REGULATION (EC) No 793/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 April 2004

amending Council Regulation (EEC) No 95/93 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 Commission ([1]),

Having regard to the opinion of the European Economic and Social Committee ([2]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([3]),

Whereas:

(1) Following the conclusions of the European Council held in Stockholm on 23 and 24 March 2001, this Regulation constitutes a first step in a comprehensive revision process. In order to keep abreast of developments, in particular with respect to new entrants and market access issues, this Regulation should be reviewed after a fixed period of operation.

(2) Experience has shown that Council Regulation (EEC) No 95/93 ([4]) 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 in accordance with Article 14 thereof and to clarify a number of its provisions.

(4) It is desirable to follow international terminology and therefore to use the terms 'schedules facilitated airport' and 'coordinated airport' instead of 'coordinated airport' and 'fully-coordinated airport' respectively.

(5) Airports with a serious shortfall in capacity should be designated as 'coordinated airports' on the basis of objective criteria after a capacity analysis has been conducted. At coordinated airports detailed rules are required to ensure that the principles of transparency, neutrality and non-discrimination are fully adhered to. Specific activities such as helicopter operations should not be subject to slot allocation rules where these are not necessary.

(6) At schedules facilitated airports the schedules facilitator should act in an independent manner. At coordinated airports the coordinator plays a central role in the coordinating process. Therefore, coordinators should 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 which is established to advise and mediate in relation to slot allocation. Member State representatives should be invited to meetings of the coordination committee as observers without voting rights. Such observer status should be without prejudice to the possibility that such representatives could chair committee meetings. It is important to ensure that the coordination committee has no power to take decisions that would be binding on the coordinator.

(8) It is also necessary to make clear that slot allocation should be considered as giving air carriers permission to access the airport facilities for landing and taking-off at specific dates and times for the duration of the period for which the permission is granted. The need to develop 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. In order to encourage regular operations at coordinated airports it is necessary to provide that grandfather rights relate to series of slots. At the same time, Member States should, when defining capacity parameters, be able to take account of operational and environmental constraints.

([1]) OJ C 270 E, 25.9.2001, p. 131.
([2]) OJ C 125, 27.5.2002, p. 8.
([3]) Opinion of the European Parliament of 11 June 2002 (OJ C 261 E, 30.10.2003, p. 116), Council Common Position of 19 February 2004 (not yet published in the Official Journal) and Position of the European Parliament of 1 April 2004 (not yet published in the Official Journal).
([4]) OJ L 14, 22.1.1993, p. 1. Regulation as last amended by Regulation (EC) No 1554/2003 of the European Parliament and of the Council (OJ L 221, 4.9.2003, p. 1).

(10) Slots with historical precedence should comply with the usage calculation as well as with all other relevant provisions of Regulation (EEC) No 95/93 so that air carriers can continue to claim these slots in the next equivalent scheduling period. The situation of grandfather rights in the case of joint operations, code-share or franchise agreements should be clarified.

(11) Regular services at airports should be given priority which should be administered strictly without distinction between scheduled and non-scheduled services.

(12) The definition of the term 'new entrant' should be such as to strengthen the provision of adequate air services to regions and to increase potential competition on intra-Community routes.

(13) In order better to ensure that, amongst other things, third countries grant Community carriers comparable treatment, a procedure should be established enabling the Community more efficiently to take action against third countries which do not grant treatment comparable to that granted in the Community.

(14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([1]).

(15) At coordinated airports, access for an air carrier is only possible if a slot has been allocated. Measures should be introduced to guarantee the enforcement of this Regulation, in particular when air carriers repeatedly and intentionally fail to comply with the slot allocation rules.

(16) There should be a procedure to review decisions taken by the coordinator.

(17) For the avoidance of doubt, it should be specified that the application of the provisions of this Regulation is to be without prejudice to the competition rules of the Treaty, in particular Articles 81 and 82 thereof and Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ([2]),

([1]) OJ L 184, 17.7.1999, p. 23.

([2]) OJ L 395, 30.12.1989, p. 1. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).

HAVE ADOPTED THIS REGULATION:

Article 1

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

1. Article 1(1) shall be replaced by the following:

'1. This Regulation shall apply to Community airports.'

2. Article 2 is amended as follows:

(a) Points (a) and (b) shall be replaced by the following:

'(a) "slot" shall mean the permission given by a coordinator in accordance with this Regulation 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 or 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 air carrier's request were accepted, the air carrier would nonetheless hold fewer than five slots at that airport on that day for that non-stop service, or

(iii) an air carrier requesting a series of slots at an airport for a non-stop scheduled passenger 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 air carrier's request were accepted,

the air carrier would nonetheless hold fewer than five slots at that airport on that day for that non-stop service.

An air carrier holding more than 5 % of the total slots available on the day in question at a particular airport, or more than 4 % of the total slots available on the day in question in an airport system of which that airport forms part, shall not be considered as a new entrant at that airport.'

(b) Points (f) and (g) shall be replaced by the following:

'(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, 8, 8a and 10, the definition of air carrier shall also include business aviation operators, when they operate according to a schedule; for the purposes of Articles 7 and 14; the definition of air carrier shall also include all civil aircraft operators;

(ii) "group of air carriers" shall mean two or more air carriers which together perform joint operations, franchise operations or code-sharing for the purpose of operating a specific air service;

(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, with the exception of State flights, emergency landings and humanitarian flights;'

(c) The following points shall be 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 amenable to resolution by voluntary cooperation between air carriers and where a schedules facilitator has been appointed to facilitate the operations of air carriers operating services or intending to operate services at that airport;

(j) "managing body of an airport" shall mean the body which, in conjunction with other activities or otherwise, 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 the same time on the same day of the week regularly in the same scheduling period and allocated in that way or, if that is not possible, allocated at approximately the same time;

(l) "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, where the aircraft are flown for purposes generally considered not for public hire and are piloted by individuals having, at a minimum, a valid commercial pilot license with an instrument rating;

(m) "coordination parameters" shall mean the expression in operational terms of all the capacity available for slot allocation at an airport during each coordination period, reflecting all technical, operational and environmental factors that affect the performance of the airport infrastructure and its different sub-systems.'

3. Article 3 is amended as follows:

(a) Paragraph 1 shall be 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) In Paragraph 2 the term 'coordinated airport' shall be replaced by 'schedules facilitated airport'.

(c) Paragraph 3 shall be 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 or by any other competent body when that Member State considers 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 either considers that capacity is insufficient for actual or planned operations at certain periods; or

(ii) upon request from the Commission, in particular where an airport is in reality accessible only for air carriers that have been allocated slots 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 methods, shall determine any shortfall in capacity, taking into account environmental constraints at the airport in question. The analysis shall consider the possibilities of overcoming such shortfall through new or modified infrastructure, operational changes, or any other change, and the time frame envisaged to resolve the problems. It shall be updated if paragraph 5 has been invoked, or when there are changes at the airport influencing significantly its capacity and capacity usage. 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. '

(d) Paragraph 4 shall be replaced by the following paragraphs:

'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 using the airport regularly and air traffic control authorities.

5. Where capacity problems occur for at least one scheduling period, the Member State shall ensure that the airport is designated as coordinated for the relevant periods only if:

(a) the shortfall is 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.

6. By way of derogation from paragraph 5, Member States may, in exceptional circumstances, designate as coordinated the airports affected for the appropriate period.'

(e) The present paragraph 5 shall become paragraph 7 and the term 'fully coordinated airport' shall be replaced by 'coordinated airport'.

4. Article 4 shall be amended as follows:

(a) The title shall be replaced by the following: 'The schedules facilitator and the coordinator'.

(b) Paragraphs 1 to 6 shall be 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 exists. The same schedules facilitator or coordinator may be appointed for more than one airport.

(2) The Member State responsible for a schedules facilitated or coordinated airport shall ensure:

(a) that at a schedules facilitated airport, the schedules facilitator acts under this Regulation in an independent, neutral, non-discriminatory and transparent manner;

(b) the independence of the coordinator at a coordinated airport by separating the coordinator functionally from any single interested party. The system of financing the coordinators' activities shall be such as to guarantee the coordinator's independent status;

(c) that the coordinator acts according to this Regulation in a neutral, non-discriminatory and transparent way.

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 in accordance with the provisions of this Regulation and shall make provision so that, in an emergency, slots can also be allocated outside office hours.

6. The schedules facilitator shall monitor the conformity of air carriers' operations with the schedules recommended to them. The coordinator shall monitor the conformity of air carriers' operations with the slots allocated to them. These conformity checks shall be carried out in cooperation with the managing body of the airport and with the air traffic control

authorities and shall take into account the time and other relevant parameters relating to the airport concerned. The coordinator shall submit on request to the Member States concerned and to the Commission an annual activity report, concerning, in particular, the application of Articles 8a and 14, as well as any complaints regarding the application of Articles 8 and 10 submitted to the coordination committee and the steps taken to resolve them.

7. All schedules facilitators and coordinators shall cooperate to detect inconsistencies in schedules.'

(c) The present paragraph 7 shall become paragraph 8 and the introductory wording shall be replaced by the following:

'The coordinator shall on request and within a reasonable time make available free of charge for review to interested parties, in particular to members or observers of the coordination committee, either in written form or in any other easily accessible form, the following information:'

(d) The present paragraph 8 shall become paragraph 9 and shall be replaced by the following:

'9. The information referred to in paragraph 8 shall be made available at the latest at the time of the relevant scheduling conferences and as appropriate during the conferences and thereafter. 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.'

(e) The following paragraph shall be added:

'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 to 9 shall be 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 of this committee shall be open at least to the air carriers using the airport(s) in question regularly and their representative organisations, the managing body of the airport concerned, the relevant air traffic control authorities and the representatives of general aviation using the airport regularly.

The tasks of the coordination committee shall be:

(a) to make proposals concerning or advise the coordinator and/or the Member State on:

— the possibilities for increasing the capacity of the airport determined in accordance with Article 3 or for improving its usage;

— the coordination parameters to be determined in accordance with Article 6;

— the methods of monitoring the use of allocated slots;

— local guidelines for the allocation of slots or the monitoring of the use of allocated slots, taking into account, inter alia, possible environmental concerns, as provided for in Article 8(5);

— improvements to traffic conditions prevailing at the airport in question;

— serious problems encountered by new entrants, as provided for in Article 10(9);

— 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, the frequency of meetings, and language(s) used. Any member of the coordination committee may propose local guidelines as provided for in Article 8(5). At the request of the coordinator, the coordination committee shall discuss suggested local guidelines for the allocation of slots as well as those suggested for the monitoring of the use of allocated 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 stated within the committee.