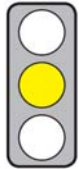


MAIN ISSUES

Objective of the Regulation: The Commission wishes to change the allocation procedure for landing and takeoff slots on airports to improve the efficient use of airport capacities.

Parties affected: Airport operators and air carriers.



Pro: (1) Increasing the slot utilisation threshold to 85% for prioritised slot allocation in the next corresponding season enhances the efficiency of airport capacity usage, as it means that as a rule only a maximum of 15% of the capacity remains unutilised.

(2) The fungibility of slots after they have been allocated allows for their efficient distribution according to the actual needs of the air carriers.

Contra: Although on the one hand the increase in the number of slots that is necessary in order to maintain priority for a series of slots in the next corresponding season facilitates the access to airports for new entrants, on the other hand, it has a negative effect on the planning certainty of air carriers and reduces their flexibility.

CONTENT

Title

Proposal COM(2011) 827 of 1 December 2011 for a **Regulation** of the European Parliament and the Council **on common rules for the allocation of slots at European Union airports** (recast).

Brief Summary

► Background and objectives

- Airlines must be able to use the entire range of infrastructure necessary for the operation of a flight (e.g. runway, taxiway).
- Where the demand for “landing and takeoff slots” exceeds airport capacity, slot allocation mechanisms must be established (p. 2). The slot allocation rules are currently stipulated under Regulation (EEC) No. 95/93.
- The Commission wishes to recast this Regulation since:
 - in future airport capacities will, even taking into account the currently planned airport enhancements, not cover the demand (p. 3);
 - the impact on environment, land planning and public budgets does not allow for any further enhancement that is also cost-efficient (p. 3);
 - the current slot allocation system does not ensure the optimal allocation or use of airport slots (Recital 4); and
 - the current approach to “new entrants” does not promote competition (Recital 10).

► Coordinated airports

- A “coordinated airport” is an airport where slots are allocated by a coordinator (Art. 2 No. 11). There are currently 89 coordinated airports in the European Economic Area (EU 27, Island, Liechtenstein, Norway) and Switzerland (p. 2, 3).
- At non-coordinated airports, slots are not allocated in line with a consistent procedure. However, the airport operator must carry out a thorough capacity and demand analysis (Art. 3 (3)) if:
 - the Member State concerned or the Commission deems it necessary;
 - an air carrier that represents more than half of the operations at an airport or the airport’s managing body puts in a request to do so.
- Where capacity problems occur during the summer or winter season (“scheduling period”), the Member State may declare the airport coordinated for the period concerned if (Art. 3 (6)):
 - significant delays cannot be avoided due to airport shortfalls; and
 - there are no possibilities of resolving these problems in the short term.
- In addition, Member States may, in “emergency situations”, designate airports coordinated (Art. 3 (7)).

► Coordinators

- The Member States appoint coordinators who allocate slots for one or several coordinated airports (Art. 5 (1) and (6)).
- A coordinator must be “independent in legal, organisational and decision-making terms” (Art. 5 (3)).
- The financing of the coordinator through the air carrier and the airport is to be provided in such a way as to ensure that the financial burden is distributed “equitably among all interested parties” (Art. 5 (3)).

► **Slot allocation**

- Air carriers may either apply for a single slot on a certain day or a “series” of slots.
- A “series” of slots consists of the same slot at a certain time on a certain day of the week over a period of 15 (summer scheduling period) or 10 (winter scheduling period) consecutive weeks (Art. 2 No. 13).
- The coordinator is to set up a “pool” containing all slots, which he or she then distributes amongst the requesting air carriers (Art. 9 (1) and (2)).
- For flights operated by more than one air carrier (“group”, Art. 2 No. 6; e.g. Star Alliance, Skyteam), only one of these undertakings may apply for the needed slots (Art. 9 (5)).
- Where an air carrier fails to provide the coordinator with the requested “relevant information” (Art. 7 (1)) or provides false or misleading information (Art. 7 (2)), the coordinator must:
 - reject the application for slot allocation and/or
 - withdraw already allocated “series” of slots and/or recommend that penalties be imposed “by the competent body”.
- Where air carriers return unused slots “belatedly” to the pool, the airport operator may ask them to bear the costs of the reserved airport infrastructure concerned (Art. 11 (1)).

