

ERA SUBMISSION ON PUBLIC CONSULTATION ON THE IMPACT ASSESSMENT FOR A POSSIBLE REVISION OF COUNCIL REGULATION (EEC) 95/93 ON COMMON RULES FOR THE ALLOCATION OF SLOTS

28 October 2010

Online questionnaire

1. Respondent information

1.1 Identification

(1) I speak on behalf of

a. — myself

b. an organisation

(1a and 1b) (Respondent only answers this question if he/she has ticked "organisation" in the question above. Compulsory question) Please can you identify which organisation you represent, and a contact email address?

Answer for organisation name: [European Regions Airline Association \(ERA\)](#)

Answer for email address: Simon.Mcnamara@eraa.org

(1c) (Respondent only answers this question if he/she has ticked "organisation" in the question above. Compulsory question) Please select the organisation type?

(c) Airport or airports' association

(d) **Airline or airlines' association (scheduled airlines)**

(e) Airline or airlines' association (leisure airlines)

(f) Airline or airlines' association (business or general aviation)

(g) Slot coordinator or slot coordinators association

(h) Freight operator

(i) Air navigation service provider or other ATM industry stakeholder

(j) National government

(k) Regional or local government

(l) Trade Union/Worker's organisation

(m) Association/non-governmental organisation

- (n) Academic institution,
- (o) Other private company
- (p) Other

1.2 Views of the respondent

(2) (Compulsory – one answer only) Please can you confirm your agreement to having your views made public and/or attributed to your organisation when we summarise the results of the consultation.

Yes

1.3. Role and interest of the respondent

(3) (Compulsory) Please can you identify your role and interest in the potential revision of the Regulation on slot allocation?

ERA has 70 airline members. These operate more than 1100 routes between airport pairs in Europe. A significant number of these routes serve slot co-ordinated airports at one end of the route, and a smaller number serve slot co-ordinated airports at both ends of the route. In addition, ERA members constantly seek to operate new routes, and some of these will include one or two coordinated airports. The slot coordinated airports served by ERA members are generally those governed by Regulation 95/93 (as amended).

If you are speaking on behalf of an organization:

As part of the European Transparency Initiative, organizations are invited to use the Register of interest representatives to provide the European Commission and the public at large with information about their objectives, funding and structures. If you are not registered yet in this register, please visit:

<https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en> .

2. Current functioning of the Regulation

It is important for this consultation to understand how well the Regulation currently functions, and whether stakeholders believe there are any problems at present with its implementation.

(4) How well do you believe the Regulation is currently functioning? What problems, if any, are there with its current operation?

- ERA does not believe that any changes to the Regulation are necessary.
- ERA believes that the slot allocation Regulation is functioning adequately for the needs of European citizens and businesses including aviation.
- ERA believes that many of the changes being evaluated would damage the EU's overall interests, in particular affecting citizens and businesses in the regions of Europe. All impact assessments must include the effect on citizens living in, and businesses based in, Europe's regions.
- Slot allocation, however it is regulated, cannot deliver additional capacity. The problems that airline face when serving congested airports arise from lack of capacity, not from slot allocation.

- The slot allocation Regulation provides for stability of operations, and serves to provide long-term certainty for operators, leading to investment in new routes, equipment and employees.
- Many of the changes under evaluation in this consultation would create mobility of slots between operators and lead to substitution of routes. This would remove long-term certainty for operators and reduce investment in new routes, equipment and employees.
- ERA supports improved implementation of the Regulation in some specific areas.

In particular, the Commission is interested in whether the problems identified in its 2008 Communication¹ remain. The Communication identified a number of issues with the operation of the Regulation, including:

- there is insufficient application of the requirements in the Regulation regarding the functional and financial independence of coordinators in some Member States;
- there is insufficient transparency of information regarding historical, requested, allocated and available slots in some Member States;
- local guidelines may allow for better use of the existing slot portfolio but they must comply with EU law;
- the Commission would not pursue infringement proceedings against Member States where secondary trading took place in a transparent manner, as the Regulation is currently silent on the issue; and
- more action was required to ensure consistency between flight plans and slots.

(5) Do you agree with the issues raised in the Commission's 2008 Communication on the operation of the slot Regulation, and why?

- The issues raised in the Commission's 2008 Communication were not identified as "problems" in that Communication.
- ERA believes that, in a small number of states, there should be greater implementation of the requirement for functional and financial independence of coordinators. Note that this is an issue of IMPLEMENTATION and does not require a change to the Regulation.
- ERA believes that there is a greater opportunity for legally compliant local rules to address local issues. Note that this is an issue of IMPLEMENTATION and does not require a change to the Regulation.
- ERA does not accept that there is a need for "more action to ensure consistency between flight plans and slots", and notes that THIS ISSUE WAS RESOLVED by the new Commission implementing rules for the Single European Sky.

The Commission believes that the limitations on availability of slots at many EU airports may hinder the ability of air carriers to expand or reshape their networks. These limitations may become more severe in the future, due to environmental and other restrictions on airport capacity expansion.

(6) How has the availability of slots influenced the ability of air carriers to expand or reshape their networks?

