



**CONSULTATION ON THE INTRODUCTION OF
SANCTIONS UNDER ARTICLE 14.5 OF EU
REGULATION 95/93, (AS AMENDED) ON
COMMON RULES FOR THE ALLOCATION OF
SLOTS AT COMMUNITY AIRPORTS**

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1. INTRODUCTION

The Commission for Aviation Regulation (“the Commission”)¹ was established on 27 February 2001 by the Aviation Regulation Act, 2001, (“the Act”).

Section 8 of the Act provides that the Commission is the competent authority in the State for the purposes of Council Regulation (EEC) No. 95/93² on common rules for the allocation of slots at community airports, other than the functions of the coordinator. The Commission has the function of appointing a coordinator. The coordinator’s primary role is to allocate slots at an airport. A “slot” means permission given by the coordinator to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or taking off.

Regulation 95/93 was amended by Regulation (EC) 793/2004 of 21 April 2004 and the majority of its Articles came into effect on 30 July 2004; Articles 11(2) and 14(5) came into effect a year later on 30 July 2005. Together the two Regulations are colloquially referred to as the ‘Slot Regulation’. The amendments to Regulation 95/93 set down in Regulation 793/2004 do not change the substantive approach to slot allocation but do, amongst other things, require Member States to implement a system providing for enforcement of sanctions against those users who do not comply with the slot coordination process, in others words users who engage in “slot abuse”.

Article 14.5 of the Slot Regulations requires that,

¹ For the purpose of clarity any reference in this Paper to “the Commission” means the Commission for Aviation Regulation.

² Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports.

"Member States shall ensure that effective, proportionate and dissuasive sanctions or equivalent measures are available to deal with repeated and intentional operation of air services at times significantly different from the allocated slots or the use of slots in a significantly different way from that indicated at the time of allocation, where this causes prejudice to airport or air traffic operations."

The Commission's understanding of the term "equivalent measures" is that it is open to a Member State to consider the introduction of a regime of administrative measures (i.e. non-punitive in the direct criminal sanction sense) that would be relevant and effective in combating slot abuse.

The purpose of this Paper is to seek views from interested parties on the nature of such an enforcement procedure at coordinated airports in Ireland. In the following text, the Commission poses a range of questions to which it invites replies. These questions are not intended to be exhaustive and respondents should feel free to make any comments on this topic which they think may be appropriate or helpful given their experience at Dublin Airport and elsewhere.

2. DECISION TO COORDINATE DUBLIN AIRPORT

In accordance with the procedures laid down in the Regulations, and in light of the conditions set out in the Commission's Decision of 13 October 2004, the Commission decided on 27 April 2005 that Dublin Airport would be coordinated within the meaning of the Slot Regulations with effect from the commencement of the Summer 2006 scheduling season onwards. The Summer 2006 scheduling season commenced on 26 March 2006. All relevant Commission papers and documentation are published on the Commissions website at www.aviationreg.ie

3. ISSUES FOR CONSULTATION

3.1 Misuse of allocated Slots

In considering the nature of sanctions to address non-compliance with the slot allocation process, it is firstly important to arrive at an understanding of what constitutes slot abuse. The IATA Scheduling Guidelines (WSG), 10th Edition, July 2004, para 6.10.6, sets out some types of actions that can be classified as intentional misuse of allocated slots.

These, in summary, are

- Intentional operation of services at a time significantly different from the allocated time,
- Operation of flights at a coordinated airport without the necessary slots,
- Holding slots which the carrier does not intend to operate, transfer or exchange,
- Holding slots with the intention of denying capacity to another carrier,
- Requesting slots which the carrier does not intend to operate, and
- Requesting a slot with the intention of gaining improved priority.

The Regulations define the circumstances in which sanctions may need to be imposed as “repeated and intentional operation of air services at times significantly different from the allocated slots or the use of slots in a significantly different way from that indicated at the time of allocation, *where this causes prejudice to airport or air traffic operations.*” [emphasis added]

In the context of designing an appropriate sanctions regime therefore two immediate questions arise:

- (i) what definition should be applied to the concept of a time “significantly different” from the allocated time? Should it be, for instance any time period greater than fifteen minutes either side of the allocated slot time?
- (ii) What should the term “prejudice to airport or air traffic operations” mean? Should it be defined to include any identifiable congestion or delay in either the terminal, or the off blocks or holding –point phases, etc?