► **New entrants**

- A “new entrant” is a carrier with only a limited presence at an airport and to which one of the following criteria applies (Art. 2 No. 2):
 - It applies for a series of slots; with this, it would hold fewer than five slots at that airport on that day.
 - It requests a series of slots for a non-stop scheduled passenger flight between two EU airports at which at most two other air carriers operate the same flight on the same day; with this series, the air carrier would hold fewer than nine slots on that day.
- An air carrier is not deemed a new entrant if, together with its parent company and subsidiaries, it holds more than 10% of all slots allocated to it on the day concerned.
- 50% of the slots are allocated to “new entrants” first, unless requests by new entrants are less than 50%. This preference given to new entrants is to be respected during the entire scheduling period (Art. 9 (2)).

► **Slot allocation priority of the same slot series in the following equivalent scheduling period**

- An air carrier is given priority for the allocation of the same series during the following equivalent scheduling period if:
 - that air carrier has used at least 85% of the series allocated to it (Art. 10 (2));
 - it has utilised less than 85% but because of “unforeseeable and unavoidable” circumstances or comparable circumstances such as strikes (Art. 10 (5)).
- In exceptional cases, the Commission may grant priority to an air carrier utilising less than 85% of the series allocated to it if “this is justified on imperative grounds of urgency linked to exceptional events” (e.g. a drastic traffic decline, economic crisis) which require EU-wide “coherence in the application” of the according measures at coordinated airports (Art. 10 (7), Recital 24).
- Air carriers that “repeatedly or intentionally” operate air services at a time significantly different from the slot allocated as part of a series will lose their priority status (Art. 18 (2)). In addition, Member States must ensure that “dissuasive” sanctions are available with which to prevent this (Art. 18 (3)).

► **Transfer and exchange of slots**

- An air carrier may use its allocated slots to (Art. 13 (1)):
 - transfer them from one route or type of service to another;
 - transfer them to another air carrier with or without compensation (“secondary trading”); and to
 - exchange them one for one between air carriers with or without compensation.
- The coordinator is to be notified of transfers and exchanges, and these do not take effect until they have been confirmed (Art. 13 (2)).
- Slots allocated to new entrants must not be transferred or exchanged (Art. 13 (3)).

Changes to the Status Quo

- To date, a series consisted of at least five slots. Now it comprises at least 15 slots during the summer scheduling period and 10 slots during the winter scheduling period in consecutive weeks.
- To date, air carriers had to utilise at least 80% of the slots allocated to them in order to be granted priority during the following period. Now they must utilise at least 85%.
- To date, air carriers have been allowed to transfer slots to only one other affiliated air carrier. Now they may transfer slots between two arbitrary air carriers.
- New is the fact that Member States may designate airports coordinated in “emergency situations”.
- New is the legal independence of the coordinator.
- New is the fact that for flights which are operated by a “group” of air carriers, only one of them may apply for the necessary slots.

- ▶ New is the fact that the coordinator may withdraw already allocated slots from air carriers and recommend the application of sanctions if the air carrier provides false or misleading information.
- ▶ New is the fact that the airport's management may use the airport fee rules to discourage air carriers from returning unused slots "belatedly" and force them to bear the costs of the reserved airport infrastructure concerned.
- ▶ New is the fact that new entrants are granted priority throughout the entire flight scheduling period.
- ▶ New is the fact that the Commission may grant priority to air carriers utilizing less than 85% if this is justified by "exceptional events".

Statement on Subsidiarity by the Commission

According to the Commission, a harmonisation of access conditions to congested airports can only be realized at EU level, rather than by individual member states.

Policy Context

A consultation carried out by the Commission in 2010 to evaluate the existing Regulation and possible amendments found out that the air carriers are "broadly satisfied" (p. 5) while airport operators deem amendments necessary in order to ensure an improved airport capacity utilisation.

