



**Decision on Updating the Slot Sanctions
Scheme Implementation Guidelines**

Commission Paper 12/2017

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Commission for Aviation Regulation

3rd Floor, Alexandra House

Earlsfort Terrace

Dublin 2 D02 W773

Ireland

Tel: +353 1 6611700

Fax: +353 1 6611269

E-mail: info@aviationreg.ie

1. Executive Summary

- 1.1 This paper sets out the Commission's decision in relation to proposed amendments to the *Guidelines for the Administration of Sanctions Against Slot Misuse in Ireland*.¹ This follows on from the consultation document published in June 2017.²
- 1.2 We received 11 responses to this consultation, which are published alongside this document. Responses were received from ACL, Aer Lingus, CityJet, Dublin Airport, the Irish Aviation Authority (IAA), International Airlines Group (IAG), the International Air Transport Association (IATA), Lufthansa, Ryanair, Stobart Air and WestJet.
- 1.3 The sanction scheme is governed by Statutory Instrument (SI) No. 460 of 2013 ("the 2013 SI").³ The implementation guidelines detail how the provisions of the SI will be interpreted by the Commission and the coordinator. We proposed four substantive amendments to the current guidelines, namely:
- The imposition of a fine for each instance of a movement at a time significantly different from the allocated slot, once a body of evidence is built up which demonstrates that the behaviour is Repeated and Intentional as required by the 2013 Statutory Instrument.
 - The removal of the 6 month element from the definition of 'Repeatedly'.
 - Provision for the publication of details related to Uncontested Sanctions by the Commission and/or the coordinator.
 - A change in the definition of 'Intentionality', such that it will be easier for the coordinator to demonstrate.
- 1.4 Respondents were also asked for any other suggested amendments to the guidelines.

The Decision

- 1.5 With regard to the four proposals, we have decided the following:
- A per incident fine will be applied for movements at a time significantly different from the allocated slot, where previously a single fine would have been applied.
 - The time limitation in the definition of 'Repeatedly' is amended, from 6 to 12 months.
 - Details relating to Uncontested Sanctions will be published.
 - 'Intentionality' is redefined as proposed. The definition is amended to provide further clarity, particularly with regard to on-the-day operational delays.
- 1.6 Based on responses received, we have expanded section 6.1 of the guidelines, which sets out aggravating or mitigating factors to be taken into account when deciding the magnitude of a fine.
- 1.7 The updated guidelines are annexed to this document.

¹ Dublin Airport is currently the only airport in Ireland which is slot coordinated and therefore the only airport where slot sanctions apply.

² <https://www.aviationreg.ie/fileupload/Slots/Consultation%20sanction%20scheme%20guidelines%20and%20annex.pdf>

³ https://www.aviationreg.ie/fileupload/en_si_2013_0460.pdf

2. Submissions Received and Rationale for the Decision

- 2.1 In the case of each proposed amendment, this section sets out the changes proposed in the consultation, together with a summary of submissions received and the rationale for our decision.

Fines to apply on a per incident basis

- 2.2 This proposal will be implemented as set out in the consultation document. A warning is issued in the first instance. An operator can then be fined for each subsequent incident in which it operated at a time significantly different from the allocated slot. Previously only a single fine would have been applied at any given time.

Submissions received

- 2.3 ACL supports this proposal, as it does not believe that the current approach is sufficiently dissuasive in the case of repeated or consistent off slot operations. It notes that there is little incentive for an operator to change its behaviour in such a situation, if the fine to be levied is fixed regardless of the number of misuses identified or continued off slot operations. ACL further notes that the number of queries it has raised in relation to a series of flights has increased in recent seasons. In only one case has a fine been imposed for a series of off-slot flights since the establishment of the scheme; in that situation, the operator in question continued to operate off-slot subsequently.
- 2.4 Aer Lingus suggests that the per incident approach should apply only where misuse continues following the imposition of an initial fine, to ‘avoid significant penalties being imposed before an infringement has been established’.
- 2.5 CityJet states that a problem with an inbound slot will affect remaining departures and arrivals that day, and this should not be seen as a repeated offence.
- 2.6 Dublin Airport expresses concern that it would lead to excessive fines, stating that this approach is not common practice in other EU states with the exception of the UK. It suggests that if this proposal is to be implemented, there should be an annualised cap to avoid excessive fines. The response also questions whether the SI allows for per incident fines.
- 2.7 The IAA is supportive of this change.
- 2.8 Stobart Air states that there is ambiguity in how a body of evidence is built up to demonstrate repetition and intentionality, and that this needs to be addressed before this change is effected.
- 2.9 WestJet believes that a measured approach to fines should be implemented to change the behaviour of carriers which intentionally misuse slots. It further states that a ‘bad jet-stream’ week previously could have led to a single fine whereas now it might lead to 7 fines.

