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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

During its 10 June 2002 Plenary Session, the European Parliament approved subject to a number of amendments the Commission's proposal for a European Parliament and Council Regulation amending Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports. The Economic and Social Committee and the Committee of the Regions supported the legislative initiative as well.

The European Parliament agrees with the main elements of the Commission's proposal. However, it has formulated a number of amendments, on the basis of which the Commission proposes to introduce some new elements to its original text.

The Commission appreciates the pragmatic and balanced approach followed by the European Parliament in the matter and recognises in particular the added value of the amendments proposing to strengthen certain elements of the Regulation and in that way the functioning of the proposed slot allocation rules.

Certain issues are considered to be of crucial importance for the effectiveness of the proposal and for the revision in itself, i.e. without these measures the revision would largely lose its "raison d'être". These issues are the following:

- Definitions: legal nature of slots and new entrants (affecting notably regional services and position of air carriers operating within alliances).
- Principles of slot allocation: slot allocation should take into consideration environmental measures (including size of aircraft) and inter-modality in order to alleviate as much possible congestion as well as in order not to reflect all capacity constraints that affect the performance of the infrastructure.
- Coordination committee: local rules elaborated by that committee (all parties concerned) should be approved by the member State concerned in order to ensure that they are compatible with community law. Therefore, one member of the committee (airport) should not be allowed to adopt such rules independently and without the approval of the MS.
- Status of the coordinator: the accrued obligations of the coordinators (cross-checks, permanent monitoring, imposition of sanctions) and its legal, factual and financial independence require that its decisions are subject to judicial review. It is therefore, necessary that coordinators are not exempt from any form of liability (damages) as their decisions may cause injury to the air carriers concerned by the measures. Thus, coordinators should be at least liable for gross negligence and wilful misconduct in the course of their activities.
- Prevention of slot transfers: this issue should be the subject of the second phase revision. However, until there is a mechanism that provides for a new system of slot allocation based on market options and neutral, non-discriminatory, transparent and fair procedures, the current slot allocation process does not allow for slot trading and for fake slot exchanges (covered slot transfers).

- Sanctions: in order to prevent that air carriers abuse their slots and thus exacerbate the problem of scarce capacity resources at Europe's hub and spoke airports, it is proposed that they lose their slots when they intentionally and consistently abuse their slots or, still before the end of the scheduling season, it is clear that they do not fulfil the usage requirements for slots - 80% usage during a season).
- Timing of the proposal: at this stage it is premature to state by which moment the Commission will have to propose further legislative proposal to further revise the current rules (market access). This may be considered only when a study to assess all possible options for such a revision has been completed and industry stakeholders and Member States have been duly consulted.

In the light of these considerations, the Commission is prepared to incorporate those suggestions and amendments aiming at improving and clarifying the current text of its proposal. In particular:

- A large part (19) of the proposed amendments are acceptable as adopted by the European Parliament. These concern the following elements of the proposal: the definition of new entrant, air carrier, the functions of the coordinator, the functions of the coordination committee and the designation of coordination parameters, the criteria of slot allocation. Also, periods for the effective dealing with complaints have been shortened to ensure quick solutions within reasonable time. These amendments are the following: 10, 11, 13, 14, 16, 19, 21, 22, 24, 27, 29, 30, 36, 39, 40, 41, 42, 47 and 49.

The following articles have been amended in the light of the above: 2 points b), f) and o), 3 para. 5, 4 para.1 and 6, 5 para.1, 6 para.1 second subparagraph, 7 para.1 and 3, 8 para. 7, 8a para. 4 points a), b) and c), 8b, 11 para. 1, 14 para.1.

- Certain amendments (4) are acceptable only in principle: they concern the recitals of the Regulation (amendments 3 and 6), the definition of new entrant and the powers of the Commission when examining cases of exceptional circumstances (amendments 12 and 44).

The following recitals and articles have been amended in the light of the above: recitals 5 and 9, article 7 para.1 second subparagraph, article 10 para. 4 and 5.

- Some amendments (5) are acceptable with minor redrafting (amendments 4, 37, 48, 51 and 52), while other (6) are acceptable only in part and with redrafting: In particular:
 - Amendment 5 (concerning recital 5) can be accepted only in part and with redrafting to ensure that the proposal states clearly that in future rules and procedures will have to be devised for the coordination of airport and airway slots. As for the rest of the amendment, it cannot be accepted because it is confusing as to which part of the regulation is applicable or not. Also, a part of it is redundant.
 - Amendment 9 (concerning article 2 point a)), concerns the definition of slots. A part of it referring to the "relevant terms and conditions of use" has to be rejected as in amendment 5. Also, the term "exclusively" has to be rejected, as there are no other Community rules regarding slot allocation. The rest can be accepted as it improves the clarity of the proposed definition.

