

Regulation (EU) 2020/696 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community in view of the COVID-19 pandemic (Text with EEA relevance)

REGULATION (EU) 2020/696 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 25 May 2020

amending Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community in view of the COVID-19 pandemic

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

After consulting the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁽¹⁾,

Whereas:

- (1) The COVID-19 pandemic has led to a sharp drop in air traffic as a result of a significant reduction in the demand for transport and the adoption by Member States and third countries of direct measures such as border closing and air traffic bans to contain the pandemic.
- (2) Figures published by Eurocontrol, which is the network manager for the air traffic network functions of the single European sky, indicate a fall in air traffic of around 90 % for the European region at the end of March 2020, as compared to March 2019. Air carriers are reporting large reductions in forward bookings as a result of the COVID-19 pandemic, and are cancelling flights for the winter 2019–2020 and summer 2020 scheduling periods. The sudden drop in demand and the unprecedented rate of cancellations has led to severe liquidity problems for air carriers. Those liquidity problems are directly linked to the COVID-19 pandemic.
- (3) Union air carriers, which were financially healthy before the COVID-19 pandemic, face liquidity problems that could trigger the suspension or revocation of their operating licence, or its replacement by a temporary licence, without there being a structural economic need for this to occur. The granting of a temporary licence pursuant to Article 9(1) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council⁽²⁾

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could send a negative signal to the market about the ability of an air carrier to survive, which in turn would aggravate any, otherwise temporary, financial problems. On the basis of the assessment carried out over the period from 1 March 2020 to 31 December 2020, it is therefore appropriate, provided that safety is not at risk and that there is a realistic prospect of a satisfactory financial reconstruction within 12 months, that the operating licence of such air carriers is not suspended or revoked. At the end of this 12-month period, the Union air carrier should be subject to the procedure laid down in Article 9(1) of Regulation (EC) No 1008/2008. The obligation provided in Article 9(2) of Regulation (EC) No 1008/2008 to inform the Commission should also apply to decisions not to suspend or revoke the operating licence.

- (4) In addition to emergency measures that could be applied in case of sudden problems of short duration, resulting from unforeseeable and unavoidable circumstances, pursuant to Article 21 of Regulation (EC) No 1008/2008, Member States should be able to refuse, limit or impose conditions on the exercise of traffic rights in order to deal with problems resulting from the COVID-19 pandemic, which could be of extended duration. Such emergency measures taken in the context of the COVID-19 pandemic should respect the principles of proportionality and transparency, and should be based on objective and non-discriminatory criteria that apply in accordance with Article 21 of Regulation (EC) No 1008/2008.
- (5) In airports where the number of suppliers of groundhandling services is limited pursuant to Article 6(2) and Article 9 of Council Directive 96/67/EC⁽³⁾, suppliers may be selected for a maximum period of seven years. Suppliers for which this period is coming to an end may, consequently, experience difficulties obtaining access to financing. That maximum period should therefore be extended.
- (6) As a result of the COVID-19 pandemic, in airports where the number of suppliers of groundhandling services is limited, one or several suppliers might cease to provide their services at a given airport before a new supplier can be selected on the basis of the procedure laid down in Article 11(1) of Directive 96/67/EC. In such circumstances, it is appropriate for the managing body of the airport to be able to choose a groundhandling service provider directly to provide the services for a maximum period of six months. It should be recalled that, where the managing body of the airport needs to procure groundhandling services as a result of the COVID-19 pandemic and is a contracting entity within the meaning of Article 4 of Directive 2014/25/EU of the European Parliament and of the Council⁽⁴⁾, that Directive applies.
- (7) Satisfactory financial reconstruction should be carried out with a plan which aims to prevent lay-offs and with guarantees that financial reconstruction will not be detrimental to workers' rights. The extension of authorisations for suppliers of ground handling services should aim to preserve jobs and workers' rights.
- (8) The further development of the COVID-19 pandemic and its impact on the air transport sector are difficult to predict. The Commission should continuously analyse the impact of the COVID-19 pandemic on the air transport sector and, if the adverse conditions persist, the Union should be in a position without undue delay to prolong the period during which the measures envisaged by this Regulation apply.

