

ACI EUROPE reaction on the Impact Assessment of a possible Revision of Reg. 95/93 - Study carried out by Steer Davies Gleave

This study by Steer Davies Gleave provides an evaluation of the current operation of the Regulation, and an impact assessment of various options for revision to the Regulation. The analysis has focused on a sample of 15 airports, selected to include all of the large European hubs and the other most congested airports, as well as a representative sample of other large airports. The study has involved bilateral interviews with key stakeholders; an open public consultation; detailed analysis of data; and modeling of impacts.

ACI EUROPE is supportive of many recommendations the Consultant has suggested but it has to be kept in mind, that the wide range of the airport community needs to be considered, including regional airports. Please find below a detailed reaction of ACI EUROPE on the individual recommendations.

Recommendations:

The following recommendations according to the analysis of all stakeholders have been made in the Impact Assessment Study by Steer Davies Gleave.

Options to improve the operations of Coordinators:

In order to ensure operational and financial independence of the Coordinators the following recommendations have been made:

- require ***organisational as well as functional separation of the coordinators from interested parties such as airlines and airport management companies***
- require that funding of the coordinator be shared between airlines and coordinated airports, divided between airports according to the workload at each airport, and between airlines according to their share of operations at those airports; and
- give Member States the ultimate responsibility to ensure that the coordinator has sufficient resources to undertake its tasks

In order to improve transparency, all coordinators should publish online:

- all capacity parameters and local guidelines applying at each coordinated airport
- at the start of every season, a summary of requested and allocated slots and capacity, by day, for the peak week, at each coordinated airports
- at the end of every season, a summary of slot utilisation by airline; and
- an annual report on their activities.

ACI EUROPE fully supports these recommendations since it is in line with our initial response to the consultant's questionnaire for their impact assessment.

Transparency and independence of the coordinators is key to a fair and equal distribution of airport slots.

Options to ensure proper use of slots:

The consultant recommends that the Regulation should make clear that **slot reservation fees are not inconsistent** with the Regulation provided revenue from fees (including fees for slots that are not operated) offsets other airport charges, and therefore that the fees are revenue-neutral for airports, but it **should be up to individual States and airports** whether to introduce them.

ACI EUROPE fully supports the idea of a slot reservation fee. It should even be considered to address this issue in a more positive way and call it a reward system for the correct usage of slots. This would possibly generate a wider acceptance of such a scheme.

Although coordinators argued that penalties would be less effective than reservation fees, they do have some advantages:

- penalties can be more flexible and would not be imposed where there was a good reason for late handback, but could be imposed for deliberately holding back slots until just before the deadline;
- there is more stakeholder support for penalties: some airlines and airline associations have indicated support for penalties being available for deliberate late handback; and
- unlike slot reservation fees, there should be no risk of challenge on the basis of inconsistency with bilateral agreements.

The **Consultant recommends** that the Regulation should state that **penalties should be available for late handback of slots**. We also recommend that a number of other, relatively minor, changes should be made to the system of slot enforcement as defined in Article 14, to make this more effective.

ACI EUROPE fully supports these recommendation in principle, that the issue of late handback of slots needs to be addressed in a possible revision of Regulation 95/93. Whether this will be done through penalties or slot reservation fees does not make a huge difference. There is however a need to introduce some kind of system in order to avoid late handback of slots in order to be able to reallocate the capacity.

In addition, some Member States have not complied with the obligations in the existing Regulation to introduce penalties. The Consultant recommends, that the **Commission should use its powers to encourage these States to comply with the Regulation.**

ACI EUROPE fully supports this recommendation.

Secondary Trading:

Secondary trading has generated significant benefits at London Heathrow airport, in terms of increased slot mobility (turnover), aircraft size and flight length. At Gatwick, there have also been a large number of trades but the impacts have been much less.

The consultant **recommends that the Regulation should be amended to explicitly permit secondary trading at all EU airports, by permitting temporary or permanent transfers of slots between air carriers.**

The impacts at London Airports through secondary trading would be considerable higher than at other EU airports where demand for slots does not exceed supply to the same extent. The economic benefits from secondary trading should increase over time if the gap between demand and capacity increases and congestion worsens.

There could be a greater risk of negative impacts at other airports where the main incumbent carrier has a larger share of slots. In order to mitigate the risk, the **trades should be made transparent and a mechanism should be set up for carriers to advertise their willingness to purchase and divest particular slots** (these measures have already been taken in the UK but not in other Member States in which secondary trading may occur).

The consultant recommends that secondary trading should be permitted at all EU airports before withdrawal of grandfather rights is further considered.

ACI EUROPE fully supports to explicitly allow secondary trading. ACI defined a number of safeguards to allow fair competition and to prevent speculative behavior (also see ACI EUROPE response to the consultant's questionnaire). It is of central importance that the trading of slots has to be transparent. Likewise advertising the willingness to trade slots should be made publicly available, too.

Auctions of slots where new capacity is created:

Whilst an auction of existing slots would be likely to generate significant practical difficulties, these can be avoided if auctions **apply for new capacity only**.

An auction would only be beneficial under certain relatively unusual circumstances; an auction would have **most impact** if it was decided to **expand a congested** airport such as Heathrow or Orly, but there would be no point undertaking an auction where the expansion of capacity was so significant that demand would no longer exceed supply, as in this case the auction would have no impact. Therefore, the **decision as to whether to undertake an auction should be a matter for the Member State** concerned.

