

Guideline for the allocation of scarce slots at coordinated German Airports

1. General objectives

In Germany airport coordination is implemented in accordance with the Regulation (EEC) 95/93 of the Council of the 18th January 1993 on common regulations for the allocation of slots at airports within the Community (Official Gazette No. L 14 of 22.01.1993 p. 1), last amended by Regulation (EC) No. 545/2009 of the 18th June 2009 (Official Gazette EU No. L 167 of 29.06.2009, p. 24) with effect from the 30th June 2009, as well as the Regulation on the Implementation of Airport Co-ordination (ACIR of 13th July 1994, last amended by Article 16 of the law of the 29th July 2009 (Federal Gazette I p. 2424). This Guideline is based on the aforementioned statutory regulations.

The Guideline serves the purpose of guaranteeing a transparent and discrimination-free procedure for decisions on the allocation of scarce slots. At the same time, this is aiming for

the promotion of the best possible utilisation of capacity

for the benefit of the users of the transport services (passenger and freight/air-mail transport)

by making available regular, reliable and diverse air connections

by promoting competition under fair conditions

and the creation of sufficient transparency and planning certainty for the applicant airlines.

2. Procedural regulations for the allocation of slots

2.1. The basis for the procedural regulations are the Regulation (EEC) No. 95/93 and the ACIR. In addition, the Worldwide Scheduling Guidelines¹ (section 6 WSG) valid at the time being and the Standard Schedules Information Manual (chapter 6 SSIM) are to be taken into consideration – in particular with reference to the type and manner of the application and the transmission of data, the codes to be used and the deadlines to be met – insofar as the same do not contradict the regulations in force.

2.2. The airlines are entitled to utilise the slots allocated to them for the duration of one scheduling period. This entitlement to use can be restricted, withdrawn or revoked.

2.3. If there are more applications for the allocation of slots than there are slots available at the times wanted, a discrimination-free and transparent allocation procedure (initial co-ordination) is to be carried out before the allocation.

¹ Worldwide Scheduling Guidelines, 21st Edition, January 2011

2.4. The prerequisite for participation in the allocation procedure (initial co-ordination, Article 8 Paragraph 1 and 2 Regulation (EEC) No. 95/93) within the context of planning shall be in particular

- the proven status as an airline (Article 2 subsection f, sub-item i Regulation (EEC) No. 95/93)
- the truthful furnishing of all the information to be given to the co-ordinator (Article 7 Paragraph 1, clause 3, Paragraph 2, Article 8 Paragraph 5 Regulation No. 95/93 in conjunction with SSIM, Article 10 Paragraph 8 clause 5 Regulation (EEC) No. 95/93) and any relevant information requested (Article 7 Paragraph 1 clause 1 Regulation (EEC) No. 95/93)
- the exclusion of justified doubts about the information furnished which would justify the withdrawal of slots already allocated (Article 7 Paragraph 2 Regulation (EEC) No. 95/93; §§ 48, 49 Administrative Procedure Act (VwVfG))

2.5. The applicant airlines shall place all the information at the co-ordinator's disposal in good time which he requires for a careful assessment of the facts and circumstances regulated in the Regulation (EEC) No. 95/93 and the appraisal aspects listed in this Guideline. Relevant facts for weighing-up, which are not notified to the co-ordinator in good time, can not be taken into consideration in the applicant's favour in the allocation. But, in the case of the existence of the prerequisites under Article 7 Paragraph 2, Article 14 Paragraph 2 Regulation (EEC) No. 95/93, §§ 48, 49 VwVfG, they can lead to the withdrawal of the slots before or during the current scheduling period.

2.6. Pursuant to Article 4 Paragraph 10 Regulation (EEC) No. 95/93, the co-ordinator shall place the items of information envisaged in section 6.4.2.1. WSG at the airlines' disposal in good time before the beginning of the initial co-ordination, those in section 6.9.1. WSG after conclusion of the initial co-ordination, as well as those in section 6.11.2. WSG after conclusion of the scheduling conference.

