



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

**Communication on the application of Regulation (EC) 793/2004 on common rules for
the allocation of slots at Community airports**

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(Text with EEA relevance)

1. INTRODUCTION

On 21 April 2004 the Council adopted Regulation (EC) 793/2004 amending Council Regulation (EEC) 95/93 on common rules for the allocation of slots at Community airports. The aim of the revision was to strengthen the Regulation so as to ensure that scarce capacity at congested Community airports is managed and used as efficiently as possible. The system of slot allocation already in place was not fundamentally modified.

On the basis of Article 14a (1) of Regulation (EEC) 95/93, as amended by Regulation (EC) 793/2004, the Commission shall submit a Communication to the European Parliament and the Council on the operation of this Regulation within three years of its entry into force. The Communication shall address in particular the functioning of Articles 8, 8a and 10. This Communication complies with this obligation.

On 23 January 2007, the Commission launched a consultation exercise to obtain interested parties' comments on the operation of Regulation (EC) 793/2004. The Commission has received 44 contributions from the following groups:

- National authorities
- Regional bodies and local authorities
- Stakeholder associations and organisations
- Air carriers
- Airports
- Slot coordinators
- Other (Eurocontrol)

2. MAIN ISSUES

The following picture emerges from the contributions:

- (1) Member States as well as other stakeholders point at the fact that Regulation 793/2004 has been in force for only three years. This relatively short period makes it difficult to identify firm trends and to make a reliable assessment of the effects.
- (2) Air carriers point at the main problem that lies at the heart of the current shortage of slots at congested airports, namely the lack of airport capacity. Rather than addressing the symptoms, such as the scarcity of slots, the air carriers advocate increasing physical airport capacity.
- (3) Airports acknowledge the positive results of the Regulation but - in view of the capacity crunch to be expected in the coming years - also point at the necessity to

further improve capacity usage by means of additional rules and local guidelines. A number of airports have made specific recommendations to this effect.

- (4) With regard to the process of slot allocation, as redefined by Regulation (EC) 793/2004, Member States and all other stakeholders are of the opinion that it has significantly improved, even if it is difficult to measure its effect in terms of efficiency of airport use.
- (5) The obligation for Member States to ensure that sanctions or equivalent measures are available to deal with slot abuse has a significant effect on the behaviour of air carriers. Air carriers compliance with the various provisions concerning the allocation and the actual use of airport slots has improved in such a way that, as a result of the mere existence of sanctions, it has not been necessary to impose sanctions or equivalent measures.
- (6) Although the slot coordinators are of the opinion that the Regulation contains a significant number of improvements compared to Regulation (EEC) 95/93 and that it has worked reasonably well, there is scope for further improvements, notably on the issue of new entrance, local rules and the role and position of the coordinator. .

Below, more specific reactions to the various issues raised in the consultation paper of the Commission are reflected. Where reference is made to 'the Regulation', such reference concerns Regulation (EC) 793/2004 only.

3. NEW ENTRANT

The new entrant rule seems to have a limited effect on competition at Community airports and on the best use of scarce capacity.

Member States find it difficult to answer the question to what extent the Regulation has contributed to additional opportunities for new entrants as Member States' authorities are able to identify the number of new entrants operating at slot coordinated airports but can not say whether the same number would have been operating in the absence of the new entrant rule. Some Member States find the definition of a new entrant too complicated as it does not give a clear picture of the new entrant concept and may therefore lead to different interpretations.

Some Member States appreciate the usefulness of the new entrant rule which allows their air carriers to obtain slots at airports in other Member States. The new entrants rule has been equally useful in the context of relations with third countries: it has created a possibility for third country carriers to obtain slots at congested Community airports.

Nevertheless, the rule may be considered as too restrictive: by giving new entrants priority in the administrative allocation of slots from the pool, it may be more difficult for air carriers already operating at a small scale from a congested airport to expand and compete with incumbents on a particular route. Such expansion could be considered at least as good a method of promoting competition as encouraging new entrants.

On a different note, experience in other Member States demonstrates that it is not so much the scarcity of slots that prevents air carriers from entering the market at an airport but rather that

the available slots are not taken up by new entrants who simply show a lack of interest in the first place.

One Member State comments that slots allocated under the new entrant rule have often not been used, or have only been used for a short period of time. It concludes that new entrants have thus not increased competition for incumbent carriers. The Member State favours the introduction of a local rule instead, which would give priority to air carriers and air services on the basis of criteria such as size of aircraft used, new destinations and frequencies on routes with less than three return services per day. Two Member States mention that the new entrant rule has favoured the development of new routes and that most new entrant slots have been used for short and medium haul routes.

