



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.1.2002
COM(2002) 7 final

2002/0013 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. *Background*

1. The Commission adopted on 10 October 2001 a Communication concerning the repercussions of the terrorist attacks in the United States on the air transport industry¹.
2. In this Communication the Commission concluded in relation to the application of Council Regulation (EEC) 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, that it considered that the closure of American airspace between 11 and 14 September and the subsequent changes to services (suspension, reduced frequencies) constituted exceptional circumstances that impact negatively both on the transatlantic network of the airlines and on the intra-Community feeder routes. Based on that, it considered that these circumstances should allow air carriers to retain their slots with grandfather status at Community airports during the summer 2002 scheduling season as a result of exceptional circumstances affecting the usage of slots during the current summer scheduling season. Thus, coordinators should interpret the provisions of the Regulation in such a way that airlines do not risk losing their unused slots to the pool for the next summer season (2002) as a consequence of the terrorist attacks” (“use-it-or-lose-it” rule). Nonetheless, coordinators remained independent in the way they would apply the provisions of the Regulation relating to the usage requirements.
3. Following the meeting of the Transport Council on 16 October, which invited the Commission to take position before the beginning of the winter season, Commission services requested the airline industry to submit to the Commission information on the evolution of their services since the events of 11 September.
4. At international level, the American authorities granted on 10 October 2001 a waiver of the slot usage requirement similar to the “use-it-or-lose-it” rule for all carriers operating at their airports until the end of the winter 2002 scheduling season, i.e. 6 April 2002 (31 March 2002 for Europe). The Japanese authorities granted on 11 October 2001 a similar waiver until the end of November 2001 with possible monthly prolongation thereafter until the end of the scheduling season.
5. Data provided by large parts of the airline industry (AEA, ERA and IACA as well as Northwest and United Airlines), indicated that the routes mostly affected by a significant drop in demand leading to subsequent changes (suspension and/or reduction of services and frequencies) were those to destinations (from Europe) in the US, the Near/Middle East as well as within Europe, other regions being affected to a lesser extent or not at all. Detailed information about advanced bookings for the months of October, November and December submitted by airlines as well as information from Computer Reservation Systems indicated that the situation has gradually deteriorated since 11 September. In summary, these data showed, that services to the US fell by 32% in the first week of October, that advanced bookings within Europe fell by 16,5% by mid-October for flights in October and November, that advance bookings to the Near and Middle East fell by 42% for November.

¹ COM(2001) 574 final of 10.10.2001

6. However, it should be noted that airlines were not unanimous on the evolution of their services since the events of 11 September, and in particular on the impact these events had had on the demand. Airlines, such as EasyJet, advocated for a strict application of the usage requirement of slots, which would open the possibilities for more competition at Europe's congested airports.
7. The drop in demand has been only partially attributable to the attacks in New York and Washington on the 11 September. Since then, the political situation has become more tense due to the intervention in Afghanistan and to threats for more terrorist attacks. These developments indicated that the perspective of air transport operations during the winter scheduling season was very close to the situation during the summer scheduling season after the events of 11 September.
8. However, most airlines were not in a position to reduce capacity in line with reduced demand, because they would lose their slots according to the "use-it-or-lose-it" rule, which effectively requires airlines to use their slots for at least 80% during the season to establish historical precedence. Thus, without a decision to safeguard grandfather status for their slots, they would be forced to maintain existing capacity with very negative consequences for their financial position ("downward spiral" of fare levels and high exploitation costs. In the light of that situation, Commission services communicated their position on 24 October 2001 by letter addressed by the Director general of the Directorate general for Energy and Transport to the Association of European Airport Coordinators (EU-ACA).

Therein they considered that the repercussions of the recent developments (ongoing military operations in Afghanistan and the recent threats for new terrorist attacks) indicated a strong negative trend in airline operations during the winter 2001/02 scheduling season, which was about to begin. Furthermore, that this situation signalled that airlines may seek to justify at the end of that scheduling season the possible non-utilisation of slots during that season on the basis of the provisions of Article 10 of the Regulation. In that case, it would appear reasonable for the coordinators to consider accepting such justification with a view to maintaining the grandfather status of non-used slots. The Commission services also drew the attention of coordinators to the provisions of article 8(3) of the Regulation so as to guarantee the optimal use of scarce resources.

B. The provisions of the slot Regulation

9. The point of reference for the Regulation, as stated in Article 10(3), is the allocation and utilisation of slots during one season ("use-it-or-lose-it" rule) and in particular the situation at the end of the season after the slots have been effectively used. In particular, it stipulates, that air carriers shall 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 the slots have been allocated. Furthermore, the Regulation in its Articles 8 (1) (a) and 10 (3) is drafted so as to allow for the usage calculation at the end of the season, once slots have been operated and for the purpose of the establishing historical precedence for the next equivalent scheduling season. The terrorist attacks of 11 September 2001 occurred during the summer 2001 scheduling season. This circumstance allowed the Commission to consider *ex post* their impact on the utilisation of slots during that season.