3. Deciding on the application

3.1. The Airport Co-ordinator shall make the decision in the allocation of the slots applied for in consideration of the criteria quoted under number 4. Notification of the decision to the applicants shall take place applying the WSG (section 6) and SSIM regulations (chapter 6).

3.2. Each applicant can request a review of the decision taken by the Co-ordinator on the allocation of slots in accordance with the provisions of German administrative procedure law. For this purpose, an objection can be lodged within four weeks after receipt of the decision.

3.3. In addition, the right of complaint to the airport's coordinating committee is available pursuant to Article 11 Regulation (EEC) No. 95/93

4. Criteria for the decision

Those applicants shall be taken into consideration pursuant to Regulation (EEC) No. 95/93 as a matter of priority for which the attribute of

- commercial air services (Article 8 Paragraph 3 clause 1 Regulation (EEC) No. 95/93)
- scheduled as well as programmed non-scheduled air services (Article 8 Paragraph 3 clause 1 Regulation (EEC) No. 95/93)
- year round air traffic within a service category² (Article 8 paragraph 3 clause 2 Regulation (EEC) No. 95/93)

is given and/or the criteria for the application

- of Historic Slots (Article 8 Paragraph 2, Article 10 Regulation (EEC) No. 95/93)
- of re-timed Historic Slots (Article 8 Paragraph 4 Regulation (EEC) No. 95/93)
- of new entrant's rights (Article 10 Paragraph 6 Regulation (EEC) No. 95/93)

are met.

Taking historical rights into consideration

4.1. Pursuant to Article 8 Paragraph 2 Regulation (EEC) No. 95/93, first of all airlines with historic rights shall again be allocated slots for the same times from the previous equivalent scheduling period.

4.2. Then, pursuant to Article 8 Paragraph 4a Regulation (EEC) No. 95/93, all airlines that want to utilise their historic rights for the rescheduling of these slots, shall first be allocated slots applied for from the previous capacity, provided that these are available. The prerequisite for this shall be that

- the airline can thus better itself in comparison with the original application, or
- can cite operating reasons. Operating reasons are either in connection with the change of an aircraft employed or of the route served.

Taking new entrant's rights into consideration

4.3. After the previous capacities from the preceding equivalent scheduling period have been allocated again on the basis of historic rights or rights to rescheduling, pursuant to Article 10 Paragraph 1 Regulation (EEC) No. 95/93, the remaining capacities as well as the new capacities that have come into being for the forthcoming scheduling period shall form the slot pool.

² Scheduled or programmed non-scheduled air services

4.4. First of all, pursuant to Article 10 Paragraph 6 clause 3 Regulation (EEC) No. 95/93, 50% of the slots from the slot pool shall be offered to the new entrants. For each planning interval of one hour, the allocation shall be made first to the new entrants, then to the remaining applicants.

4.5. An applicant's status as new entrant shall be determined in accordance with Article 2 subsection b Regulation (EEC) No. 95/93³. In order to determine the status of new entrant, the individual, legally independent airline shall be taken into account; this shall also apply for subordinate companies within a group.

4.6. The applicant can reject the new entrant status. In this case, its application will be processed without taking account of a new entrant status. A new entrant shall lose the status as new entrant pursuant to Article 10 Paragraph 7 Regulation (EEC) No. 95/93 if slots of up to one hour before or after the time applied for are offered to it and it rejects this offer.

4.7. The applicant shall be obliged to inform the airport co-ordinator if he has the intention of using the new entrant slot for the implementation of a co-operation or a joint operation⁴ with one or more other airlines (Article 10 Paragraph 6 clause 3 Regulation (EEC) No. 95/93). In this case, the airport co-ordinator will only allocate the slot applied for if the applicant airline operates the service under its own flight number (Operating Flight Designator) in its own aviation service and the passenger, freight or air mail transport capacity is also marketed in its own name.

4.8. The review of the competition law prerequisites for a joint operation going beyond this – in particular whether a co-operation agreement falls under the exceptional facts of Article 81 Paragraph 3 EC, shall be incumbent on the airlines involved on their own responsibility. In particular, the points to be taken into account are⁵

- the gain in efficiency to be achieved by the applicant airline as a new entrant
- the appropriate participation of consumers in this gain
- the need for the agreement to achieve these effects
- and the fact that there is no elimination of the competition with this co-operation.

