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## **REPORT**

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL on common rules for the allocation of slots at European Union  
airports (Recast)  
- General approach

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### **I. INTRODUCTION**

On 1 December 2011, the Commission submitted to the European Parliament and the Council the above-mentioned proposal. This proposal is part of the so-called "airport package", a set of three legislative proposals aimed at fostering competitiveness in European airports and at increasing their performance in terms of efficiency, quality and resilience. The general objective of this proposal is to ensure optimal allocation and use of airport slots in congested airports by ensuring a strengthened and effectively implemented slot allocation and use, and by enhancing fair competition and competitiveness of operators. It amends Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, the current basic act establishing the rules and procedures with regard to slots allocation at EU airports.

## II. CONTENT OF THE PROPOSAL

The proposal contains the following key elements:

- introduction of the possibility for secondary trade in slots and increased competition;
- strengthening the transparency of the slot allocation process and the independence of slot coordinators;
- integration of slot allocation with the reform of the European air traffic management system (Single European Sky);
- amendment of the '80/20' rule and definition of a series of slots and resort to the airport charge system to discourage the late return of slots to the pool.

## III. WORK WITHIN THE COUNCIL BODIES

The Aviation Working Party (hereinafter referred to as the "Working Party") started the examination of the proposal under the Cyprus Presidency in July 2012. In line with the Inter-Institutional Approach to Impact Assessments, the Working Party also discussed and evaluated the Commission's impact assessment.<sup>1</sup>

Following the in-depth discussions held at various meetings of the Working Party, the Presidency has amended several provisions of the Commission proposal to take account of delegations' comments. The recitals have not been examined yet and they will have to be adapted to the text of the general approach at a later stage.

On 18 October 2012, the draft general approach was submitted to the Permanent Representatives Committee (Coreper). During this meeting, several delegations expressed, in general, their support for the Presidency compromise text, while others reiterated their concerns on some issues and presented new drafting suggestions. The Presidency took note of the delegations' concerns and, in order to solve some outstanding issues and to facilitate reaching a general approach, accepted some of the proposals tabled by the delegations.

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<sup>1</sup> Better Regulation: Inter-Institutional Common Approach to Impact Assessment (IA) 14901/05 JUR 486 COMPET 263.

However, a few questions still need to be discussed at Council level, as some delegations and the Commission maintain their reservations on the text. The changes in the Annex to this report compared to the Annex to the report to Coreper are indicated in **bold** and ~~strikethrough~~.

#### **IV. MAIN OUTSTANDING ISSUE**

In spite of the hard work carried out in order to reach an agreed text, some issues are still outstanding.

##### **Secondary trading (Article 13, footnotes 60-69)**

In order to encourage greater slot mobility, the Commission proposal suggested that airlines could sell and buy slots. Currently, such a market in airport slots has been in operation for some time at London Heathrow and the Commission's proposal would open the possibility to generalise this market throughout the EU.

In Coreper, the Commission emphasised that alongside slots utilisation and the length of slots series, secondary trading represented one of the three fundamental issues that were essential in its proposal. The Commission expressed serious concerns regarding the restrictions proposed by FR and supported by BG, DE, DK, EL, ES and PT (footnote 62). In the Commission's opinion, secondary trading would not lead to the loss of regional routes and that there were other factors that menaced them. The Commission, together with BE, IT, NL and UK, underlined that secondary trading should be applied uniformly in the EU, in order to create an integrated and efficient market and that the above restrictions would risk fragmenting the European single market.

DK maintained its proposal for a 'de minimis' clause (footnote 61), whereby slots could be sold only if at least two return flights were operated on the same route in the same day. The DK proposal is meant to solve concerns regarding the potential negative effect secondary trading might have on regional flights and on connectivity to major hubs in general, since the airlines might be interested in using the traded slots for routes, which are more profitable (usually long-haul), to the detriment of less economically profitable shorter routes.

DE, LV and UK maintained their position against such a condition. IT proposed a compromise solution specifying the type of routes for which the '*de minimis*' clause could apply.

DK also maintained its proposal that traded slots should not be leased out to other air carriers for at least two scheduling seasons, to take care of concerns about the potential speculative use of traded slots. For the same reasons, DK and IT consider that all newly acquired slots should not be traded for two equivalent scheduling seasons. The Commission proposal was less restrictive on this issue, proposing that only slots acquired by new entrants should be prohibited from trading for the above-mentioned period of time.

In addition, UK expressed concerns regarding the last sentence of paragraphs 5 and 7. UK argues that the slots would still have new entrant status and this sentence has the undesirable effect of forcing an airline to operate a re-timed slot for up to seven months. DE and FR proposed a compromise text limiting the obligation of air carriers to operate the re-timed slots only for the period for which they were allocated within the scheduling period concerned.

## V. OTHER ISSUES

Local guidelines (Article 8(4) footnote 38, Article 9(8) footnote 42)

The Commission proposal provided that Member States might adopt local guidelines after having received an advisory opinion from the coordination committee, provided that the Commission had been notified and had not opposed the adoption within three months. In Coreper, a majority of delegations proposed the deletion of the last two subparagraphs of paragraph 4, preferring to be less prescriptive regarding the possible content of the local guidelines. The first subparagraph specified that the above-mentioned local guidelines could concern the allocation of slots, the monitoring of their use or the modification of the length of slots series. The second one established three specific conditions for which the adoption of local guidelines by an airport could be rejected by the Commission. UK and the Commission oppose this deletion. They consider that these provisions are important in order to supplement the previous subparagraph and to clarify the possible content and adoption conditions for the local guidelines.

Withdrawal of slots for misuse (Article 9(5), footnote 41)

DE, supported by FR, would like to make optional the coordinator's obligation to withdraw slots if an airline allows another air carrier to use its slots without complying with the conditions set in Article 9(5). These delegations argue that in case of justified grounds the misuse may be excused.

DE, supported by NL, proposes an alternative wording which would allow the coordinator the possibility to make recommendations for the penalties that could be imposed by the national authorities in such a case.

Slots reservation fee (Article 11, footnotes 54 and 59)

The Presidency compromise text for Article 11(1) provides that on the request of the airport managing body, the Member State may decide to use the airport charges system to penalise the airlines for the late return of slots to the pool. CZ, UK and the Commission prefer that this decision is left to the airport managing body, without involving the Member States.

DE proposes that the coordinator should not have the obligation to send to the airport managing body all the information necessary for the implementation of the slots reservation fee, and that the coordinator should only make sure that all such information at his disposal is made available to the airport managing body.

Slots cancelled due to public holidays (Article 10(4a) footnote 48)

In Coreper, it was agreed to include '*a recognisable part of a series of slots*' in the text of Article 10(4) and therefore FR, NL and UK propose the deletion of Article 10(4a) which now becomes superfluous. This paragraph would have been necessary to allow air carriers to return to the pool slots cancelled due to public holidays, but with the inclusion of the above-mentioned wording this would no longer be necessary, since such cancellations can be covered by the possibility for the air carriers to return parts of series and still be able to retain their historical rights for the whole series.

Other concerns and reservations expressed by delegations appear in the footnotes in Annex I to this report.

UK has a parliamentary scrutiny reservation.

The European Commission fully reserves its position on the entire compromise proposal. The Commission takes the view that the Presidency text reduces the benefits in terms of citizens' mobility identified in the Commission proposal (24 million additional passengers per year and 5 billion euros economic benefits 2012-2025). The fundamental reservations pertain to 85/15 and slot utilisation generally, to the slot reservation mechanism and to possible restrictions hampering secondary trading. Other concerns relate to the transparency of the coordination and slot allocation process; to consistency of slots and flight plans; to the relations with third countries; to the deletion of delegated acts and on references on recommendations/guidance/guidelines in relation to implementing measures.

Furthermore, the Commission also considers that certain changes proposed in the Presidency text amount to changes to the codified part of the proposal. According to the Commission, changes of this kind do not respect the provisions of the Inter-institutional agreement on a more structured use of the recasting technique for legal acts (2002/C 77/01). Therefore, when the Commission has not proposed changes to the codified part, it would only accept, in line with the spirit of the Inter-institutional agreement above, those amendments which have appeared in the course of the legislative process indispensable for reasons of coherence and clarity.

## **VI. CONCLUSIONS**

In the light of the above, at its meeting on 29 October 2012, the Council is invited to examine the text as set out in Annex I to this report, to resolve the last outstanding issues, to adopt a general approach and to inscribe in its minutes the statement set out in Annex II to this report.

2011/0391 (COD)

Proposal for a  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on common rules for the allocation of slots at European Union airports**

**(Recast)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

Whereas:

- (1) Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports<sup>4</sup> has been substantially amended several times<sup>5</sup>. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) Regulation (EEC) No 95/93 made a decisive contribution to the achievement of the internal market in aviation and to the development of relations between the Union, its Member States and third countries, by ensuring access to the Union's congested airports on the basis of neutral, transparent and non-discriminatory rules.
- (3) However, there is a growing imbalance between the expansion of the air transport system in Europe and the availability of certain airport infrastructures to meet that demand. There is, as a result, an increasing number of congested airports in the Union.
- (4) The slot allocation system established in 1993 does not ensure the optimum allocation and use of slots and thus of airport capacity. In the context of growing airport congestion and the limited development of major new airport infrastructure, the slots are a rare resource. Access to such resources is of crucial importance for the provision of air transport services and for the maintenance of effective competition. To this end, the allocation and use of slots should be made more effective by introducing market mechanisms, by ensuring that the unused slots are made available to interested operators as soon as possible and in a transparent manner, and by reinforcing the underlying principles of the system with regard to the allocation, management and use of the slots. At the same time, although the historical slots meet the need for stability in schedules for the airlines, during the future assessment of the application of this Regulation, a gradual introduction of other market mechanisms could be envisaged, such as withdrawing and auctioning historical slots.