C. *The necessity to modify the Regulation*

10. However, the Regulation stipulates that the only entity responsible for the allocation and the monitoring of use of slots at airports is the coordinator (Article 4(5) and (6) of the Regulation). Also, it clearly imposes the obligation on coordinators to carry out their duties in an independent manner and requires them to act in a neutral, non-discriminatory and transparent manner (paragraphs (2) and (3) of the same article). For this reason, neither the Commission nor Member States can issue any binding instructions to coordinators, which could interfere with their independence.
11. Therefore, the Regulation does not confer any powers to the Commission or to the Member States to create binding provisions as to what shall be considered *ex ante* in a binding way as an exceptional circumstance. Notably, the Regulation in its Article 10(5) (a) refers to a non-exhaustive list of cases on which the non-utilisation of slots can be justified at the end of the scheduling season. Finally, the Regulation stipulates (Article 8(1) (c)) that coordinators shall take into account ... if possible additional guidelines recommended by the coordination committee, provided such guidelines respect Community law. Thus, any interpretation of the current developments by the Commission could not create any legally binding obligation for the coordinators to follow the Commission's views.
12. In fact, according to information available to the Commission, not all coordinators followed the advice given for the winter 2001/02 scheduling season. In particular, the Danish, Norwegian, Swedish did not accept to follow it "due to difficulties distinguishing between recession caused by September 11th or the general economy of the airline industry" with the exception of flights to/from USA or rescheduled operations to/from the Far East. The Spanish coordinator was not allowed to apply the provisions relating to "exceptional circumstances" by [royal decree requiring AENA, the Spanish coordinator to apply strictly the "use-it-or-lose-it" rule].
13. This situation shows the lack of uniform application of this provision of the Regulation in the Community and the different interpretation given to the current crisis in various Member States. It also indicates that coordinators by following the Commission's views risk legal challenge unless there is legal certainty about the issue of exceptional circumstances. It demonstrates the need for the Commission to act swiftly to remedy the situation and to provide for legal certainty and security in a clear and unambiguous way on the question of the "use-it-or-lose-it" rule during the scheduling seasons affected by the crisis.
14. Accordingly, it is proposed to introduce a new Article 10a into the Regulation whereby coordinators are obliged to accept that slots in both seasons (summer 2001 and winter 2001/02) are granted grandfather status.
15. An important aspect of this proposal is its timing. Initial slot allocation takes place during the course of the IATA Scheduling Conferences: in November for the next summer season and in June for the next winter season. Accordingly, slots for the summer 2002 season were allocated during the IATA Scheduling Conference in November 2001, while slots for the winter 2001/02 season were allocated in June 2001. Article 10(4) of the Regulation provides that air carriers can return slots to the pool by specific dates without that affecting the usage calculation for the slots they continue to hold. After these dates the allocation of slots becomes fixed. For the

summer 2002 scheduling season, which begins on 1 April 2002, this date is 31 January 2002.

16. Therefore, in order to avoid breaching the legitimate expectations of carriers, with regard to slots allocated for the summer season 2002, and to allow them to return slots by the deadline in full knowledge of the prevailing usage requirements, the proposal should be adopted by the European Parliament and the Council by 31 January 2002 or at the latest by 31 March 2002, when the current season ends and slots with historic precedence have to be calculated for the winter season 2002/03.

Otherwise, there appears to be significant risk of legal challenges from those air carriers that have been allocated slots at airports, where coordinators did not accept the justification of exceptional circumstances for the current winter 2001/02 season. The same applies to air carriers that have already received slots (with or without grandfather status for the summer 2002 season, which becomes fixed on 31 January.

17. Finally, the present proposal to amend the Regulation does not affect the Commission's proposal adopted on 20 June 2001 for a modification of the currently applicable Regulation.² This latter proposal is wider in scope, aims at ensuring that scarce capacity of slots at congested airports is managed and used efficiently, albeit without modifying fundamentally the current system of slot allocation build around the so-called "grandfather" or "historical slots". It represents the first step in a two-phase revision exercise of the Community rules on slot allocation, whereas the current proposal constitutes the response to a specific circumstance arising from the crisis of the airline industry following the events of 11 September 2001.

² COM(2001) 335 final of 20.6.2001, 2001/0140 (COD)

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REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

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 Commission³,

Having regard to the opinion of the Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁶,

Whereas:

- (1) The terrorist attacks of 11 September in the United States and the political developments that followed those events seriously affected the air transport operations of air carriers and resulted in a significant drop in demand during the remainder of the summer 2001 and winter 2001/02 scheduling season;
- (2) In order to make sure that the non-utilisation of slots allocated for those seasons does not cause operators to lose their entitlement to those slots, it appears necessary to provide clearly and unambiguously that those scheduling seasons were adversely affected by the terrorist attacks of 11 September 2001;
- (3) Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports⁷ should therefore be accordingly amended.

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ L 14, 22.1.1993, p.1

HAVE ADOPTED THIS REGULATION:

Article 1

The following Article 10a is inserted in Council Regulation (EEC) No 95/93:

‘Article 10a

The events of 11 September 2001

The terrorist attacks of 11 September 2001 affected seriously air carriers’ operations during the summer season 2001 and the winter season 2001 – 2002. Consequently, for the purposes of Article 10(3), co-ordinators shall accept that air carriers are entitled to the same series of slots during summer scheduling season 2002 and winter scheduling season 2002 – 2003 as they were entitled during the summer scheduling season 2001 and the winter scheduling season 2001 – 2002 respectively.’

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

It shall apply from [...]

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