¹ COM(2008) 227 final

- The availability of slots is a function of airport capacity. The ability of air carriers to expand or reshape their networks is governed primarily by capacity.
- Where capacity is scarce, carriers are subject to slot coordination and allocation. Irrespective of any changes to legislation, all carriers will be constrained at an airport where slot coordination is required.

The Commission recognises that there have been significant changes in the aviation sector since the Regulation was developed and since it was last amended, such as the further development of low cost carriers, and the consolidation of network carriers. In particular, some stakeholders have reported that exchanges of slots increasingly take place within airline alliances.

(7) What are in your view the main changes and challenges in the aviation sector which have had impacts on the slot allocation system? Do you think airline alliances have had any impact on the allocation of slots? Please explain why.

- ERA does not believe that the changes in the aviation sector have had any significant OVERALL impact on the slot allocation system.
- ERA does not know whether the statement that exchanges of slots increasingly take place within airline alliances is correct. Assuming it is correct, there is little overall impact as, without the alliance, there are two likely scenarios: EITHER a) the original airline would have retained the slot, OR b) the original airline would have exchanged the slot with an airline which had some form of partnership with it. It is unlikely that the slots would have been returned to the pool – it is only in this case that an OVERALL impact would have arisen.

3. Options for revision to the Regulation

Option B1: Strengthen the independence of the coordinators

The Regulation requires that slot coordinators should act in an independent manner and be functionally separated from any interested party (principally, the airport manager or the key air carrier(s) operating from the airport), and that the system of financing should be such as to guarantee the coordinators' independent status.

However, the Regulation does not specify in further detail how this independence should be achieved: for example, it is not specifically stated that the coordinator should keep separate accounts. In some Member States, the airport operator has been appointed as the coordinator. Some airlines consider that the coordinator is not sufficiently independent in some Member States. The Regulation could be strengthened to ensure the independence of the coordinator.

Option B1.1: Organisational separation of coordinator

(8.1) What measures have the Member States taken to ensure that coordinators are functionally separated from any single interested party? ERA has no information.

(8.2) What would be the advantages and disadvantages of amending the Regulation to specify that the coordinator should be organisationally, as well as functionally, separate from interested parties such as airport management companies, and not to have any obligations to report back to them? What administrative costs would it generate? How could the independence of the coordinators be improved otherwise? Please suggest solutions.

- ERA believes that the current Regulation, if implemented correctly, would ensure adequate

independence of the coordinator. Changing the Regulation would, of itself, create no benefit.

Option B1.2: Keeping separate accounts

(9) What would be the advantages and disadvantages of amending the Regulation to specify that the coordinator must keep accounts and budgets separate from any party having an interest in its activities, and should not be financed solely by a single interested party? What, if any, administrative costs would this generate?

- ERA believes that the current Regulation, if implemented correctly, would ensure adequate independence of the coordinator. Changing the Regulation would, of itself, create no benefit.

Option B1.3: Limits on adjacent activities

(10) What would be the advantages and disadvantages of amending the Regulation to limit the types of adjacent activities that a coordinator may develop (such as consultancy services), in order to avoid any possible influence on their coordination activity? What, if any, administrative costs would this generate?

- ERA believes that the current Regulation, if implemented correctly, would ensure adequate independence of the coordinator. Changing the Regulation would, of itself, create no benefit.
- Article 4.2 of the Regulation, if correctly enforced, ensures the coordinator acts in a neutral, non-discriminatory and transparent way. If the coordinator can undertake consultancy services while meeting these conditions, then there is no reason to ban the activity. In some cases, revenue from consultancy services may reduce the net cost to the industry of providing the coordination services, and ERA would welcome this.

Option B2: Improve transparency of schedule data

Article 4(8) requires coordinators to make available, free of charge, information on the slots that have been requested and are allocated, historical allocations of slots, and the slots which are available. A database of slot allocations has been set up by the coordinators and most provide this information to the database. The Commission considers that transparency of slot and schedule data is essential and this could be improved if all States provided information schedule information (including the historic slot file) for placing on this database.

(11.1) What measures have the Member States taken to ensure that schedule data is fully transparent to interested parties?

- ERA has received no comments from members that availability of slot data is a problem.
- The Regulation requires slot data (but not schedule data) to be made available. If the Commission has evidence that this condition is not being met, then the Commission should take action on enforcement.
- ERA does not believe the Regulation needs to be amended to achieve adequate schedule transparency.

(11.2) What would be the advantages and disadvantages of amending the Regulation to require coordinators to make historic schedule data available, for example through placing it in an online database? What, if any, administrative costs would this generate?

- ERA has received no comments from members that availability of slot data is a problem.

- The Regulation requires slot data (but not schedule data) to be made available. While an online database is an attractive option, ERA believes the concept should be developed through best practice guidelines rather than a regulatory approach.
- ERA does not believe the Regulation needs to be amended to require an online historic slots database.

Option B3: Better define and ensure the correct use of slots

Regulation (EC) 793/2004 introduced sanctions for deliberate abuse of slots, including giving the coordinator the right to withdraw slots if an air carrier repeatedly and intentionally operates services at times which are materially different from the allocated slot, or if the slot is used in a significantly different way. In contrast, there is no penalty for late handback of slots: a carrier that is allocated slots that it subsequently decides not to use (or never had any intention of using) has no incentive to hand these back to the pool in sufficient time for other air carriers, which might seek to compete with it, to plan services.

Option B3.1: Slot reservation fees

Slot reservation fees could be introduced, as an advanced payment of the airport charge. This would not be refundable if the carrier did not operate the service or if the slot was handed back too late to be allocated to another carrier. This would be offset by a reduction in airport charges so as to be financially neutral for airports.

(12.1) What would be the advantages and disadvantages of amending the Regulation to introduce slot reservation fees?

- A slot reservation fee transfers the risk of non-payment of an airport charge from the airport operator to the airline, in circumstances of the non-operation of a flight for which a slot has been granted.
- This would protect airports when flights are disrupted for reasons such as fog. A recent very relevant example would be flights that could not be operated due to airspace closures arising from the Icelandic volcanic ash cloud.
- ERA does not believe that airports should be protected from financial risk at the expense of airlines.
- ERA is opposed to amending the Regulation to introduce slot reservation fees.

(12.2) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- ERA does not believe that slot reservation fees would have any significant impact on items a)-f). The principle effect is to transfer financial risk from airports to airlines.
- ERA is opposed to amending the Regulation to introduce slot reservation fees.

Option B3.2: Penalties for late handback of slots

Penalties could be introduced if slots are handed back after the deadline. The penalty would take the form of a fine payable to the national authorities.

(13.1) What would be the advantages and disadvantages of amending the Regulation to introduce penalties for late handback of slots? How should late hand-back be defined? Are there any alternative ways to incentivise on-time use of slots which we should consider? Please specify.

- There are different impacts of the late hand-back of slots at different congested airports. For example the impact of a late hand-back of a peak time slot at an airport which is operating at full capacity throughout the day compared to a late hand-back of an off-peak time slot at an airport which has spare capacity at that time is very different.
- Consequently, ERA believes that late hand-back of slots should be addressed through local rules rather than through a “one size fits all” regulatory approach.
- ERA does not believe that the Regulation needs to be amended to introduce penalties for late hand-back of slots.

(13.2) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- ERA has seen no data to suggest that the late hand-back of slots is a significant issue – ERA believes that local rules are in place at, for example, London Gatwick Airport, which reduces the number of late hand-backs.
- Consequently, ERA does not believe that a penalty regime will have any significant effects on the practice. It will, however, penalise airlines that are faced with circumstances outside their control which make them unable to start a service on the planned date (eg unexpected late delivery of aircraft, unexpected refusal of traffic rights).
- ERA does not believe that penalties for late hand-back of slots would have any significant impact on items a)-f).
- ERA does not believe that the Regulation needs to be amended to introduce penalties for late hand-back of slots.

Option B3.3: Strengthen powers of coordinators

The coordinator already has the power to withdraw slots from carriers that repeatedly operate flights at a different time to the slot. However, this power could be strengthened to give the coordinators the right to penalise carriers that return slots late, for example by preventing the carrier from applying for other slots for a given period.

(14.1) To what extent have slot coordinators used the power to withdraw slots from air carriers that repeatedly and intentionally operate air services outside the allocated slot times, and how effective has this been?

- ERA has no information on the withdrawal of slots by coordinators.

(14.2) What would be the advantages and disadvantages of amending the Regulation to give the coordinators more powers to address late handback of slots? What additional such powers should coordinators be given?

- ERA has seen no data to suggest that the late hand-back of slots is a significant issue – ERA believes that local rules are in place at, for example, London Gatwick Airport, which reduces the number of late hand-backs.
- ERA does not believe that the Regulation needs to be amended to strengthen the powers of coordinators to address the late hand-back of slots.

- (14.3) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.
- ERA has seen no data to suggest that the late hand-back of slots is a significant issue – ERA believes that local rules are in place at, for example, London Gatwick Airport, which reduces the number of late hand-backs.
- ERA does not believe that stronger powers for coordinators to address late hand-back of slots would have any significant impact on items a)-f).
- ERA does not believe that the Regulation needs to be amended to strengthen the powers of coordinators to address the late hand-back of slots.

Option B4: Business and general aviation

It can be difficult for business aviation flights to obtain grandfather rights for slots at congested airports, and this might hamper the development of this market segment. These flights rarely operate to regular schedules and therefore it is not possible for operators to obtain historic preference. One way to address this would be by allowing business/general aviation to obtain historic preference on the basis of the total volume of business/general aviation flights, rather than on the basis of the operation of individual flights.

(15.1) What approach have coordinators taken to allocating slots for business aviation operators?

- ERA has no information on this issue.

(15.2) What would be the advantages and disadvantages of amending the Regulation to allow business/general aviation to obtain historic preference on the basis of the total number of business/general aviation flights operated? If implemented, how should this function? What, if any, administrative costs would this generate?

What are the advantages and disadvantages of reserving a number of slots per hour to business aviation operators?

- ERA has no comment on business aviation.
- ERA does not accept that general aviation should have access to historic preference for slots at congested airports.