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- (9) In order to extend, where necessary and justified, the period during which the competent licensing authorities may decide not to suspend or revoke the operating licences, the period during which Member States may refuse, limit or impose conditions on the exercise of traffic rights, and the period during which contracts of suppliers of groundhandling services may be prolonged and during which the managing body of an airport may choose a supplier of groundhandling services directly, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amending Regulation (EC) No 1008/2008. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁽⁵⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (10) In view of the urgency entailed by the exceptional circumstances caused by the COVID-19 pandemic justifying the proposed measures, and more particularly in order to adopt the necessary measures quickly so as to address the severe and immediate problems faced by the sector, it was considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the Union, annexed to the Treaty on European Union (TEU), to the TFEU and the Treaty establishing the European Atomic Energy Community.
- (11) Since the objective of this Regulation, namely to amend Regulation (EC) No 1008/2008 in view of the COVID-19 pandemic, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale or effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (12) The unforeseeable and sudden outbreak of COVID-19 and the legislative procedures required for the adoption of relevant measures meant that it was impossible to adopt such measures in time. For that reason, the provisions of this Regulation should also cover a period before its entry into force. Given the nature of those provisions, such an approach does not result in a violation of the legitimate expectations of the persons concerned.
- (13) Regulation (EC) No 1008/2008 should therefore be amended accordingly.
- (14) In view of the urgency entailed by the exceptional circumstances justifying the measures established, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

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Article 1

Regulation (EC) No 1008/2008 is amended as follows:

- (1) in Article 1, paragraph 1 is replaced by the following:
 1. This Regulation regulates the licensing of Community air carriers, the right of Community air carriers to operate intra-Community air services and the pricing of intra-Community air services. It also lays down temporary rules on the supply of groundhandling services at Union airports.;
- (2) in Article 9, the following paragraphs are inserted:
 - 1a. Based on the assessments referred to in paragraph 1 carried out from 1 March 2020 until 31 December 2020, the competent licensing authority may decide before the end of that period not to suspend or revoke the operating licence of the Union air carrier provided that safety is not at risk, and that there is a realistic prospect of a satisfactory financial reconstruction within the following 12 months. It shall review the performance of this Union air carrier at the end of the 12-month period and decide whether the operating licence shall be suspended or revoked and a temporary licence shall be granted on the basis of paragraph 1.
 - 1b. Where the Commission finds, on the basis of data 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 2019 is persisting and is likely to persist, and also finds, on the basis of the best available scientific data, such as data from the European Centre for Disease Prevention and Control, that this situation is the result of the impact of the COVID-19 pandemic, the Commission shall adopt delegated acts in accordance with Article 25a to amend this Regulation by extending the period of 1 March 2020 to 31 December 2020 referred to in paragraph 1a of this Article accordingly.
 - 1c. The Commission shall continuously monitor the situation using the criteria set out in paragraph 1b. Based on the information available to it, the Commission shall present a summary report on this matter to the European Parliament and to the Council by 15 November 2020. Where the criteria referred to in paragraph 1b are fulfilled, the Commission shall adopt the delegated act provided for in paragraph 1b as soon as possible.
 - 1d. Where, in the case of a prolonged impact of the COVID-19 pandemic on the air transport sector in the Union, imperative grounds of urgency so require, the procedure provided for in Article 25b shall apply to delegated acts adopted pursuant to this Article.;
- (3) the following Article is inserted:

Article 21a

Emergency measures linked to the COVID-19 pandemic

1. Notwithstanding Article 21, for the period from 1 March 2020 until 31 December 2020, Member States may, without the agreement of the Commission referred to in Article 21(1), refuse, limit or impose conditions on the exercise of traffic rights if this action is necessary in order to address the COVID-19 pandemic. Such

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action shall respect the principles of proportionality and transparency and shall be based on objective and non-discriminatory criteria.

2 The Member State concerned shall inform the Commission and the other Member States without delay of such action as referred to in paragraph 1 and its duration, and shall provide them with adequate reasons justifying the need for that action. If the Member State modifies, suspends or withdraws such action after this Regulation has entered into force, it shall inform the Commission and the other Member States accordingly.

3 The Commission may, at the request of any other Member State or States involved, or on its own initiative, suspend the action referred to in paragraph 2 if it does not meet the requirements referred to in paragraph 1 or is otherwise contrary to the Union law.

4 Where the Commission finds, on the basis of the best scientific knowledge, evidence and data, such as data from the European Centre for Disease Prevention and Control, confirming the persistence of the COVID-19 pandemic, that refusals, limitations or impositions of conditions on the exercise of traffic rights by Member States are likely to be necessary beyond the period referred to in paragraph 1 of this Article, the Commission shall adopt delegated acts in accordance with Article 25a to amend this Regulation by extending that period accordingly.

5 The Commission shall continuously monitor the situation using the criteria referred to in paragraph 4. Based on the information available, the Commission shall present a summary report on this matter to the European Parliament and to the Council by 15 November 2020. Where necessary, the Commission shall adopt the delegated act referred to in paragraph 4 as soon as possible.

6 Where, in the case of a prolonged impact of the COVID-19 pandemic on the air transport sector in the Union, imperative grounds of urgency so require, the procedure provided for in Article 25b shall apply to delegated acts adopted pursuant to this Article.;

(4) the following Chapter is inserted:

CHAPTER IVa

TEMPORARY RULES ON GROUNDHANDLING SERVICES

Article 24a

1 By way of derogation from point (d) of Article 11(1) of Council Directive 96/67/EC⁽⁶⁾, contracts of or authorisations granted to suppliers of groundhandling services selected on the basis of the procedure laid down in Article 11(1) of that Directive that expire in the period from 28 May 2020 until 31 December 2021 may be prolonged until 31 December 2022.

2 By way of derogation from point (e) of Article 11(1) of Directive 96/67/EC, for the period from 1 March 2020 until 31 December 2020, where a supplier of groundhandling services ceases its activity before the end of the period for which it was selected, the managing body of the airport or the competent authority of the Member State, may choose a groundhandling service provider directly to provide the services for a maximum period of six months or for a period until 31 December 2020, whichever is the longer.

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3 Where the Commission finds, on the basis of data published by Eurocontrol, that the reduction in the level of air traffic, as compared to the level in the corresponding period in 2019, is persisting and is likely to persist, that this situation is the result of the impact of the COVID-19 pandemic, and that it results in interruption of supply of groundhandling services or difficulties in access to financing for suppliers of groundhandling services at Union airports, the Commission shall adopt delegated acts in accordance with Article 25a to amend this Regulation by extending the periods referred to in paragraphs 1 and 2 of this Article accordingly.

4 The Commission shall continuously monitor the situation using the criteria set out in paragraph 3. Based on the information available to it, the Commission shall present a summary report on this matter to the European Parliament and to the Council by 15 November 2020. Where necessary, the Commission shall adopt the delegated act provided for in paragraph 3 as soon as possible.

5 Where, in the case of a prolonged impact of the COVID-19 pandemic on the air transport sector in the Union, imperative grounds of urgency so require, the procedure provided for in Article 25b shall apply to delegated acts adopted pursuant to this Article.;

(5) the following Articles are inserted:

Article 25a

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Articles 9(1b), 21a(4) and 24a(3) shall be conferred on the Commission for a period of one year from 28 May 2020.

3 The delegation of power referred to in Articles 9(1b), 21a(4) and 24a(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6 A delegated act adopted pursuant to Articles 9(1b), 21a(4) and 24a(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

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Article 25b

Urgency procedure

- 1 Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
- 2 Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 25a. In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council..

Article 2

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 May 2020,

For the European Parliament

The President

D.M. SASSOLI

For the Council

The President

A. METELKO-ZGOMBIĆ

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- (1) Position of the European Parliament of 15 May 2020 (not yet published in the Official Journal) and decision of the Council of 25 May 2020.
- (2) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).
- (3) Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p. 36).
- (4) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).
- (5) OJ L 123, 12.5.2016, p. 1.
- (6) Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p. 36).’;

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