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COMMISSION OF THE EUROPEAN COMMUNITIES

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2009/0042 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EEC) No 95/93 on common rules for the allocation of slots at
Community airports**

EXPLANATORY MEMORANDUM

Introduction

1. The global economic and financial crisis, which is of major severity and scope, is now seriously affecting the activities of air carriers. It has led to a significant reduction in air traffic over the winter 2008/09 scheduling season. The summer 2009 scheduling season will also be affected by the economic crisis.

After six years of 3% average growth and zero growth in 2008, in December 2008 Eurocontrol was forecasting a 3% fall in the number of flights in Europe in 2009. On 25 February 2009, it revised its estimates and is now forecasting a reduction of between 8.1% and 1.4%, with the most likely scenario being a 4.9% fall. It notes that traffic collapsed at the end of 2008, with a 7% fall in December alone. According to Eurocontrol, low-cost airlines saw the first fall in their traffic in 15 years, with 4 600 flights in November 2008, 6.1% down on November 2007. Business flights showed a reduction of 16% in December 2008 compared with the same month in 2007.

More than 80% of European airports have seen a reduction in traffic (8% to 10% in passenger traffic and 25% to 30% in cargo traffic in January 2009), which means that the economic crisis is hitting the whole of the European air transport sector.

2. The figures advanced by European air operators (AEA) illustrate the gravity of the situation. In December 2008, the volume of cargo traffic fell by 21.4%. Passenger traffic is expected to see a 4% contraction in 2009. Operators point out that, over the past 25 years, such reductions have occurred on only three occasions: in 1986, because of Chernobyl and the war in Libya, in 1991, because of the first Gulf War and in 2001/02, because of the terrorist attacks in the United States. The AEA is forecasting cuts in capacity during summer 2009 of between 6% and 8% in terms of the number of flights and between 9% and 12% in terms of the number of seats offered (available seat kilometres).

3. According to the International Air Transport Association (IATA), in December freight volumes contracted by 22.6% at international level and by more than 21% in the case of European carriers. Figures published on 26 February 2009 show a reduction of 5.6% in passenger traffic and 23.2% in cargo traffic in January 2009 compared with the same month in 2008. IATA notes that European carriers have compensated, in part, for a fall of 5.7% by reducing their capacity by 3.6%.

4. The Commission takes the view that the current economic crisis and subsequent readjustments to services (suspension, reduction of frequencies) constitute exceptional circumstances that are having a negative impact on airline companies. Consequently, coordinators should interpret the provisions of Regulation (EEC) No 95/93 on the allocation of slots in such a way that airline companies do not risk losing the slots they fail to use because of the economic crisis ('use-it-or-lose-it' rule).

5. Unless a decision is adopted to maintain the 'grandfather status' of slots, airlines might keep existing capacity in the face of significantly reduced demand, which would aggravate the current economic difficulties.

The provisions of the slot Regulation

6. The point of reference for the Regulation, as stated in Article 10(2), is the allocation and utilisation of slots during one season ('use-it-or-lose-it' principle) and in particular the situation at the end of the season after the slots have actually been used. In particular, that Article stipulates that air carriers will not be entitled to the same series of slots in the next equivalent scheduling season, unless they can prove to the satisfaction of the coordinator that they have operated them, as cleared by the coordinator, for at least 80% of the time during the season for which they were allocated.

7. Furthermore, Articles 8(2) and 10(2) of the Regulation provide for calculation of usage at the end of the season, once slots have been operated, for the purpose of acquiring rights for the next equivalent scheduling season.

8. Article 10(4) gives a list of reasons that can validly be used by air carriers to justify the non-utilisation of slots allocated during a scheduling season. Point (a) gives a non-exhaustive list of unforeseeable and unavoidable circumstances outside the carrier's control.

9. The Regulation is based on the principle that the allocation and monitoring of the use of slots are the responsibility of the coordinator (Articles 4(5) and 6). Coordinators must not only carry out their duties in an independent manner but must also act in a neutral, non-discriminatory and transparent way (Article 4(2) and (3)). Therefore, neither the Commission nor any Member State may impose on coordinators any requirements that might undermine their independence.

Hence, it may be concluded that in applying Article 10(2) and (4), the coordinator must act in accordance with the principles set out in the abovementioned Article 4.

10. Under these circumstances, there is a danger that Member States will interpret the Regulation differently, which would lead to a lack of consistency in the application of Article 10(4) within the Community. This was what occurred following the terrorist attacks in the United States. The Community must therefore act to guarantee in a clear and unequivocal fashion, as it did in 2002 and 2003 with the insertion of Articles 10a and 10b, legal certainty concerning the application of the 'use-it-or-lose-it' rule for scheduling seasons affected by the crisis.

11. It is therefore proposed to insert a new Article 10c into the Regulation, laying down that coordinators must accept, against the background of the economic crisis, that air carriers are entitled to the same slots in the summer 2010 scheduling season as allocated to them for the summer 2009 scheduling season (29 March 2009 to 24 October 2009).

12. In order to avoid wasting slot capacity in seasons affected by the crisis, coordinators may reallocate slots not used during the summer 2009 season for the rest of the season as 'ad hoc' slots, which may be used by other air carriers without this conferring 'grandfather rights'.

13. The Commission shall continue to analyse the impact of the economic crisis on the air transport sector. Should the situation continue to deteriorate during the winter 2009/10 season (25 October 2009 to 27 March 2010), the Commission may decide to renew these arrangements for the winter 2010/11 season.

Time frame

14. An important aspect of this proposal is its time frame. Initial slot allocation takes place at the IATA scheduling conferences: in November for the following summer season and in June for the following winter season. Consequently, slots for the summer 2010 season will be allocated during the November 2009 scheduling conference, while slots for the winter 2010/11 season will be allocated in June 2010.

Article 10(3) of the Regulation lays down that air carriers may return their slots to the pool before 31 January for the following summer season or before 31 August for the following winter season, without this affecting the calculation of the use made of their remaining slots.

According to the IATA world-wide scheduling guidelines, having identified the entitlement to 'grandfathered' slots, coordinators must provide each airline with details of their 'grandfathered' slots, as soon as these have been determined by the coordinator, but not later than:

- the third Monday in April for slots registered as 'grandfathered' slots, as actually operated in the preceding winter season;
- the third Monday in September for slots registered as 'grandfathered' slots, as actually operated in the current summer season up to that time.

15. Although the allocation of slots for the summer 2009 scheduling season was completed on 31 January 2009, amendment of the Regulation will still permit airline companies to adjust their activities and reduce existing capacity in order to comply with the 'use-it-or-lose-it' rule. Since the summer 2009 season begins on 29 March, the proposed rule should enter into force as soon as possible.

16. Otherwise, there is a major risk of legal challenges from air carriers allocated slots at airports where coordinators did not accept the justification of exceptional circumstances caused by the economic crisis during the summer 2009 scheduling season.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) The global economic and financial crisis is now seriously affecting the activities of air carriers. It has led to a significant reduction in air traffic over the winter 2008/09 scheduling season. The summer 2009 scheduling season will also be affected by the economic crisis.
- (2) In order to ensure that the non-utilisation of slots allocated for the summer 2009 season does not cause air carriers to lose their entitlement to those slots, it is necessary to specify clearly and unambiguously that the season is affected by the economic crisis. The Commission will continue to analyse the impact of the economic crisis on the air transport sector. Should the situation continue to deteriorate during the winter 2009/10 season, the Commission may decide to renew all or part of these arrangements for the winter 2010/11 season.
- (3) Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports⁵ should therefore be amended accordingly.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ L 14, 22.1.1993, p. 1. Regulation as amended by Regulation (EC) No 894/2002 of the European Parliament and of the Council (OJ L 142, 31.5.2002, p. 3), Regulation (EC) No 1554/2003 of the European Parliament and of the Council (OJ L 221, 4.9.2003, p. 1) and Regulation (EC) No 793/2004 of the European Parliament and of the Council (OJ L 138, 30.4.2004, p. 50).

This amendment in no way affects the Commission's powers as regards the application of Articles 81 and 82 of the EC Treaty,

HAVE ADOPTED THIS REGULATION:

Article 1

In Regulation (EEC) No 95/93, the following Article 10c is inserted:

'Article 10c

For the purpose of Article 10(4), coordinators shall accept that air carriers are entitled to the same series of slots during the summer 2010 scheduling season as were allocated to them during the summer 2009 scheduling season in accordance with the Regulation. The Commission shall continue to analyse the impact of the economic crisis on the air transport sector. Should the situation continue to deteriorate during the winter 2009/10 season, it may decide, in accordance with the procedure referred to in Article 13(2), to renew all or part of these arrangements for the winter 2010/11 season.'

Article 2

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,

For the European Parliament
The President

For the Council
The President