

POSITION PAPER

Review of Regulation (EEC) No 95/93 on Common Rules for the Allocation of Slots at Community Airports

CLECAT, the European association for forwarding, transport, logistics and customs services, is the leading voice on freight forwarding and logistics at the EU level in Brussels. We represent and are supported by 24 member organisations, working to promote a sound approach to transport and logistics across Europe, in support of the competitiveness of our industry.

Freight forwarders represent a vital link between exporters/importers of goods and transport operators, such as air carriers. They have a keen interest in a modern, innovative air freight sector which guarantees choice, quality, connectivity, transparency and fair competition.

Freight forwarders are reliant on a fair and adequate slot allocation regime for full freighter aircrafts, to ensure its customers, shippers, are being served with timely and good quality service levels, which can be expected from air freight, which represents an economically strategic transportation service for the European economy.

Summary:

- Recognising the importance of an appropriate slot allocation mechanism, as well as the drastic changes brought by the COVID-19 crisis, CLECAT considers Commission's initiative to review the EU Slots Regulation is now timely and urgent, as the current framework for the allocation of slots at EU airports, dating back to 1993, is **inadequate to address the continuously increasing congestion** at EU Airports and **does not effectively address the needs of the air cargo sector**.
- The EU Slot Regulation does not provide the much-needed flexibility to air freight. The reason for this is that the **80/20 "use it or lose it" rule is difficult to achieve for full freighters** since passenger and cargo operate in a very different way. The European society cannot rely on the limited freight capacity in the belly of passenger aircraft only.
- CLECAT calls on the Commission to recognise the different needs of air freight by leaving a certain flexibility to Member States to legitimately and proportionately prioritise certain traffic segments in the determination and allocation of capacity on an objective, unambiguous and transparent manner. Air cargo is much more **demand-driven** than the supplier-driven passenger markets, it is imperative that **air cargo needs a separate part of the capacity** in order to be able to effectively respond to fast changing market situations. In particular, a dedicated number of slots for full freighter aircraft is needed at intercontinental hub airports, which connect Europe most efficiently to many regions around the globe.
- CLECAT is of the view that a revised EU Slot Regulation should **ensure a system of fair, non-discriminatory and transparent rules** for the allocation of landing and take-off slots to allow

optimal utilisation and fair competition. Where the demand of landing and take-off slots exceeds the airport capacity, a mechanism to allocate slots is needed. To this extent CLECAT embraces **market-based mechanisms for the trading of slots** between airlines, as well as the introduction of local guidelines.

- CLECAT also calls for the **extension of the ‘use it or lose it rule’**, according to which currently 80% of the slots have to be used by an airline in order to keep their respective slots. An increase or the total implementation of this rule would even further increase airport capacities, whilst allowing more airlines to enter the market. This would again **foster competition, ensure maximum flexibility and reduce prices**.
- The rules for **New Entrants** should be amended to allow for more competition.

The role of air cargo

Air cargo has a vital role in international trade and is essential for the proper functioning of trade and society. As such, air cargo contributes significantly to economic development globally, transporting over US \$6 trillion worth of goods, which account for approximately 35% of world trade by value, whilst representing less than 1% of trade in terms of volume.

Due to its inherent ability to transport goods fast and securely, air cargo serves for the transport of valuable, time- and temperature-sensitive goods, including high-tech goods, medicine and medicinal goods, fruits and vegetables, spare parts, as well live animals.

The importance which the sector carries has also been highlighted recently during the COVID-19 crisis, where air cargo played an essential part in keeping supply chains running when other modes were impeded, particularly in relation to vaccines, medicines, as well as medicinal goods, including personal protective equipment (PPE).

The air cargo sector is highly demand-driven, standing in sharp contrast to the passenger sector, which is capacity driven. Whilst passenger airlines can reduce the prices for their fares to fill up seats if the flight is not fully booked, the same principle is not applicable for air cargo, due to the market’s inherent nature.

New Reality

The current Regulation was introduced in 1993 – almost three decades ago – and is designed for an aviation market that has changed significantly since then. Most notably, major developments include the unprecedented growth of the EU aviation market, the liberalisation of the airline industry and connected to that the emergence of low-cost carriers, as well as the multilateral aviation agreements entered into by the EU and third countries.

Many EU-airports will not be able to increase their slot capacity even though the demand is expected to double by 2035. This puts significant pressure on scarce airport infrastructure and capacity, leading to delays, weakened connectivity and lowered quality of services provided. Especially the increased presence of low-cost carriers in the passenger sector has led to more movements at airports, and thus reduced the overall availability of slot capacity.

The EU Slots Regulation is largely based on the IATA Worldwide Scheduling Guidelines, the principles governing the system of slot allocation at global level. The aim of the EU Slots Regulation is to ensure the access of air carriers to congested EU airports based on the principles of neutrality, transparency and non-discrimination.