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<sup>4</sup> OJ L 14, 22.1.1993, p. 1.

<sup>5</sup> See Annex I.



- (5) It is therefore necessary to modify the slot allocation system at the Union's airports.
- (6) The allocation of slots at congested airports should continue to be based on neutral, transparent and non-discriminatory rules.
- (7) The current slot allocation system should be adapted to the development of the market mechanisms used in certain airports for transferring or exchanging slots. In its Communication of 30 April 2008 on the application of Regulation No 95/93 on common rules for the allocation of slots at Community airports<sup>6</sup>, the Commission undertook to make an appropriate proposal if it became apparent that revision of the existing legislation was required for competition or other reasons.
- (8) Experience has shown that secondary trading, that is the exchange of slots for financial or other compensation, does not benefit from a uniform and consistent legislative framework, including guarantees of transparency and competitive safeguards. It is therefore necessary to regulate secondary trading in slots in the Union.
- (9) Transparency of information is an essential element for ensuring an objective procedure for slot allocation. It is therefore necessary to enhance this transparency and take account of technological progress.
- (10) Provisions to allow new entrants into the Union market should be laid down. Experience shows that the current definition of new entrant has not succeeded in promoting competition to the full and that it should therefore be duly amended. Furthermore, it is necessary to combat abuses by limiting the possibility for an operator to attain the status of a new entrant if, together with its parent company, its own subsidiaries or subsidiaries of its parent company, it holds more than 10 % of the total number of slots allocated on the day in question in a given airport. Likewise, an air carrier should not be considered as a new entrant if it has transferred slots obtained as a new entrant in order to invoke this status again.

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<sup>6</sup> COM(2008)227.

- (11) The priority given to an air carrier requesting a series of slots in an airport for a non-stop scheduled passenger service between that airport and a regional airport should be abolished, since this situation is already covered by the priority given to an air carrier requesting the allocation of a series of slots for a regular non-stop scheduled passenger service between two Union airports.
- (12) Situations where, owing to a lack of available slots, the benefits of liberalisation are unevenly spread and competition is distorted, should also be avoided.
- (13) The progress made in implementing the Single European Sky has a major impact on the slot allocation process. The imposition of performance plans, which make the airports, the air navigation service providers and airspace users subject to performance improvement and monitoring measures, and the network management function, based on the establishment of a European network of routes and a central air traffic management, means it is necessary to update the slot allocation rules. It is therefore necessary to create an adequate framework allowing the network manager, the performance review body and the national supervisory authorities to participate in the procedure of setting the airport capacity and coordination parameters. A new category of airports of importance to this network should also be created with a view to allowing the network to react better in crisis situations.
- (14) The flight plans and the slots should be better matched in order to better exploit airport capacity and improve flight punctuality.
- (15) The Member State responsible for the schedules facilitated or coordinated airport should ensure the appointment of a schedules facilitator or a coordinator whose neutrality should be unquestioned. To this end, the coordinators' role should be enhanced. Provision should be made for the legal, organisational, decision-making and financial independence of the coordinators with regard to stakeholders, the Member State and bodies subordinate to that Member State. To prevent the coordinator's activity suffering from a lack of financial, technical or human resources or expertise, Member States should ensure that the coordinators have all the resources needed for their work.

- (16) Additional obligations should be introduced for air carriers with regard to sending information to the coordinators. Provision should be made for additional penalties for omitting information or sending false or misleading information. For airports belonging to the network, the air carriers should have the obligation to communicate their flight intentions or other relevant information requested by the coordinator or schedules facilitator.
- (17) The Union should facilitate cooperation between the coordinators and schedules facilitators to allow them to exchange best practices with a view to the establishment of a European coordinator in due course.
- (18) An airport may be designated as coordinated provided that principles of transparency, neutrality and non-discrimination are followed and subject to the conditions laid down in this Regulation.
- (19) The decision to coordinate an airport should be taken by the Member State responsible for that airport on the basis of objective criteria. Given the progress made in implementing the Single European Sky and the network manager function, it is useful to reconcile the methods for evaluating airport capacity to ensure better functioning of the European air traffic management network.
- (20) Provision must be made for a procedure by which a Member State decides to modify the designation of a coordinated airport or a schedules facilitated airport to make it a schedules facilitated airport or an airport with no designation status, respectively.
- (21) The period of validity for a series of slots should be limited to the schedule planning period for which the series is granted. The priority for allocating a series of slots, even historical slots, should come from the allocation or confirmation by the coordinator.
- (22) It is necessary to retain special provisions, under limited circumstances, for the maintenance of adequate domestic air services to regions of the Member State or Member States concerned when a public service obligation has been imposed.

- (23) Since the environmental aspects may be taken into account in the coordination parameters and regional connectivity can also be fully ensured in the context of the public service obligations, experience has not demonstrated the usefulness of local rules. Furthermore, it cannot be excluded that such rules do not lead to discrimination in allocating slots. Consequently, the option of resorting to local rules should be restricted. All the technical, operational, performance and environmental constraints that should be applied by the coordinators or the facilitators should be defined in the coordination parameters. Recourse to local rules would also be reduced to monitoring the use of slots and the possibility of reducing the length of the series of slots in the cases provided for by this Regulation. With a view to promoting better use of airport capacity, two basic principles in slot allocation should be reinforced, namely the definition of a series of slots and the calculation of historical slots. At the same time, the flexibility given to air carriers should be better regulated with a view to preventing distortions in the application of this Regulation in the Member States. Therefore, better use of airport capacity should be encouraged.
- (24) To allow air carriers to adapt to imperative situations of urgency, such as a marked decline in traffic or an economic crisis that severely affects the activity of air carriers, affecting a larger part of the scheduling period, the Commission should be allowed to adopt urgent measures to ensure the consistency of measures to be taken at coordinated airports. These measures will allow air carriers to retain priority for the allocation of the same series for the following scheduling period even if the 85% rate has not been met.
- (25) The role of the coordination committee should be strengthened in two ways. On the one hand, the network manager, the performance review body and the national supervisory authority should be invited to follow the committee's meetings. On the other hand, the coordination committee's tasks could include making suggestions or giving advice to the coordinator and/or Member State on any issue concerning the airport capacity, in particular in relation to the implementation of the Single European Sky and the working of the European Air Traffic Management Network. The committee should also be able to provide the performance review body and the national supervisory authority with opinions concerning the link between the coordination parameters and the key performance indicators proposed to the air navigation service providers.

- (26) Experience shows that a significant number of slots are returned to the pool too late to be reallocated effectively. The airport managing body should be encouraged to use the airport charges system to discourage this type of behaviour. Despite having recourse to this mechanism, the airport managing body should not, however, discourage air carriers from entering the market or developing services.
- (27) It is desirable that third countries offer Union air carriers equivalent treatment.
- (28) The application of the provisions of this Regulation should be without prejudice to the competition rules of the Treaty on the functioning of the European Union (TFEU), in particular Articles 101 , 102 and 106.
- (29) [...].<sup>7</sup>
- (30) In order to lay down the methods for developing a study on capacity and demand, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of [content and scope]. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (31) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

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<sup>7</sup> The question on how to reflect the Gibraltar issue in the text is awaiting the outcome of discussions between Spain and the UK.

- (32) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control, by Member States, of the Commission's exercise of implementing powers<sup>8</sup>.
- (33) The examination procedure should be used for the adoption of implementing instruments concerning the creation of a European coordinator, the template for the coordinator and schedules facilitator's annual activity report and the decision that one or more Member States should take measures with a view to remedying a third country's discriminatory behaviour with regard to the Union air carriers.
- (34) The Commission should adopt implementing acts that apply immediately, in accordance with the examination procedure, in duly justified cases linked to the need to ensure the continuation of historical slots, when required on imperative grounds of urgency.
- (35) This Regulation should be reviewed after a fixed period of operation to assess its functioning,
- (36) Since the objective of this Regulation - namely more homogeneous application of Union legislation on slots - cannot be sufficiently achieved by the Member States because of the international character of air transport, and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

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<sup>8</sup> OJ L 55, 28.2.2011, p.13.

HAVE ADOPTED THIS REGULATION:

## Scope and definitions

### *Article 1*

#### Scope

1. This Regulation shall apply to Union airports.
2. [...] <sup>9</sup>.

### *Article 2*

#### Definitions

For the purpose of this Regulation:

- 1) 'slot' shall mean the permission given by a coordinator in accordance with this Regulation to use the full range of airport infrastructure necessary for the arrival or departure of an air service <sup>10</sup> operated at a coordinated airport on a specific date and time as allocated by a coordinator in accordance with this Regulation;

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<sup>9</sup> The question on how to reflect the Gibraltar issue in the text is awaiting the outcome of discussions between Spain and the UK.

<sup>10</sup> PCY draws the attention to the fact that '*air service*' is not defined in the current Regulation, but it is defined in Article 2(4) of Regulation 1008/2008, where it excludes general aviation.

- 2) 'new entrant' shall mean:
- a) an air carrier requesting, as part of a series of slots, a slot at an airport on any day, where, if the air carrier's request were accepted, it would in total hold fewer than five slots at that airport on that day; or
  - b) an air carrier requesting a series of slots for a non-stop scheduled passenger service between two Union airports, where at most two other air carriers operate the same non-stop scheduled service between those airports on that day, and where, if the air carrier's request were accepted, the air carrier would nonetheless hold fewer than nine slots at that airport on that day for that non-stop service.

An air carrier, which together with its parent company, its own subsidiaries or the subsidiaries of its parent company, holds more than 10 % of the total slots allocated on the day in question at a particular airport, shall not be considered as a new entrant at that airport;

[...] (*moved to Article 10a(2a)*)

- 3) 'scheduling period' shall mean either the summer or winter season as used in the schedules of air carriers, in accordance with the guidelines established by the air transport industry on a global basis;
- 4) 'Union air carrier' shall mean an air carrier with a currently valid operating licence issued by a Member State in accordance with Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community<sup>11</sup>;
- 4a) 'Competent licensing authorities' shall mean those authorities defined in Article 2(2) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community;

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<sup>11</sup> OJ L 293, 31.10.2008, p. 3.



