



RECOMMENDED PRACTICE

Weather and Force Majeure

Version 1 – 10 September 2005

1. Explanation

The European Commission made a significant change when amending the Regulation regarding the justifications for the failure to use slots.

In the old Regulation the list of force majeure criteria (unforeseeable and unavoidable circumstances outside the air carrier's control) were preceded by the words 'for example' allowing the coordinators some flexibility regarding the interpretation of the force majeure criteria.

In the amended Regulation no such flexibility exists and therefore the airlines are forced to rely on the coordinators interpretation of a small section of the force majeure provisions relating to the '**closure of an airport or airspace**'.

In amending the Regulation the Commission has clearly taken the view that 'normal' weather cancellations should be absorbed by the airline's 20% allowance against the utilisation of their series of slots and not treated as force majeure. This is consistent with the Commission's objective of maximising the number of slots slot under the use it or lose it rule in order to refresh the slot pool which in turn they believe will provide opportunities for new entrants.

In the amended Regulation the Commission has, in addition, inserted Article 10(5) giving themselves the power to review a coordinator's application of Article 10(4).

The coordinators in the EU feel that their discretion in interpreting Article 10(4) is now much reduced.

The IATA WSG is currently ambiguous on the subject of whether schedule disruption and cancellations caused by weather count against the use it or lose it rule.

The airlines are proposing to amend the WSG to make it explicit that cancellations due to weather should not count against the use it or lose it rule calculation. The WSG will in future contain a specific reference that different rules apply in the EU.

2. References

Article 10 (4) of the Regulation states:

'If the 80% usage of the series of slots cannot be demonstrated, all the slots constituting that series shall be placed in the slot pool, unless the non-utilisation can be justified on the basis of any of the following reasons:

- (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 relevant scheduling period'*

The IATA WSG currently states

6.6.4 - Schedule Disruptions

In the short term, schedules dislocated by disturbances beyond the airline's control should be considered as originally allocated.

Long-term disruption should normally invoke a rescheduling process and the future treatment of the slots allocated, but not operated because of the disruption, should be discussed and agreed in advance between the coordinator and the airline.

6.10.7 – Use it or Lose it Provision

A series of slots which have been allocated to an airline for the operation of regular scheduled services, will not be granted historical precedence in the next equivalent scheduling period, unless the airline can demonstrate to the satisfaction of the coordinator, that they have been operated, as cleared by the coordinator, for at least 80% of the time during the period for which they have been allocated. (See Appendix 4 – Basis for the Calculation of Historics)

Slots returned by an airline before 31 January for the following Northern Summer scheduling period or before 31 August for the following Northern Winter scheduling period, will not be taken into account for the purpose of the usage calculation.

In calculating 80% usage for the series of slots as outlined above, slots not used will be treated as operated, if the non-utilization is justified for any of the following reasons:

- (a) Interruption of the air services of the airline concerned due to unforeseeable and irresistible causes outside the airline's control
- (b) Action intended to affect these services, which prevents the airline from carrying out operations as planned

3. Rationale/Description

EUACA Coordinators or Schedules Facilitators should observe the following Guidelines regarding the **Closure of an Airport or Airspace**

Some flexibility for coordinators may exist for dealing with the effects of weather when interpreting the expression 'closure of an airport or airspace'.

Coordinators in the EU have experience of a number of scenarios in which weather can result in the (partial or total) closure of an airport and may be regarded as force majeure.

Clearly where the airport is **totally closed** as a consequence of the weather e.g. snow, storm, hurricanes, typhoons, ice storms etc this would qualify under the Regulation as an airport closure. On some occasions the airport may be reopened

later in the day. In this scenario coordinators would be flexible regarding continuing disruption from the earlier closure when considering the utilisation of slots.

The total closure of an origin or destination airport can also justify the failure to use slots at a coordinated airport in the EU.

Airports can also suffer from **temporary or partial** closure. In such circumstances most coordinators would not count the failure to utilise slots for the purpose of the use it or lose it (80/20) calculation, for example:

- severe weather resulting in the closure of the airport for the majority of the airlines or in widespread disruption and the cancellation of a significant proportion (say 33%) of services on that day
- if the weather results in the closure of the airport for a particular type or group of aircraft, e.g. an ATR may not be able to operate under the same weather conditions as a 757.
- where the cancellation at one airport of all services to/from another airport (by all airlines) due to weather closure at another airport.

What coordinators do not generally regard as force majeure

- **Temporarily** reduced flow rates due to common weather conditions like fog or high winds.
- Where the disruption is not widespread, e.g. where one airline cancels its flights due to weather but another airline, operating similar equipment, **on a similar route**, continues to operate normally.

It is essential that, when an airline cancels a significant number of services due to weather disruption then, as soon as possible, the airline should discuss the cancellations with the coordinator and that the coordinator should confirm the effect of the cancellations on the airline's historic.

What is clearly required in the EU is a dialogue between the airlines and the coordinator, as soon as possible after the event, regarding the way in which the Coordinator intends to treat historic following cancellations due to weather.

The airlines for their part must understand that, except in circumstances described above it is not within the coordinators power to ignore cancellations due to weather when determining historic.

4. Status

Agreed at EUACA/?? 2006

5. Exceptions

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