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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,
COM(2008) 227

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**On the application of Regulation (EEC) No 95/93 on common rules for the allocation of
slots at Community airports, as amended**

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(Text with EEA relevance)

Introduction

On 21 April 2004 the Parliament and the Council adopted Regulation (EC) No 793/2004¹ amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports (the “Regulation”). The amendments were aimed at improving the efficient use of scarce capacity at congested Community airports, while not fundamentally altering the existing system of slot allocation. To that end Regulation (EC) No 793/2004 introduced new provisions with regard to market access and new entrants, enforcement and the independence of the coordinator.

The obligation laid upon Member States to ensure the introduction of sanctions to prevent slot abuse at coordinated airports has fostered a better use of existing capacity. The process of slot allocation has been improved through a number of new or modified provisions, such as a new definition of what constitutes a series of slots, further strengthening of the use-it-or-lose-it provisions, the possibility for air carriers to re-time slots before allocation to optimise schedules, and more leeway for Member States to introduce local rules and guidelines at congested airports to improve the efficient use of scarce capacity.

Despite these new provisions, stakeholders and Member States consider that a number of provisions are still not fully or completely implemented.

This conclusion is underpinned by the Commission Report on the application of the slot Regulation², which concluded that there is a need to ensure better implementation in a number of areas with which stakeholders have experienced particular difficulties.

First, despite the obligation on Member States to guarantee the functional and financial independence of the coordinator at coordinated airports, there still appear to be cases of insufficient application of these requirements in some Member States, which could impede the coordinator’s functioning under the Regulation in a neutral, non-discriminatory and transparent way.

Second, in some Member States significant problems remain with ensuring full transparency of the information that coordinators and schedules facilitators hold regarding historical, requested, allocated and available slots. This could hinder a more efficient use of slots and

¹ Regulation (EC) No 793/2004 of the European Parliament and of the Council of 21 April 2004 (OJ L 138, 30.4.2004, p. 50) amending Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993).

² COM(2007) 704, 15.11.2007.

distort competition as not all interested parties may have the same degree of access to this schedule data.

Third, while local guidelines have the potential to allow for the better use of the existing slots at coordinated airports, it should be ensured that they comply with Community law.

Fourth, at a number of congested Community airports, air carriers exchange slots for monetary and other consideration. Some doubts have been raised regarding the compatibility of such exchanges with the Regulation.

Finally, there is a greater need for effective consistency between slots and flight plans in order to avoid slot abuse and to guarantee compliance with the Regulation, as evidence suggests that verification of flight plans against slots rarely takes place in a systematic manner, even though the possibility to do so is provided for in the Regulation.

The purpose of this Communication is to state the Commission's views with regard to above mentioned issues. This Communication draws from -and elaborates on- the Commission's, Member States' and stakeholders' experience with the application of the revised Regulation since its entry into force on 21 April 2004.

1. INDEPENDENCE OF THE COORDINATOR

Article 4(2)(b) of the Regulation states that "the Member State responsible for a coordinated airport shall ensure the independence of the coordinator at a coordinated airport by separating the coordinator functionally from any single interested party. The system of financing the coordinator's activities shall be such as to guarantee the coordinator's independent status".

Article 4(2)(c) further provides that Member States must ensure that "the coordinator acts according to this Regulation in a neutral, non-discriminatory and transparent manner".

The Commission considers that the independence of the coordinator is essential for it to properly carry out its task in accordance with the requirements laid down in Article 4(2)(c).

The Commission is of the view that functional separation means *inter alia* that the coordinator should act autonomously from, not be instructed by, and not have a duty to report back to the airport managing body, a service provider nor any air carrier operating from the airport concerned.

The Commission further considers that the system of financing the coordinator's activities should be set up in such a way that the coordinator is financially autonomous from any single party directly affected by -or having an interest in- its activities. The coordinator should therefore keep separate accounts and budgets and not rely for the financing of his activities only on the airport managing body, a service provider nor a single air carrier.