- 5) 'air carrier' shall mean an air transport undertaking holding a currently valid operating licence or equivalent at the latest on 15 January for the following summer season or on 15 August for the following winter season, and
- for the purposes of Articles 6, 9, 10, 11 and 13, the definition of 'air carrier' shall include business aviation operators;
  - for the purposes of Articles 5, 7, 17 and 18, the definition of 'air carrier' shall include all civil aircraft operators;
- 6) '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;
- 7) 'air navigation service provider' shall mean any air navigation service provider within the meaning of Article 2(5) of Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky <sup>12</sup>;
- 8) 'groundhandling service provider' shall mean any provider of groundhandling services within the meaning of Article [...] of Regulation No [...] (on groundhandling services); or any airport user within the meaning of Article [...] of Regulation No [...] (on groundhandling services) which self-handles within the meaning of Article [...] of Regulation No [...] (on groundhandling services);
- 9) [...];

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<sup>12</sup> OJ L 96, 31.3.2004, p. 1.

- 10) 'schedules facilitated airport' shall mean an airport where there is potential for congestion at certain 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;
- 11) 'coordinated airport' shall mean any airport where, for the arrival or departure of an air service, 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, emergencies<sup>13</sup> and humanitarian flights;
- 12) 'airport managing body' shall mean a body which, in conjunction with other activities or not as the case may be, has as its objective under Union and/or national laws, regulations or contracts the administration and management of the airport infrastructure and coordination and supervision of the activities of the different operators present at the airport;
- 13) 'series of slots' shall mean at least 5 slots for a scheduling period requested for the same time on the same day of the week for consecutive weeks and allocated by the coordinator on that basis or, if that is not possible, allocated at approximately the same time;
- 14) '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 licence with an instrument rating;

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<sup>13</sup> CION considers that it is necessary to clarify that the term 'emergencies' only includes the need for a specific flight to take off or land in an emergency situation.

- 15) 'coordination parameters' shall mean the expression, in operational terms, of all the capacity available for slot allocation or schedules facilitation at an airport during each scheduling period and the operational rules on capacity use, reflecting all technical, operational and environmental factors, including in cases of exceptional circumstances, that affect the performance of the airport infrastructure and its different sub-systems;
- 16) 'flight plan' shall mean specific information provided to air traffic services units, relative to an intended flight or portion of a flight of an aircraft;
- 17) 'scheduled air services' shall mean a series of flights with the characteristics defined in Article 2(16) of Regulation (EC) No 1008/2008;
- 18) 'programmed non-scheduled air service' shall mean a series of flights which are not scheduled air services, but which operate so regularly or frequently, that they nonetheless constitute a recognisably systematic series, even where these flights do not always serve the same route;<sup>14</sup>
- 19) 'network manager' shall mean the body established under Article 6(6) of Regulation (EC) No 551/2004 2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky<sup>15</sup>;
- 20) 'performance review body' shall mean the body established under Article 11(2) of Regulation (EC) No 549/2004;
- 21) 'national supervisory authority' shall mean the body or bodies nominated or established by Member States as their national authority pursuant to Article 4 of Regulation (EC) No 549/2004.

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<sup>14</sup> A recital will be added, clarifying that this definition includes "business aviation": *Non-scheduled air transport contributes to regional cohesion and competitiveness. Where operators have regularly used slots for such transport at an airport falling within the scope of the Regulation, even where these slots do not always involve the same routes, precedence should be given to requests for continued usage of such slots.'*

<sup>15</sup> OJ L 96, 31.3.2004, p. 20.

# Designation of airports

## Article 3

### Conditions for airport coordination or schedules facilitation

1. Member States shall be under no obligation to designate any airport as schedules facilitated or coordinated save in accordance with the provisions of this Article. Member States shall not designate an airport as coordinated save in accordance with the provisions of paragraphs 3 to 3c.
2. A Member State may, however, provide for any airport to be designated as a schedules facilitated airport, provided that principles of transparency, neutrality and non-discrimination are met.
3. The Member State responsible shall ensure that a thorough capacity and demand analysis is carried out at an airport with no designation status, or at a schedules facilitated airport by the airport managing body or by any other competent body when that Member State considers it necessary, or within one year:
  - (i) following a written request from air carriers representing more than half of the operations at an airport or from the airport managing body 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 new entrants encounter serious problems in securing landing and take off possibilities at the airport in question, or when the network manager justifies that it is necessary to ensure that the airport's operational plan is consistent with the Network Operations Plan, in accordance with Article 6(7) of Commission Regulation (EU) No 677/2011 of 7 July 2011 laying down detailed rules for the implementation of air traffic management (ATM) network functions<sup>16</sup>.

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<sup>16</sup> OJ L 185, 15.7.2011, p. 1.

- 3a. This analysis 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.
- 3b. The analysis shall be based on guidelines<sup>17</sup> determined by the Commission through implementing acts<sup>18</sup>. The guidelines shall be limited to categories of data and tools to be used and shall take account of the different planning needs of the special events referred to in paragraph 7. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).

Until the entry into force of the act referred to in this paragraph, the analysis shall be based on commonly recognised methods.

- 3c. The Member State shall ensure that the analysis is updated if paragraph 6 has been invoked, when there are changes at the airport influencing significantly its capacity and capacity usage or, where appropriate, at the request of the coordination committee. 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.
4. On the basis of the analysis, the Member State shall consult on the capacity situation at the airport with the airport managing body, the air carriers using the airport regularly, their representative organisations, representatives of general aviation using the airport regularly, air traffic control authorities and, if relevant, the coordinator or the schedules facilitator.
5. [...]. (*moved to Article 3(10a)*)

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<sup>17</sup> A recital will be added to clarify the fact the guidelines constitute non-binding legal acts.

<sup>18</sup> CION reservation on changing delegated acts to implementing acts, plus on the term guidelines.

6. On the basis of the analysis referred to in paragraph 3, 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/or capacity, as determined in accordance with paragraph 3a, is insufficient to meet actual or planned demand, and
  - (b) there are no possibilities of resolving these problems in the short term.<sup>19</sup>
7. By way of derogation from paragraph 6, Member States may, in exceptional circumstances such as special events, designate for an appropriate period an airport as a coordinated airport. This period may be shorter than a scheduling period.
- 7a. By way of derogation from paragraphs 3 to 4, 6 and 10a, a Member State<sup>20</sup>, may in emergency situations, designate as coordinated the airports affected for the appropriate period, which may be shorter than a scheduling period<sup>21</sup>.
8. If the updated analysis on capacity and demand in a coordinated or schedules facilitated airport shows that the airport concerned has sufficient capacity to meet actual or planned operations, the Member State may, after consulting the bodies mentioned in paragraph 4, change its designation to a schedules facilitated airport, or an airport with no designation status.
9. [...]

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<sup>19</sup> PCY suggests the following recital to address the need for coordination of an airport following the failure of schedules facilitation: '*Unsuccessful attempts to resolve capacity problems at schedules facilitated airports through voluntary schedules adjustments, in particular due to unsatisfactory cooperation of air carriers, should be considered as one of the grounds for designating such an airport as coordinated.*'

<sup>20</sup> BE suggests to reinstate the following text: '*or a body designated by the Member State*'

<sup>21</sup> CION suggests that procedures and responsibilities for emergency coordination be published in advance: '*The Member States shall ensure that the procedures for such coordination are transparent and non-discriminatory.*'

10. If a decision is taken under paragraphs 6 or 8, the Member State shall communicate it to the bodies mentioned in paragraph 4 and the airport coordinator or the schedules facilitator no later than 1 April for the following winter scheduling period and no later than 1 September for the following summer scheduling period.
- 10a. After requesting the opinion of the network manager, the Commission may make recommendations to Member States on how the capacity is set in relation to the network operating needs. *(moved from Article 3(5))*

#### *Article 4*

### **Coordination parameters**

1. <sup>22</sup>At coordinated and, if the Member State considers it necessary, at schedules facilitated airports, the Member State responsible shall ensure the timely determination of the coordination parameters<sup>23</sup>, twice yearly, while taking into account all relevant technical, operational, and environmental constraints as well as any changes thereto. For coordinated and schedules facilitated airports, these constraints shall be notified to the Commission at least when there are major changes since the previous ~~scheduling period~~ **capacity and demand analysis**<sup>24</sup>.

For the purpose of examining the constraints and delivering recommendations, the Commission may be assisted by the network manager.

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<sup>22</sup> A recital will be added as follows: *'The Commission may make recommendations to Member States according to Articles 3 and 4 of this Regulation. These recommendations shall not be considered as binding for Member States in any case.'*

<sup>23</sup> The deleted text indicating that the determination of the coordination parameters will include *'the definition of relevant coordination time intervals'* will be explained in a recital.

<sup>24</sup> CION reservation on the new text at the end of para.1. CION considers that the 'previous scheduling period' is the relevant reference.

The determination of the coordination parameters 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 likely to occur during the coordination period and the capacity situation.

2. For coordinated airports, the determination of the parameters and the methodology used as well as any changes thereto shall be discussed in detail within the coordination committee with a view to increasing, to the optimum level, the capacity and number of slots available for allocation, before a final decision on the coordination parameters is taken. All relevant documents shall be made available on request to interested parties.
3. The determination of the coordination parameters shall not affect the obligation to ensure the transparent, neutral and non-discriminatory character of the slot allocation.
4. Member States shall ensure that the coordination parameters are communicated to the coordinator and schedules facilitator in good time before initial slot submission for the purpose of scheduling conferences.
5. [...]