- Amendment 17 (concerning article 3 para.3) is acceptable only in part and with redrafting to ensure that the proposal states clearly that the analysis of the airport capacity is also made at the request of the coordination committee, or the air carriers representing more than half of the operations at an airport, or the managing body of the airport, or the Member State, or the Commission.
- Amendment 31 (regarding article 8 para. 2 third subparagraph) concerns the right of Member States to limit slot entitlements operated with a minimum size of aircraft. Only the first part of the amendment can be accepted, which clarifies that the measure is to be applied without prejudice to Article 9 of the slot Regulation and the relevant provisions of the market access Regulation (Council Regulation 2408/92). The rest has to be rejected as too restrictive.
- Amendment 32 (regarding article 8 para. 4) concerns the re-timing possibilities of series of slots with "grandfather status". The part, which clarifies that re-timing can also be accepted when air carriers are allocated series of slots closer to their initial requests is acceptable. The rest of the amendment proposing to delete any reference to cases of "operational reasons", has to be rejected as it opens the door to different interpretations of what can be considered as an "operational reason".
- Amendment 33 (regarding article 8 para.5) concerns the local rules that are decided by the coordination committee and approved by the Member State concerned. The only acceptable part of the amendment is the reference to "Community-wide guidelines". These have been already developed as "best practices" by the European association of airport coordinators. The rest of the amendment cannot be accepted, as it risks being discriminatory given that the term "effective use of airport capacity" may be differently interpreted at each airport. Furthermore, the question of what is "effective use of airport capacity" is a matter for the second phase revision of the slot allocation rules.

The following recitals and articles have been amended in the light of amendments accepted with minor redrafting: recital 7, article 8a para. 1 point b) first subparagraph, article 11 para. 2 point c), article 14 para. 4 and 5.

- The Commission has to reject a number (18) of proposed changes to the Regulation, which affect the core issues of its proposal. More specifically:
 - The balanced approach of the proposal: amendments 1, 18 and 28 affect significantly the balanced approach of the proposal that ensures that all interests (airlines, airports and consumers) are duly considered. On the one hand the exclusive reference to consumers creates the impression that the proposed revision is not in the interest of airports (suppliers of capacity) and airlines (users). On the other hand, amendments 18 and 28 delete any reference to local passenger organisations from the consultation process regarding the airport capacity analysis and the determination of the coordination parameters. Accepting these amendments would deprive completely consumer interests from playing any role in the slot allocation process. As to amendment 46, it is not accepted because it affects the balance between incumbent and new entrant air carriers. The following recitals and articles are concerned by the rejected amendments: recital 2, article 3 para.4, article 6 para. 3, article 10 para. 6.

- The definitions and the clarity of slot allocation criteria: certain amendments would either prejudice the outcome of the study on the introduction of a market mechanism, which has not yet been carried out (amendment 7) or introduce confusion on the application of the slot allocation criteria at both Community and world-wide level (amendments 2, 15, 45, and 50) or are redundant (amendments 26 and 38). The following recitals and articles are concerned by the rejected amendments: recitals 3 and 13, articles 2 point f) subparagraph ii), article 5 para. 3, article 8a para. 1 point c), article 10 para. 5 second subparagraph, article 14 para. 2.
- The status of the coordinator: Amendments 8 and 48 concern the accountability of the coordinator; the European Parliament has proposed to exempt the coordinator from all liability despite his increased obligations. The Commission places particular importance to the duties of the coordinator and cannot therefore accept a general exemption as suggested by the Parliament. On the contrary the Commission is of the opinion that the liability of the coordinator should be limited to cases of gross negligence and wilful misconduct. Amendment 23, it is considered by the Commission to be too broad imposing undue burden on the information obligations of coordinators. The following recitals and articles are concerned by the rejected amendments: recital 17 together with article 11 para. 2 point c), article 4 para. 8.
- Designation of airports based on transparent and non-discriminatory procedures: Amendment 20 (regarding article 3 para. 5 subparagraph 1) ignores that there should be at all times a capacity analysis before slot coordination is imposed at an airport and should therefore be rejected.
- The functioning of the coordination committee: amendment 25 (regarding article 5 para. 3) ignores that rules of procedure are a necessary functioning requirement for the coordination committee to ensure transparency and cannot, therefore, remain only an option. As for amendment 34 (introducing a new subparagraph into article 8 para 5), it is necessary that local rules are always adopted by the coordination committee and not by any other single entity and approved by Member States to ensure that they do not infringe community law in any way. Also, if accepted, the amendment would impose the obligation on coordinators to apply rules outside the Regulation; this would create the danger that certain rules require application even if they may be incompatible with the Regulation.
- Intermodality and Public Service Obligations: amendments 35 and 43 (regarding article 8 para. 6 and article 9 para. 1 respectively) cannot be accepted as they affect negatively established Community law regarding inter-modality and Public Service Obligations. Amendment 35 concerns the application of article 9 of Council Regulation (EEC) No 2408/92 on access for Community air carriers on intra-Community routes. It is clear from that article that decisions as to which routes are affected by its application are taken by Member States and not by any other entity. As to amendment 43, if accepted it would introduce discriminatory treatment of air services on routes where public service obligations have been imposed in application of article 4 of Council Regulation (EEC) No 2408/92. In fact, it would render the application of both regulations on that matter impossible.

In the light of all the above and in compliance with Article 250, paragraph 2, the Commission modifies its proposal.