(15.3) Should the current definition of business aviation in the Regulation be changed or updated and if so, in what way?

- ERA does not believe that the Regulation needs to be amended to address the issues of business aviation and general aviation.

Option B5: Operations without slots, or at times significantly different from the slot

Commission Regulation (EU) 255/2010 introduced various measures to ensure consistency between flight plans and airport slots. However, it does not give the central unit for air traffic flow management (CFMU) the power to refuse to accept the flight plans of flights that do not have appropriate airport slots i.e. that have no slot or are to be operated at a time significantly different from their slots

(16.1) To what extent, and how, have ATM authorities made use of their existing power to reject flight plans where an air carrier intends to use an airport without having an appropriate slot?

- ERA has no information on this issue.

(16.2) What would be the advantages and disadvantages of amending the Regulation to allow airports or the central unit for air traffic flow management to refuse to allow a flight to operate if it does not have an appropriate slot? What, if any, administrative costs would this generate? What could be the operational impacts of such a measure?

- Article 14.1 of the Regulation permits the rejection of an air carrier's flight plan if the air carrier does not have a slot allocated by the co-ordinator.
- There is no requirement to amend the Regulation to achieve the required objective, as the refusal of a flight plan if the air carrier does not have a slot allocated by the co-ordinator is already clearly possible.

Option C1: Define the ownership of slots

Under the current Regulation, the ownership of slots is not explicitly defined. This option would seek to explicitly define the legal basis for slot ownership, as licences to use the public property, possibly with a time limitation.

(17) Does the current lack of definition of ownership of slots cause any problems for the slot allocation system? If so, how? What would be the advantages and disadvantages of amending the Regulation to introduce a definition of the ownership of slots? What, if any, administrative costs would this generate?

- ERA does not accept that defining the ownership of slots will address any problem which arises from the allocation of slots.
- Addressing a theoretical issue will bring no benefits – ERA asks the Commission to identify the problem that defining the ownership of slots would address.
- ERA opposes amendment of the Regulation to define the ownership of slots.

Option C2: Introduce an EU-wide regime of secondary trading

The Regulation neither explicitly permits nor explicitly prohibits secondary trading in slots. As a result, in some Member States, a 'grey market' for secondary trading in slots has developed, on the basis of slot exchanges: a valuable peak hour slot is exchanged for a valueless slot late at night or early morning, and the exchange is accompanied by a monetary or other payment. Payments are not currently transparent but it has been reported that slots at some airports can exchange for substantial sums.

The Commission's 2008 Communication confirmed that it would not initiate infringement proceedings against States where secondary trading in slots took place, provided that these exchanges take place in a transparent manner. However, the result of this is that there are differences in procedures for slot allocation in different States. In addition, there are limitations to the current system of secondary trading: for example, carriers may be unwilling to transfer slots to carriers that may use them to compete with them. In addition, there is no transparency about the payments made for slots, and conditions attached to slot exchanges (for example that the slot be returned after a certain period).

This could be addressed by introducing an EU-wide regime for secondary trading, or measures to regulate secondary trading in slots.

C2.1: Introduce secondary trading at all EU airports

At present, the Regulation neither specifically permits nor prohibits secondary trading. The Regulation could be amended to state that secondary trading should be permitted at all EU airports.

<p>(18.1) What impact has secondary trading had, in particular, on usage of slots, mix of services operated, and competition?</p> <ul style="list-style-type: none">• ERA has no observations on this.
<p>(18.2) What would be the advantages and disadvantages of amending the Regulation to explicitly state that secondary trading in slots is permitted at all EU airports?</p> <ul style="list-style-type: none">• ERA has no observations on this.
<p>(18.3) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.</p> <ul style="list-style-type: none">• ERA has no observations on this.

C2.2: Limit restrictive covenants

Carriers exchanging slots are not currently prohibited from imposing restrictions on how the slots are used, for example to restrict use of the slots by the acquiring carrier to compete with the carrier giving up the slots.

<p>(19.1) What would be the advantages and disadvantages of amending the Regulation to prohibit the placing of restrictive covenants on slot transfers?</p> <ul style="list-style-type: none">• ERA has no observations on this.
<p>(19.2) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.</p> <ul style="list-style-type: none">• ERA has no observations on this.

C2.3: Require post-trade transparency

Limited information is available on trades in slots or on slot leases. Whilst the fact that the slots have been exchanged may be transparent, it is not clear even to the coordinator or national regulatory authorities if the exchange has been accompanied by a payment or subject to any other conditions, or whether the exchange is permanent or a lease.

<p>(20.1) What degree of transparency regarding slot trades is required to encourage slot mobility? What would be the advantages and disadvantages of amending the Regulation to require transparency about slot trades, including the identities of the carriers, any payment or other consideration and whether the exchange is permanent or a lease?</p> <ul style="list-style-type: none">• ERA has no observations on this.
<p>(20.2) Please specify any impacts this would have on (a) the proportion of slots for which services</p>

would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- ERA has no observations on this.

