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Ms Cathryn Geraghty  
Commission for Aviation Regulation  
Alexandra House  
Earlsfort Terrace  
Dublin 2  
Ireland

**Response to the Commission for Aviation Regulation's Consultation on the Introduction of sanctions under Article 14.5 of EU Regulation 95/93**

Dear Ms Geraghty,

on behalf of Lufthansa German Airlines, I am grateful for the opportunity to comment on the Commission's Consultation on the introduction of sanctions for the misuse of slots.

Lufthansa German Airlines is operating 3 daily frequencies from Frankfurt (FRA) to Dublin (DUB) and is using 3 daily slot pairs for summer and winter seasons (grandfather rights) accordingly.

Fully complying with the rules and regulations of slot allocation and usage (as defined by the IATA World Wide Scheduling Guidelines and EU Regulation 95/93 as amended by EU Regulation 793/2004) is an important objective for Lufthansa, since punctuality and the stability of the flight operations are defining the quality of our product.

Therefore, it is our view that all airlines should comply with the slot coordination process and should not commit "slot misuse". However, processes must be in place, that ensure that only "blatant" slot misuse is detected and enforced by sanctions that are in proportion to the prejudice caused to other users, but still dissuasive. On the other hand, the bureaucratic burden by any sanction scheme should be minimized. It has to be ensured that airlines will be asked for justification only in cases of repeated, significant and intentional slot misuse – and not for each operational disruption caused on the day of operation.

Another key element that should be taken into account, is the need for clearly and concisely defined processes that are harmonized across all EU member states, and preferably in other countries as well. The examples of Spain, Portugal and Germany, enhanced by the consultation currently undertaken in the UK, already use different definitions for abuses, processes and sanctions that make compliance difficult and time-consuming.

In response to the six specific questions posed by the Commission, we are pleased to point out the following issues:

**1. What do respondents believe ought to constitute repeated and intentional operation of air services at a time significantly different from the allocated slot?**

Intentional slot misuse, in our view, can only be proven, when comparing the schedule as published on web-sites or in computer reservations systems with the slot allocated, ex-post. Discrepancies between slots and schedule at future dates is a usual observation, when scheduling departments try to adjust schedules to slots allocated or to find alternative solutions.

Repeated slot misuse, in our view, needs the judgement of an experienced person, taking also into account the length of a slot series in question (e.g. is a discrepancy between slot and schedule on 2 dates of a series of 31 weeks a repeated slot misuse?).

Significant slot misuse, by the wording of the EU regulation has to be judged relative to the prejudice caused to other users. However, since capacity is defined in elaborated capacity studies, we would assume that each discrepancy, even 5 minutes, must cause prejudice at congested airports, even if it is not feasible to measure it exactly.

In terms of the classifications of intentional slot misuse, we would like to also raise the issue of allegedly late slot returns or holding of slots (the last 4 points on page 5). EU regulation doesn't mention the "late" return of slots as a case of slot misuse. Also, the slot return deadline is only mentioned as the basis for the calculation of the 80/20 rule. IATA WSG only says states correctly, that "airlines must not hold slots that they do not intend to operate, transfer or exchange ..." (WSG 6.10.3). The ability to use slots is depending on many factors outside airlines control (i.e. traffic rights, slots at the other airport, etc.). Even so, there might be a clear intention to use them. In many cases it is therefore necessary and justifiable that slots are returned on short notice. Since EU regulation is not restricting or regulating when slots must be returned, any national sanction scheme based on the EU regulation should not require justification for returned slot. On the other hand, sanctions should be imposed, were slots are not used but have not been returned after their day of operation .

On a final note, the definitions and applications of slot misuses should be consistent across European borders.

**2. What do respondents believe constitutes prejudice to airport operations? How should this be measured or identified?**

At a coordinated airport, where the capacity studies have been soundly undertaken, we would regard any publication and repeated operation at a time different from the allocated slot as a prejudice to airport operations. Again, that definition should be consistent throughout the EU.

- 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?**

This clearly depends, if prejudice is assumed by a discrepancy between published/ operated timings and airport slots, or if in each case actual prejudice has to be proven. In the latter case, the coordinator should lead the investigation, but support by ATC and airport officials would be required.

- 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?**

In our view, the slot coordination committee or the slot performance committee are the best suited bodies to fulfill the role of the appeal or reviewing party. However, the application of Art 14(5) should be seen as a ultima ratio after a comprehensive dialogue with the alleged slot abuser. The slot performance committee should also function as a consulting body, which the coordinator could ask for guidance in cases where intention, repeatedness or significance are not obvious.

- 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.**

In general, the non-complying airline should be punished and not its passengers, that do not know the quality of the airline's slot management department. Therefore, we do not regard administrative sanctions like remote parking as proportionate. Since a reduction of the priority for future slot allocations will be hard to administer and would hamper the transparency, independence and non-discriminating role of the coordinator, we do not recommend this kind of sanction.

Therefore, we regard financial penalties as the best measure to sanction slot abuse (besides the withdrawal of grandfather rights as a last resort). An escalating scale of financial sanctions for repeated misuse should be developed that ensure both proportionality and deterrence

- 6. Do respondents believe it is appropriate to deal with collection of penalties in the proposed summary fashion before the District Court if necessary?**

We do not believe that this is appropriate or necessary.

Respectfully yours,

i.V. Jörg Bauer

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