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

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 Economic and Social Committee² and of the Committee of Regions³,

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

Whereas:

- (1) Following the conclusions of the European Council held in Stockholm on 23 and 24 March 2001, the present Regulation constitutes a first step in a comprehensive revision process; in order to review the developments, in particular with respect to new entrants and monetised slot transfers, this Regulation should be reviewed after a fixed period of operation;
- (2) Experience has shown that Regulation (EEC) 95/93 on common rules for the allocation of slots at Community airports⁴ should be strengthened to ensure the fullest and most flexible use of limited capacity at congested airports;
- (3) It is therefore necessary to amend that Regulation substantially in accordance with Article 14 thereof and to clarify a number of its provisions;
- (4) It is desirable to follow international terminology and therefore use the terms *scheduled airport* and *coordinated airport* instead of *coordinated* and *fully-coordinated* respectively;
- (5) Airports where there are serious capacity shortcomings should be designated as coordinated on the basis of objective criteria **and after a capacity analysis has been conducted**; whereas at coordinated airports detailed rules are required to ensure that the principles of transparency, neutrality and non-discrimination are fully adhered to;

¹ OJ C

² OJ C

³ OJ C

⁴ OJ L 14; 22.1.1993; p. 1. **Council Regulation (EEC) No 95/93 of 18 January 1993, OJ L 14, 22.1.1993, p. 1**

- (6) At schedules facilitated airports the schedules facilitator must act in an independent manner; whereas at coordinated airports the coordinator plays a central role in the coordinating process; whereas, therefore, coordinators must be in a fully independent position and their responsibilities should be specified in detail;
- (7) It is necessary to specify in detail the role of the coordination committee to be established to carry out advisory and mediation functions in relation to slot allocation; **it is important to ensure that the coordination committee cannot take decisions that would be binding on the coordinator;**
- (8) It is also necessary to clarify that slot allocation must be considered as a right of usage giving air carriers the entitlement to access the airport facilities by landing and taking-off at specific dates and timings for the duration of the period for which the entitlement has been granted; **the need to devise rules and procedures for coordinating airport and airway slots should be examined;**
- (9) However, in the interest of stability of operations, the existing system provides for the reallocation of slots with established historical precedence ("grandfather rights") to incumbent air carriers; whereas, in order to encourage regular operations at a coordinated airport it is necessary to provide that grandfather rights relate to series of slots; **at the same time Member States should be able to restrict an entitlement to a series of slots in response to changed environmental conditions at the airport concerned;**
- (10) Slots with historical precedence must comply with the usage calculation as well as with all other relevant provisions of the Regulation to continue to entitle air carriers to claim these slots in the next equivalent scheduling period; whereas the situation of grandfather rights in case of joint operations, code-share or franchise agreements should be clarified;
- (11) Regular operations at an airport should be given priority which should be administered strictly without distinction between scheduled and non-scheduled services;
- (12) In order to ensure the efficient use of capacity and reduce the environmental impact at congested airports and to further promote intermodality it is necessary to also consider in the process of slot allocation the existence of adequate services of satisfactory quality provided by other modes of transport;
- (13) The definition of new entrant should strengthen the provision of adequate air services to regions and increase potential competition on intra-Community routes;
- (14) In order better to ensure that third countries offer Community carriers comparable treatment, a procedure should be established enabling the Community more efficiently to take action against third countries which do not grant comparable treatment to that granted in the Community;

- (15) Since the measures necessary for the implementation of this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁵, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision;
- (16) At a coordinated airport, access for an air carrier is only possible if a slot has been allocated; whereas measures should be introduced to guarantee the enforcement of this Regulation, in particular when air carriers repeatedly and intentionally do not respect the slot allocation rules;
- (17) There should be a judicial procedure to review decisions taken by the coordinator;
- (18) For the avoidance of doubt, it should be specified that, the application of the provisions of this Regulation shall be without prejudice to the competition rules of the Treaty, in particular Articles 81 and 82 thereof and Regulation (EEC) No 4064/89 on the control of the concentrations between undertakings⁶, as last amended by Regulation (EC) No 1310/97⁷.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 95/93 is hereby amended as follows:

- (1) Article 1 paragraph 1 is replaced by the following:

‘This Regulation shall apply to Community airports.’

- (2) Article 2 is amended as follows:

- (a) Points (a) and (b) are replaced by the following:

‘(a) ‘slot’ shall mean the entitlement established under this Regulation, of an air carrier 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 and take-off as allocated by a coordinator in accordance with this Regulation;

- (b) ‘new entrant’ shall mean:

- (i) an air carrier requesting, as part of a series of slots, a slot at an airport on any day, where, if the carrier’s request were accepted, it would in total hold fewer than five slots at that airport on that day, or

- (ii) an air carrier requesting a series of slots for a non-stop scheduled passenger service between two Community airports where at most two other air carriers operate the same non-stop scheduled service between these airports or airport systems on that day, where, if the carrier’s request were accepted, it would nonetheless hold fewer than five slots at that airport on that day for that non-stop service;

⁵ OJ L 184, 17.7.1999, p.23

⁶ OJ L 395, 30.12.1989, p.1; corrected version, OJ L 257, 21.9.1990, p. 13

⁷ OJ L 180, 9.7.1997, p.1

(iii) an air carrier requesting a series of slots at an airport for a non-stop scheduled service between that airport and a regional airport where no other air carrier operates a direct scheduled **passenger** service between these airports or airport systems on that day, where, if the carrier's request were accepted, it would nonetheless hold fewer than five slots at that airport on that day for that non-stop service.