2. NEW ENTRY

Article 10(6) of the Regulation provides that slots placed in the pool set up by the coordinator in accordance with Article 10(1) must be distributed among applicant air carriers. 50% of these slots must first be allocated to new entrants, as defined by Article 2(b), unless requests

by new entrants are less than 50%. The coordinator must treat the requests of new entrants and other carriers fairly, in accordance with the coordination periods of each scheduling day.

The question has been raised whether the obligation laid upon the coordinator to allocate the slots from the pool on a precise 50/50 basis, as provided for in Article 10(6), relates only to the initial allocation from the pool about four months before the start of the relevant summer and winter scheduling seasons, or whether this also applies throughout the scheduling season. It has been argued that Article 10(6) relates only to the initial allocation from the pool and that thereafter coordinators could seek to provide a broadly balanced allocation at their own discretion.

The Commission observes that the Regulation, neither in Article 10(6) nor in any other provision, limits the scope of this Article to the initial allocation of slots prior to each scheduling season. The Commission, therefore, is of the view that the provisions of Article 10(6) should be applied permanently and continuously, throughout the scheduling seasons.

3. TRANSPARENCY OF SCHEDULE DATA

Article 4(7) of the Regulation provides that “all schedules facilitators and coordinators shall cooperate to detect inconsistencies in schedules”.

Article 4(8) further provides that “the coordinator shall on request and within a reasonable time make available free of charge for review to interested parties, in particular to members or observers of the coordination committee, either in written form or in any other easily accessible form, the following information:

- (a) historical slots by airline, chronologically, for all air carriers at the airport,
- (b) requested slots (initial submissions), by air carriers and chronologically, for all air carriers,
- (c) all allocated slots, and outstanding slot requests, listed individually in chronological order, by air carriers, for all air carriers,
- (d) remaining available slots,
- (e) full details on the criteria being used in the allocation”.

The Commission considers that transparency of information is essential for ensuring an objective procedure for slot allocation and for guaranteeing that the coordinator acts in accordance with the requirements of Article 4(2)(c). The Commission therefore calls upon Member States to ensure that coordinators fully comply with the requirements laid down in Article 4(8).

Given that slots are needed by an air carrier at both ends of a flight serving coordinated airports and given that schedules should be consistent to ensure an efficient use of airport and airspace capacity, the value of the schedule data mentioned in paragraph 8 of Article 4 hinges to a large extent on the cooperation of schedules facilitators and coordinators as set out in paragraph 7 of the said Article.

The Commission recalls that European coordinators have jointly developed a combined database that contains the data of all slots they have allocated. The data is supplied by almost

all coordinators and schedules facilitators and is accessible online and free of charge to all air carriers. The value of the database relies on accurate, complete and up-to-date data. Proper provision of schedule data to the database by coordinators and schedules facilitators is therefore pivotal and indispensable to facilitate effective collaboration between the actors, contributing therefore to the fulfilment of their obligations under Article 4(7) and 4(8).

The Commission therefore calls on Member States to encourage all coordinators and schedules facilitators to submit their schedule data to the combined database.

4. LOCAL GUIDELINES

Article 8(5) of the Regulation provides that “the coordinator shall also take into account additional rules and guidelines established by the air transport industry world-wide or Community-wide as well as local guidelines proposed by the coordination committee and approved by the Member State or any other competent body responsible for the airport in question, provided that such rules and guidelines do not affect the independent status of the coordinator, comply with Community law and aim at improving the efficient use of airport capacity. These rules shall be communicated by the Member State in question to the Commission”.

Article 5(1) and (3) further provides that local guidelines shall be proposed by the coordination committee at the request of any of its members and in accordance with its rules of procedure as provided for by Article 5(3).

As envisaged expressly in Article 5(1)(a) of the Regulation, local guidelines may take into account possible environment concerns, including those relating to noise. However, any operating restrictions based on such concerns must be compatible with Community law.