Rationale for Decision

- 2.10 The approach taken to date to sanctioning operators for a series of off-slot operations is not sufficiently dissuasive, as is required under Article 14(5) of the Slot Regulation.⁴ Currently,

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1993R0095:20090630:EN:PDF>
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where an abuse is repeated in a relatively short time period it is met with a single sanction rather than multiple sanctions. This results in a €3,000 fine regardless of the number of off-slot operations. Therefore, there is little incentive to change behaviour if an operator believes that it will be fined €3000 regardless.

- 2.11 As Dublin Airport correctly states, qualifying misuse under the 2013 SI requires more than one incident for a fine to be imposed, and this has not changed in the revised guidelines. The purpose of this revised approach is to bring the treatment of a specific subset of slot misuse in line with the approach taken to other types of misuse, and to ensure that a carrier which operates a series of off-slot movements can be met with a proportionate and dissuasive sanction. This is clarified in Section 6 of the guidelines.
- 2.12 Sanctions should be proportionate. It should be noted that operators are not fined in the first instance where an infringement has been established. The coordinator will seek to work with the operator in question to improve performance, and may issue a warning. Consequently, a per-incident fine will only be issued in the case of continued off-slot operations, following on from a first infringement. This is a proportionate increase in the severity of fines which will be imposed for this specific type of misuse. Together with the coordinator, we will ensure that fines are not disproportionately high. The factors to be considered when determining the appropriate level of a fine are discussed further in sections 2.52 to 2.54.
- 2.13 A fixed annualised cap on the total fine which can be imposed is not desirable nor appropriate. Operators will be made aware that repeated off-slot operations can lead to a per-incident fine, and will be given an opportunity to change their behaviour in advance of a fine being imposed. In addition, and similar to the current situation, if an operator believes that it has reached the cap, there would be no further financial incentive to change behaviour.
- 2.14 The 2013 SI requires that slot misuse be both Repeated and Intentional to fall within the scope of the Sanctions Scheme. The definition of these terms is addressed further in paragraphs 2.15 to 2.30 and 2.40 to 2.51, respectively.

The removal of the 6 month element from the definition of 'Repeatedly'

- 2.15 Rather than redefining this without any time limitation, we will extend the time period from 6 months to 12 months.

Submissions received

- 2.16 ACL supports an amendment to the definition, as it believes that the current time limitation impacts the effectiveness of the scheme with regard to GA/BA operators. However, it believes that the time limitation should be extended to 12 months, if possible for GA/BA operators only.
- 2.17 Aer Lingus states that this proposal would expose regular operators to fines arising from isolated instances of misuse over an extended period of time, and consequently does not support it. It suggests separate defined periods for frequent and infrequent operators.
- 2.18 CityJet does not support the proposal, noting that circumstances may change across different seasons, and that it would be unfair on legacy carriers who do not operate seasonally.
- 2.19 Dublin Airport believes that the proposed amendment is disproportionate, suggesting instead that the time period is revised from 6 to 12 months.

- 2.20 The IAA support this proposal.
- 2.21 IAG expresses concern that this change would allow for fines to be issued based on single instances of misuse occurring years apart. It suggests that the time limitation be extended for GA/BA operators, while remaining unchanged for regular scheduled operators.
- 2.22 IATA does not support this proposal. It states that an investigation into alleged slot misuse should not extend beyond the current season or series of slots, as the quality of information available will deteriorate over time. It notes that planning and operational factors will change over extended time periods.
- 2.23 Lufthansa does not support the proposal.
- 2.24 Ryanair states that slot usage should be assessed on a seasonal basis only, which is standard at other European airports.
- 2.25 Stobart Air believes that the 6 month element should remain, as airline scheduling is independent of the previous adjacent slot season. It believes that the Irish scheme should align with that of the UK.