The airports state that the new entrant provisions have barely had an effect on competition between air carriers, as it creates a negligible presence at an airport, leading to a range of small operations that do not provide effective competition in the market place. This is accentuated by the relatively small number of attractive slots available in the pool. Strict application of the new entrant rule may undermine the effective use of scarce capacity. As an alternative, it is proposed to further develop local rules as an instrument to optimise capacity. In this approach, Member States would have the possibility to opt out on the new entrant rule and endorse local rules instead.

Air carriers observe that it is difficult to properly assess the impact of the new entrant rule. They hold the view that competition between air carriers is strong enough in Europe and that airport congestion has not deterred new entrants from challenging the established air carriers at major airports as well as at secondary airports. One air carrier states that at 32 coordinated EU airports, low cost carriers have started new air services or increased their number in the last decade. This would tend to prove the effectiveness of the new entrant rule. It is noted, however, that there is no clear connection between this development and the Regulation which dates back only to 2004.

Some coordinators argue that the new entrant rule may not be widely understood among Community based carriers and even less so by air carriers from third countries. Coordinators in general do not feel qualified to give an opinion on whether the new entrant rule has promoted competition on intra-Community routes, as levels of competition are affected by a wide variety of factors at airports. A broader set of rules governing new entrants might avoid situations in which the effects of a strict application of the rule frustrates other objectives of the Regulation, such as the most optimal use of scarce capacity.

In addition, one coordinator argues that secondary trading of slots has contributed more to the increased efficiency of slot usage than the new entrant rule, as trading has resulted in small aircraft operated on short routes being replaced by large aircraft on long haul routes.

The mere fact that new entrants are limited in the amount of slots they can hold to apply under the new entrant status implies that they are prevented from expanding their services and are unlikely to establish a viable network and competitive critical mass of operations. This limitation could result in a fragmentation of slots amongst many small operators and result in strengthening the relative position of the incumbent carriers at hub airports.

4. THE ROLE OF THE COORDINATOR

The main issue concerning the role of the coordinator regards its neutrality and functional independence. Evidence suggests that the relevant provisions of the Regulation have not yet been implemented in a unified and consistent way in all Member States.

Some Member States have passed on the duties of the slot coordinator to the airport operator and recognise that, as a consequence, the coordinator is not functionally independent from any single interested party required by the Regulation. Most Member States have functionally separated the slot coordinator from any single interested party and state that this is conducive to ensuring the neutrality and independence of his/her actions.

Air carriers draw attention to the fact that the independence of the slot coordinator, particularly his/her functional separation, is not yet sufficiently ensured in all Member States. The Commission is urged to make sure, as a matter of priority, that the relevant provisions of the Regulation are consistently applied across the EU. The low cost carriers are concerned that the slot coordinator may have too many powers and that the adoption of an appeal procedure could remedy this.

Regional air carriers express the view that the use of other than the English language in the slot coordination committee hampers its functioning. They recommend the provision of translation facilities if requested or the adoption of English in these committees. One air carrier suggests that one coordination committee per coordinator (instead of per airport) could improve the committee's efficiency.

Slot coordinators welcome the fact that the Regulation stresses the importance of the independence of the coordinators' position. Member States have made much progress in applying the relevant provisions of the Regulation though not all coordinators yet have the fully independent status they need. Their independence could be further enhanced if they no longer had to rely on airport operators and air carriers for their budget. But the coordinators do not substantiate with figures, or otherwise, that their position has been negatively affected by these financial arrangements.

In general, it is believed that complete transparency of schedule data will lead to neutrality and non-discrimination in the slot allocation process, as the evidence of the coordinators' slot allocation decisions will be available for all to examine. There is anecdotal evidence that in some Member States there exist significant problems with the transparency of coordinators' scheduling data. It is noted that currently not all coordinators in the EU submit their data to the slot allocation database which is accessible free of charge to all air carriers.

5. THE PROCESS OF SLOT ALLOCATION

Local guidelines have the potential to add more flexibility to adapt to local circumstances to allow for better use of the existing slots at congested airports, provided they comply with the provisions of the Regulation.

Member States take the view that even if there is no generally accepted definition of 'efficient use of airport capacity', a number of new or modified provisions in the Regulation have contributed to more efficient use of airport capacity: the new definition of what constitutes a

series of slots, the further strengthening of the use-it-or lose-it rule and the stricter rules on force majeure.

The airports highlight the potential value added of the Regulation as it allows the introduction of local rules to improve the slot allocation process in a more flexible manner. This benefit is currently regarded as being limited however, and the provisions could be further strengthened by raising the slot usage rate under the use-it-or-lose-it rule and by allowing airports to introduce a slot reservation fee which would serve as an incentive for air carriers to commit to the actual use of allocated slots. The fee would be paid in advance for every allocated slot and be forfeited when the slot is not used.

Air carriers point to the absence of a common definition of what is efficient use of airport capacity. They offer several possibilities for such a definition including maximising the number of passengers carried for each slot or the best contribution to development of the network at a given airport. The lack of a common definition makes it difficult to assess the effects of the revised Regulation. In any case, the increased possibility to apply local guidelines is a major improvement as is the potential to add ad-hoc flexibility to adapt slot allocation to local circumstances. Compatibility of such local rules with Community law needs to be ensured.

Slot coordinators observe that the new definition of what constitutes a series of slots and the stricter definition of force majeure have had a positive effect on efficiency of operations. The Regulation has increased the minimum number of slots that must be operated in order to earn historic rights for the operation of a series. This has also contributed to the reduction of fragmentation of schedules at airports, be it marginally.

6. ENFORCEMENT

The introduction of dissuasive sanctions or equivalent measures to prevent slot abuse has fostered better use of existing capacity,.

One Member State observes that the possibility for a slot coordinator to withdraw a slot once an air carrier does not use it in accordance with the Regulation has a strong deterrent effect and this is a clear regulatory improvement that the Regulation has brought about.

Airports are dissatisfied with the impact of the provisions on enforcement which aim to promote the proper use of airports because there is, they claim, little interest in creating procedures that lead to sanctions applied by Air Traffic Management authorities. The airports consider that more could be done in terms of defining the tools to properly enforce the Regulation. In this context, consistency between airport slots and flight plans in a systematic way is advocated and the development of implementing rules would be helpful.

Airports also state that coordinators have rarely used their power to withdraw slots from air carriers that repeatedly and intentionally operate air services outside the allocated slot times. It has not been made clear, however, whether this is due to the reluctance of coordinators to use their enforcement powers or whether it is due to the good behaviour of air carriers.

Air carriers welcome the significant progress that has been made by requiring that effective, proportionate and dissuasive sanctions or equivalent measures are applied to prevent abuse of the slot allocation mechanism. The effects thereof are not quantified, however. The overall

perception is that the mere threat of sanctions has a deterrent effect and is thus an effective means to achieve the objective of more efficient use of slots. The air carriers stress that further sanctions should be proportionate.

One air carrier takes the view that the Regulation lacks common principles on the monitoring and sanctioning of punctuality of slot use. Some slot coordinators apply these principles in a coherent way while others do not, and this has resulted in confusion and unequal treatment between air carriers. The same air carrier advocates that measures taken by Member States against slot abuse should be made public so as to enhance transparency.

The regional air carriers believe that a number of circumstances beyond an air carrier's control should be considered force majeure when calculating adherence to the use-it-or-lose-it rule: weather conditions that affect operators of smaller aircraft more than others should be recognised as force majeure; flight cancellations due to industrial action and strikes; and, cumulative delays over a day caused by Air Traffic Management problems that result in cancellations.

Slot coordinators point out that they have as yet not used their powers to withdraw slots from air carriers that repeatedly and intentionally operate air services outside the allocated slot times. The existence of this power has, however, made it easier for coordinators to convince air carriers to change their behaviour if necessary.

One coordinator mentions that the Commission itself has a significant responsibility for monitoring and enforcing implementation of the Regulation and that raising the standards for coordination across the EU should be given greater priority by the Commission. Another coordinator suggests that the coordinator should be given the authority to demand from the Air Traffic Management authorities the refusal of a flight plan in case of manifest slot abuse by an air carrier.

7. CONCLUSIONS

The new entrant rule seems to have had only a limited effect on competition at Community airports and on the best use of scarce airport capacity as some evidence suggests that the rule seems not to be widely understood and can therefore result in creating a negligible presence at congested airports, leading to a range of small operations that do not provide effective competition in the market place.

Local guidelines have the potential to add more flexibility to adapt to local circumstances to allow for better use of the existing slots at congested airports. The possibilities to introduce local guidelines should be enlarged, provided they comply with the provisions in the Regulation.

Although the Regulation has brought some improvements in use of airport capacity, it is not adequate to address the increasing congestion at Community airports. Implementation of the measures set out in the Commission Communication "An action plan for airport capacity, efficiency and safety in Europe" adopted in October 2007 is needed to achieve a more efficient use of scarce airport capacity possibly accompanied by a more structured approach to market based slot allocation schemes.

There are concerns regarding the neutrality and functional independence of the coordinator at coordinated Community airports. The evidence suggests that the relevant provisions of the Regulation have not yet been implemented in a unified and consistent way in all Member States.

The introduction of dissuasive sanctions or equivalent measures to prevent slot abuse has fostered better use of existing capacity.

Although the Regulation has brought about a number of significant improvements aimed at making a better use of scarce capacity, the Commission will now have to concentrate on assuring adequate implementation of a number of issues with which stakeholders have experienced particular difficulties. Also, the Commission concludes that the existing Regulation can be improved through an interpretative instrument where the scope of a number of provisions would be clarified. Eventually, the Commission could envisage a partial review of the text should this prove to be indispensable.