



RECOMMENDED PRACTICE

Interpretation of 'Force Majeure'

Version 10 – 22 March 2006

1. Explanation

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 period.

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 a limited number of quite specific reasons.

2. References

Articles 8 and 10 of the Regulation deal with this topic but in particular Article 10(4) contains the following justifications for the non-utilisation of slots.

- “(a) *unforeseeable and unavoidable circumstances outside the air carrier's control leading to:*
- *grounding of the aircraft type generally used for the air service in question;*
 - *closure of an airport or airspace;*
 - *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 scheduling period;*
- (b) *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;*
- (c) *serious financial damage for a Community air carrier concerned, with, as a result, the granting of a temporary license by the licensing authorities pending financial reorganisation of the air carrier in accordance with Article 5(5) of Regulation (EEC) No 2408/92*
- (d)” (Not relevant in this context)

In the IATA WSG section 6.10.7 (use it or lose it provision) refers to the justifications for failure to utilise slots allocated by the Coordinator.

3. Rationale/Description

The EUACA believe that the following are examples of 'force majeure' operational issues outside the air carrier's control:

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

- **Airport Closure**

Total or partial closure (e.g. extreme weather conditions, conflict, action of 'mother nature', political reasons) or restructuring of an airport and/or airspace for a limited period or the closure of an airport for a particular type or group of aircraft, including reactionary cancellations, resulting in at least widespread disruption and the cancellation of a significant proportion of services in that period.

In case of extreme weather conditions for a prolonged period (snow, storm, fog etc.), after reopening, partial or total, the continuing disruption from the earlier closure would be taken into account when considering the utilisation of slots. Air carriers are expected to find alternative routings if airspace is disrupted for a prolonged period and the Coordinator should be flexible if revised slot times are required as a result of changed routings.

Also, cancellations at one airport of all services to/from another airport by all 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.

- **Serious disturbance of operations**

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.

The EUACA believe that the following are examples of action intended to affect the services of air carriers though the exact circumstances need to be considered carefully in each case:

- Internal strikes within the company that are publicised (though not staff "working to rule")
- External strikes by critical services (e.g. ATC, fire services, fuel companies or fuel supplies, customs and immigration, catering companies, aircraft manufacturers etc.) 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 on the grounds of safety or security

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
- Commercial cancellations within the airlines discretion

In all cases the Coordinator must be flexible regarding the reactionary and rotational delays arising from the disruptions outlined above which may affect many other flights on the same day. The full picture should be discussed as soon as possible during or directly after the disruption with the air carrier concerned so that there is clarity about how the Coordinator intends to treat the historic entitlements for the affected services. Air carriers should not leave it until the SHL's are sent out to advise the Coordinator of claims for 'force majeure'.

Slots made available by circumstances justified under Article 10(4) (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.

4. Status

Agreed at EUACA/37 March 2006

5. Exceptions

In the following countries the Coordinator applies the Regulation differently from the method described above: