



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending the amended 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 pursuant to Article 250 (2)
of the EC Treaty)

EXPLANATORY MEMORANDUM

Introduction

The hostilities in Iraq have affected the provision of air transport services in the Community and elsewhere. This international situation has accentuated fears for new terrorist attacks in aviation, which has in turn triggered a sharp drop in demand. Also, air carriers in various countries have been requested to provide military airlift in view of a defence emergency by pledging aircraft used otherwise for commercial air transport operations. Thus, supply too has been shortened, triggering a significant reduction in capacities and frequencies offered on various routes, mostly transatlantic and to the Near and Middle East. In addition, the general economic downturn is negatively affecting the air transport sector. Finally, the recent outbreak of the Severe Acute Respiratory Syndrome (SARS) in South East Asia has impacted severely on air transport services.

The slow down in fighting in Iraq and the end of broad military hostilities has not yet caused changes in the above negative air traffic developments.

Forecasts provided by the airlines' world-wide organisation (IATA) indicated that in case there were hostilities in the Near and Middle East region during three months, that would have a downward impact of 10% on traffic, 5% on freight and further influence negatively (- 5%) passenger traffic during three months following the hostilities. At world-wide level that would translate into a considerable fall in revenue by US \$ 6 billion and a rise in costs by US \$ 0.2 billion. That would result in net losses for 2003 for the airline industry world-wide of around - US \$ 5.8 billion (after interest). This grim scenario would be further exacerbated should hostilities last the double, i.e. 6 months and affect the entire summer scheduling season (April to October 2003). In such a case, net losses (after interest) could reach at least US \$ - 8 billion and revenue could further fall. According to IATA these assumptions were relatively conservative compared to the effects seen in the Gulf War in 1990-1991. Also, these estimates have not taken into account the outbreak of SARS.

Similarly, according to the Association of European Airlines the war risks to result into a significant drop in Revenue Passenger Kilometres (RPKs) of the order of ca. 2-3 million RPK. Given that events of September 11th caused massive traffic losses (until end of 2002 Europe: -8%, North Atlantic: - 22%) and operating losses (in 2001 of US \$ 3.02 billion), the effects of this new conflict may further accentuate a rather fragile situation.

Also, according to data from the AEA regarding the impact of the first days of the war (the week of March 17th – 23rd), compared to the same week in the previous year, international passenger traffic was down 12.3%. Within Europe, the decline was 14.6%, on the North Atlantic, 10.2% and on Far Eastern routes 12.4%. On routes to the Middle East, the decrease was a massive 42.2%. Since the outbreak of the war various major European air carriers have announced significant staff reductions.

Against the position taken by air carriers of IATA, AEA, IACA, ERA, European low cost carriers such as EasyJet and Ryanair, have stated that the slot allocation rules must be allowed to work in the normal manner; that there should be no relaxation of the rules upon which European aviation has flourished in the last decade and that they consider providing slot protection to airlines as a form of state aid.

In particular, the beginning of military operations has led to the disruption of commercial air services to the region affected directly by the hostilities as well as within the Community. First estimates by Eurocontrol indicate that ca. 500 daily flights to the region are affected; these include both Community and third country air carriers. Also, it should be borne in mind that Iraqi airspace has been closed for civil air transport operations since the first Gulf War. Thus restrictions on the airspace of other countries in the region are likely to result into additional cancellations of flights and re-routing of flights from Europe central and South East Asia.

As far as SARS is concerned, as of 9 April 2003, in the Community a total of 48 cases has been reported, and a total of 2650 cases have been reported world-wide including 103 deaths based on data of the World Health Organisation.

However, despite these circumstances most air carriers operating at Community airports are not in a position to reduce capacity, because they would lose unused slots according to the "use-it-or-lose-it" rule, which effectively requires air carriers to use their slots at least 80% during a scheduling season, to establish historical precedence and receive these slots for the next equivalent scheduling season.

Thus without a decision to safeguard slots with "grandfather status" they would be forced to maintain existing capacity even though demand has been substantially reduced and supply is limited due to airspace restrictions, thus aggravating existing economic difficulties. In certain cases they may not even be able to use their aircraft as these may have been required for airlift of military staff.

The provisions of the slot Regulation

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, this Article 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.

Article 10 (5) gives a non-exhaustive list of reasons, which can be validly used by air carriers to justify the non-utilisation of slots allocated during a scheduling season. This particular article contains in sub-paragraph (a) a non-exhaustive list of unforeseeable and irresistible cases outside the carrier's control. This article does not refer to a situation of war or armed conflict and to the impact that such a situation may have on the application of the slot allocation rules.