Rationale for decision

- 2.26 The current definition of Repeatedly is time based rather than seasonal.⁵ Two instances of Intentional misuse occurring within 6 months, but in different slot seasons, is a qualifying infringement and is liable to sanction.
- 2.27 As noted by ACL, the infrequent nature of GA/BA operations means that in many cases, there is little incentive for slot adherence if the operator is unlikely to operate at Dublin Airport in the subsequent six months. Thus, while the level of slot misuse by these operators is relatively high, only a single fine has been issued to GA/BA operators since the scheme was introduced in 2013. Based on the pattern of misuse over the last number of years, a 12 month time period would have significantly increased the level of sanctionable misuse by GA/BA operators, particularly with regard to operations without a slot.
- 2.28 Several respondents stated that the removal of any defined time period would be unfair on regular users. On review, we have extended the time period from 6 to 12 months instead of removing the time limit. We will keep this under review. A number of respondents suggest that Repeatedly be defined differently for GA/BA or infrequent operators, and regular operators. Article 4 (2) of the Slot Regulation requires us to 'ensure that the coordinator acts in a neutral, transparent, and non-discriminatory way'. Different definitions of Repeatedly for GA/BA operators and other operators could breach this requirement.
- 2.29 Amending the time period from 6 to 12 months should bring slot misuse by GA/BA operators within the scope of the scheme.
- 2.30 We do not envisage that this change will lead to investigations or information requests to carriers months after an alleged misuse is identified. We understand that planning and operational factors will tend to be more variable over a longer period of time. We agree with IATA that the quality of information available may deteriorate over time, however, the timeline for the coordinator to investigate an apparent misuse will remain unchanged.

⁵ <https://www.acl-uk.org/wp-content/uploads/2016/09/Enforcement-Code-V6-Updated-Jun-15.pdf>
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Following the conclusion of that investigation, the incident will either be deemed an Intentional misuse or not. Where Intentionality is satisfied, only the outcome of the investigation will be relevant, should another Intentional misuse occur within 12 months.

Publication of details relating to fines

- 2.31 This will be implemented as proposed in the consultation document. As part of our annual report, a summary of sanctions levied and slot monitoring activities will be published.

Submissions received

- 2.32 Respondents who addressed this proposal were generally supportive, citing increased deterrence and improved transparency.
- 2.33 Aer Lingus states that publication should not be discretionary, occurring in every instance where an Uncontested Sanction is imposed.
- 2.34 Dublin Airport suggests that an annual report should be published which summarises sanctions applied, together with details on slot monitoring carried out by the coordinator.
- 2.35 CityJet is not supportive of this proposal, citing potential damage to the commercial image of an operator arising from misinterpretation by external parties. Furthermore, it does not believe that publication would provide an effective deterrent.
- 2.36 Ryanair states that the current approach provides sufficient deterrence, and the publication of fine details is therefore unnecessary.

Rationale for decision

- 2.37 The publication of Uncontested Sanction details is desirable as it provides an additional reputational slot adherence incentive for operators. It will provide further transparency to the regime, allowing stakeholders to satisfy themselves that the scheme is being applied fairly and consistently and in accordance with these guidelines.
- 2.38 We confirm that publication will not be discretionary, but will occur in each instance where an Uncontested Sanction is applied.
- 2.39 The Commission's annual report will include a summary of sanctions levied and slot monitoring activities. Details of interactions between the coordinator and operators which did not lead to a fine being issued will only be shared or published anonymously, as is the case currently.

Definition of 'Intentional'

- 2.40 This is redefined as proposed. However, we clarify that the definition continues to exclude on the day operational delays which are not within the reasonable control of the air carrier. We have also added a definition of 'outside the reasonable control of the carrier'.

Submissions received

- 2.41 ACL supports the proposed amendment, suggesting also that the Commission clarify that the definition excludes on the day operational delays.