For the purpose of paragraphs (i) and (ii), an air carrier shall not be considered as a new entrant if at the time of allocation:

- it has, at the airport concerned, a joint operation, code sharing or franchise arrangement with another air carrier which itself is not considered as a new entrant, or
- the majority of its capital is held by another air carrier which itself is not considered as a new entrant (subsidiary company), or
- it holds directly or indirectly the majority of the capital of another air carrier which itself is not considered as a new entrant (parent company), or
- it forms part of a group of air carriers of which one is not considered as a new entrant, **or**
- **it is an associated air carrier belonging to the same holding company.**

For the purpose of paragraph (ii), an air carrier, which alone or together with other partners in a group of airlines holds more than 7% ~~of the total number~~ **of all** slots available for allocation on the day in question at a particular airport, or airport system shall not be considered as a new entrant at that airport on that day.'

(b) Point (f) is replaced by:

'(f) (i) 'air carrier' shall mean an air transport undertaking holding a valid operating licence or equivalent at the latest on 31 January for the following summer season or on 31 August for the following winter season. For the purpose of Articles **4**, 7, 8, **8a**, **10** and **14**, the definition of air carrier shall also include business aviation operators, **provided that they operate scheduled services at the airport in question.**'

(ii) 'group of air carriers' shall mean two or more carriers which together perform joint, franchise operations or code-sharing or in any other way cooperate for the purpose of operating a ~~specific~~ air service.

(c) Point (g) is replaced by the following:

'(g) 'coordinated airport' shall mean any airport where, in order to land or take off, it is necessary for an air carrier or any other aircraft operator to have been allocated a slot by a coordinator;'

(d) Points (i), (j), (k), (l), (m), (n) and **(o)** are added:

'(i) 'schedules facilitated airport' shall mean an airport where there is potential for congestion at some periods of the day, week or year which is likely to be resolved by voluntary co-operation between air carriers and where a schedules facilitator has been appointed to facilitate the operations of air carriers operating or intending to operate at that airport;

- (j) 'managing body of an airport' shall mean the body which, whether or not in conjunction with other activities, has the task under national laws or regulations of administering and managing the airport facilities and coordinating and controlling the activities of the various operators present at the airport or within the airport system concerned;
- (k) 'series of slots' shall mean at least five slots having been requested for a scheduling period at the same time regularly on the same weekday and allocated in that way or, if that it is not possible, allocated at approximately the same time.
- (l) 'regional airport' shall mean a regional and accessibility connecting point or a Community connecting point as defined in Section 6 of Decision No 1692/96/EC on Community guidelines for the development of the trans-European network⁸;
- (m) 'business aviation' shall mean that sector of general aviation which concerns the operation or use of aircraft by companies for the carriage of passengers or goods as an aid to the conduct of their business, flown for purposes generally considered not for public hire and piloted by individuals having, at the minimum, a valid commercial pilot license with an instrument rating;
- (n) 'coordination parameters' shall mean the expression in operational terms of all the capacity available for slot allocation at an airport during each coordination period by reflecting all technical, operational and environmental factors that affect the performance of the airport infrastructure and its different sub-systems;
- (o) 'taxiing time' shall mean the time the aircraft requires to assume takeoff position on the runway, or on landing, the time necessary to clear the runway and bring the aircraft to a complete stop.'**

(3) Article 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1 (a) A Member State shall be under no obligation to designate any airport as schedules facilitated or coordinated save in accordance with the provisions of this Article.

(b) A Member State shall not designate an airport as coordinated save in accordance with the provisions of paragraph 3.'

(b) The term 'coordinated' in Paragraph 2 is replaced by "schedules facilitated".

(c) Paragraph 3 is replaced by the following:

'3. The Member State responsible shall ensure that a thorough capacity analysis is carried out at an airport with no designation status or at a schedules facilitated airport by the managing body of that airport when that Member State consider it necessary or within six months:

(i) following a written request from air carriers representing more than half of the operations at an airport or from the managing body of the airport when they consider that capacity is insufficient for actual or planned operations at certain periods; or

⁸ OJ L 228, 9.9.1996, p.99

- (ii) upon request from the Commission, in particular where an airport is in reality accessible only for air carriers that have been allocated slots by a coordinator or where air carriers and in particular new entrants encounter serious problems in securing landing and take off possibilities at the airport in question.

This analysis, based on commonly recognised **standardised** methods, shall determine **the all** capacity shortcomings, taking into account environmental constraints applicable at the airport in question. The analysis shall consider the possibilities of overcoming such shortcomings through new or modified infrastructure, operational changes, or any other change, and the time frame envisaged to resolve the problems. It shall be updated at least every three years if paragraph 5 has been invoked, or when there are changes at the airport influencing significantly the capacity and the use of it, **or at the request of the coordination committee, the air carriers representing more than half of the operations at an airport, the managing body of the airport, the Member State, or the Commission.** Both the analysis and the method used shall be made available to the parties having requested the analysis and, upon request, to other interested parties. The analysis shall be communicated to the Commission at the same time.

Standards for the elaboration of the capacity analysis may be established in accordance with the procedure laid down in Article 13 (2).

(d) Paragraph 4 is replaced by the following paragraphs 4 and 5 and the present paragraph 5 becomes paragraph 6 whereby the term ‘fully coordinated airport’ is replaced by ‘coordinated airport’:

- ‘4. On the basis of the analysis the Member State shall consult on the capacity situation at the airport with the managing body of the airport, the air carriers using the airport regularly, their representative organisations, representatives of general aviation, air traffic control authorities and local passengers’ organisations where such organisations exist.
5. The Member State shall ensure that the airport is designated as coordinated for the period during which **a capacity analysis has determined that the capacity problems occur exist for at least one scheduling period** only if
- a) the shortcomings are of such a serious nature that significant delays cannot be avoided at the airport and
- b) there are no possibilities of resolving these problems in the short term.’

(4) Article 4 is amended as follows:

(a) The title is replaced by the following: “The schedules facilitator and the coordinator”

(b) Paragraph 1 is replaced by the following:

- ‘1. The Member State responsible for a schedules facilitated or coordinated airport shall ensure the appointment of a qualified natural or legal person as schedules facilitator or airport coordinator respectively after having consulted the air carriers using the airport regularly, their representative organisations and the managing body of the airport **and the coordination committee, where such a committee already exists.** The same schedules facilitator or coordinator may be appointed for more than one airport.’

(c) Paragraph 2, 3, 4, 5 and 6 are replaced by the following:

- ‘2. The Member State responsible for a schedules facilitated or coordinated airport shall ensure that:
 - a) at a schedules facilitated airport, the schedules facilitator acts under this Regulation in an independent, neutral, non-discriminatory and transparent manner,
 - b) at a coordinated airport the de facto independence of the coordinator shall be ensured additionally by separating the coordinator institutionally and financially from any single interested party. The Member State shall ensure that the coordinator acts according to this Regulation in a neutral, non-discriminatory and transparent way and that sufficient resources are made available in such a way that the financing of the coordination activities cannot affect the independence of the coordinator.
3. The schedules facilitator and the coordinator shall participate in such international scheduling conferences of air carriers as are permitted by Community law.
4. The schedules facilitator shall advise air carriers and recommend alternative arrival and/or departure times when congestion is likely to occur.
5. The coordinator shall be the sole person responsible for the allocation of slots. He shall allocate the slots according to the provisions of this Regulation and make provision that slots can also be allocated outside office hours in urgency situations.
6. The schedules facilitator and the coordinator shall monitor the use of schedules and slots **allocated and actually used** in close co-operation with the managing body of the airport and with the air traffic control authorities. The coordinator shall submit an annual activity report to the Commission concerning, in particular, the application of Articles 8(a) and 14 as well as on any complaints regarding the application of Articles 8 and 10 submitted to the Coordination Committee and the initiatives taken to resolve them.
7. All schedules facilitators and coordinators shall cross-check their databases in order to detect inconsistencies in schedules.’

(d) Paragraph 7 becomes paragraph 8 and the introductory wording of the paragraph is replaced by the following:

‘The coordinator shall on request and within a reasonable time make available free of charge for review to all interested parties, either in written or in any other easily accessible form, the following information:’

(e) The following sentence is added to paragraph 8, which becomes new paragraph 9:

‘On request, the coordinator shall provide such information in a summarised format. A cost-related fee may be charged for the provision of such summarised information.’

(f) The following is inserted as new paragraph (10):

‘Where relevant and generally accepted schedules information standards are available, the schedules facilitator, the coordinator and the air carriers shall apply them provided that they comply with Community law.’

- (5) Articles 5, 6, 7, 8, 9, are replaced by the following:

'Article 5

Coordination committee

1. At a coordinated airport, the Member State responsible shall ensure that a coordination committee is set up. The same coordination committee may be designated for more than one airport. Membership in this committee shall be open at least to the air carriers, **and** their representative organisations **and representatives of general aviation** using the airport(s) regularly, the managing body of the airport concerned; **and** the relevant air traffic control authorities.

The tasks of the coordination committee shall be

- a) to propose or advise the coordinator and/or the Member State on:
- possibilities for increasing the capacity of the airport determined in accordance with Article 3 or improving the use of it;
 - coordination parameters to be determined in accordance with Article 6;
 - local guidelines for the allocation of slots, taking into account possible environmental concerns, as provided for in Article 8 (5);
 - improvements to traffic conditions prevailing at the airport in question;
 - complaints on the allocation of slots as provided for in Article 11;
 - the methods of monitoring the use of allocated slots;
 - serious problems encountered by new entrants as provided for in Article 10(8);
 - all questions relating to the capacity of the airport.
- b) to mediate between all parties concerned on:
- complaints on the allocation of slots as provided for in Article 11.
2. Member State representatives and the coordinator shall be invited to the meetings of the coordination committee as observers.
3. The coordination committee shall draw up written rules of procedure covering inter alia participation, elections, frequency of meetings, and language(s) used. Any member of the Coordination Committee may propose local guidelines as provided for in Article 8 (3). At the request of the coordinator, the coordination committee shall discuss suggested local guidelines for the allocation of slots. A report of the discussions in the Coordination Committee shall be submitted to the Member State concerned with an indication of the respective positions within the Committee.

Article 6

Coordination parameters

1. At a coordinated airport the responsible Member State shall ensure the determination of the parameters for slot allocation twice yearly, while taking account of all relevant technical, operational and environmental constraints as well as any changes thereto.

This exercise shall be based on an objective analysis of the possibilities of accommodating the air traffic, taking into account the different types of traffic at the airport, the airspace congestion **of local airspace** likely to occur during the coordination period and the capacity situation.

The parameters shall be provided to the airport coordinator in good time before the initial slot allocation takes place for the purpose of scheduling conferences.