3.2 What actions trigger the imposition of sanctions?

The Regulation sets out that the actions or events, which give rise to the need for sanctions, must satisfy three broad criteria. For slot abuse to exist, according to the Regulation, the actions complained of must be:

- (a) repeated and intentional,
- (b) (i) the slots must be operated at times significantly different from the allocated slots,
or
- (b) (ii) in a significantly different way from that indicated at the time of allocation
and
- (c) must cause prejudice to airport or air traffic operations.

For the abuse to be deemed to have occurred there must be behaviour combining:-

- (a) and (b)(i) and (c)
- or
- (a) and (b)(ii) and (c)

3.3 Who decides whether there has been misuse of the process?

In the context of Slot Coordination, the list of stakeholders comprise the following:

- the Commission for Aviation Regulation (as the competent authority);
- Dublin Airport Authority;
- Irish Aviation Authority (in its ATC capacity);
- ACL (as slot coordinator);
- the Coordination Committee (representing airline members).

In considering the most appropriate and effective sanctions regime, the question arises as to which organisation/party is best placed to assess prejudice to airport operations and to be the enforcer of the sanctions scheme.

The Airport

The airport operator's overall definitive role at an airport is not mentioned in the Regulations but one must note that in regard to State Airports run by Dublin Airport Authority ("DAA") it is a criminal offence to contravene bye-laws made by the company in relation to the proper management, operation, safety, security and supervision of a State Airport or part thereof.

In addition, as of the 26 March 2006, it is a term and condition of use in relation to Dublin Airport that no airline operator shall operate to or from Dublin Airport without first having obtained a slot for Airport Coordination Ltd. (ACL), which is the designated airport coordinator. If in the opinion of the airport company, an operator regularly or intentionally fails to adhere to an allocated slot (either arrival or departure) for reasons which are not beyond its control, then having first given the airline operator an opportunity to make representations, the airport company may adopt

such measures as it deems appropriate to ensure that the operator adheres to its allocated slots.

The Air Traffic Management authorities

In addition to the specific tasks assigned to a coordinator, the Slot Regulations recognise – in the context of a sanctions regime - a possible contribution to combating misuse of slots which could be made by the air traffic management authorities at the airport. Article 14.1 of the Regulations states:

“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”

Although this is framed as a discretionary measure, it recognises a certain rationale in attempting to address potential misuse at the earliest phase of the process i.e. at the filing of the flight plan. It is acknowledged however, that in reality flight plans may be filed a considerable period in advance of the operating times, that there may be multiple filings (i.e. Repetitive Flight Plans) and that they may be filed in the country in which the headquarters of the airline is situated. Wherever they are initially filed the plans are (for the purposes of EU flights) then filed centrally in Brussels as part of the International Flight Planning System. Therefore, ATC bodies may not, to a large degree, be the recipients of the flight plan in the first instance.

However, in the context of the role of all of the parties listed above, respondents are asked to state their views as to the appropriateness as well as the practicality of assigning responsibility to the air traffic management authorities - whether singly or as part of a combined scheme - in respect of the sanctions regime.

The Airport Coordinator

For the purposes of article 14.4 the coordinator for the time being appointed shall decide:

- (a) Whether slots have been used as intended
- (b) Whether an air carrier has repeatedly operated air services at a time significantly different from the allocated slot
- (c) Whether an air carrier has used slots in a significantly different way from that indicated at the time of allocation.

The coordinator, if it believes these events have occurred, may withdraw from the air carrier the slots in question for the remainder of the scheduling season. In addition the air carrier may lose its "grand-father" rights in relation to those slots.

3.4 Situation in other European Union Member States

Some Member States have, in recognition of the desirability of having objective evaluation of prejudice, devolved responsibility to the coordinator, while in other cases, the State organisation with responsibility for the Slots Regulations acts as the enforcer.

A number of Member States have introduced national legislation designed to prevent and/or discourage the misuse of slots by airlines. It is the Commission's understanding that the following regimes are in place in the countries cited:

Germany

A failure to return slots by certain specified dates will be seen by the Federal Office of Civil Aeronautics as an infringement and will be punished by a fine of up to 50,000 Euros.

Spain

A comprehensive system of fines are applicable at all Spanish airports in respect of:

- Failing to hand back slots by the designated deadline (Fine Range 6,000-90,000 Euros per series of slots)
- Failing to operate without a cleared slot (Fine Range 3,000-12,000 Euros per flight)
- Regularly operating off slot (Fine Range 3,000-30,000 Euros per flight).

Portugal

Portugal has identified a series of offences/serious misconduct cases:

- Landing or take-off of aircraft in fully coordinated airports without the previous allocation of a slot
- Failure to cancel an allocated slot by the operator with twelve hours prior notice whenever the operator does not intend to use the slot.
- Landing or take off of aircraft in violation of the allocated slot in a coordinated airport except in cases of force majeure.