- 2.42 Aer Lingus states that, as is the case in the UK guidelines, a carrier should not be deemed to have acted intentionally where circumstances were beyond its reasonable control.
- 2.43 CityJet welcomes a redefinition, also stating that similar actions may have different causes and thus not be repeated and intentional.
- 2.44 Dublin Airport supports the proposal, as it will give the coordinator wider scope to investigate slot misuse.
- 2.45 The IAA supports the proposed redefinition.
- 2.46 IAG supports the proposal, but also suggests that the guidelines should state that where events are outside the reasonable control of the air carrier, this is not considered intentional misuse.
- 2.47 Stobart Air believes that the current wording is sufficient and thus the proposed changes are not necessary.
- 2.48 WestJet notes that there is no mention of factors outside the control of the carrier, nor a defined tolerance for off-slot movements.

Rationale for decision

- 2.49 The revision provides a clearer definition of Intentionality which is in line with the UK definition, granting a wider scope to the coordinator in investigating potential instances of misuse. With regard to the specific examples of Intentional misuse in the previous guidelines, the language is clarified to show that this is not an exhaustive list, but rather examples.
- 2.50 In the consultation paper, the defence relating to on-the-day operational delays was inadvertently removed. It was never our intention that on the day operational delays outside the reasonable control of the carrier would come within the scope of the Sanctions Scheme, and therefore this has been reinstated within the definition of Intentionality. In response to those who have asked for clarity regarding this definition, we have also added a detailed definition of 'outside the reasonable control of the air carrier'. This is not a change in the current approach, but rather provides further detail on the current definition and interpretation of Intentionality as requested by a number of respondents.
- 2.51 As set out in Section 3.7 (a), any movement which occurs at a time which constitutes a different slot to that which has been allocated is considered an off-slot movement.

Other suggested amendments - factors to be considered when setting the level of a sanction

Submission received

- 2.52 Aer Lingus and IAG suggest that elements of Section 6.2 of the UK guidelines, which sets out factors to be considered when setting the level of a fine, should be incorporated into the Irish guidelines.

Decision and Rationale

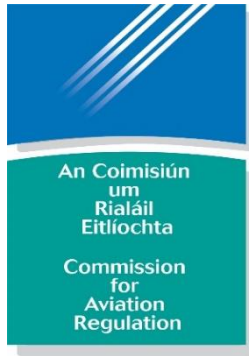
- 2.53 The Irish guidelines set out a number of broad principles, derived from the 2013 SI, to be relied upon when setting the magnitude of a financial sanction. The sanction is required to be proportionate to the contravention and sufficiently dissuasive to ensure future compliance.

The seriousness and frequency of the contravention and the turnover of the air carrier concerned are also taken into account. While there is some overlap, there are a number of factors in the UK guidelines which do not clearly fall within the Irish principles. We agree that the explicit inclusion of some of these factors in the Irish guidelines, in addition to the broader principles as stated in the 2013 SI, will add further clarity and transparency to the Irish Sanctions Scheme. The key principles of proportionality and dissuasiveness remain in place.

2.54 The following elements are therefore included in the Irish guidelines as mitigating/aggravating factors:

- whether the misuse is blatant.
- the extent to which the coordination parameters were broken, including over a particular scheduling period in respect of a series of slots.
- the extent to which airport or air traffic operations and/or other air carriers or passengers were or were likely to have been prejudiced by the misuse taking into account all technical, operational and environmental constraints.
- previous and current slot performance; other behaviour and misuse by the same air carrier will be taken into account, i.e. whether this is this a first case of misuse or a “second offence”.
- whether sanctions have been imposed on the air carrier for previous breaches.
- the carrier’s conduct following the misuse or earlier sanction for similar off slot operations, including action taken to correct the misuse and degree of cooperation of the carrier during the investigation.
- the possible benefits to the carrier from the misuse.
- the size of aircraft used and the number of passengers generally carried on it.