#### *Article 5*

#### **The schedules facilitator and the coordinator**

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, after having consulted the air carriers using the airport regularly, their representative organisations and the airport managing body and the coordination committee, where such a committee exists. The same schedules facilitator or coordinator may be appointed for more than one airport.



2. Member States shall encourage close cooperation among coordinators and schedules facilitators to develop common projects at Union level, particularly regarding the interoperability of the different computer systems used by the coordinators, the establishment of a common database, and common approaches aimed at improving the efficiency of service provided to air carriers.
  - 2a. The Commission shall facilitate close cooperation between the coordinators and schedules facilitators to develop common projects at Union level and consult with the Member States on progress made in accordance with Article 16(4).
3. The Member State responsible for a schedules facilitated or coordinated airport shall ensure that:
  - (a) the coordinator and the schedules facilitator<sup>25</sup> act under this Regulation in an independent, neutral, non-discriminatory and transparent manner;
  - (b) the coordinator, in the essential functions of his coordinating activity under this Regulation takes his decisions independently in legal, functional and organisational terms of any single interested party, as well as of the Member State and bodies under the jurisdiction of that state whose control in this respect is limited to monitoring the financing and legality of the coordinator's activities whereby;
    - (i) the consequence of the legal independence shall be that the essential functions of the coordinator can only be assigned to a natural or legal person who is not at the same time a service provider at, the airport managing body of, or an airline operating on the airport and who is not integrated in its organisational structures; and

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<sup>25</sup> The functional independence of the schedules facilitator may be further explained in a recital.

(ii) the independence of his decisions regarding his essential functions and of his internal organisation shall be based on the fact that he does not receive instructions from the Member State, from the airport managing body, from service providers active there or from airlines.

(c) the system of financing the coordinator's activities is such as to guarantee the coordinator's independent status. The system of financing of the schedules facilitator's activities shall not conflict with the schedules facilitator's obligations set out in paragraph 3(a).

(d) [...].

3a. The financing referred to under point (c) shall be jointly provided by air carriers who operate in the coordinated and schedules facilitated airports and by the concerned airport managing body in such a way as to ensure that the financial burden is distributed transparently and in a non discriminatory manner among them and that the financing does not largely depend on a sole party. The charging system shall be related to the total cost of the services provided by the coordinator or the schedules facilitator.<sup>26</sup>

Member States may entrust the airport managing body **or any other organisation designated by the Member State** with the collection of the contribution of air carriers to the financing of the coordinator or the schedules facilitator.

The Member States shall ensure that sufficient financial, human, technical and material resources and expertise are available to the coordinator and to the schedules facilitator.

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<sup>26</sup> A recital will be added on the basis of the following text: '*If the coordinator is appointed for multiple airports in one Member State, each air carrier should contribute only once, even if it uses more airports in the same Member State.*' CION reservation: the recital is not clear as currently drafted. DE has concerns regarding this recital and suggests the following compromise: '*If the coordinator is appointed for multiple airports in one Member State, **the Member State can decide that** each air carrier should contribute only once, even if it uses more airports in the same Member State.*'

4. The schedules facilitator and the coordinator shall participate in scheduling conferences of air carriers at international and Union level in accordance with Union law.
5. The schedules facilitator shall advise air carriers and recommend alternative arrival and/or departure times when congestion is likely to occur.
6. 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.
7. 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 airport managing body and with the air traffic control authorities and the network manager and shall take into account the time and other relevant parameters relating to the airport concerned.

All schedules facilitators and coordinators shall cooperate to detect inconsistencies in schedules and to encourage air carriers to resolve them.

8. The fulfilment of the coordinator's and the schedules facilitator's functions as well as the use of its financial resources may be subject to checks initiated by the Member State for the current year and the five previous years in accordance with national law. The checks may also concern former coordinators or schedules facilitators. The coordinator and the schedules facilitator shall provide any document, evidence and information requested for the purpose of such checks.

**Transparency of coordination activities and schedules facilitation**

1. At the end of each scheduling period, the coordinator and, if the Member State considers it necessary, the schedules facilitator shall submit to the Member States concerned and to the Commission an activity report describing the general slot allocation and/or schedules facilitation situation, examining, in particular, the application of Article 9(5) and Articles 13 and 18, as well as any complaints regarding the application of Articles 9, 10 and 10a submitted to the coordination committee and the steps taken to resolve them. The report shall also contain the results of the latest annual<sup>27</sup> survey conducted among the interested parties on the quality of services provided by the coordinator or by the schedules facilitator<sup>28</sup>. Upon request, the report shall be communicated to the interested parties as referred to in Article 3(4).
2. The Commission may adopt a guidance document<sup>29</sup> for the activity report as well as for the survey mentioned in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).
3. The coordinator shall maintain an up-to-date electronic database, accessible free of charge, containing the following information:
  - (a) historical slots by airline, chronologically, for all air carriers at the airport;
  - (b) requested slots by air carriers and chronologically for all air carriers;

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<sup>27</sup> NL proposes to delete '*annual*', because there is no need for an annual survey and it increases the administrative burden.

<sup>28</sup> A recital will explain that the report should be produced at the end of each scheduling period; whereas the survey will be performed annually. Commission recalls that the report template should be binding in order to allow comparability of information between coordinators.

<sup>29</sup> CION reservation on the term '*guidance document*'.

- (c) all allocated slots, and outstanding slot requests, listed individually in chronological order, by air carriers, for all air carriers;
- (d) remaining available slots, indicating the availability as far as possible with respect to each type of constraint taken into consideration in the coordination parameters. The database shall allow the aircraft operators to estimate the availability of slots corresponding to their requests;
- (e) slots transferred or exchanged, indicating the identity of the air carriers involved and whether the transfer or exchange was made for compensation of a financial or other nature. Aggregate data on financial compensation shall be published by the coordinator concerned each year;
- f) full details on the coordination parameters.

<sup>30</sup>This information shall only be accessible to the Member States, the network manager, the coordinators, the air navigation service providers, the Commission, any air carrier<sup>31</sup> and the airport managing body concerned.

This information shall be updated regularly. ~~At the end of each season, the coordinator shall publish the activity report mentioned in paragraph 1.~~<sup>32</sup>

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<sup>30</sup> CION prefers to refer to '*interested parties*' as specified in Article 6(8) of the current Regulation. NL proposes the following rewording: '*This information shall ~~only~~ be accessible to the Member States, the network manager, the coordinators, **the scheduled facilitators**, the air navigation service providers, the Commission, any air carrier and the airport managing body concerned. **All non-confidential information shall be available to all interested parties.***'

<sup>31</sup> CION reservation on the term '*air carrier*'. CION considers that '*aircraft operator*' should replace it, in order to allow all operators to have the information necessary in order to request slots.

<sup>32</sup> CION reservation on the deletion of this sentence.

4. The coordinator shall ensure that the relevant data<sup>33</sup> are stored and remain accessible for at least five consecutive equivalent scheduling periods and are transferred without delay, free of charge, to any successor coordinator at the airport concerned.
5. Where relevant and generally accepted standards on the format of schedules information are available, the schedules facilitator, the coordinator and the air carriers shall apply them provided that they comply with Union law.

#### *Article 7*

### **Information for schedules facilitators and coordinators**

1. Air carriers operating or intending to operate at a schedules facilitated or coordinated airport shall submit to the schedules facilitator, or coordinator, all relevant information requested by them. If this information changes, the air carriers shall inform the schedules facilitator and the coordinator as soon as possible about such changes. All relevant information shall be provided in the format and within the time-limit<sup>34</sup> specified by the schedules facilitator or coordinator. In particular, an air carrier shall inform the coordinator, at the time of the request for allocation, whether it would benefit from the status of new entrant, in accordance with Article 2(2), in respect of requested slots and declare any shareholder relationship with other air carriers operating at that airport.

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<sup>33</sup> A recital will be added on the accessibility of coordination data, to reflect the following text: *'The list of historical slots as well as the data of the coordination database at specific dates, notably at the (deadline for) initial (slot request) submission, at the slot handback deadlines (15/9 and 15/1), at 31 January, at 31 August, and at the start and the end of each scheduling period.'*

<sup>34</sup> NL proposes to add: *'as based on international industry standards and practices and further'*

- 1a. For any other airports with no particular designation status, Member States may require the air carriers operating or intending to operate from that airport, the airport managing body, the groundhandling service providers and the air navigation service providers to provide in a timely manner to a coordinator or a schedules facilitator<sup>35</sup>, any information in their possession about the planned services of air carriers. In such cases, the airport managing body shall also provide information on the available capacity.
- 1b. For the purposes of monitoring of the use of slots, for all airports with no particular designation status, the airport managing body shall provide, when requested by a coordinator, information in his possession about the planned services of an air carrier.
- 1c. On justified request from the network manager, the schedules facilitator and the coordinator shall send it the relevant information referred to in paragraphs 1 and 1a that is available to them.
2. Where an air carrier fails to provide the information referred to in paragraph 1, unless it can satisfactorily demonstrate that mitigating circumstances exist, or provides false or misleading information, the coordinator shall not take into consideration the slot request or requests by that air carrier to which the missing, false or misleading information relates. The coordinator shall withdraw the slot(s) or the series of slots if they were already allocated and/or recommend that penalties be imposed by the competent body under national law. The coordinator shall give that air carrier the opportunity to submit its observations.
3. The schedules facilitator or the coordinator, the airport managing body, the air traffic control authorities and the network manager shall exchange all the information they require for the exercise of their respective duties, including flight data and slots, in particular with a view to ensuring the application of Article 17.

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<sup>35</sup> NL proposes to replace '*a coordinator or a schedules facilitator*' with '*the network manager*'.

