



RECOMMENDED PRACTICE

Application of Article 14(6)

Version 4 – 9 June 2006

1. Explanation

The Regulation contains new provisions empowering the coordinator, as the ultimate remedy, to withdraw series of slots that are not being effectively used during the current season, rather than waiting until the end of the season when the use it or lose it rule is applied.

The purpose of these provisions is to avoid wasting scarce slots.

2. References

Article 14(6) of the revised Slot Regulation states:

*14 (6)(a) Without prejudice to Article 10(4), if the 80% usage rate as defined in Article 8(2) cannot be achieved by an air carrier, the coordinator **may** decide to withdraw from that air carrier the series of slots in question for the remainder of the scheduling period and place them in the pool after having heard the air carrier concerned.*

*14(6)(b) Without prejudice to Article 10(4), if after an allotted time corresponding to 20% of the period of the series validity no slots of that series of slots have been used, the coordinator **shall** place the series of slots in question in the pool for the remainder of the scheduling period, after having heard the air carrier concerned.*

3. Rationale/Description

The words 'Without prejudice to Article 10(4)' simply mean that the air carrier still has the opportunity to justify the non-utilisation of slots, i.e. claim *force majeure*.

The important distinction between the paragraphs is that 14(6)(a) says 'the coordinator **may**', while 14(6)(b) says 'the coordinator **shall**'.

Article 14(6) is designed to prevent the abuse of the scheduling system. Before applying Article 14(6), the coordinator must decide if there has been an abuse of the scheduling system and have 'heard from the air carrier concerned', i.e. initiated a dialogue and communicated with the air carrier, ideally in writing, and given the carrier an opportunity to respond by explaining any mitigating circumstances which may affect the coordinator's decision e.g. delays to the delivery of new aircraft beyond the air carriers control.

If the air carrier refuses to respond by a reasonable deadline date, but was given a fair opportunity to be heard, then the withdrawal of slots may proceed. Article 7 allows coordinators to set reasonable timescales for responses to enquiries and requests for information.

Application of Article 14(6)(a)

As a 'coordinator may' apply this sanction, the application of 14(6)(a) is somewhat at the coordinator's discretion. The decision should be based on an objective assessment of what would make best use of the slots for the remainder of that season.

Before applying the sanction, the coordinator should consider the following factors:

- Are the remaining slots in the series likely to be used by the air carrier?
- Would the travelling public be disrupted by withdrawing the remaining slots?
- Are there outstanding requests that would utilise the slots more effectively?
- Has the air carrier been given warnings about this before, or tended to be wasteful with slots in the past?

Generally, 14(6)(a) should be invoked where the coordinator is not satisfied that the remaining slots will be effectively used and there are other requests on the waitlist that will utilise the slots more effectively.

Even if the withdrawal of slots is not implemented, coordinators should inform the air carrier concerned that they have failed under the 80/20 rule and will not earn historic rights to the series of slots, and that repeat behaviour could result in the withdrawal of slots in the future.

Requests to Reinstate Cancellations:

When the coordinator informs an air carrier that it will fall below the 80% usage target, the air carrier may seek to reinstate some planned cancellations in order to recover the situation.

Generally, this is permissible where the slots are still available and the flights are genuine reinstatements. The following should not be considered permissible:

- Seeking to 'share' the cancellations with another service at the same time
- Retiming another service on an ad hoc basis, also to 'share' the cancellation rate
- Adding unrelated flights to the series, such as ad hoc positioning flights

Application of Article 14(6)(b):

As a 'coordinator shall' sanction, 14(6)(b) describes the more serious situation where the carrier has already failed to utilise 20% of a series of slots and prompt action is warranted to prevent further wastage.

This provision clearly applies where an air carrier:

- Fails to operate the first 20% of the series without cancelling in advance at all; or
- Cancels on a rolling basis at relatively short notice

Although the sanction cannot be invoked until 20% of the series has passed, the process of contacting the carrier concerned could and should, where possible, be started earlier, i.e. tell the air carrier that if they have not started operations by the 20% date then the slots will be withdrawn from that date.

As 14(6)(b) cannot be applied until part-way through the season, there may be little other demand for the slots that would be released by the withdrawal from an air carrier except on an ad hoc basis. None-the-less, the purpose of the sanction is to deter behaviours that waste slots, so it is appropriate to use the slots for ad hoc services rather than re-allocate them to the offending air carrier.

Where an air carrier cuts back the start date of a service well in advance, albeit after the slot return deadline, it is more appropriate deal with this under Article 14(6)(a), ie. the 'coordinator **may**' sanction this behaviour but does not have to do so.

4. Status

Agreed at EUACA/38 June 2006

5. Exceptions

In the following countries the Coordinator or Schedules Facilitator may act differently from the method described above: