



Brussels, 08/08/2023

Position Paper

Use of Commander's discretion

It has become apparent to EurECCA that there is a level of confusion and differences of interpretation within some airlines regarding the application of Commander's discretion as adopted in EASA Flight Time Limitations Scheme. We believe much of this confusion is a result of a lack of clear explanations of aircrews' rights and rules to be applied in line with EASA FTL Regulation.

The use of Commander discretion is a decision made solely by the Commander based on the fitness of his crew to perform a duty safely. A roster cannot make a plan that assumes the use of discretion and any process to review a Commander's decision to use or not to use discretion must be "nonpunitive".

When can discretion be used?

Under EASA rules the Commander can only use discretion to extend an FDP or reduce a rest period "*in the event of unforeseen circumstances in flight operations, which start at or after the reporting time*". Thus, there are two separate situations both of which must be satisfied: the circumstances must be "unforeseen" and they must "start at or after the reporting time".

A consequence of the discretion rules is that discretion cannot be 'planned'.

As examples:

- It is not permissible for an operator to roster a crewmember to operate into discretion as by definition the roster is produced before report.
- Similarly, an operational decision that will result in a requirement to use discretion cannot be taken by the company alone. For example, the operator cannot instruct a Commander to delay departure to wait for a positioning crew member to arrive if that would result in the use of discretion to complete the duty.
- However, an operator can ask a Commander to consider using discretion in the same circumstances as long as the cause of the positioning requirement was not apparent before the crew operating the flight reported for duty.

Under EASA regulations “In case of unforeseen circumstances which could lead to severe fatigue, the Commander shall reduce the actual flight duty period and/or increase the rest period in order to eliminate any detrimental effect on flight safety.”

“Unforeseen circumstances”

The EASA FTL Regulations do not provide a definition of what unforeseen circumstances are. However, ICAO defines unforeseen circumstances as “An unplanned event, such as unforecast weather, equipment malfunction, or air traffic delay that is beyond the control of the operator”.

EurECCA asks all the operators to clarify the use of Commander’s discretion in their manuals of operation in a way to avoid misuse of such complex topic which has direct consequences on aircrews’ working conditions and health & safety at work in a nonpunitive approach.

ORO.FTL.205 Flight duty period (FDP)

(f) Unforeseen circumstances in flight operations — Commander’s discretion

AMC1 ORO.FTL.205 (f) Flight Duty Period (FDP)

CIRCUMSTANCES IN ACTUAL FLIGHT OPERATIONS — COMMANDER’S DISCRETION

(a) As general guidance when developing a commander’s discretion policy, the operator should take into consideration the shared responsibility of management, flight and cabin crew in the case of unforeseen circumstances.

The exercise of commander’s discretion should be considered exceptional and should be avoided at home base and/or company hubs where standby or reserve crew members should be available.

Operators should assess on a regular basis the series of pairings where commander’s discretion has been exercised in order to be aware of possible inconsistencies in their rostering.

(b) The operator’s policy on commander’s discretion should state the safety objectives, especially in the case of an extended FDP or reduced rest and should take due consideration of additional factors that might decrease a crew member’s alertness levels, such as:

- (1)** WOCL encroachment;
- (2)** weather conditions;
- (3)** complexity of the operation and/or airport environment;
- (4)** aeroplane malfunctions or specifications;
- (5)** flight with training or supervisory duties;
- (6)** increased number of sectors;
- (7)** circadian disruption; and
- (8)** individual conditions of affected crew members (time since awake, sleep-related factor, workload, etc.).

(1) The conditions to modify the limits on flight duty, duty and rest periods by the commander in the case of unforeseen circumstances in flight operations, which start at or after the reporting time, shall comply with the following:

(i) the maximum daily FDP which results after applying points (b) and (e) of point ORO.FTL.205 or point ORO.FTL.220 may not be increased by more than 2 hours unless the flight crew has been augmented, in which case the maximum flight duty period may be increased by not more than 3 hours;

**GM1 ORO.FTL.205 (f) (1) (i) Flight Duty Period (FDP)
COMMANDER'S DISCRETION**

The maximum basic daily FDP that results after applying ORO.FTL.205 (b) should be used to calculate the limits of commander's discretion, if commander's discretion is applied to an FDP which has been extended under the provisions of ORO.FTL.205 (d).

(ii) if on the final sector within an FDP the allowed increase is exceeded because of unforeseen circumstances after take-off, the flight may continue to the planned destination or alternate aerodrome; and

(iii) the rest period following the FDP may be reduced but can never be less than 10 hours.

(2) In case of unforeseen circumstances which could lead to severe fatigue, the commander shall reduce the actual flight duty period and/or increase the rest period in order to eliminate any detrimental effect on flight safety.

(3) The commander shall consult all crew members on their alertness levels before deciding the modifications under subparagraphs 1 and 2.

(4) The commander shall submit a report to the operator when an FDP is increased or a rest period is reduced at his or her discretion.

(5) Where the increase of an FDP or reduction of a rest period exceeds 1 hour, a copy of the report, to which the operator shall add its comments, shall be sent by the operator to the competent authority not later than 28 days after the event.

(6) The operator shall implement a non-punitive process for the use of the discretion described under this provision and shall describe it in the operations manual.

**EurECCA represents, protects and develops the rights and
needs of all cabin crew all over Europe**

Flying together - Protecting each other

About EurECCA: established in Brussels in 2014, the European Cabin Crew Association, EurECCA, represents, protects and develops the rights and needs of cabin crew all over Europe. It is composed of cabin crew unions from European Union Member States as well as accession and bordering states and represents some 33,000 cabin crew accounting for 70% of all organized cabin crew in Europe. EurECCA has no political connections. EurECCA's work is around Cabin Crew working conditions, wages, social protection and health and safety at work.