**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 airport managing body concerned, the relevant air traffic control authorities, 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:
  - (i) the possibilities for increasing the capacity of the airport determined in accordance with Article 3 or for improving its usage;
  - (ii) the coordination parameters to be determined in accordance with Article 4;
  - (iii) the methods of monitoring the use of allocated slots;
  - (iv) local guidelines as provided for in paragraph 4;
  - (v) factors affecting the traffic conditions prevailing at the airport in question;
  - (vi) serious problems encountered by new entrants, as provided for in Article 10a(6);
  - (vii) any issue concerning the airport capacity, in particular in relation to the implementation of the Single European Sky and the operation of the network;



(viii) the link between the coordination parameters and the key performance indicators as defined in Article 2(d) of Commission Regulation (EU) No 691/2010 of 29 July 2010 laying down a performance scheme for air navigation services and network functions and amending Regulation (EC) No 2096/2005 laying down common requirements for the provision of air navigation services<sup>36</sup>.

~~(aa) to request the update of the capacity and demand analysis in accordance with article 3(3e)<sup>37</sup>~~

(b) [...]

c) to mediate between all parties concerned on complaints on the allocation of slots, as provided for in Article 19.

2. Member State representatives, the coordinator, the network manager, the performance review body and the national supervisory authority of the Member State shall be invited to the meetings of the coordination committee as observers. In duly justified situations, on its request, the Commission may participate in these meetings as an observer.

3. The coordination committee shall draw up written rules of procedure covering, inter alia participation, elections, the frequency of meetings, and language(s) used. [...] *(last sentence moved to para.5)*

4. Any member of the coordination committee, a Member State or coordinator may suggest local guidelines. The coordination committee shall discuss the suggested local guidelines and shall issue an advisory opinion. Once a Member State has received such an opinion, it may adopt the local guidelines in question, provided that the Member State has notified them to the Commission and the Commission has not opposed the adoption within 3 months of the notification.

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<sup>36</sup> OJ L 201, 3.8.2010, p. 1.

<sup>37</sup> CION reservation on the deletion of this sentence. CION considers that the wording should be kept, with the addition of '*Where appropriate*' at the beginning, in order to ensure consistency with Article 3(3c).

~~The local guidelines may concern the allocation of slots, the monitoring of the use of allocated slots or the modification of the length of the series of slots which under no circumstances may be below 5 consecutive slots.~~

~~The Commission may oppose the adoption of local guidelines on the grounds that they:~~

~~— would not be in conformity with Union law;~~

~~— would not affect the independent status of the coordinator; or and~~

~~— would not improve the efficient use of airport capacity.<sup>38</sup>~~

5. 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. This report shall also be communicated to the performance review body and the network manager. *(moved from para.3)*

## **Allocation of slots**

### Article 9

#### Slot pool

1. The coordinator shall set up a pool, which shall contain all slots. All new slot capacity determined by a Member State pursuant to Article 4 shall be placed in the pool. All slot series satisfying the conditions set out in Article 10(2) shall also be placed in the pool, indicating which air carriers are entitled to use these series of slots<sup>39</sup>.
- 1a. Series of slots shall be allocated from the slot pool for the scheduling period for which they are requested, at the expiry of which they have to be returned to the slot pool.  
*(moved from Art.10(1)).*

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<sup>38</sup> UK reservation on the deletion of these two subparagraphs. CION considers it necessary to clarify the requirements for rules currently in force.

<sup>39</sup> CION suggests replacing 'entitled' with 'granted permission'.

2. Without prejudice to Article 19(2) of Regulation (EC) No 1008/2008 and Article 12 of this Regulation, slots placed in the pool shall be distributed among applicant air carriers in accordance with Articles 10 and 10a.

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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 air 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 (*moved back from Article 10a*)
4. [...] (*moved to Article 10a*)
5. In the case of services operated by a group of air carriers, only one of the participating air carriers may apply for the required slots. The air carrier operating such a service shall be responsible for meeting the operating criteria required to benefit from the precedence referred to in Article 10(2).

Slots allocated to one air carrier may be used by (an)other air carrier(s) belonging to a group of air carriers, provided that the designator code of the air carrier to whom the slots are allocated remains on the shared flight for coordination and monitoring purposes. To this end, the air carrier shall notify the group of air carriers to which it belongs to the coordinator.

Upon discontinuation of such operations, the slots so used shall remain with the air carrier to whom they were initially allocated. Such operations shall be notified to the coordinator by the air carriers belonging to the group and may not begin prior to the express confirmation by the coordinator .

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<sup>40</sup> IT proposes a new paragraph: '*Slots placed in the pool may be reserved by a Member State, according to Article 12 of this Regulation, before the allocation of the historical slots.*'

A new entrant belonging to a group of air carriers shall not, for at least two corresponding scheduling periods, be allowed to give the use of its slots to other air carriers belonging to that group.

If a series of slots allocated to an air carrier is used by another air carrier in a way which is not in conformity with the conditions of this paragraph, the coordinator shall withdraw <sup>41</sup>the series and return it to the pool after consulting the air carriers concerned.

6. [...] (*moved to Article 10a*)
7. If a requested slot cannot be accommodated, the coordinator shall inform the requesting air carrier of the reasons therefore and shall indicate the nearest available alternative slot. (*moved back from Article 10a*)
8. The coordinator shall also take into account:
  - additional rules and guidelines established by the air transport industry Union wide or world-wide, and
  - local guidelines as provided for in Article 8(4).

[...].<sup>42</sup>

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<sup>41</sup> DE, supported by FR, proposes to replace 'shall' with 'may'. Alternatively DE, supported by NL, suggests to add: '*or may recommend that penalties be imposed by the competent national authority*'. CION reservation on the proposals suggested by DE, FR and NL.

<sup>42</sup> CION has a reservation on the deletion of this subparagraph: '*The local guidelines may only concern the monitoring of the use of slots allocated or the amendment of the definition of a series of slots to reduce its length below 10 slots for the winter scheduling period or below 15 slots for the summer scheduling period, but under no circumstances below 5 slots. The reduction of the length of the series of slots applies only at airports where demand for air services is highly seasonable*'.

9. 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, slots remaining in the pool after distribution among the applicant air carriers and slots available at short notice may be used.

#### *Article 10*

#### **Historical slots**

1. [...] (*Moved to Art.9(1a)*).
2. Without prejudice to articles 7, 13 and 18, an air carrier shall be entitled<sup>43</sup> to the same series of slots during the following equivalent scheduling period, if that air carrier so requests within the time-limit mentioned in Article 7(1), and if the following conditions are satisfied:
  - (a) the same series of slots has been used by that air carrier for the operation of scheduled and programmed non-scheduled air services, and
  - (b) that air carrier can demonstrate to the satisfaction of the coordinator that the same series of slots in question has been operated, as cleared by the coordinator, by that air carrier for at least 80%<sup>44</sup> of the time during the scheduling period for which it has been allocated.
3. Re-timing of series of slots before the allocation of the remaining slots from the pool referred to in Article 10a to the other applicant air carriers shall be accepted only for operational reasons such as, changes in the type of aircraft used or route operated by the air carrier, or if slot timings<sup>45</sup> are improved in relation to the timing initially requested. It shall not take effect until expressly confirmed by the coordinator.

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<sup>43</sup> CION suggests to replace *'be entitled'* with *'be granted permission'*

<sup>44</sup> CION reservation on the deletion of 85%.

<sup>45</sup> CION reservation on deletion *'of new entrants'*.

4. Slots from the particular series of slots allocated to an air carrier before 31 January for the following summer scheduling period, 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 provided that the remaining allocated slots constitute a **recognisable part of a**<sup>46</sup> series of slots.
- 4a. Slots notified by the air carrier to have been cancelled due to<sup>47</sup> a public holiday and returned to the coordinator prior to the dates set out in this paragraph shall be incorporated into the series of slots for the following season without any need to justify their non-use.

**A consolidated list of the public holidays to be accepted by the coordinators shall be adopted and published by the Commission in accordance with the examination procedure referred to in Article 16(2)**<sup>48</sup>.

~~For the purpose of this paragraph, public holidays shall be those days notified as such to the Commission by each Member State. Each Member State shall notify any modification to its public holidays. The Commission shall publish a list of these holidays on its website.~~

5. If the 80%<sup>49</sup> usage of the series of slots cannot be demonstrated, the precedence provided under paragraph (2) shall not be given, unless the non-utilisation can be justified on the basis of any of the following reasons:

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<sup>46</sup> CION has a reservation on this addition.

<sup>47</sup> CION suggests to replace 'due to' with '*as they coincide with*'.

<sup>48</sup> PCY notes that there is an inconsistency in the text, given that reference is made to the examination procedure in Article 16(2), while in Article 16(4)(3) reference is also made to public holidays. Such double reference is misleading and delegations were invited to indicate which procedure they prefer. FR, NL and UK propose the deletion of para.4a. CION highlights the potential administrative burden which could result from the mechanism referred to in this paragraph.

<sup>49</sup> CION reservation on the deletion of 85%.

- (a) unforeseeable and unavoidable circumstances<sup>50</sup> outside the air carrier's control leading to:
- (i) grounding of the aircraft type generally used for the air service in question;
  - (ii) total or partial closure of an airport or airspace and its direct and immediate consequences;
  - (iii) serious disturbance of operations at the airports concerned, including those series of slots at other<sup>51</sup> airports related to routes which have been affected by such disturbance, during a substantial part of the relevant scheduling period;
- (b) an interruption of air services due to action intended to affect these services, for example, in the event of a strike which makes it practically and/or technically impossible for the air carrier to carry out operations as planned;
- (c) serious financial difficulties of the Union air carrier concerned, resulting in the granting of a temporary licence by the licensing authorities pending financial reorganisation of the air carrier in accordance with Article 9(1) of Regulation (EC) No 1008/2008;
- (d) judicial proceedings concerning the application of Article 12 of this Regulation for routes where public service obligations have been imposed in accordance with Article 16 of Regulation (EC) No 1008/2008 resulting in the temporary suspension of the operation of such routes.

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<sup>50</sup> A recital will be added at a later stage to clarify that these circumstances include exceptional weather conditions.

<sup>51</sup> CION reservation on the deletion of the word '*Union*'.

A ban on operating in the Union adopted on the basis of Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier<sup>52</sup> and its implementing acts cannot be accepted as a justification for the non-use of the series of slots within the meaning of this paragraph.

6. At the request of a Member State or on its own initiative, the Commission shall examine the application of paragraph 5 by the coordinator.

It shall take a decision within two months of receipt of the request. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 16(2).

7. ~~On duly justified imperative grounds of urgency linked to exceptional events requiring coherence in the application of measures to be taken in Union airports, the Commission shall adopt without delay implementing acts in accordance with the procedure referred to in Article 16(3). Those acts shall remain in force for a period not exceeding the length of one scheduling period. The measures taken by the Commission may be differentiated according to airport and destination, based on the characteristics of the exceptional event considered. If the conditions set out in paragraph (2)(a) and (b) are not met, the Commission, on its own initiative or upon request from a Member State, may decide that precedence for the allocation of the same series should be awarded to the air carriers for the following equivalent scheduling period.~~

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<sup>52</sup> OJ L 344, 27.12.2005, p. 15.



**If the conditions set out in paragraph (2)(a) and (b) are not met, the Commission, on its own initiative or upon request from a Member State, may however decide that precedence for the allocation of the same series should be awarded to the air carriers for the following equivalent scheduling period if this is justified on imperative grounds of urgency linked to exceptional events requiring coherence in the application of measures to be taken in these airports. The Commission shall adopt without delay implementing acts in accordance with the procedure referred to in Article 16(3). Those acts shall remain in force for a period not exceeding the length of one scheduling period. The measures taken by the Commission may be differentiated according to airport and destination, based on the characteristics of the exceptional event considered.**

8. The precedence for a series of slots referred to in paragraph 2 of this Article shall not give rise to any claims for compensation in respect of any limitation, restriction or elimination of this precedence imposed under Union law, in particular in application of the rules of the TFEU relating to air transport.

#### **Article 10a**

##### **Allocation of other slots** *(moved from Article 9)*

1. [...] *(remained in Article 9)*
2. Subject to the allocation of slots in accordance with Article 10, <sup>53</sup>50 % of the remaining slots shall first be allocated to new entrants unless requests by new entrants are less than 50 %. The preference given to new entrants shall be respected until 15 January for the following summer scheduling period and 15 August for the following winter period. Nevertheless, in the event of a significant number of slots becoming available during the same scheduling period, the preference given to new entrants shall be respected in that case. The coordinator shall treat the requests of new entrants and other air carriers fairly, in accordance with the coordination periods of each scheduling day. Among requests from new entrants, preference shall be given to air carriers qualifying for new entrant status under Article 2(2)(b).

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<sup>53</sup> The application of the 50% percentage will be further clarified in a recital.

- 2a An air carrier which has transferred, within the meaning of Article 13, slots to another air carrier in the same airport, shall not be considered as a new entrant at that airport for the period of two equivalent scheduling periods unless the air carrier would have benefited of the same priority even if it had not transferred the slots. *(moved from Article 2(2))*
3. [...]. *(moved back to Article 9)*
4. 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 its new entrant status for that series during the scheduling period.
5. [...]. *(moved back to Article 9)*
6. If serious problems continue to exist for new entrants, the Member State shall ensure that a meeting of the airport coordination committee is convened. The purpose of the meeting shall be to examine possibilities for remedying the situation. The Commission shall be invited to that meeting.
7. [...] *(moved back to Article 9)*
8. [...] *(moved back to Article 9)*
9. [...] *(moved back to Article 9)*

**Slot reservation**

1. On request from the managing airport body, a Member State responsible for<sup>54</sup> a coordinated airport which is subject to a significant and demonstrable problem in relation to the late hand back of slots and the non-utilisation of allocated slots may decide to apply airport charges as defined in Article 2(4) of Directive 2009/12 of the European Parliament and of the Council of 11 March 2009 on airport charges<sup>55</sup> in relation to the air carriers' late return of slots<sup>56</sup> to the pool referred to in Article 9 and to hold such air carriers liable for having reserved airport infrastructure without using it. The Member States shall ensure that the following principles are respected:
  - (a) the procedure set out under Article 6 of Directive 2009/12/EC<sup>57</sup> shall be observed, mutatis mutandis, before this decision is taken. The coordinator shall also be consulted. For coordinated airports not covered by Article 1(2) of Directive 2009/12/EC, the airport managing body shall consult the coordination committee and the coordinator;
  - (b) this decision shall not affect the non-discriminatory and transparent character of the slot allocation process and the system of airport charges;
  - (c) this decision shall not discourage air carriers from developing services or entering the market and it shall be limited to covering the costs of providing the airport infrastructure and its essential ancillary services, including the costs of maintenance, operation, management and administration, incurred by the airport for reserving the airport capacity corresponding to the slots which remained unused;

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<sup>54</sup> CION, CZ and UK reservation on the deletion of *'The airport managing body of'* and on the Presidency proposal to replace it with *'On request from the managing airport body, a Member State responsible'*.

<sup>55</sup> OJ L 70, 14.3.2009, p. 11.

<sup>56</sup> A recital will be added to explain that the managing body of coordinated airports may use the airport charges system with the aim to dissuade the belated return of slots to the pool.

<sup>57</sup> OJ L 70, 14.3.2009, p. 11.

- (ca) This decision shall not, of itself, require advance payment by air carriers of slot reservation fees and shall be revenue neutral in its effect on the airport concerned.
- (d) air carriers shall not be held liable for:
- (i) having reserved airport infrastructure without using it for slots allocated but returned to the pool before 31 January for the following summer scheduling period or before 31 August for the following winter scheduling period, for slots notified by the air carrier to have been cancelled due to a public holiday and returned to the pool before the same dates and for slots for which the non-use can be justified on the basis of Article 10(5);
  - (ii) having reserved airport infrastructure without using it for slots allocated but returned to the pool after 31 January for the following summer scheduling period or after 31 August for the following winter scheduling period, and allocated by the coordinator to other air carrier.
- (e) this decision shall be communicated to the coordinator, the interested parties and the Commission at least six months before the start of the scheduling season concerned<sup>58</sup>.
2. The coordinator shall send<sup>59</sup> the airport managing body all the information necessary for the implementation of the decision referred to in the first paragraph.

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<sup>58</sup> CION proposes to add the following new indent: *'this decision shall be communicated to the Member State at least 12 months before the start of the scheduling season concerned.'*

<sup>59</sup> DE proposes to replace *'The coordinator shall send'* with *'The coordinator shall make available to'*.

**Public service obligations**

1. Where public service obligations have been imposed on a route in accordance with Article 16 of Regulation (EC) No 1008/2008, a Member State may, at a coordinated airport on its territory, reserve the slots required for the operations envisaged on that route. If the reserved slots on the route concerned are not used, they shall be made available to any other air carrier interested in operating the route in accordance with the public service obligations, subject to paragraph 2 of this Article. If no other air carrier is interested in operating the route and the Member State concerned does not issue a call for tenders under Article 16(10), Article 17(3) to (7), and Article 18(1) of Regulation (EC) No 1008/2008, **or the public service obligation has expired according to article 16(11) of Regulation (EC) No 1008/2008**, the slots shall either be reserved for another route subject to public service obligations or be returned to the pool. ~~Slots which are not used for public service obligations for more than one year shall be returned to the pool.~~
2. The tender procedure established in Article 16(10), Article 17(3) to (7) and Article 18(1) of Regulation (EC) No 1008/2008 shall be applied for the use of the slots referred to in paragraph 1 of this Article if more than one Union air carrier is interested in serving the route and has not been able to obtain slots within one hour before or after the times requested from the coordinator.

## Slot mobility

### Article 13

#### Slot transfers and exchanges<sup>60</sup>

1. Subject to the express confirmation by the coordinator, following notification by an air carrier concerned, <sup>61</sup>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 between two air carriers, with or without monetary or any other kind of compensation;
  - (c) exchanged, one for one, between air carriers, with or without monetary or any other kind of compensation.<sup>62</sup>

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<sup>60</sup> EL has a reservation on this article.

<sup>61</sup> DK suggests the following *de minimis* clause for indents (b) and (c): *'A slot can only be transferred or exchanged if there are more than two return operations on the particular route the same day.'* DE, LV and UK are against it. IT suggests the following compromise text: *'A slot can only be transferred or exchanged if there are more than two return operations - the same day - on the particular route between an airport in the Union and an airport serving a peripheral or development region in its territory, or on a thin route to any airport on its territory, any such route being considered vital for the economic and social development of the region which the airport serves.'* CION reservation on the DK proposal.

<sup>62</sup> FR, supported by BG, DE, DK, EL, ES and PT, proposes to add a new subparagraph: *'Member States may implement some restrictions to exchanges and transfers with monetary or any kind of compensation, as provided in b) and c), where a significant and demonstrable problem in relation to these exchanges or transfers occurs. Such restrictions are motivated and duly notified to the European Commission.'* CION has a reservation on such an addition. BE, IT, NL and UK have concerns about this addition.

- 1a. Where the coordinator considers that a transfer or exchange as referred to in paragraph 1 could have a direct and not insignificant negative impact on the level of service on a regional route operated from the airport concerned, the coordinator shall inform the Member State(s) concerned accordingly.
2. Member States on whose territory there are coordinated airports shall ensure that a transparent framework is set up to allow contact between air carriers interested in transferring or exchanging slots in conformity with Union law. Interested parties shall have open access to such non-confidential information.
- 2a. The coordinator shall decline to confirm the transfers or exchanges if they are not in conformity with the requirements of this Regulation and if the coordinator is not satisfied that:
  - (a) airport operations would not be prejudiced, taking into account all technical, operational, and environmental constraints;
  - (b) limitations imposed in accordance with Article 12 are respected;
  - (c) a transfer or exchange of slots does not fall within the scope of paragraphs 3 to ~~5~~ 7 of this Article. (*reinstated*)

The coordinator shall not decline to confirm the transfers or exchanges on any other grounds than those referred to in this paragraph.

- 2b. For the transfers or exchanges referred to in paragraph 1(b) and (c), the air carriers shall give the coordinator the details of any monetary or any other kind of compensation. The details regarding compensation for the transfers or exchanges shall be treated as confidential and the coordinator shall only divulge such details to the Member State where the airport is situated or the Commission, upon their request.

- 2c. The transfers or exchanges may not be subject to conditions intended to limit the possibility for the air carrier wishing to obtain the slots to enter into competition with the air carrier which transfers or exchanges the slots.

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3. Slots allocated to a new entrant<sup>64</sup> may not be transferred<sup>65</sup> as provided for in paragraph 1(b) for a period of two equivalent scheduling periods, except in the case of a legally authorised takeover of the activities of a bankrupt undertaking. *(former paragraph 5)*
4. Slots allocated to a new entrant as defined in Article 2(2)(b) may not be transferred to another route as provided for in paragraph 1(a) of this Article for a period of two equivalent scheduling periods unless the new entrant would have been treated with the same priority on the new route as on the initial route. *(former paragraph 6)*
5. Slots allocated to a new entrant may not be exchanged<sup>66</sup> as provided for in paragraph 1(c) for a period of two equivalent scheduling periods, except in order to improve the slot timings for these services in relation to the timings initially requested. The slots received after such an exchange shall be operated **accordingly** by the air carrier concerned for ~~at least~~ the scheduling period for which ~~is~~ **it** was allocated, ~~or and~~ **and** for at least one full scheduling period<sup>67</sup>. *(former paragraph 7)*

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<sup>63</sup> A recital will be added as follows: 'Recognising that slots can be traded, and without prejudice of tax legislation, nothing in this Regulation could be considered as preventing a Member State to impose a tax ~~(or charge)~~ in the event of a transfer or exchange of slots with monetary compensation between two airlines, while fully respecting Union law.' LV and UK are against such a proposal, considering it may create situations of double taxation and of market distortion. CION considers that this recital is not necessary.

<sup>64</sup> DK and IT suggest to include all newly acquired slots, not just those acquired by new entrants.

<sup>65</sup> DK proposes to add: '*or leased out*'.

<sup>66</sup> Ibidem

<sup>67</sup> UK has concerns regarding the last sentence of this paragraph. UK considers it unnecessary text, as the slots would still have new entrant status and this sentence has the undesirable effect of forcing an airline to operate a re-timed slot for up to seven months. DE and FR propose the following wording: '*The slots received after such an exchange shall be operated accordingly by the air carriers concerned for the period for which they were allocated in that scheduling period.*'



6. <sup>68</sup>**Without prejudice to paragraphs 3 to 5**, slots which have not been allocated in accordance with Article 10(2) or (3) may only be transferred according to paragraph 1(b), in case of a takeover of the activities of a undertaking, or between a parent company and its subsidiaries, or between subsidiaries of the same parent company. (*former paragraph 3*)
7. **Without prejudice to paragraphs 3 to 5**, slots which have not been allocated in accordance with Article 10(2) or (3) may only be exchanged according to paragraph 1(c) in order to improve the slot timings for these services in relation to the timings initially requested. The slots received after such an exchange shall be operated **accordingly** by the air carrier concerned for ~~at least~~ the scheduling period for which ~~is it~~ was allocated, ~~or~~ **and** for at least one full scheduling period<sup>69</sup>. (*former paragraph 4*)

#### *Article 14*

#### Competition provisions

This Regulation shall not affect the powers of public authorities to approve or restrict the transfer or exchange of slots between air carriers and to direct how these are allocated pursuant to national competition law or to Articles 101, 102 or 106 of the TFEU or Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>70</sup>.

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<sup>68</sup> Text in bold has been added in order to clarify the application of paragraphs 3 to 7.

<sup>69</sup> UK has concerns regarding the last sentence of this paragraph. UK considers it unnecessary text, as the slots would still have new entrant status and this sentence has the undesirable effect of forcing an airline to operate a re-timed slot for up to seven months. DE and FR propose the following wording: '*The slots received after such an exchange shall be operated accordingly by the air carriers concerned for the period for which they were allocated in that scheduling period.*'

<sup>70</sup> OJ L 24, 29.1.2004, p. 1.

## Implementation

### *Article 15*

[...]

### *Article 16*

#### Committee procedure

1. The Commission shall be assisted by a committee. That committee is a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011<sup>71</sup> shall apply .
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.
4. The committee may also be consulted by the Commission on any other matter concerning application of this Regulation, **including on the**:
  - a) ~~including on~~ methods for the determination of the coordination parameters<sup>72</sup>;
  - b) **flights exempted of the allocation of a slot referred of a slot referred to in Article 2(11);**
  - c) **public holidays referred to in Article 10(4a) and 11<sup>73</sup>;**
  - d) **terms “time significantly different” referred to in Article 17(1) and 18(2)<sup>74</sup>.**

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<sup>71</sup> OJ L 55, 28.2.2011, p. 13.

<sup>72</sup> UK reservation on this indent.

<sup>73</sup> See footnote 48 in Article 10(4a).

<sup>74</sup> FR proposes to add '*and a recognisable part of a series of slots*'

**Consistency between the slots and the flight plans**

1. <sup>75</sup>When an air carrier submits a flight plan, it shall include a reference to the slot allocated. On request of the Member State <sup>76</sup>, the network manager shall reject an air carrier's flight plan if the air carrier intends to arrive at or depart from a coordinated airport, during the periods for which it is coordinated, without having a slot for that flight allocated by the coordinator. The Member State may delegate this task to the coordinator. Business aviation operators shall not be deemed to have been allocated a slot if they had to operate at a time significantly different from the slot allocated and if the delay is not attributable to air navigation services.
2. The Member State shall adopt the measures necessary for the exchange of information between the coordinator, the network manager, the air navigation service providers and the airport managing body.
3. [...].
- 3a. For the purpose of paragraph 1, any air carrier intending to operate a State flight, an emergency or humanitarian flight shall **without delay** provide the coordinator with the necessary information for the identification of its flight.

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<sup>75</sup> IT has a reservation this paragraph.

<sup>76</sup> CION has a reservation on the beginning of this sentence: '*On request of the Member State*'

### Enforcement

1. The coordinator shall withdraw the series of slots provisionally allocated to an air carrier in the process of establishing itself and place them in the pool on 15 January for the following summer season or on 15 August for the following winter season if the undertaking does not hold an operating licence or equivalent on that date or if it is not stated by the competent licensing authority that it is likely that an operating licence or equivalent will be issued before the relevant scheduling period commences. The competent licensing authorities shall give regular information updates to the coordinator and respond to its requests within a reasonable period of time.<sup>78</sup>
2. An air carrier that repeatedly operates air services at a time significantly different from the slot allocated as part of a series of slots or use slots in a significantly different way from that indicated at the time of allocation shall lose its precedence as referred to in Article 10(2), unless it provides evidence that this was not intentional. The coordinator may decide to withdraw from that air carrier the series of slots in question for the remainder of the scheduling period and place them in the pool after having consulted the air carrier concerned and after issuing a single warning. If the air carrier requests equivalent slots, the coordinator shall not be obliged to allocate them.

The Member State shall ensure that the coordinator establishes an efficient system for ensuring the application of this paragraph.

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<sup>77</sup> A recital will be added on the basis of the following text: '*Whenever enforcement measures are to be applied to airlines, the Member States should pay particular attention to air routes which link peripheral regions, including island Member States, to major hub European airports, since any decision to withdraw such crucial slots would affect the connectivity of that Member State to the rest of the world.*' NL does not agree with this recital because it has no relation with the text and adds unclarity. CION reservation, because the recital implies that flights to islands should be treated differently in terms of compliance with the Regulation.

<sup>78</sup> CION agrees to make a statement to the effect that coordinators will be given access to the CIRCA database used by the competent licensing authorities referred to in Regulation 1008/2008. It should be noted that such access does not, however, affect an authority's responsibility to respond to specific ad hoc requests from coordinators.

3. Member States shall ensure that effective, proportionate and dissuasive penalties are available and are applied in particular to deal with:

- situations as set out in paragraph 2;
- situations when air carriers operate without the necessary slot for that flight<sup>79</sup>;
- **situations where a single flight occurrences that is not part of series is operated unjustifiably at a time significantly different from the allocated slot;**
- the return of slots after 31 January for the following summer season or after 31 August for the following winter season, or the retention of unused slots, taking into account the possible use of the mechanism provided by Article 11;
- the failure to communicate to the coordinator or the schedules facilitator the information specified under Articles 7 and 13 or the communication of false or misleading information;
- situations as set out in Article 13(2c);
- **scheduling on the day of operation of air services at times that are significantly different from the allocated slots<sup>80</sup>.**

The coordinator shall be duly informed of the outcome of each case reported for application of any penalties.

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<sup>79</sup> A recital will be added at a later stage to reflect the fact this indent does not apply to flights which can operate without slots (State flights, emergency and humanitarian flights).

<sup>80</sup> NL proposes to delete this indent because it is not related to the scope of this Regulation and should be dealt with in the field of passenger rights.

4. Without prejudice to Article 10(5), if the 80%<sup>81</sup> usage rate as defined in Article 10(2) cannot be achieved by an air carrier, the coordinator may decide to withdraw from that air carrier the series of slots in question for the remainder of the scheduling period and place them in the pool after having consulted the air carrier concerned.

Without prejudice to Article 10(5), if after an allocated 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 consulted the air carrier concerned. The coordinator may decide to withdraw the series of slots before the end of a period corresponding to 20 % of the period of validity of the series if the air carrier does not show that it intends to use them.

#### *Article 19*

### **Complaints and rights of appeal**

1. Without prejudice to rights of appeal under national law, complaints regarding the application of Articles 7(2), 9, 10, 13, 17 and 18(1),(2) and (4) shall be first submitted to the coordination committee. The committee shall, within a period of one month following submission of the complaint, consider the matter and if possible make proposals to the coordinator in an attempt to resolve the problem. If the complaint cannot be settled, the Member State responsible may, within a further two month period, provide for mediation by an air carriers' or airports' representative organisation or other third party.
2. Member States shall take appropriate measures, in accordance with national law, to protect coordinators with regard to claims for damages relating to their functions under this Regulation, save in cases of gross negligence or wilful misconduct.

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<sup>81</sup> CION reservation on the deletion of 85%.

**Relations with third countries<sup>82</sup>**

1. Without prejudice to the international obligations of the Union **and to the bilateral air services agreements of the Member States, a Member State may** ~~the Commission may, in accordance with the procedure referred to in Article 16(2), recommend that a Member State or Member States should~~<sup>83</sup> take measures, including the withdrawal of slots, in respect of an air carrier or air carriers of a third country with a view to remedying the discriminatory behaviour of the third country concerned, whenever it appears that:
  - i) the level playing field and the fair competition with EU air carriers is not ensured; or
  - ii) with respect to the allocation of slots and use of slots at its airports a third country acts **in a discriminatory manner, as described in paragraph 1 b:**
- 1b. Within the meaning of paragraph 1, a third country shall be deemed to act in a discriminatory manner, if it:**
  - (a) does not grant Union air carriers treatment comparable to that granted by this Regulation to air carriers from that country, or
  - (b) does not grant Union air carriers de facto national treatment, or
  - (c) grants air carriers from other third countries more favourable treatment than Union air carriers.

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<sup>82</sup> CION reservation regarding the substantial changes introduced by the PCY. CION proposal on this article is only meant to clarify the existing Regulation. UK scrutiny reservation on this article.

<sup>83</sup> CION has a reservation on the first lines of this paragraph. CION argues that bilateral air services agreements contain no provisions which could override the current Regulation. Member States should not be able to act unilaterally on this issue. This jeopardizes the functioning of a non-discriminatory and transparent EU slot allocation system.

- 1a Without prejudice to the Union's international obligations<sup>84</sup>, the Commission may, in accordance with the procedure referred to in Article 16(2) recommend<sup>85</sup> that a Member State or Member States should take measures, including the withdrawal of slots, in respect of an air carrier or air carriers of a third country with a view to remedying the discriminatory behaviour of the third country concerned whenever it appears that the level playing field and fair competition with the Union air carriers is not ensured.
2. Member States shall inform the Commission of any serious difficulties encountered, in law or in fact, by Union air carriers in obtaining slots at airports in third countries.

## **Final provisions**

### *Article 21*

#### **Report and cooperation**

1. The Commission shall submit a report to the European Parliament and the Council on the operation of this Regulation at the latest four years after its entry into force. The report shall address in particular the functioning of Articles 9, 10, 10a, 11 and 13.
2. Member States and the Commission shall cooperate in the application of this Regulation, particularly as regards the collection of information for the report mentioned in paragraph 1.

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<sup>84</sup> CION proposes to replace the phrase ‘*Without prejudice to the Union’s international obligations*’ with ‘*Without prejudice to paragraph 1b*’ in order to avoid any possible inconsistency between the two paragraphs.”.

<sup>85</sup> CION reservation on the use of Art.16(2) procedure for adoption of recommendations which are non-binding in nature and cannot be adopted through an implementing act.



*Article 22*

**Repeal**

Regulation (EEC) No 95/93 is hereby repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 23*

**Entry into force**

This Regulation shall enter into force on the last Sunday of March or the last Sunday of October, whichever comes first, following a period of 24 months after publication of the Regulation in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament The President*

*For the Council*

[...]

*The President*

*For the Council*

[...]

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**Repealed Regulation with list of its successive amendments**

Council Regulation (EEC) No 95/93	(OJ L 14, 22.01.1993, p.1)
Regulation (EC) No 894/2002 of the European Parliament and of the Council	(OJ L 142, 31.5.2002, p.3)
Regulation (EC) No 1554/2003 of the European Parliament and of the Council	(OJ L 221, 4.9.2003, p.1)
Regulation (EC) No 793/2004 of the European Parliament and of the Council	(OJ L 138, 30.4.2004, p.50)
Regulation (EC) No 545/2009 of the European Parliament and of the Council	(OJ L 167, 29.6.2009, p.24)

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**CORRELATION TABLE**

Regulation (EEC) No 95/93	This Regulation
Article 1(1) and (2)	Articles 1(1) and (2)
Article 1(3)	—
Article 2(a)	Article 2(1)
Article 2(b)	Article 2(2)
Article 2(c)	—
Article 2(d)	Article 2(3)
Article 2(e)	Article 2(4)
Article 2(f)(i)	Article 2(5)
Article 2(f)(ii)	Article 2(6)
—	Article 2(7)
—	Article 2(8)
—	Article 2(9)
Article 2(g)	Article 2(11)
Article 2 (h)	—
Article 2(i)	Article 2(10)
Article 2(j)	Article 2(12)
Article 2(k)	Article 2(13)
Article 2(l)	Article 2(14)
Article 2(m)	Article 2(15)
—	Article 2(16)
—	Article 2(17)
—	Article 2(18)
—	Article 2(19)

—	Article 2(20)
—	Article 2(21)
Article 3(1)	Article 3(1)
Article 3(2)	Article 3(2)
Article 3(3)	Article 3(3)
Article 3(4)	Article 3(4)
—	Article 3(5)
Article 3(5)	Article 3(6)
Article 3(6)	Article 3(7)
Article 3(7)	Article 3(8)
—	Article 3(9)
—	Article 3(10)
Article 4(1)	Article 5(1)
—	Article 5(2)
Article 4(2)(a)	Article 5(3)(a)
Article 4(2)(b) first sentence	Article 5(3)(b)
—	Article 5(3)(b)(i)
—	Article 5(3)(b)(ii)
Article 4(2)(b) second sentence	Article 5(3)(c)
Article 4(2)(c)	Article 5(3)(d)
—	Article 5(3), in fine
Article 4(3)	Article 5(4)
Article 4(4)	Article 5(5)
Article 4(5)	Article 5(6)
Article 4(6)	Article 5(7)
Article 4(7)	Article 5(7) and Article 6(1)
—	Article 6(2)
Article 4(8)	Article 6(3)
—	Article 6(4)
Article 4(9)	—
Article 4(10)	Article 6(5)

Article 5(1), first subparagraph	Article 8(1), first subparagraph
Article 5(1)(a)	Article 8(1)(a)
—	Article 8(1)(b)
Article 5(1)(b)	Article 8(1)(c)
Article 5(2)	Article 8(2)
Article 5(3)	Article 8(3)
Article 6(1)	Article 4(1)
Article 6(2)	Article 4(5)
Article 6(3)	Article 4(2)
—	Article 4(3)
Article 6(1), in fine	Article 4(4)
Article 7	Article 7
Article 8(1)	Article 10(1)
Article 8(2), first subparagraph, introductory sentence	Article 10(2), introductory sentence
Article 8(2), first subparagraph, first and second indents	Article 10(2)(a) and (b)
Article 8(2), second subparagraph	—
Article 8(3)	Article 9(3)
Article 8(4)	Article 10(5)
Article 8(5)	Article 9(8), first subparagraph
—	Article 9(8), second subparagraph
Article 8(6)	Article 9(7)
Article 8(7)	Article 9(9)
—	Article 11
Article 8a	Article 13
Article 8a(1)	Article 13(1)
—	Article 13(2), first subparagraph
Article 8a(2)	Article 13(2) second subparagraph
—	Article 13(2), in fine

Article 8a(3)	Article 13(3)
Article 8b, first sentence	Article 10(7)
Article 8b, second sentence	Article 14
Article 8b, third sentence	—
Article 9	Article 12
Article 10(1)	Article 9(1)
Article 10(2)	—
Article 10(3)	Article 10(4)
Article 10(4)(a) first, second and third indents	Article 10(5)(a)(i), (ii) and (iii)
Article 10(4)(b), (c) and (d)	Article 10(5)(b), (c) and (d)
—	Article 10(5), in fine
Article 10(5)	Article 10(7)
—	Article 10(6)
Article 10(6)	Article 9(3)
Article 10(7)	Article 9(4)
Article 10(8)	Article 9(5)
Article 10(9)	Article 9(6)
Article 10a	—
Article 11	Article 19
Article 12	Article 20
Article 13(1) and (2)	Article 16(1) and (2)
—	Article 16(3)
Article 13(3)	Article 16(4)
Article 13(4)	—
—	Article 15
Article 14(1)	Article 17(1)
—	Article 17(2)
Article 14(2)	Article 18(1)
Article 14(3)	—

Article 14(4)	Article 18(2)
Article 14(5)	Article 18(3)
Article 14(6)(a) and (b)	Article 18(4), first and second subparagraphs
Article 14a	Article 21
—	Article 22
Article 15	Article 23
—	Annex I
—	Annex II

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**STATEMENT TO THE COUNCIL MINUTES:**

"The Presidency suggests, in order to allow the UK and Spain more time to reach an understanding on the Gibraltar question, to park the matter for now.

In order to reflect this "parking" in our text the Presidency suggests to leave out entirely from the text the references to Gibraltar (in Recital 29 and Article 1) and replace footnotes 7 and 9 with a text reflecting that the matter has been parked in this way for the time being".

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