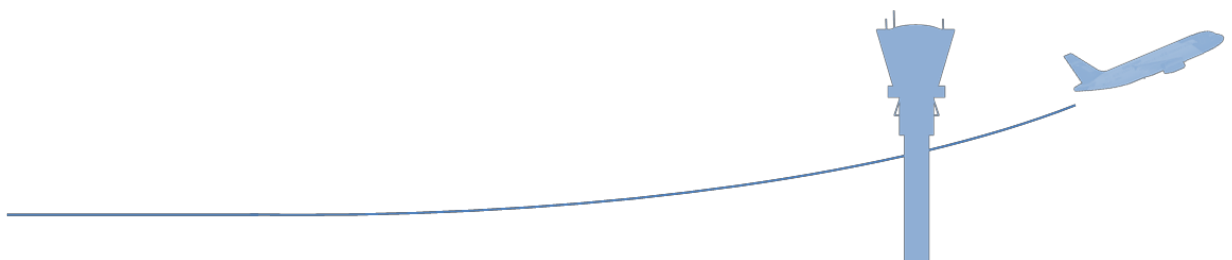
Appendix



**GUIDELINES FOR THE ADMINISTRATION OF
SANCTIONS AGAINST SLOT MISUSE IN IRELAND**

**October
2017**

Version 2



1. BACKGROUND

- 1.1 Article 14.5 of Council Regulation (EEC) No 95/93, as amended by Regulation (EC) No 793/2004 (the “**Council Regulation**”) requires Member States to ensure that effective, proportionate and dissuasive sanctions or equivalent measures are available to deal with repeated and intentional slot misuse.
- 1.2 The European Communities (Airport Slots) Regulations 2013, Statutory Instrument No 460 of 2013, which took effect on 6 December 2013 (the “**Irish Regulation**”), implements Article 14.5 of the Council Regulation, and is applicable at coordinated airports in the Republic of Ireland. Dublin Airport is currently the only Irish airport designated as coordinated under the Council Regulation.
- 1.3 Airport Coordination Limited (“**ACL**”) is the coordinator of Dublin Airport, appointed by the Commission for Aviation Regulation (the “**Commission**”) under the Council Regulation.
- 1.4 These guidelines set out how the Irish Regulations will be applied by the coordinator.

2. TYPES OF SLOT MISUSE

- 2.1 Regulation 3(1) of the Irish Regulation sets out the types of slot misuse as:

Where the coordinator is of the opinion that an air carrier has contravened or is contravening Article 14 of the Council Regulation by repeatedly and intentionally–

- (a) operating air services at times significantly different from the allocated slots, or*
- (b) using or having used slots in a significantly different way from that indicated at the time of allocation and thereby has caused or is causing prejudice to airport or air traffic operations*

- 2.2 Examples of slot misuse covered by Regulation 3(1)(a) are:

- a) The operation of scheduled or programmed non-scheduled air services at times significantly different from the allocated slots.
- b) The repeated operation of ad hoc air services, including operations by General and Business Aviation operators (“**GA/BA**”), at times significantly different from the allocated slots.
- c) The operation of an air service without a slot allocated for that air service, as this constitutes operating at a time different from the slots allocated to all airlines at the airport.

- 2.3 Examples of slot misuse covered by Regulation 3(1)(b) are:

- a) The operation of air services with a larger seat capacity aircraft from that indicated at the time of allocation, as such operations cause prejudice to airport operations as they are likely to cause additional congestion or queuing for passengers using the terminal building.

- b) The operation of air services with an aircraft requiring a larger parking stand from that indicated at the time of allocation, as such operations cause prejudice to airport or air traffic operations as they necessitate last-minute changes to the stand allocation plan for the airport.
- c) The operation of air services on a route different from that indicated at the time of allocation, as such operations cause prejudice to airport operations by placing unexpected demands on airport facilities and infrastructure.

3. DEFINITIONS

3.1 Words defined in the Council Regulation and Irish Regulation shall have the same meaning in these guidelines. Particular expressions in the Council Regulation and Irish Regulation call for comment:

3.2 Air carrier is taken to include all aircraft operators using the airport.

3.3 Operation is taken to mean the landing or take-off of an aircraft at the airport. Slot times are based on the time that an aircraft is scheduled to arrive at its parking stand following a landing, or the time that an aircraft is scheduled to push-back from its parking stand prior to a take-off.