The Commission considers that, in particular, they should comply with Article 9(2) of Regulation (EEC) No 2408/92 on access for Community to intra-Community air routes³, which requires *inter alia* that restrictions must be non-discriminatory on grounds of nationality or identity of air carriers and not unduly distort competition between air carriers.

In addition, operating restrictions aimed at noise reduction should comply also with Directive 2002/30/EC on the establishment of rules and procedures with regard to the introduction of noise related operating restrictions at Community airports⁴.

5. EXCHANGE OF SLOTS

Article 8a(1)(c) of the Regulation states that “slots may be exchanged, one for one, between air carriers”.

Where there is no transparent market for the scarce resource of slots at congested airports, incumbent air carriers are often not aware of, or confronted with, the full opportunity costs of

³ Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992).

⁴ Directive 2002/30/EC of the European Parliament and of the Council on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (OJ L 85, 23.8.2002, p. 40).

the slots they hold. As a consequence an air carrier may retain a slot even when its market value far exceeds the value that the air carrier generates from retaining and using the slots.

This, in turn, implies that the number of slots made available both to new entrants and to incumbent air carriers seeking to add services may be lower than it otherwise would be. Against this background it would seem that the application of the Regulation has still not consistently led to the most efficient use of slots.

However, the Commission recognises that exchanges of slots for monetary and other consideration, more commonly referred to as secondary trading, are taking place at a number of congested Community airports. This has had certain advantages, notably in allowing the creation of additional services on specific routes.

The text of the current Regulation is silent on the question of exchanges with monetary and other consideration to reflect differences in value between slots at different times of day and other factors. Given that there is no clear and explicit prohibition of such exchanges, the Commission does not intend to pursue infringement proceedings against Member States where such exchanges take place in a transparent manner, respecting all the other administrative requirements for the allocation of slots set out in the applicable legislation.

If it becomes apparent that for competition or other reasons revision of the existing legislation is required, the Commission will make an appropriate proposal.

6. CONSISTENCY BETWEEN SLOTS AND FLIGHT PLANS

Article 14(1) of the Regulation provides that “an air carrier’s flight plan may be rejected by the competent Air Traffic Management authorities if the air carrier intends to land or take off at a coordinated airport, during the periods for which it is coordinated, without having a slot allocated by the coordinator”.

Experience has shown that verification of flight plans against airport slots in particular allocated to general aviation by Air Traffic Management authorities and coordinators does rarely take place in a systematic and consistent manner.

As set out in the “Action plan for airport capacity, efficiency and safety in Europe”⁵, the Implementing Rule on Air Traffic Flow Management, which is scheduled to be adopted by the Commission in 2008 on the basis of Article 9 of Regulation (EC) No 551/2004 on the organisation and use of the airspace in the Single European Sky⁶, will provide for a mechanism aimed at increasing the consistency between slots and flight plans.

Effective consistency between requests for single slots and flight plans has become increasingly relevant in particular for general and business aviation flights, which by definition operate unscheduled services often outside the allocated slot bracket or even without having obtained a slot from the slotpool in advance. As a result, these ad-hoc flights may interfere with the proper operation of coordinated airports, where slots tend to reflect

⁵ COM(2006) 819, 24.1.2004.

⁶ Regulation (EC) No 551/2004 of the European Parliament and the Council of 10 March 2004 on the organisation and use of the airspace in the Single European Sky (OJ L 96, 31.3.2004, p. 20).

flight plans and where air carriers are required to operate in accordance with the slots allocated to them.

Conclusions

The Commission hopes that this Communication will stimulate a better use of scarce capacity at coordinated Community airports.

The Commission will continue to monitor the functioning of the Regulation and will concentrate on ensuring proper implementation of the Regulation by Member States.

In the light of this monitoring, the Commission will consider whether it is necessary to make a proposal to amend the Regulation.

The Commission will continue to facilitate the involvement of stakeholders and Member States in further developments regarding slot allocation. In this respect, the Community Observatory on airports, which will be set up in the coming months, will serve as a forum in which all qualified parties will be in a position to effectively tackle slot issues.