However, an analysis carried out by the European Commission in 2010-2011 showed that the allocation system in place prevents optimal use of the scarce capacity at busy airports. In the ambit of the 2011 Airport Package, the European Commission proposed changes to the Regulation in view of allowing for the introduction of market-based mechanisms across the EU, provided that safeguards to ensure transparency or undistorted competition are established, including greater independence for slot coordinators.

The COVID-19 crisis has led to an unprecedented decrease in air traffic, which significantly impacted the freight forwarding industry, as a significant amount of cargo is being transported in the belly of passenger flights. CLECAT therefore highly welcomed the introduction of the slot waiver in March 2020 through Regulation (EU) 2020/459, however, a dedicated system as part of the Regulation to address such crisis-situations in the future is needed.

CLECAT calls on the EC to address the following issues in its review:

Transparency

With increasing air travel, slots for landing and take-off are becoming an increasingly scarcer resource. Therefore, an adequate mechanism for the allocation of slots is needed as demand exceeds airport capacity in many cases. CLECAT believes that in order to allow for optimal utilisation of slots and fair competition at EU airports, it is of utmost importance to ensure the creation of a system for the allocation of slots which is **fair, non-discriminatory, and transparent**.

CLECAT believes that transparency in the slot allocation process, as required from slots coordinators by Article 4(8) Slots Regulation, is of essential importance to ensure a fair and objective procedure for slot allocation at EU airports. Moreover, transparency helps in assessing whether the slots coordinator acts in accordance with the requirements of carrying out its function in a neutral, non-discriminatory and transparent way, as set out in Article 4(2)(c) of the Slots Regulation.

Generally, access to the data pertaining to the slot allocation should be available for interested parties and ideally, all data regarding slot allocation and historic rights should be available on a central online database.

Grandfathering rights

CLECAT continues to support the **'use it or lose it rule'**, which requires 80% of the allocated slots to be used by an airline in order to keep their respective slots (grandfathering). However, CLECAT believes that a further increase or the total implementation of this rule would even further increase airport capacities, whilst allowing more airlines to enter the market, which would again foster competition, ensure maximum flexibility and reduce prices. CLECAT would therefore support a full opening of the slot-allocation. Additionally, a transparent and robust system of sanctions addressing the misuse of slot should be included in the Regulation.

However, CLECAT believes that in view of ensuring a market-oriented approach, Member States should be able to make distinctions between the relevant utilisation rate for slot-rights according to the market segment; i.e. it would be ideal if Member States would be allowed to set different utilisation rates for cargo and passenger flights.

Moreover, the way the Regulation is currently drafted allows carriers to circumvent the grandfathering rights to a certain extent. More specifically, according to Article 10(3) of the Regulation, airlines may return up to 20% of the slots they have been allocated prior to the specified dates, and subsequently use 80% of the remaining slots, whilst still receiving historic rights for the entirety of slots initially allocated. To ensure that the utilisation rate is respected, Article 10(3) of the Regulation should be amended so as to allow only those slots not having been returned before the specified dates to be eligible for historic rights.

Taking into account the effects of the COVID-19 pandemic which are still felt in the aviation industry, CLECAT would also suggest the introduction of a future-proof concept to address crisis-situations, which would require a temporary lowering of the slot-use rate. This could be done by enabling the European Commission to introduce such rules by delegated act when needed, provided that a pre-determined set of criteria are met to trigger such an emergency situation.

Meeting Market Demands

When capacity is scarce, passenger airlines attempt to secure as many slots as possible, to ensure that they can fulfil their flights for the coming season. However, this leaves only marginal capacity for dedicated cargo flights, which negatively impacts the industry. Cargo forms an integral part of the aviation business and should therefore have sufficient slots for take-off and landing. Therefore, CLECAT believes that market demands should be addressed as a priority by the regulatory framework.

Whilst significant cargo is transported in the belly of passenger flights, a combination of belly capacity and full-freighter capacity increases the attractiveness of airports. This is largely due to the fact that businesses can combine their operations at such an airport. For certain destinations, during specific parts of the year and in case of sudden decreases of passenger traffic (e.g. due to pandemics), there is a shortage of belly capacity. Thus, if this is taken into account, it would strengthen the competitiveness of the airport, the cargo community, as well as the region.

As air cargo is much more **demand-driven** than the supplier-driven passenger markets, it is imperative that **air cargo needs a separate part of the capacity** in order to be able to effectively respond to fast changing market situations. In particular, a dedicated number of slots for full freighter aircraft is needed at intercontinental hub airports, which connect Europe most efficiently to many regions around the globe. To ensure that the Regulation appropriately addresses the market demands, CLECAT suggests the introduction of a 'slot pool' for cargo, i.e. the allocation of a number of dedicated slots reserved for full freighters would thus be ideal. To ensure fairness, unused slots could be opened for re-allocation to all operators.