C2.4: Centralised auctions to exchange slots

A further issue with secondary trading is that incumbent carriers may be unwilling to exchange slots with carriers who might use the slots to launch services in competition with them. To address this, bilateral exchanges could be replaced with centralised auctions of slots that carriers' wished to give up. The auctions would be managed by the coordinator or some other independent body. The carrier releasing the slot would receive the payment from the highest bidder, but would not have any control over who received the slot or how it was used.

(21.1) What would be the advantages and disadvantages of amending the Regulation to replace the current system of decentralised, bilateral slot exchanges with centralised auctions of slots that carriers wish to give up?

- ERA is opposed to the auctioning of any slots as part of the slot allocation process.
- ERA firmly believes that the opportunities for new intra-European regional operations would be significantly reduced by the auctioning of any slots. It is an inherent feature of auctioning that the highest bid wins. A bidder for an intercontinental flight operated by a widebody aircraft can afford a higher bid than a bidder for a one-hour flight with a regional aircraft with 100 seats or less. This could lead to an increase in long-haul operations by non-EU airlines that have the ability to make the highest bid. However, it will often be in Europe's interests to increase the connectivity of Europe's regions rather than increasing long-haul aviation.
- Any impact assessment of the introduction of auctioning of slots must include the impact on citizens living in, and businesses based in, Europe's regions.

(21.2) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- ERA is opposed to the auctioning of any slots as part of the slot allocation process.
- ERA firmly believes that the opportunities for new intra-European regional operations would be significantly reduced by the auctioning of any slots. It is an inherent feature of auctioning that the highest bid wins. A bidder for an intercontinental flight operated by a widebody aircraft can afford a higher bid than a bidder for a one-hour flight with a regional aircraft with 100 seats or less. This could lead to an increase in long-haul operations by non-EU airlines that have the ability to make the highest bid. However, it will often be in Europe's interests to increase the connectivity of Europe's regions rather than increasing long-haul aviation.
- Any impact assessment of the introduction of auctioning of slots must include the impact on citizens living in, and businesses based in, Europe's regions.

(21.3) Who should manage these auctions, and why?

- ERA is opposed to the auctioning of any slots as part of the slot allocation process.
- ERA has no further comment on this question.

C3: Two stage hybrid auction process for slot allocation

The current administrative process for slot allocation could be replaced with allocations through auctions. In order to address the practical difficulties that could arise as a result of the complexity of an auction system, and interactions with the airline scheduling system, it has been suggested that broad scheduling rights could be auctioned but that there would then be an administrative process for allocation of slots to the carriers that had obtained scheduling rights. This option could either be applied EU-wide, or left to the discretion of individual States; and could either be applied only to newly created slots and slots returned to the pool, or slots withdrawn from other carriers (the option of withdrawal of slots is addressed below – see C5).

(22.1) What would be the advantages and disadvantages of amending the Regulation to replace the current system of administrative allocation of slots with a two stage hybrid system, by which carriers would bid for scheduling rights, followed by an administrative allocation of these slots between the carriers that had scheduling rights?

- ERA is opposed to the auctioning of any slots as part of the slot allocation process.
- ERA firmly believes that the opportunities for new intra-European regional operations would be significantly reduced by the auctioning of any slots. It is an inherent feature of auctioning that the highest bid wins. A bidder for an intercontinental flight operated by a widebody aircraft can afford a higher bid than a bidder for a one-hour flight with a regional aircraft with 100 seats or less. This could lead to an increase in long-haul operations by non-EU airlines that have the ability to make the highest bid. However, it will often be in Europe's interests to increase the connectivity of Europe's regions rather than increasing long-haul aviation.
- Any impact assessment of the introduction of auctioning of slots must include the impact on citizens living in, and businesses based in, Europe's regions.

(22.2) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- ERA is opposed to the auctioning of any slots as part of the slot allocation process.
- ERA firmly believes that the opportunities for new intra-European regional operations would be significantly reduced by the auctioning of any slots. It is an inherent feature of auctioning that the highest bid wins. A bidder for an intercontinental flight operated by a widebody aircraft can afford a higher bid than a bidder for a one-hour flight with a regional aircraft with 100 seats or less. This could lead to an increase in long-haul operations by non-EU airlines that have the ability to make the highest bid. However, it will often be in Europe's interests to increase the connectivity of Europe's regions rather than increasing long-haul aviation.
- Any impact assessment of the introduction of auctioning of slots must include the impact on citizens living in, and businesses based in, Europe's regions.

(22.3) Where should the proceeds from such auctions be allocated? Please give reasons.

- ERA is opposed to the auctioning of any slots as part of the slot allocation process.
- ERA has no further comment on this question.

(22.4) If this was applied should it be EU-wide or left to the discretion of individual States?

- ERA is opposed to the auctioning of any slots as part of the slot allocation process.
- ERA has no further comment on this question.

C4: One stage auction process for slot allocation

The current administrative process for slot allocation could be replaced with allocations through various different types of auctions. This option could either be applied EU-wide, or left to the discretion of individual States; and could either be applied only to newly created slots and slots returned to the pool, or slots withdrawn from other carriers.

(23.1) What would be the advantages and disadvantages of amending the Regulation to replace the current system of administrative allocation of slots with an auction process for slots?