2. For the purpose of the exercise referred to in paragraph 1 the coordinator shall define relevant coordination time intervals after consultation of the coordination committee and in the light of the capacity situation.
3. The determination of the parameters and the methodology used as well as any changes thereto shall be discussed in detail with the coordination committee with a view to increasing the number of slots available for allocation, before a final decision on the parameters for slot allocation is taken. All relevant documents shall be made available on request to interested parties.

Article 7

Information for schedules facilitator and coordinator

1. Air carriers operating or intending to operate at a schedules facilitated or coordinated airport shall submit to the schedules facilitator or coordinator respectively all relevant information requested by them. All relevant information shall be provided in the format and within the time limit specified by the schedules facilitator or coordinator.

~~In particular,~~ An air carrier **wishing to acquire new-entrant status**, shall **be required to** inform the coordinator, **in standard industry format** at the time of the request for allocation, whether it would benefit from the status of new entrant **and to submit all necessary information to enable that coordinator to establish whether the air carrier concerned is eligible for such status**, in accordance with article 2 (b), in respect of requested slots.

For all other airports with no particular designation status, information about planned services of air carriers, when requested by a coordinator, shall be provided by the managing body of the airport to that coordinator.

2. In the event of failure by an air carrier to provide the information referred to in paragraph 1, or of the provision of false or misleading information by an air carrier, the coordinator shall not take into consideration the slot request or requests by that air carrier unless mitigating circumstances exist. The coordinator shall give that air carrier the opportunity to submit its observations.

3. The schedules facilitator or the coordinator, the managing body of the airport and the air traffic control authorities shall exchange all the necessary information required including flight **scheduling** data and **details of slots actually allocated** for the exercise of their respective duties.

Article 8

Process of slot allocation

1. Series of slots are allocated from the slot pool to applicant carriers as entitlements to use the airport infrastructure for the purpose of landing and take-off for the scheduling period for which they are requested, at the expiry of which they have to be returned to the slot pool as set up according to the provisions of Article 10.
2. Without prejudice to Articles 7, 8a, 9, 10(1) and 14, paragraph (1) of this Article shall not apply when the following conditions are met:
 - a series of slots has been used by an air carrier for the operation of scheduled and programmed non-scheduled air services and
 - that air carrier can demonstrate to the satisfaction of the coordinator that the series of slots in question has been operated, as cleared by the coordinator, by that air carrier for at least 80% of the time during the scheduling period for which it has been allocated.

In such case that series of slots shall entitle the air carrier concerned to the same series of slots in the next equivalent scheduling period.

Without prejudice to Article 9 of this Regulation and the relevant provisions of Regulation (EEC) No 2408/92, Member States may limit such entitlement to series of slots operated with a minimum aircraft size.

3. Without prejudice to Article 10 (2), in a situation where all slot requests cannot be accommodated to the satisfaction of the air carriers concerned, preference shall be given to commercial air services and in particular to scheduled services and programmed non-scheduled air services. In the case of competing requests within the same category of services, priority shall be given for year round operations.
4. Re-timing of series of slots before the allocation of the remaining slots from the pool referred to in Article 10 to the other applicant air carriers shall be accepted only for operational reasons due to changes in the type of aircraft used or route operated, **or if slot timings of applicant air carriers would be improved in relation to the timings initially requested.** It shall not take effect prior to the express confirmation by the coordinator.
5. The coordinator shall also take into account additional rules and guidelines established by the air transport industry world-wide **and Community-wide** as well as local guidelines proposed by the Coordination Committee and approved by the Member State responsible for the airport in question, provided that such rules and guidelines do not affect the independent status of the coordinator, comply with Community law and aim at improving the efficient use of airport capacity. These rules shall be communicated by that Member State to the European Commission.

6. In situations where Article 9 of Council Regulation (EEC) No 2408/92 is applicable, the coordinator shall not give priority to requests of air carriers intending to use the series of slots concerned for routes where satisfactory service by other means of transport exists.
7. If a requested slot cannot be accommodated, the coordinator shall inform the requesting air carrier of the reasons therefor and shall indicate the nearest **available** alternative slot.
8. The coordinator shall, in addition to the planned slot allocation for the scheduling period, endeavour to accommodate single slot requests with short notice for any type of aviation, including general aviation. To this end, remaining slots in the pool referred to in Article 10 after distribution among the applicant carriers and slots available at short notice may be used.

Article 8a

Slot mobility

1. Slots may be:
 - a) transferred by an air carrier from one route or type of service to another route or type of service operated by that same air carrier,
 - b) transferred
 - i) between parent and subsidiary companies, **and between subsidiaries of the same parent company**,
 - ii) as part of the acquisition of the majority of the capital of an air carrier,
 - iii) in the case of a total or partial take-over when the slots are directly related to the business taken over.
 - c) transferred between air carriers in accordance with decision taken by public authorities pursuant to Articles 81 or 82 of the EC treaty or Regulation 4064/89;
 - d) exchanged, one for one, between two air carriers where both air carriers involved undertake to use the slots received in the exchange.
2. Slots cannot be transferred in any way between air carriers or between air carriers and other entities with or without monetary compensation other than between those air carriers referred to in Article 8a(1) (b).
3. The transfers or exchanges referred to in paragraphs 1 above shall be notified to the coordinator and shall not take effect prior to the express confirmation by the coordinator. The coordinator shall decline to confirm the transfers or exchanges if they are not in conformity with the requirements of this Regulation, and if not satisfied that:
 - (a) airport operations would not be prejudiced taking into account all technical, operational and environmental constraints;
 - (b) limitations imposed according to Article 9 are respected;
 - (c) a transfer of slots does not fall within the scope of paragraph 4;