Considering the scarcity of capacity, which should under no circumstance be wasted, priority should be given to flights which contribute to the economy and society. In that regard, CLECAT believes that intercontinental cargo flights, which contribute significantly to both the economy and society, should be prioritised over short-haul city trips of less than 1.5 hours offered by low-cost carriers, which could

be replaced by other modes, e.g. rail transport. To address this, the above-mentioned cargo slot-pool would be an ideal solution.

New Entrant Rule

CLECAT Members have monitored that the introduction of the new entrant rule (Article 10(6)) appears to have a limited effect on competition at EU airports, as well as on the best use of scarce capacity. While it may have a positive effect on obtaining slots by third country air carriers, as suggested by the European Commission, the presence of competition created at EU airports against the incumbents is negligible.

Moreover, the number of slots that a new entrant can hold while retaining the status is limited, and thus services cannot be expanded further to create a meaningful competition to the incumbent. Thereby, the presence of new entrants as competitors to the incumbent usually does not create a meaningful impact on competition. Based on that, the threshold should be increased, e.g. to 10% as specified in the 2011 proposal, and higher priority should be given to New Entrants in the allocation process.

Additionally, CLECAT would support an extension of the scope to cover airline groups as, under the current system, a subsidiary may qualify as a new entrant while its parent company already has an established presence. Moreover, code-sharing should be expressly forbidden for operators benefitting from the New Entrant rule to counter abuse of the system.

CLECAT would also support the removal of the ‘airport system’, as airlines should not be prevented from establishing a presence at multiple airports in the same city. This is particularly true in the case of cargo transport, as an airline might have a dominant presence at the city’s main airport but might need to increase its operations at other airports for logistical reasons.

Local Guidelines

CLECAT supports the possibility for Slot Coordinators to take into account local guidelines proposed by the coordination committee and approved by the Member State or any other competent body responsible for the airport, in line with Article 8(5) of the EU Slots Regulation. As noted in Article 8(5), these guidelines may not affect the independent status of the coordinator.

CLECAT believes that the possibility to introduce local guidelines at airports has proven to **effectively address local circumstances and offer improved flexibility**, ultimately leading to better use of the slot capacity at congested airports.

A best practice example for such local rules can be found at Amsterdam Schiphol airport, where the introduction of the Local Rule has allowed to better take into account the role, as well as the needs of cargo flights.

Secondary Slot Trading

CLECAT particularly supports **market-based mechanisms** for the trading of slots between airlines. The EU Slots Regulation allows for Slot Trading between carriers under Article 8(a)(1)(c). In its 2008 Communication on the application of the EU Slots Regulation, the Commission noted that in many

cases the market value of a slot exceeds the value that an incumbent air carrier generates from retaining and using the slot. The lack of a transparent market for slots at congested EU airports leads to unawareness of the full opportunity costs for incumbents. Thereby, the number of slots made available is lower than what would logically follow from the market forces. The Commission concluded that the application of the EU Slots Regulation has not led to the most efficient use of slots.

The possibility of secondary slot trading, i.e. the exchange of slots for monetary and other consideration, takes place at a number of congested EU airports. This leads to a number of benefits, such as the creation of additional services. In its current state, the Regulation does not prohibit such exchanges. CLECAT appreciates the positive effects which secondary slot trading has had on the slot allocation at congested airports and therefore believes that this practice should continue in the future. Additionally, CLECAT would propose the explicit inclusion of secondary trading into the Regulation, thereby introducing a legal framework for it, e.g. in reference to their value according to the time of day and other relevant factors.

Consistency between Slots and Flights Plans

Generally, we believe that a slot should cover both the permission, as well as the obligation to use the airport infrastructure. However, in its current form, the Regulation has also led to different forms of interpretations of the definition of slots, thereby paving the way for non-use, as well as misuse of slots.

Whilst an air carrier's flight plan may be rejected if the landing or take-off is planned for a period that is not covered by an allocated slot (Article 14(1)), experience has shown that a verification of flight plans against airport slots rarely takes place in a systematic and consistent manner.

To ensure the efficient functioning of air transport, the verification of flight plans against airport slots should take place in a **systematic and consistent manner**. Moreover, the definition of 'slot' should be changed to expressly highlight the obligation on the airline to make effective use the slot granted.

Extension of Airport Infrastructure

CLECAT believes that one way to improve the shortage of capacity at EU airports lies in the extension of existing airport infrastructure, however, this should be based on market demand. The members of CLECAT observe that airport capacity is used to different extents at EU airports, with some being characterised by overcapacity, whilst at others there is a significant lack of capacity. This observation is also supported by an exploratory opinion of the European Economic and Social Committee (EESC) from 2014, entitled "Airport Capacity in the EU", which states that Europe suffers from a problem of misplaced capacity. CLECAT therefore believes that, to ensure adequate and effective investments, any extension of airport infrastructure should take place only at those airports where the market's demand outweighs the available capacity.

Whilst some airports have been trying to extend their physical capacity, these types of endeavours are often faced with opposition, as was the case for example with the planning of the third runway at London Heathrow Airport, as well as Madrid Airport.



CLECAT remains at the disposal of interested parties for any further information.

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