Penalties for offences (considered serious misconduct) are between a minimum of 1,000 Euros and a maximum of 250,000 Euros depending upon the situation.

3.5 Nature of an appropriate sanctions regime under Article 14(5).

The scheme of the Slots Regulations is that at coordinated airports access for an air carrier should only be possible if a slot has been allocated. It goes on to state that measures should be introduced to guarantee the enforcement of this Regulation, in particular when air carriers repeatedly and intentionally fail to comply with the slot allocation rules. The scheme implicitly recognises that the coordinator is best placed to decide if airlines are adhering to the coordination process. In relation to enforcement it states that there should be a procedure to review decisions taken by the coordinator.

Article 14(5) of the Regulation calls on the Member states to ensure that effective, proportionate and dissuasive sanctions are available to deal with abuse of the slot allocation system. The Commission believes that, to be effective and dissuasive, sanctions should be apportioned to a series of flights on a per flight basis.

Set out below is a proposal for a sanctions regime.

The Commission for Aviation Regulation is of the view that disputes over slot coordination at a State Airport is not the type of activity that should give rise to criminal liability and accordingly has attempted to steer away from such an approach. However, responsibility for introducing the legislative arrangements for a sanctions regime currently rests with the Department of Transport. Accordingly, the scheme set out below is indicative only of the draft proposals of the Commission for Aviation Regulation on which the views of interested parties are sought.

In the first instance, it is the Commission's proposal that, for the purposes of Article 14(5) the coordinator shall decide:

- (i) Whether allocated slots have been used as intended;

- (ii) Whether an air carrier has repeatedly and intentionally operated air services at a time significantly different from the allocated slot;
- (iii) Whether an air carrier has used slots in a significantly different way from that indicated at the time of allocation;
- (iv) having consulted with the airport operator, air traffic management authorities and other relevant air carriers, the coordinator shall decide if the behaviour described above has caused prejudice to airport or air traffic operations.

The Coordinator at a State airport would be given the power to certify that an air carrier operating at an airport has abused the slot allocation process as defined. Upon certification a penalty of €5,000 would become payable by the air carrier involved for non-compliance with the slot allocation process in respect of that flight. 21 days would be given for payment of said penalty to the Commission for Aviation Regulation. In default of payment the Commission may seek to recover said sum as a liquidated sum in the District Court.

Certification of the activity constituting abuse by the slot coordinator and the amounts due would be deemed conclusive evidence before the Courts in the absence of evidence to the contrary.

3.6 Questions for Consultation:

For the purposes of introducing a sanctions regime under Article 14.5 the Commission welcomes the views of interested parties on the following questions:

1. What do respondents believe ought constitute repeated and intentional operation of air services at a time significantly different from the allocated slot?
2. What do respondents believe constitutes prejudice to airport operations? How should this be measured or identified?
3. Do respondents agree that the Coordinator is best placed to decide if prejudice has occurred? Should the Coordinator consult with other parties at the airport before making this finding?
4. Should the Coordinators decision be subject to review? For example, by the Slot Coordination Committee or should the decision of the Coordinator be reviewed by a different body?
5. Do respondents feel that the proposed penalty per flight for non-compliance with the slot coordination process is appropriate? If not, suggested alternative penalties should be set out in replies.
6. Do respondents believe it is appropriate to deal with collection of penalties in the proposed summary fashion before the District Court if necessary?

4. INVITATION TO COMMENT

The Commission invites comments from interested parties on the issues raised in this document.

The Commission requests that respondents respond within one month of the publication of this paper so as to reach the Commission no later than 2 May 2006.

Responses can be e-mailed to the Commission at info@aviationreg.ie, faxed to +353 (0) 1- 6611269, or sent by post to:

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The Commission wishes to bring to the attention of potential respondents that it is subject to the Freedom of Information Act, and respondents should bear this in mind.

The Commission will carefully consider all responses received.

4 April 2006.

INDEMNITY

Any party submitting information to the Commission for Aviation or Regulation ("the Commission") in response to a document inviting submissions acknowledges that the Commission intends to publish that information on the website of the Commission, in reports of the Commission and elsewhere as required or appropriate. Parties submitting such information to the Commission consent to such publication. Any party submitting information to the Commission shall have sole responsibility for the contents of such information and shall indemnify the Commission in relation to any loss or damage of whatsoever nature and howsoever arising suffered by the Commission as a result of publication or dissemination of such information either on its website, in its reports or elsewhere.