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Advocate General's Opinion in Case C-857/24 | daa and Others

Advocate General Campos Sánchez-Bordona: An annual passenger limit imposed by a planning authority may be taken into account when allocating slots at an airport with capacity problems

Under the regulation on the allocation of slots at Community airports, ¹ when it is found that an airport may have capacity problems, it must be designated as a 'coordinated airport'. At those airports, air carriers must have a slot allocated by a coordinator in order to land or take off. ² Dublin Airport (Ireland) has been a coordinated airport since 2007.

The coordination parameters for slot allocation must be determined twice yearly, taking account of all relevant technical, operational and environmental constraints, and any changes to those constraints.

In 2007 and 2008, the Irish Planning Board imposed an annual limit of 32 million passengers as a condition of authorising the expansion of Terminals 1 and 2 at the airport. ³

In 2024, the airport managing body forecast that the limit in question could be reached for the first time, or could even be exceeded. When drawing up the coordination parameters that would apply at the airport during the winter of 2024 and the summer of 2025, the Irish Aviation Authority (IAA) adopted various measures to ensure that passenger numbers would not go beyond that limit. ⁴

The airport managing body and a number of air carriers lodged appeals before the High Court (Ireland) against the decisions on the measures in respect of winter 2024 and summer 2025. The air carriers concerned submit, first, that the limit of 32 million passengers a year is not a technical, operational or environmental constraint that must be taken into account in drawing up the coordination parameters. Second, they argue that the allocation of 'historical slots' ⁵ cannot be compromised, since it is a grandfather right enjoyed by the air carriers. ⁶

The Irish court has referred its uncertainties on those two points to the Court of Justice. It also wishes to know whether the airport managing body is empowered to close the airport temporarily in order to comply with that annual limit.

In his Opinion delivered today, Advocate General Manuel Campos Sánchez-Bordona states, in the first place, that the technical, operational or environmental **factors affecting airport capacity** are not only physical or material factors, as the air carriers suggest, but **also the legal constraints imposed by the rules which, directly or indirectly, affect the use of the airport**.

In his view, **compliance with the limit of 32 million passengers a year** can be classified as one of the **operating constraints**. **The fact that the constraint in question comes from a State planning authority does not mean that it ceases to be an operational constraint**. What is decisive is that it restricts airport 'operational capacity'. **It is therefore a relevant factor for the objective analysis of the possibilities of accommodating the air traffic**.

In the second place, the Advocate General considers that **the historical slots are not property rights, but authorisation to use airport infrastructure**, and that they cannot be granted in disregard of the airport's capacity as defined in the coordination parameters. **Nor does the elimination or reduction of those slots in order to comply with the capacity of the airport compromise the freedom to conduct a business**.

Last, the Advocate General is of the view that the question relating to the power of the airport managing body to order closure of the airport in order to comply with the limit of 32 million passengers a year is inadmissible. If it should be found to be admissible, the Advocate General submits that **closure of the airport** in order to comply with a requirement known well in advance would be an **excessively drastic** and detrimental **measure** not provided for in the regulation. The regulation contains mechanisms to avoid such a measure.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ [Council Regulation \(EEC\) No 95/93](#) of 18 January 1993 on common rules for the allocation of slots at Community airports, as amended by [Regulation \(EU\) 2022/2038](#) of the European Parliament and of the Council of 19 October 2022 as regards temporary relief from the slot utilisation rules at Union airports due to an epidemiological situation or military aggression.

² This also applies to any other aircraft operator, the only exceptions being State flights, emergency landings and humanitarian flights.

³ The imposition of that limit was due, first, to the aim of the balanced development of the airport, with Terminals 1 and 2 in the eastern part and a third terminal, whose construction was proposed in 2006, in the western part. Since at that time the overall capacity of the airport was considered to be in the region of 45 million passengers a year, it was decided to limit the combined capacity of Terminals 1 and 2. Second, the limit was imposed to respond to transport capacity constraints in the eastern part of the airport.

⁴ Although the two terminals can physically accommodate more than 32 million passengers a year without additional infrastructure works, the airport managing body can be penalised if that limit is breached.

⁵ An air carrier may continue to use in a subsequent season the slot allocated to it in a previous season if it has used that slot correctly.

⁶ On 4 November 2024, the High Court provisionally suspended implementation of the summer 2025 decision. As a result, the airport coordinator was able to allocate to air carriers all their historical slots for the summer 2025 season.