Legislative Procedure

01 December 2011	Adoption by Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorate General:	DG Mobility and Transport
Committees of the European Parliament:	Transport and Tourism (leading), rapporteur: Giommaria Uggias (ALDE Group, IT)
Committees of the German Bundestag:	Committee for Transport, Building and Urban Development (in charge), Committee for Tourism, Committee for EU Affairs
Decision mode in the Council:	Qualified majority (approval by a majority of Member States and at least 255 out of 345 votes; Germany: 29 votes)

Formalities

Legal competence:	Art. 91 TFEU (Common Transport Policy)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

A standardised EU-wide procedure for the allocation of slots creates a level playing field for air carriers. The legal and organisational independence of coordinators allows for the equal treatment of all air carriers in the allocation of slots and thus reduces any conflict of interests.

The financing of the coordinators through airport operators and air carriers is appropriate, for having the coordinators allocate slots reduces the costs of negotiations for both parties: the airport operator does not have to negotiate with every single air carrier. Furthermore, the splitting of costs reduces the risk of a one-sided manipulation of the coordinator, as it is no longer financially dependent on only one party.

Increasing the number of slots in a series from 5 to 15 or 10 in consecutive weeks as an (implicit) precondition **for prioritising the allocation of slots in the following season facilitates the airport access of new entrants. However**, the increase entails three disadvantages: firstly, air carriers with a small market share at an airport are placed at a disadvantage compared to air carriers with a large market share, as the latter can utilize the increased slot number more easily. As a consequence, smaller air carriers offering only a small number of flights at certain seasonal peaks can no longer offer them permanently during preferred periods and can thus be pushed out of the market more easily. This leads to less competition and a tendency for higher prices. Secondly, **aggravating the priority granting procedure has a negative effect on the planning certainty of air carriers**, as it becomes more difficult to foresee whether or not they can utilize the increased minimum number of slots. Thus the incentive to invest in airports is weakened. Thirdly, the increase has the effect that air carriers can react less flexibly to short-term demand decreases **and thus reduces the possibility to reduce costs**. If, for instance, an air carrier needs only 11 instead of 15 slots during the summer season, it loses the priority for all 15 slots rather than for a series of just five slots, as has been the case until now.

The airport operator's option to charge air carriers with the costs of belated returns and the non-utilisation of slots and airport infrastructure sets the incentive to transfer such slots to other air carriers. Moreover, the costs for all air carriers acting in line with the rules are reduced, for a part of the costs for the use of infrastructure is now caused by those air carriers not making use of their allocated slots.

Impact on Efficiency and Individual Freedom of Choice

Increasing the slot utilisation rate to 85% as a precondition **for prioritised slot allocation** in the next corresponding season **promotes competition** on the one hand, as maintaining priority status is aggravated **and** thus new entrants are provided with easier access to airports. On the other hand, it **boosts the efficiency of airport infrastructure utilization**, because as a rule at most 15% may remain unutilised.

Setting up **secondary trading allows for the efficient distribution of slots**, for the pricing mechanism on the secondary market sets incentives for air carriers to exchange or transfer their allocated slots according to the respective demands.

The Commission's option to grant priority, despite a slot utilization of less than 85%, due to "imperative grounds of emergency" allows for quick reactions in exceptional cases. This reduces the economic damage caused to air carriers. However, the Commission should clarify what exactly "imperative grounds of emergency" are.

Impact on Growth and Employment

An efficient slot allocation and an improved utilization of the existing airport infrastructure increase cross-border mobility and could have a positive impact on growth and employment through an intensified division of labour.

Impact on Europe as a Business Location

Insignificant.

Legal Assessment

Competency

Unproblematic. The EU may lay down "appropriate provisions" for a common air transport policy (Art. 100 (2) TFEU).

Subsidiarity

Unproblematic.

Proportionality

Unproblematic. This also applies to the extraordinary decision-making powers of the Commission (Art. 10 (7)), as they are limited to "imperative grounds of emergency" requiring a "consistent application" of measures. Nonetheless, this precondition should be clarified within the Regulation.

Compatibility with EU Law

Unproblematic.

Compatibility with German Law

Unproblematic.

Conclusion

Increasing the slot utilisation rate to 85% enhances the efficiency of airport infrastructure use, because it means that as a rule only a maximum capacity of 15% remains unutilised. Moreover, secondary trading allows for an efficient distribution of slots, since air carriers are more likely to receive those slots which meet their needs. The increase in the number of slots which is necessary in order to maintain priority for a series of slots in the next corresponding season facilitates airport access for new entrants but has a negative effect on the planning certainty of air carriers and reduces their flexibility.