of airlines, with knock-on effects on employment in aviation, both directly and indirectly.

The European Transport Workers' Federation expressed the view that relaxing the slot rules is important to ensure the stability of the airline industry in Europe. However, if done in isolation, it would fail to address the social costs suffered by civil aviation employees. According to the trade union, in parallel to a second extension of the waiver, EU Member States need to protect employees whose jobs are at risk and therefore bring in aviation sector-specific measures to prevent job loss and worsening of job conditions. However, this is outside the scope of the current initiative.

The European Transport Workers' Federation also noted that not all airlines would access the slot waiver extension on equal conditions because some air carriers will be better positioned to continue operations over the winter since they have received State aid rescue packages. Overall, a cautious approach is warranted to ensure that any action does not lead to social dumping or to worsening labour standards and social standards in the aviation sector.

At the same time reintroducing a utilisation threshold, which would encourage a certain level of air services would also benefit aviation sector employees.

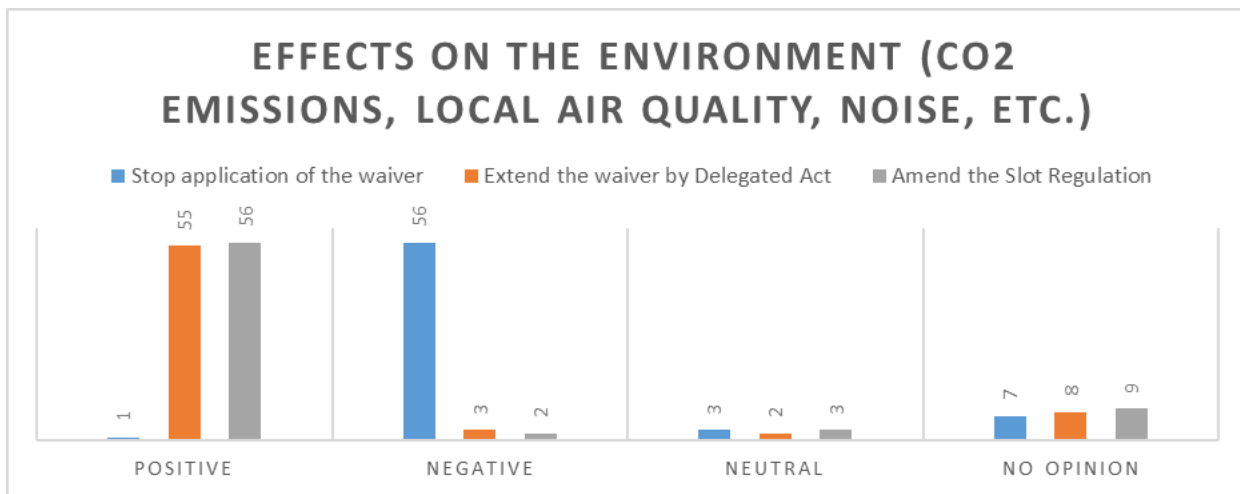
6.4. Environmental consequences

The Commission expects that the proposed way forward will largely prevent flights operating at very low load factors and hence avoid negative environmental and climate consequences.

In reply to the consultation, the IATA stated that, without an extension of the waiver for the full winter 2020/2021 season, an estimated 27 million more tonnes of CO₂ would be emitted. The Commission could not independently verify this estimate. These emissions would be mainly due to flights with very low load factors operated to maintain airlines' historic rights. Respondents to the public consultation were of the view that the negative environmental consequences could be avoided by amending the Slots Regulation to ensure a more efficient use of airport capacity.

However, one airline argued that both extending the current waiver and amending the Slots Regulation would distort competition on the market and would therefore reduce the incentive for airlines to renew their fleet.

Figure 6.3 Stakeholder views on the environmental consequences



7. CONCLUSION

At this stage, it seems premature to stop granting airlines relief from the use-it-or-lose-it rule beyond the winter 2020/2021 scheduling season, as suggested by some stakeholders. It is highly uncertain what will happen to air traffic levels and demand over the coming year. It may be possible that the discovery of a vaccine will pave the way to a fast recovery. However, if depressed demand persists, it should be possible for the Commission to react quickly to extend relief as the impact on the market of applying the use-it-or-lose-it rule in full would otherwise be devastating for airlines and disruptive for consumers.

Although a further extension of a blank waiver by delegated acts would support airlines in their recovery, the current problems experienced as side effects of the waiver would continue until the waiver expires. It will not be possible to ensure, with legal certainty based on the Slot Regulation, that slots are handed back promptly or to prevent speculative slot requests during the period of the waiver and the knock-on risks to competition at congested airports. Such effects could have an impact that would continue to be felt after the COVID-19 crisis has passed.

The proposed way forward to amend the Slot Regulation provides relief to air carriers during the COVID-19 pandemic, as they will have a longer period of certainty during which they can manage their slot holdings in a way that allows them to adapt to ongoing changes in travel patterns. In addition, it would aim to:

- ensure that airlines operate their historic slots to the maximum extent possible in line with the recovery and stabilisation of air traffic. This would be achieved by modulating the current use-it-or-lose-it principle so that airlines are obliged to use a certain percentage of their historic slots to keep their entire portfolio of historic rights for the corresponding next season;

- ensure that extended slot relief does not interfere unduly with market dynamics by facilitating the exit of airlines from airport markets where necessary, and encouraging new entry;
- provide a degree of visibility and operational certainty to airports and other service providers of air carriers for future operations, by ensuring that slots are handed back to the coordinator promptly when they are not required;
- ensure that slot relief protects the historic rights of air carriers that intend to operate their slots during subsequent scheduling seasons;
- ensure that slots affected by sudden measures adopted by public authorities affecting the ability of passengers to travel during a substantial part of the season are protected as these circumstances would be considered outside the airlines' control; and
- provide a degree of flexibility to extend the slot waiver again by way of a further delegated act after the beginning of 2021, subject to need and in a proportionate manner. This includes the option to further modulate the use-it-or-lose-it thresholds to ensure that airlines still have an incentive to use their slots to the maximum extent possible or return them to the pool of slots for distribution to other airport users.