4.9. Among the new entrants pursuant to Article 10 Paragraph 6 Regulation (EEC) No. 95/93, those passenger services shall have priority that meet the cumulative conditions of the criteria for new entrants pursuant to Article 2b Regulation (EEC) No. 95/93, both at the airport concerned (subsection i) all in all and either for

- a certain route between two community airports subsection ii)

or

- a certain route to a regional airport (subsection iii).

³ Cf. Appendix 1

⁴ Forms of co-operation: e.g. Blocked Space, Wet and Dry Lease, Sub Charter, Franchising, Joint Venture, Code Sharing, Free Sale, Virtual Flight Agreement,

⁵ Cf. 'The European Competition Authorities' perspective Code-sharing agreements in scheduled passenger air transport" p. 18 f

Distribution of the remaining capacities from the slot pool

4.10. The remaining capacities from the slot pool shall then be placed at the disposal of all other applicant airlines (Article 10 Paragraph 6 Regulation (EEC) No. 95/93). Insofar as the new entrants' applications amount to less than 50% of the capacity, this remaining capacity shall also be at the other applicants' disposal.

Allocation criteria in the case of applicants of equal status

4.11. During the allocation procedure, a comparison shall be made of the requested traffic from applicants of equal status with regard to the best possible utilisation of the scarce airport capacity. In this connection, the following aspects shall be taken into consideration:

- best possible utilisation of scarce resources by daily services in comparison to non daily services, type and availability of the aircraft, additional routes offered by the new inclusion of a region or country, optimal mixture of long-haul, medium-haul and short-haul routes to preserve or improve the hub function
- service quality of the planned service (direct or connecting services, membership in an airline alliance)
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- user-friendliness (creation of possibilities of choice among several airlines in certain individual markets, accessibility of transport services for consumers, optimisation of a route in heavy demand e.g. as a connection to a region or capital, balanced range of charter and scheduled services for holiday and business travellers, while taking account of the requirements of freight transport
- paying attention to fair competition by opening opportunities for new interested parties to enter the market for a certain service (new regional connection, heavy demand etc.), taking already existing services, their load factor and operation into consideration, fair implementation of restrictions through new official or legal requirements
- taking environmental concerns into account (arrival and departure times, size of the aircraft employed, noise and pollutant emissions)
- safeguarding public transport interests (significance of the service for the national and European location, for the competitive situation in individual markets, for the consolidation of the airlines operating in the market).

4.12. In a second step, the quality of the applicants' offer and their previous behaviour are included in the overall assessment. These include:

- Reliability of the air service offered (longer-term flying operation and technical capability; route-related operating capability taking account of e.g. turn-around

- Sustainability of the interest in the flights offered (waiting list status) and
- Behaviour in conformity with regulations in the sense of Regulation (EEC) No. 95/93 and the ACIR (in particular the return of slots in good time, operating flights in accordance with the schedule, no wrongful applications, correct communication with the co-ordinator).

4.13. There is no order of precedence for the individual decision criteria. Depending on the slot supply and demand, and current number of transport connections at this moment in time, as well as of the airlines operating them, the criteria shall be weighed up in an individual case.

4.14. In addition to that, further criteria can be taken into consideration, provided this is notified to the applicants in good time and before the final decision on their applications is made.

5. Lapse of the slot entitlement, reallocation, other allocation

5.1. If slots already allocated are withdrawn by the co-ordinator on the basis of Article 14 Paragraph 2 to 6 Regulation (EEC) No. 95/93 or §§ 48 ff. VwVfG or returned by the airlines, they are placed in the slot pool again and allotted on the basis of the waiting list status in the allocation procedure. Incidentally, the co-ordination takes place in accordance with the chronological sequence of the incoming requests.

5.2. Applicants, who do not meet any of the criteria for preference for participation in the initial coordination listed under subsection 2.4 and for under subsection 4, will be served with lower priority from the remaining slots made available again in the slot pool. This shall not apply for capacities which are expressly allocated to this transport segment through dedicated parameters.

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