

EUSG 4

Effective from November 2017

Interpretation of ‘Force Majeure’

1. PURPOSE

This document is aiming at providing guidance to slot coordinators about how the reasons provided by the aircraft operators for the non-utilisation of slots may be interpreted, and eventually considered as justified, according to the existing legal frame and the industry recommendations.

2. REFERENCES

EU Slot Regulation 95/93 (amended)

- Art. 8(1) and 8(2) – ‘use it or lose it rule’ and eligibility for historic precedence
- Art. 10(4) – reasons for the non-utilisation of slots

EU Regulation 261/2004 on passengers’ rights

- Recital 14 – exclusion of obligation for air carriers when extraordinary circumstances occur

Worldwide Slot Guidelines

- Section 8.6 – ‘use it or lose it rule’
- Section 8.7 – eligibility for historic precedence
- Section 8.8 – justified non-utilization of slots

3. PREAMBLE

Air carriers are required to operate 80% of the slots in a series held at 31 January or 31 August, as cleared by the Coordinator, in order to qualify for their entitlement to the same series of slots in the next equivalent season.

Unless the air carrier can demonstrate to the satisfaction of the Coordinator that a series of slots has been operated, as cleared by the Coordinator, for at least 80% of the time for which it has been allocated, all the slots in that series will be placed in the slot pool, unless the non-utilisation can be justified. Justification can only take place for the specific reasons consistent with EU Slot Regulation.

Nonetheless, a regular and transparent dialogue and exchange of information between the air carriers concerned and the Coordinator, as well as with other

relevant stakeholders when applicable (e.g. the airport managing body, the ANSP, the regulatory authority, etc.), is strongly advised for the clarity of the process regarding the interpretation of ‘force majeure’.

4. RECOMMENDATIONS

The EUACA believe that the following are examples of ‘force majeure’ events outside the air carrier’s control, caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken¹:

Grounding of the aircraft type generally used for the air service in question - Article 10.4(a)(i)

The grounding of an aircraft type (or engine type) by the manufacturers or by the relevant regulatory authority (e.g. Civil Aviation, EASA) for safety reasons.

Also, the unexpected and compulsory short term maintenance work on an aircraft type (or engine type), imposed on the air carrier by the manufacturers or by the relevant regulatory authority, would be considered as a justified reason for the non-utilisation of slots. What to consider as ‘short term’ should be determined by the Coordinator and discussed with the air carrier concerned, taking into account the details of the maintenance work.

Consequential impact caused by the grounding of an aircraft or engine type should also be considered for alleviation in order to allow air carriers flexibility to mitigate the impact of such grounding. However, the burden of proof rests with the air carrier to demonstrate that the consequential impact is a direct result of grounding that particular aircraft or engine type.

Closure of an airport or airspace – Article 10.4(a)(ii)

Total or partial closure of an airport or airspace as a result of any planned event (e.g. works, restructuring of an airport and/or airspace, implementation or renewal of ATC/airport equipment or facilities) or unplanned event (e.g. extreme weather conditions, action of ‘mother nature’, failure of ATC services or EDP systems, conflict or political reasons) resulting in at least widespread disruption of services in that period.

In case of planned capacity reductions, those cancellations made in anticipation of the event at the request of the Coordinator or the relevant authority, either on a voluntary basis or not, would be considered as justified when evaluating the non-utilisation of slots.

¹ References to Articles 10.4(c) and 10.4(d) of EU Slot Regulation are not included in this EUSG as they are directly related to other specific EU Regulations (No 2407/92 and No 2408/92 respectively)

In case of capacity reductions resulting in cancellations for a prolonged period, the subsequent cancellations during a reasonable period following the opening, partial or total, should also be considered for alleviation. Such a reasonable period should be discussed between the air carrier and the Coordinator, taking into account the details of the event. In this regard, a transparent dialogue and exchange of information with the air carriers concerned and the airport managing body is highly advised.

Air carriers should explore alternative routings if airspace is disrupted for a prolonged period and, wherever feasible, amend its slots accordingly. The Coordinator should be flexible if revised slot times are required as a result of changed routings within the declared capacity of the airport.

Cancellations at one airport of services to/from another airport by airlines because of total or partial closure at that other airport would be considered outside the air carrier's control for the non-utilisation of slots at both ends of the route. For this purpose, Coordinators are required to exchange information with other Coordinators whenever a closure of an airport or airspace occurs at their airports.

Serious disturbance of operations at the airports concerned, including those series of slots at other Community airports related to routes which have been affected by such disturbance, during a substantial part of the relevant scheduling period – Article 10.4(a)(iii)

Serious disturbances which affect a number of airports in the EU for a substantial part of the scheduling period for which, under the original text of Regulation 95/93 a special waiver of the use it or lose it rule would have been requested for example an epidemic outbreak (e.g. SARS), war or hostilities (e.g. Iraq), etc.

Depending on the circumstances, such alleviation may be time limited and the period of alleviation discussed between the Coordinator and the air carrier concerned.

Interruption of air services due to action intended to affect these services which makes it practically and/or technically impossible for the air carrier to carry out operations as planned – Article 10.4(b)

Examples of **action intended to affect the services of air carriers** are included below, though the exact circumstances need to be considered carefully in each case:

- Internal strikes which have been formally announced or declared (e.g. by a recognised Union following a ballot process) will be considered for alleviation (though not staff 'working to rule', unless this action has been publicly declared)

- External strikes by critical services (e.g. ATC, customs and immigration, aircraft manufacturers and any other critical service provider at the airport) that directly prevent that airline's operation.
- The withdrawal or suspension of traffic rights as a result of bilateral disputes.
- Temporary withdrawal of permission to operate by a State or any other regulatory authority on the grounds of safety or security (e.g. blacklists)

In all these examples (with the exception of strikes), the alleviation should be time limited, giving the air carrier concerned a reasonable period to find solutions and/or alternatives in order to utilise the slots properly. Such a reasonable period should be discussed between the Coordinator and the air carrier concerned, taking into account all the information available from other interested parties (e.g. the airport managing body, ANSP, the licencing authority, etc.).

There could be also other non-intentional actions outside the air carrier's control that may affect the services of the air carrier concerned (e.g. the interruption of air services following a recommendation from the relevant authority). In these cases, air carriers should discuss the issue in detail with the Coordinator concerned and, where necessary, provide clear evidence of the reasons for requesting alleviation. If the justification of the non-utilisation of slots is accepted by the Coordinator, the alleviation should be time limited as agreed between the Coordinator and the air carrier concerned. In general, it should not be extended further than the coordinated seasons that exist at the time the issue arises.

In all cases the Coordinator should be flexible regarding the reactionary and rotational cancellations and delays arising from the disruptions outlined above which may affect many other flights on the same day. In this regard, air carriers should provide the Coordinator with information demonstrating that the consequential impact is directly a result of the event/action should it be requested by the Coordinator.

On the contrary, the following are examples of cancellations which should not be considered as 'force majeure':

- Cancellations due to public holidays
- On-the-day technical/mechanical cancellations within the airline's control (e.g. AOG)
- Commercial cancellations within the airlines discretion

A regular and transparent dialogue and exchange of information between the air carriers concerned and the Coordinator, as well as with other relevant stakeholders when applicable (e.g. the airport managing body, the ANSP, the regulatory authority, etc.), is strongly advised for the clarity of the process regarding the interpretation of 'force majeure'.



Additionally, the exchange of information amongst the coordinators of the airports concerned, about those circumstances and events leading to 'force majeure', should also be made by noticing them appropriately (e.g. on the relevant websites).

5. ENFORCEMENT

The air carrier concerned is highly encouraged to contact the Coordinator and request alleviation from the 80/20 rule at the soonest (in advance when the non-utilisation of the slot can be anticipated or, alternatively, as soon as possible after the non-utilisation or disruption occurred), and to discuss how the Coordinator intends to treat the historic entitlements for the affected services, so that there can be certainty about the process. Air carriers must not leave it until the SHLs are sent out to advise the Coordinator of claims for 'force majeure'.

Slots made available by circumstances justified under Article 10(4) (e.g. serious disturbance of operations at Community airports for a substantial part of the season) may be reallocated to other operators on a non-historic basis. The operators will be informed, at the time of allocation, that they will not be entitled to claim historic status.