The Regulation is based on the principle, that the allocation and the monitoring of the use of slots are the duties of the coordinator (Article 4(5) and (6)). The airport coordinator is understood to be an independent body, i.e. a natural or legal person with detailed knowledge of air carrier scheduling coordination, the appointment of which is ensured by the Member State responsible for the airport where slot allocation takes place (Article 4(1)). Finally, the

coordinator must carry out his or her duties not only in an independent manner but also act in a neutral, non-discriminatory and transparent way (Article 4(2) and (3)).

Hence, it may be concluded that in applying Article 10(3) and (5), the coordinator must act in accordance with principles stated in Article 4 as described above.

The necessity to modify the Regulation

For the reasons outlined above, neither the Commission nor Member States can issue any binding instructions to coordinators, which could interfere with their independence.

Accordingly, it is proposed to introduce a new Article 10b into the Regulation whereby coordinators would accept that, when air carriers attribute the non-utilisation of slots allocated to them for the Summer 2003 scheduling season to the hostilities in Iraq, they are allocated these slots for the next equivalent scheduling season (Summer 2004).

Bearing in mind, that air carriers should be encouraged to release to the pool slots that they are not going to use during the scheduling season affected by the hostilities, it is recalled that airport coordinators allocate slot released to the pool to accommodate *ad hoc* requests of general aviation for slots (reference to Article 8(3) of the current Regulation) as well as to satisfy requests by incumbent and new entrant air carriers in an equitable manner (the so-called "50/50 rule" of Article 10(7) of the current Regulation). In that way during the season affected by the hostilities scarce slot capacity will not be wasted.

Timing

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 2003 season were allocated already during the IATA Scheduling Conference in November 2002, while slots for the winter 2002/2003 season were allocated in June 2002. 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. The table below indicates the most important date in the slot allocation process as these are set by the world-wide scheduling guidelines for slot allocation as established by the airline industry (IATA) and the Regulation.

Season	Duration of the season	IATA Allocation Conference	Return Date	Confirm « historic » slots – 6 days prior to the IATA Conference	revision – latest necessary date of entry
Winter 02-03	27.10.02 – 29.3.03	8 - 11 June 02	31.8.02	2.6.2002	1.6.2002
Summer 03	30.3.03 – 25.10.03	9- 12 Nov 02	31.1.03	3.11.2002	2.11.2002
Winter 03-04	26.10.03 – 28.3.04	14 – 17 June 03	31.8.03	8.6.2003	7.6.2003
Summer 04	29.03.04 – 30.10.04	8 – 11 Nov 03	31.1.04	2.11.2003	1.11.2003

According to the world-wide scheduling guidelines of the airline industry (IATA), having identified the entitlement to “grandfathered” slots, coordinators must provide to each airline the details of their “grandfathered” slots, as soon as these have been determined by the coordinator, but not later than:

- the third Monday in April for what is on record as “grandfathered” slots, as actually operated in the preceding Winter season,
- the third Monday in September for what is on record as “grandfathered” slots, as actually operated in the current Summer season up to that time.

In view of the above, the amended proposal with the present amending proposal on the inclusion of a new article 10b should be adopted by the European Parliament and the Council still during the Summer 2003 scheduling season, as it is by the 15th September ("third Monday in September" as indicated above) that the usage calculation for slots with "grandfather status" for that season will be established. Coordinators have to confirm that before the coordination of schedules and allocation of slots for the next summer season at the IATA Scheduling Conference, which will take place early November 2003. Therefore, the proposed rule needs to enter into force before that to allow coordinators and air carriers to safeguard unused slots.

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 due to the hostilities for the Summer 2003 scheduling season.

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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 Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas:

- (1) The war launched in March 2003 against Iraq and the political developments that followed such launch as well as the outbreak of the Severe Acute Respiratory Syndrome (SARS) have seriously affected the air transport operations of air carriers and have triggered a significant reduction in demand in the beginning of the summer 2003 scheduling season;
- (2) In order to make sure that the non-utilisation of slots allocated for that season does not cause air carriers to lose their entitlement to those slots, it is necessary to provide clearly and unambiguously that those scheduling seasons are adversely affected by the armed conflict;
- (3) Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports⁵ should therefore be accordingly amended;

¹ OJ C ..., ..., p. ...

² OJ C ..., ..., p. ...

³ OJ C ..., ..., p. ...

⁴ OJ C ..., ..., p. ...

⁵ OJ L 14, 22.1.1993, p. 1.

HAVE ADOPTED THIS REGULATION:

Article 1

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

“Article 10b

1. For the purpose of Article 10(3), coordinators shall accept that air carriers are entitled to the same series of slots during the summer 2004 scheduling season as were allocated to them for the summer 2003 scheduling season.

Article 2

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

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