3.4 Slot is defined in Article 2(a) of the Council Regulation as:

'slot' shall mean the permission given by a coordinator in accordance with this Regulation to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator in accordance with this Regulation

3.5 Repeatedly is taken to mean:

- a) For a scheduled or programmed non-scheduled air service, more than one operation in the past 12 months of that particular air service by that air carrier.
- b) For ad hoc air services, more than one operation at the airport in the past 12 months by that particular air carrier.

3.6 Intentionally is taken to mean:

- a) That, from the circumstances, the carrier intended to land or take-off an aircraft at or about the time that it did land or take off, if this is different from the allocated slot time – e.g. most obviously, published flight times on the internet or a differently filed flight plan time, except for air services suffering on-the-day operational delays outside the reasonable control of the carrier. In the case of operating a slot in a significantly different way from that indicated at the time of allocation, it is sufficient to show that the air carrier planned to operate with the aircraft actually used.
- b) For operations without an allocated slot, that the air carrier intended to land or take-off at the airport, excluding diversions and emergency landings.
- c) For the operation of a larger aircraft type, that the air carrier intended to use the aircraft type operated, excluding an on-the-day substitution of an aircraft due to

operational or technical reasons beyond the reasonable control of the air carrier.

3.7 Significantly is taken to mean:

- a) For operations at times different from the allocated slots, any time difference that constitutes a different slot based on the time intervals of the airport's declared coordination parameters.
- b) For the operation of a larger aircraft type, that the number of passengers carried exceeds the capacity of the aircraft type indicated at the time of allocation, and/or that the external dimensions of the aircraft type operated requires a larger parking stand than the aircraft type indicated at the time of allocation.
- c) For the operation of a different route, an air service arriving from a non-EU point of origin where an intra-EU point of origin was indicated at the time of allocation as this is likely to cause queuing and congestion in the immigration area.

3.8 Outside the reasonable control of the carrier

- a) This is taken to encompass exceptional weather conditions or third party industrial action, air traffic control regulations/CTOTs and exceptional/unexpected technical issues which could not reasonably have been foreseen or mitigated and (in all cases) which are demonstrated to have caused the apparent slot misuse. Note that the examples given will not automatically be valid reasons just by virtue of being listed in this definition; and
- b) The burden of proof is on the carrier to demonstrate that the apparent misuse was outside its reasonable control. Exactly what evidence is required will depend on the circumstances, but a mere assertion that a particular issue arose will, in most circumstances, not be enough. The carrier will need to explain to the coordinator what the issue was, where and when on route it arose, how that issue caused the apparent misuse and why the carrier could not reasonably have prevented the issue from causing the misuse. The carrier will be expected to adduce satisfactory evidence to back up its explanations (for example official weather warnings issued by the affected airport or ATC and/or airport/ATC imposed weather regulation, flight logs and tech reports).
- c) The individual causes of each slot misuse may be relevant to demonstrating that the failure not to repeatedly misuse slots was beyond the carrier's control. But, depending on the wider evidence available to the coordinator, this may not be sufficient, for example, where the evidence available points to a carrier's operational set up (e.g. flight schedules or planned turnaround times) not being sufficiently robust to cope with normal and foreseeable operational challenges.
- d) For the avoidance of doubt an air carrier's reliance on incorrect information (about slots allocated by the Coordinator) which is given by an agent of the air carrier is not a matter beyond its reasonable control.

3.9 Uncontested Sanction is taken to mean a financial sanction applied by the coordinator following the procedure described in section 4.4 of these guidelines and Regulation 4 of the Irish Regulation.

3.10 Court Decision is taken to mean a decision of the Court under Regulation 3(4) of the Irish Regulation.

4. PROCESS FOR APPLYING SANCTIONS FOR SLOT MISUSE

4.1 In accordance with Article 4.6 of the Council Regulation, it is a duty of the coordinator to monitor the conformity of air carriers' operations with the slots allocated to them. If in the course of this slot monitoring, or as a result of a complaint or other source of relevant information, the coordinator is of the opinion that possible slot misuse has occurred or is occurring, then it will take the following actions:

4.2 Stage 1: Investigation

4.2.1 The coordinator will contact the air carrier concerned with details of the alleged slot misuse and the data supporting the coordinator's opinion, and will request information and/or an explanation from the air carrier.