- (d) in the case of exchanges between two air carriers referred to in paragraph 1, both carriers intend to operate the slots resulting from the exchange or from the subsequent exchanges.
4. (a) Slots allocated to a new entrant as defined in Article 2 (b) may not be transferred as provided for in paragraph 1(b) for a period of ~~three~~ **two** equivalent scheduling periods.
- (b) Slots allocated to a new entrant as defined in Article 2 (b) (ii) and (iii) may not be transferred to another route as provided for in paragraph 1(a) for a period of ~~three~~ **two** equivalent scheduling periods, **unless the new entrant would have been entitled to be treated with the same priority on the new route as on the operated route.**
- (c) Slots allocated to a new entrant as defined in Article 2(b) may not be exchanged as provided for in paragraph 1(d) for a period of ~~three~~ **two** equivalent scheduling periods, except in order to improve the slot timings for these services in relation to the timings initially requested.

Article 8bis

Exclusion of compensation claims

The entitlement to series of slots referred to in Article 8(2), shall not give rise to any claims for compensation in respect of any limitation, restriction or elimination thereof imposed under Community law, in particular in application of the rules of the Treaty relating to air transport.

The present Regulation shall not affect the powers of public authorities to require the transfer of slots between air carriers without monetary compensation pursuant to Articles 81 or 82 of the EC Treaty or Regulation 4064/89.

Article 9

Public Service Obligations

1. Where public service obligations have been imposed on a route according to Article 4 of Council Regulation (EEC) No 2408/92, a Member State may reserve at a coordinated airport the slots required for the envisaged operations on that route. If the carrier does not use the reserved slots on the route concerned in compliance with Article 8 (2) and 8 (4), these slots shall be made available to any other air carrier interested in operating the route according to the public service obligations subject to paragraph 2. If no other carrier is interested in operating the route and the Member State concerned does not issue a call for tender under Article 4 (1) d of Regulation (EEC) No 2408/92, the slots shall be returned to the pool.
2. The tender procedure established in Article 4 (1) (d) to (g) and 4 (1) (i) of Regulation (EEC) No 2408/92 shall be applied for the use of the slots referred to in paragraph 1 above if more than one Community air carrier is interested in servicing the route and has not been able to obtain slots within one hour before or after the times requested from the coordinator.'

- (6) Paragraphs 1, 2, 3, 4, 5, 7 and 8 of Article 10 are replaced by the following:

Article 10

Slot pool

1. The coordinator shall set up a pool, which shall contain all the slots not allocated on the basis of Article 8(2) and 8(4). All new slot capacity determined pursuant to Article 3 (3) will be placed in the pool.
2. A series of slots that has been allocated to an air carrier for the operation of scheduled or programmed non-scheduled air services shall not entitle that air carrier to the same series of slots in the next equivalent scheduling period, if the air carrier cannot demonstrate to the satisfaction of the coordinator that they have been operated, as cleared by the coordinator, by that air carrier for at least 80 % of the time during the period for which they have been allocated.
3. Slots allocated to an air carrier before 31 January for the following summer season, or before 31 August for the following winter season, but which are returned to the coordinator for reallocation before those dates shall not be taken into account for the purposes of the usage calculation.
4. If the 80 % usage of the series of slots cannot be demonstrated, all the slots constituting that series shall be placed in the slot pool, unless the non-utilisation can be justified on the basis of any of the following reasons:
 - (a) unforeseeable and irresistible cases outside the air carrier's control leading to:
 - grounding of the aircraft type generally used for the air service in question;
 - closure of an airport or airspace;
 - **serious disturbance of at least 50% of all the operations at the airport concerned during the relevant scheduling period**
 - (b) an interruption of air services due to action intended to affect these services, which makes it practically and/or technically impossible for the air carrier to carry out operations as planned;
 - (c) serious financial damage for a Community air carrier concerned, with, as a result, the granting of a temporary license by the licensing authorities pending financial reorganisation of the air carrier in accordance with Article 5(5) of Regulation (EEC) No 2407/92.
5. **At the request of a Member State or on its own initiative the Commission shall examine the application of paragraph 4 by the coordinator of an airport falling within the scope of this Regulation;**
It shall take a decision within two months of receipt of a request and after consulting the Committee referred to in Article 13.

6. Without prejudice to Article 8(2) of this Regulation and without prejudice to Article 8(1) of Regulation (EEC) No 2408/92, slots placed in the pool shall be distributed among applicant air carriers. 50 % of these slots shall first be allocated to new entrants unless requests by new entrants are less than 50%. For the purpose of such allocation, the scheduling day shall be divided into equal coordination periods of at most one-hour duration.

Preference shall be given among requests from new entrants to air carriers qualifying for new entrant status under both Article 2 (b) (i) and (ii) or Article 2 (b) (i) and (iii).

7. A new entrant which has been offered a series of slots within one hour before or after the time requested but has not accepted this offer shall not retain the new entrant status for that scheduling period.
8. In the case of services operated by a group of air carriers, only one of the participating air carriers can apply for the required slots. The air carrier operating such a service assumes responsibility for meeting the operating criteria required to maintain historical precedence referred to in Article 8(2).