- ERA is opposed to the auctioning of any slots as part of the slot allocation process.
- ERA firmly believes that the opportunities for new intra-European regional operations would be significantly reduced by the auctioning of any slots. It is an inherent feature of auctioning that the highest bid wins. A bidder for an intercontinental flight operated by a widebody aircraft can afford a higher bid than a bidder for a one-hour flight with a regional aircraft with 100 seats or less. This could lead to an increase in long-haul operations by non-EU airlines that have the ability to make the highest bid. However, it will often be in Europe's interests to increase the connectivity of Europe's regions rather than increasing long-haul aviation.
- Any impact assessment of the introduction of auctioning of slots must include the impact on citizens living in, and businesses based in, Europe's regions.

(23.2) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- ERA is opposed to the auctioning of any slots as part of the slot allocation process.
- ERA firmly believes that the opportunities for new intra-European regional operations would be significantly reduced by the auctioning of any slots. It is an inherent feature of auctioning that the highest bid wins. A bidder for an intercontinental flight operated by a widebody aircraft can afford a higher bid than a bidder for a one-hour flight with a regional aircraft with 100 seats or less. This could lead to an increase in long-haul operations by non-EU airlines that have the ability to make the highest bid. However, it will often be in Europe's interests to increase the connectivity of Europe's regions rather than increasing long-haul aviation.
- Any impact assessment of the introduction of auctioning of slots must include the impact on citizens living in, and businesses based in, Europe's regions.

C5: Withdrawal of slots

Auctions would have more impact if they applied to slots withdrawn from carriers rather than if they were used for newly created slots, and slots returned to the pool, only. A proportion of slots could be withdrawn from carriers each year and would then be auctioned for a given period: for example, if 10% of slots were withdrawn each year, the slots would then be allocated for 10 years.

The case for withdrawal of slots may be stronger at the airports where market concentration is highest, and most slots are allocated through grandfather rights. Therefore, an alternative would be to limit withdrawal of slots to a small number of the most congested airports at which more than a certain percentage of the slots that are available are allocated through grandfather rights.

(24.1) What would be the advantages and disadvantages of amending the Regulation to introduce

withdrawal of slots, in parallel with the introduction of auctions, at all coordinated airports? If this was introduced, what proportion of slots should be withdrawn each year?

- ERA is totally opposed to the withdrawal of slots except for reasons that are connected with “slot abuse” or under-utilisation of slots.
- Many ERA airlines provide daily (weekday only) services early and late to facilitate passengers to make day trips for business and social reasons. These occupy 10 landing and 10 take off slots. The withdrawal of a single slot under a “10% rule” would destroy the commercial offering of a “daily round-trip” and could lead to the withdrawal of the entire service which would be highly detrimental to Europe’s regions, citizens and businesses.
- If the service remains with 9 flights per week, all consumers planning a day trip on the day on which a service is withdrawn will suffer a significant disbenefit.
- In addition, airlines need certainty for future use of assets (aircraft, crew etc) in order to justify investment in equipment and people. The removal of this certainty will reduce investment and employment.
- It is unlikely that an alternative use could be found for the assets no longer required at the time of the service affected by the slot withdrawal, leading to higher unit costs arising from under-utilisation of assets.
- Any evaluation of the arbitrary withdrawal of slots must take into account the disbenefits to consumers, employees, and businesses.

(24.2) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- ERA is totally opposed to the arbitrary withdrawal of slots for reasons unconnected with “slot abuse” or under-utilisation of slots.
- ERA believes that essential regional services (between Europe’s congested airports and Europe’s regions) would be reduced by the arbitrary withdrawal of slots – this will affect the mix of traffic at the airport.
- Any evaluation of the arbitrary withdrawal of slots must take into account the disbenefits to consumers, employees, and businesses.

(24.3) If applied, should this policy be restricted to the most congested airports where virtually all slots are allocated through grandfather rights and what difference if any would this make to the impacts?

- ERA is totally opposed to the arbitrary withdrawal of slots at any airports for reasons unconnected with “slot abuse” or under-utilisation of slots.
- The impact on consumers, employees and businesses would be as described above.
- Any evaluation of the arbitrary withdrawal of slots must take into account the disbenefits to consumers, employees, and businesses.

C6: Allow more flexibility for local rules

The current Regulation allows for local rules on slot allocation to be developed but the scope these rules can have is limited, as they must be consistent with the specific administrative criteria for slot allocation defined in the Regulation. These administrative criteria for local rules for slot allocation could be strengthened by policy criteria. These could include, for example, environmental and regional accessibility objectives as well as capacity goals.

This would allow the exact method of primary slot allocation to be decided at local level, for instance by an enlarged coordination committee (where regions could also be represented and have voting rights), which would be able to use local knowledge to select the most appropriate method for the particular airport.

(25) What would be the advantages and disadvantages of amending the Regulation to allow more local flexibility to develop policies for slot allocation? The precise criteria would be decided by the coordination committees at individual airports, subject to some requirements that criteria could not be unfairly discriminatory between carriers. What, if any, administrative costs would this generate? Could environmental and regional accessibility objectives be better ensured by local rules and if so, how? If local rules were allowed to be more flexible, how could the uniform application of the principles of the Slot Regulation be ensured? How could competition between airlines be ensured?