The appropriate **design of the auction** would also depend on the circumstances and therefore should also be **decided by the State** concerned. As a safeguard, the design of the auction should be subject to **approval by the Commission**.

The consultant recommends that the Regulation be amended to allow newly created slots to be allocated by auctions; where an auction was undertaken the new entrant rule would not apply.

ACI EUROPE welcomes the idea of auctioning, but only in the context of newly created capacity and to leave it to the MS should have the latitude to decide whether or not an auction should be allowed. However, the final acceptance depends on the practicality of such system and the proceeds of any such system should, at least partly, benefit the infrastructure development of the airport.

New Entrant Rule:

The impact of the **new entrant rule** would be **significantly reduced if secondary trading and auctions for new capacity were introduced**. However, it would continue to have some impact, for example when slots at a congested airport are allocated following the insolvency of a carrier. The Consultant recommends a **number of changes to the new entrant rule** to enable slots to be allocated to carriers which would be better placed to provide commercially viable competing services. The main changes that would achieve this are:

- allow an airline to be classified as a new entrant on an intra-Community route where it operates less than four daily rotations on the route (instead of two as now);
- allow an airline to be classified as a new entrant on a non-Community route where it operates less than two daily rotations on the route;
- remove the automatic classification as a new entrant for carriers that have less than 5 slots at an airport, and the priority given to carriers that meet this criteria as well as the other criteria; and
- replace the limitation on an air carrier being considered a new entrant if it has over 5% of the slots at the airport with a limit of 10% across the entire airline owning group (and possibly also any joint venture partners).

Since new entrant rules have proved to be effective at certain airports, but ineffective at others, ACI EUROPE proposes to give Member States the possibility to adapt the new entrants priority rule so as to make it less prescriptive or even replace it by locally developed priority rules, in consultation with the local players (airlines, airport, coordinator). Those local rules would need to be transparent, objective and non-discriminatory.

Local Guidelines:

The Consultant **does not recommend allowing greater flexibility for local guidelines**, because this increases the risk that Member States or regional governments try to interfere with the process of slot allocation to favor particular airlines or types of flights; all stakeholders claimed to support the principle of neutral, non-discriminatory slot allocation.

*ACI EUROPE **can not support this recommendation. We believe the flexibility for local rules should be increased, mainly to ensure greater connectivity of the regions and more efficient use of scarce capacity.***

Whilst **local guidelines** could not be an **effective tool to meeting regional accessibility objectives**, this is a significant issue at some airports, such as Heathrow, where the number of regional air services has reduced and is likely to continue to reduce. Two options could be pursued to address this:

- **Governments** could be permitted to **reserve capacity at airports for regional services**. This would be similar to the position before the 2004 amendment to the Regulation.
- **Regional authorities could be permitted to buy slots** on the secondary market for specific routes, enabling them to achieve flights from congested hubs to regional airports whilst covering the congestion costs of doing so.

This would be the only way of meeting the objective of ensuring regional accessibility is maintained, and therefore it is essentially a political judgment as to whether this is appropriate.

Slot Utilisation:

Although slot **utilisation is high** (over 95%) at the **most congested airports** such as London Heathrow and Paris Orly, it is **significantly lower at other airports** at which demand exceeds capacity throughout the day. A carrier should lose a series of slots if a particular flight on a particular day of the week falls below 80% utilisation, even if overall the utilisation achieved by the carrier is much higher. The Consultant has **identified that some coordinators do not follow this approach**, and we recommend that the **Commission should monitor this** and where appropriate **use its powers to encourage them to do so**.

In order to ensure that capacity is fully utilised at the most congested airports, the Consultant recommends that the utilisation threshold should be increased to 85%.

Whilst this rule must continue to apply, it does allow air carriers a large margin for not using slots (20% of the capacity allocated to them) without being subject to sanctions or penalties. The slot usage rate should be increased above the existing 80% figure, in order to encourage air carriers to optimise the use of slots and allow the return to the pool of those slots that will not be used effectively.

Any **increase in the utilisation** threshold would **need to be accompanied** by:

- an increase in the minimum length of a slot series, to ensure that short series were not withdrawn as a result of a cancellation of one flight; and
- clarification of the circumstances under which coordinators may allow 'fill in' of gaps in series of slots, for example where a slot is returned before the slot return deadline due to a public holiday.

Even if it is decided not to increase the utilisation threshold, the circumstances under which 'fill in' of gaps in series should be clarified, because this is unclear in the current Regulation and is one of the main areas of differences of opinion between coordinators.

The Consultant recommends that the minimum series length should be extended to 15 slots for the summer season and 10 slots for the winter season, but as it can be appropriate to have shorter series lengths at some airports, the Regulation should specify that airport coordination committees may adopt a lower minimum. ***The Consultants analysis indicates that extending the minimum length of a series of slots would have more significant benefits than increasing the slot utilisation threshold.***

ACI EUROPE is willing to explore with the other stakeholders and the institutional bodies options that would balance an increase in the minimum usage rate over 80% with the needs of airlines for flexibility in flight planning. The proposed recommendation by the Consultant to increase the length of the minimum series of slots could be one of the options.