Slots allocated to one air carrier in the operation may be used by (an)other participating air carrier(s) for their shared operation, provided that the designator code of the air carrier to whom the slots were allocated remains on the shared flight for coordination and monitoring purposes. Upon discontinuation of such operations, the slots so used will remain with the air carrier to whom they were initially allocated. Air carriers involved in shared operations shall advise coordinators of the detail of such operations.

- (7) Paragraph 6 of Article 10 becomes new paragraph **8 9**.
- (8) Article 11 is replaced by the following:

Article 11

Complaints and Right of appeal

1. Complaints regarding the application of Articles 8, 8a, and 10 shall be submitted to the Coordination Committee. It shall within a period of ~~three~~ **one** months following the submission of the complaint consider the matter and if possible make proposals to the coordinator in an attempt to resolve the problems. If the complaints cannot be settled, the Member State responsible may within the subsequent three-month period provide for mediation by an air carriers' or airports' representative organisation or other third party.
2. Member States shall ensure that, any party with a legitimate interest has the right to appeal against the decisions of the coordinator before a national court or another independent authority, when the mediation procedure provided under paragraph (1) has failed.

Member States shall ensure that the appellate body has the powers to:

- a) take, at the earliest opportunity and by way of interlocutory procedures, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the allocation of slots or the implementation of any decision taken by the coordinator,
- b) set aside or ensure the setting aside of decisions taken unlawfully,
- c) award damages.

For the purpose of application of point (c) of the second subparagraph, coordinators shall be exempt from claims for damages, save in cases of gross negligence or wilful misconduct.

Member States shall ensure that the review procedures are available, under detailed rules, which the Member States may establish, at least to any person having or having had an interest in slot allocation procedures and who has been or risks being harmed by an alleged infringement.

If legal action has been taken pursuant to this paragraph, application of paragraph 1 of this Article shall immediately cease.

- (9) The title of Article 12 and paragraph 1 are replaced by the following:

‘Relations with third countries

- ‘1. Whenever it appears that a third country, with respect to the allocation and use of slots at its airports,
- (a) does not grant Community air carriers treatment comparable to that granted by this Regulation to air carriers from that country, or
 - (b) does not grant Community air carriers *de facto* national treatment, or
 - (c) grants air carriers from other third countries more favourable treatment than Community air carriers,

the Commission may, in accordance with the procedure of Article 13 (2), decide that a Member State or States shall take measures, including the suspension in whole or in part of the application of this Regulation in respect of an air carrier or air carriers of that third country with a view to remedying the discriminatory behaviour of the third country involved.’

- (10) Articles 13 and 14 are replaced by the following:

Article 13

Procedure for decisions

1. When deciding pursuant to Articles **3 (3) and** 12, the Commission shall be assisted by a committee, composed of the representatives of the Member States and chaired by the representative of the Commission.
2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 (3) and Article 8 thereof.
3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.
4. The Committee may furthermore be consulted by the Commission on any other matter concerning the application of this Regulation.
5. The Committee shall establish its own rules of procedure.

Article 14

Enforcement

1. An air carrier's flight plan shall be rejected by the competent Air Traffic Management authorities, if it intends to land or take off at a coordinated airport, during the periods for which it is coordinated, without having a slot allocated by the coordinator. **Allowance shall be made for the necessary taxiing time required at the airport.**
2. The coordinator shall withdraw the series of slots of an air carrier and place them in the pool on 31 January for the following summer season or on 31 August for the following winter season if the air carrier does not hold an operating licence or equivalent on that date.
3. The coordinator shall withdraw and place in the pool the series of slots of an air carrier, which it has received following a transfer or exchange pursuant to Article 8a(3) if they have not been used as intended according to Article 8a(3)(d).
4. Air carriers who repeatedly and intentionally operate air services at a time significantly different from the allocated slot as part of a series of slots shall lose the status referred to in Article 8 (2). The coordinator may decide to withdraw the series of slots in question of that air carrier for the remainder of the scheduling period and place them in the pool after having heard the air carrier concerned **and issued a formal warning.**
5. **After having given a formal warning,** Member States shall introduce measures to impose, fines and/or periodic penalty payments on air carriers for the repeated and intentional operation of air services at times significantly different from the allocated slots, **or for the use of a slot in a manner other than that indicated at the time of allocation.**

In setting the amount of the fine and/or periodic penalty payments regard shall be had to the nature and gravity of the infringement after having heard the air carrier concerned.

6. (a) Without prejudice to Article 10(4), if the 80% utilisation rate as defined in Article 8(2) cannot be achieved by an air carrier, the coordinator may decide to withdraw that series of slots of that air carrier for the remainder of the scheduling period and place them in the pool after having heard the air carrier concerned.
 - (b) Without prejudice to Article 10(4), if after an allotted time corresponding to 20% of the period of the series validity no slots of that series of slots have been used, the coordinator shall place the series of slots in question in the pool for the remainder of the scheduling period after having heard the air carrier concerned.'
- (11) Article 15 is added:

'Article 15

Report and co-operation

1. The Commission shall submit a report to the European Parliament and the Council on the operation of this Regulation at the latest three years after its entry into force. The report shall address in particular the functioning of Articles 8, 8a and 10.
2. Member States and the Commission shall co-operate in the application of this Regulation, particularly as regards the collection of information for the report mentioned in paragraph 1.'

Article 2

This Regulation shall enter into force three months after its publication in the *Official Journal of the European Communities*.

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