- Articles 5.3 and 8.5 of the Regulation establish the right for local rules to exist within certain parameters.
- There is no requirement to amend the Regulation to allow for local rules as suggested.

C7: New entrant rule

The Regulation requires that 50% of slots be allocated to new entrants. In allocating these slots, priority is given to carriers with five or fewer slots per day at the airport concerned who wish to add services on routes which currently have limited competition or link the congested airport to a regional airport. New entrants cannot include carriers with more than 4% of slots at the airport or 5% of slots at an airport system.

However, it is unclear that a new entrant, as defined by the Regulation, is best placed to compete with a dominant incumbent. There is a risk that this rule may lead to a proliferation of air carriers with small numbers of services from an airport, which may over time either be taken over by, form a commercial alliance with, or trade their slots with the dominant incumbent, thereby further increasing its market power.

Allocation of slots to the second or third largest carriers at an airport, or carriers that are members of a different airline alliance to the dominant incumbent, might provide more effective competition. In addition, at the most congested airports, there is limited incentive to apply for pool slots on the basis of new entrant status, as these tend to be available at unattractive times only, or no series is available.

C7.1: Amend definition of new entrant to include carriers with a higher number of slots

At present, in allocating slots to new entrants, priority is given to any carriers with five or fewer slots per day at the airport. This could be replaced with a higher number, or withdrawn, whilst keeping the basic principle that 50% of slots should be allocated to new entrants, which would then be defined as carriers with less than 4% of the slots at the airport or 5% at the airport system, launching services either on routes with limited competition or to regional airports to which no non-stop service exists.

(26.1) Has the new entrant rule been effective, in terms of promotion of competition on intra-EU routes, the development on new routes and obtaining slots at congested EU airports for new entrants?

- The Airport Observatory noted that information on the effectiveness of the new entrant rule was not available, and recommended that a study should be undertaken prior to any further work on

the new entrant rules.

- ERA believes such a study should be undertaken to determine the effectiveness of the new entrant rules.

(26.2) What would be the advantages and disadvantages of amending the Regulation to increase the number of slots carriers can hold whilst being defined as a new entrant? If it was, what new definition should be used?

- This can only be assessed following a study into the impact of the current new entrant rules.

(26.3) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- This can only be assessed following a study into the impact of the current new entrant rules.

C7.2: Replace definition of new entrant with priority for competing carriers

An alternative approach would be to replace the new entrant rule with a rule giving priority to slot requests from carriers other than the dominant carrier and its partner or alliance carriers. The rule would only apply at airports where the dominant carrier and its partners had more than a certain proportion of slots at the airport (for example, 40%).

(27.1) What would be the advantages and disadvantages of amending the Regulation to replace the current new entrant rule with a rule giving priority to carriers other than the dominant carrier and its partner or alliance carriers?

- This can only be assessed following a study into the impact of the current new entrant rules.

(27.2) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- This can only be assessed following a study into the impact of the current new entrant rules.

C8: Measures to improve slot utilisation

C8.1: Amend 80-20 rule

The Regulation states that air carriers will not be entitled to retain slots if they cannot demonstrate that they have used the slots at least 80% of the time, excluding specified cases of force majeure (the 'use it or lose it' rule). However, since cases of force majeure (such as closure of an airport or airspace) are excluded from the calculation of whether a slot has been used, the provision allowing a slot to be retained even if it has not been used 20% of the time may not be sufficient to ensure efficient utilisation of slots. This could, for example, be replaced with a rule requiring that a slot be used 90% of the time.

(28.1) How well has the current 80/20 rule ensured efficient use of capacity, and why? What is the current level of utilisation of slots? To what extent do you think that the 80/20 rule has led to perverse effects (e.g. babysitting, ghost flights)?

- ERA has no evidence to suggest that the 80/20 rule is not effective in ensuring good use of available capacity.
- ERA notes that the Commission cites “anecdotal evidence” that slots are under-utilised – it is essential that a true picture is available prior to any proposal for amendment. For example, slots on Christmas Day will almost always be under-utilised.
- ERA further notes than many instances of “force majeure” are not specifically accepted as valid reasons for non-operation – these include for example weather that is outside the safety parameters for a specific aircraft but which does not lead to the closure of an airport or airspace, and cancellations for technical reasons that affect flight safety.
- Without an increase in the allowable circumstances outside the air carrier’s control, there should be no consideration of amending the 80/20 rule. However, amending both the allowable circumstances and the 80/20 rule would make no practical difference to the number of slots operated.
- Consequently, ERA is opposed to any change in the 80/20 rule.

(28.2) What would be the advantages and disadvantages of amending the Regulation to increase the utilisation of slots required to obtain grandfather rights from 80%? What minimum level of utilisation should be required?

- ERA believes that an increase from 80/20 would lead to a greater withdrawal of grandfather rights, mostly arising from circumstances outside an airline’s control.
- Consequently, ERA is opposed to any change in the 80/20 rule.
- Many instances of “force majeure” are not specifically accepted as valid reasons for non-operation – these include for example weather that is outside the safety parameters for a specific aircraft but which does not lead to the closure of an airport or airspace, and cancellations for technical reasons that affect flight safety.
- Airlines need certainty for future use of assets (aircraft, crew etc) in order to justify investment in equipment and people. Withdrawal of grandfather rights will reduce investment and employment which will affect the citizens, businesses and regions of Europe.
- Any evaluation of the arbitrary withdrawal of slots must take into account the disbenefits to consumers, employees, and businesses.

(28.3) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- Without an increase in the allowable circumstances outside the air carrier’s control, there should be no consideration of amending the 80/20 rule. However, amending both the allowable circumstances and the 80/20 rule would make no practical difference to the number of slots operated and would not impact on items a)-f).
- Any evaluation of the arbitrary withdrawal of slots must take into account the disbenefits to consumers, employees, and businesses.
- ERA is opposed to any change in the 80/20 rule.

C8.2: Increase minimum length of a series of slots

At present a series of slots is defined as a minimum of 5 slots. This means that slots, and hence grandfather rights, may be obtained for air services that operate during 5 peak weeks only and (at congested airports) may prevent operation of other air services throughout the full season. This could

be addressed by extending the minimum length of a series from 5, possibly on an airport-by-airport basis.

(29.1) What would be the advantages and disadvantages of amending the Regulation to increase the minimum length of a series of slots beyond the current level (5 slots)? What should the minimum be, and should this be determined EU-wide or on an airport-by-airport basis?

- ERA observes that some of its members, and more importantly their passengers, derive benefit from the 5 slot rule. This arises from the ability to seek different slots for the high Summer period when demand on business routes operated throughout the rest of the year is significantly reduced, and aircraft are reassigned to routes serving leisure destinations for a period which may be no longer than 5 weeks.
- ERA accepts that an examination of high Summer period slots may lead to a conclusion that the series could be slightly extended without serious disbenefit. However, ERA does not believe that a change to the Regulation to lengthen the minimum series of slots will produce significant benefits.
- ERA concludes that a change to the Regulation to lengthen the minimum period of slots is more likely to produce overall disbenefits than overall benefits, and is therefore opposed to such an amendment.

(29.2) Please specify any impacts this would have on (a) the proportion of slots for which services would be scheduled; (b) the proportion of slots for which services had been scheduled that would actually be used; (c) the mix of traffic; (d) administrative costs; (e) competition; and (f) any other impacts.

- ERA observes that some of its members, and more importantly their passengers, derive benefit from the 5 slot rule. This arises from the ability to seek different slots for the high Summer period when demand on business routes operated throughout the rest of the year is significantly reduced, and aircraft are reassigned to routes serving leisure destinations for a period which may be no longer than 5 weeks.
- Consequently ERA observes that a small proportion of Europe's passengers will be disadvantaged by a change to the 5 slot minimum rule. ERA believes that there is no offsetting advantage.
- ERA concludes that a change to the Regulation to lengthen the minimum period of slots is more likely to produce overall disbenefits than overall benefits, and is therefore opposed to such an amendment.

4. Single European Sky II

Regulation 1070/2009 (Single European Sky II) requires the Implementing Rules for the air traffic flow management function to take into account the need to monitor consistency between flight plans and airport slots. The Implementing Rules (Commission Regulation 255/2010) introduced a mechanism for data exchange between the coordinators and the flow management function (currently CFMU), and defined that the flow management function should report flight plans to the relevant slot coordinator where there is repeated operation of services at significantly different times from the allocated airport slot, and this causes prejudice to ATFM.

(30) What further role do you think the coordinators should have in the context of SESII? How do you think the slot allocation system and SESII should interact? What mechanism should be used to resolve inconsistencies between flight plans and airports slots? Could the Network Manager use or influence the slot allocation system? How? Are there any additional issues with slot allocation

arising from SESII which we should be aware of?

- The mechanism for data exchange introduced in the Implementing Rules will facilitate a greater level of knowledge relating to “slot abuse”. Regulation 95/93 defines the action that may be taken in such circumstances.
- ERA is not in a position to comment on the precise procedures that should be adopted.

5. Other issues to which you would like to draw our attention

We would welcome any information you are able to provide regarding any other issues with the application of the Regulation.

(31) Are there any other issues with the operation of the current Regulation to which you would like to draw our attention? Please give details.

- ERA does not believe that any changes to the Regulation are necessary.
- ERA believes that the slot allocation Regulation is functioning adequately for the needs of European citizens and businesses including aviation.
- ERA believes that many of the changes being evaluated would damage the EU’s overall interests in particular affecting citizens and businesses in the regions of Europe. All impact assessments must include the effect on citizens living in, and businesses based in, Europe’s regions.
- Slot allocation, however it is regulated, cannot deliver additional capacity. The problems that airline face when serving congested airports arise from lack of capacity, not from slot allocation.
- The slot allocation Regulation provides for stability of operations, and serves to provide long-term certainty for operators, leading to investment in new routes, equipment and employees.
- Many of the changes under evaluation in this consultation would create mobility of slots between operators and lead to substitution of routes. This would remove long-term certainty for operators and reduce investment in new routes, equipment and employees.
- ERA supports improved implementation of the Regulation in some specific areas.

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