4.2.2 The coordinator will give the air carrier a reasonable deadline to respond, which will normally be 7 days but may be less in urgent cases. Correspondence between the coordinator and air carrier will be in writing, normally by email.

4.2.3 If the air carrier fails to respond by the deadline date, or provides an incomplete response or a response which fails to adequately address the issues raised by the coordinator, or supplies information which is false or misleading in any material particular, then the coordinator may rely on the best information available.

4.3 Stage 2: Decision on Further Action

4.3.1 After investigation, the coordinator may take one of the following actions:

- a) Notify the air carrier concerned that the investigation has been satisfactorily concluded with no further action.
- b) Issue a warning that, in the opinion of the coordinator, a slot misuse has occurred or is occurring and that further slot misuse may be liable for a financial sanction.
- c) Notify the Commission that, in the opinion of the coordinator, a slot misuse has occurred or is occurring and that a financial sanction is appropriate.

4.4 Stage 3: Uncontested Sanction

4.4.1 Under Regulation 4 of the Irish Regulation, the coordinator, with the consent of the Commission, will give notice to the air carrier concerned that a slot misuse has occurred or is occurring and specify an amount (not exceeding €3000 per repeated incidence of slot misuse) to be paid to the Commission by a date 7 days from the date of service of the notice or by a later date specified by the coordinator in the notice (the "**Due Date**").

4.4.2 The notice will also indicate the amount of the financial sanction (not exceeding €6000 per repeated incidence of slot misuse) that the coordinator intends to recommend to the Court if the matter is dealt with under Regulation 3(4) of the Irish Regulation.

4.4.3 Within 7 days of the notice, the air carrier may make representations and request that the coordinator lower the amount of the financial sanction. The coordinator will take

into account any submissions made with the request and any other matters it considers relevant. The coordinator will make a determination and notify the air carrier to pay either the original amount notified or a lower amount within 7 days from the date of this notice or by a later date specified by the coordinator in the notice (the revised “**Due Date**”).

4.4.4 If the air carrier has paid the amount specified by the coordinator under paragraph 4.4.1 or 4.4.3, as the case may be, by the Due Date, the coordinator shall not apply to the Court under Regulation 3(2) of the Irish Regulation.

4.5 Stage 4: Application to the Court

4.5.1 Where an air carrier fails to pay an Uncontested Sanction by the Due Date, Regulation 3(2) of the Irish Regulation states that the coordinator, with the consent of the Commission, may:

...apply to the Court for:

- a) a determination that a contravention of Article 14 of the Council Regulation as referred to in paragraph (1) has occurred or is occurring, and*
- b) an order imposing financial sanction on the air carrier*

4.5.2 In making its application, the coordinator will recommend to the Court the amount of financial sanction which the coordinator considers appropriate to the circumstances, as was notified to the air carrier concerned in the notice referred to in paragraph 4.4.2 or 4.4.3, as the case may be.

4.5.3 Regulation 3(4) and (5) of the Irish Regulation states that:

(4) The Court, on an application made to it by the coordinator–

(a) may do one or more of the following:

- (i) make a determination that the air carrier concerned has contravened or is contravening Article 14 of the Council Regulation as referred to in paragraph (1);*
- (ii) order the air carrier concerned to pay the Commission a financial sanction (not exceeding €6000) in respect of the contravention;*
- (iii) make such other order as it considers appropriate,*

or

(b) may dismiss the application.

(5) The Court may make such order as to costs as it thinks fit in respect of the application

5. PUBLICITY

5.1 The Commission or the coordinator may publish details relating to any Uncontested

Sanction, including but not limited to the name of the operator, the slot misuse(s) in question, and the amount fined.

5.2 Court Decisions will be published on the Commission's website and on the coordinator's website.

6. FACTORS TO BE CONSIDERED IN SETTING FINANCIAL SANCTIONS

6.1 In setting a financial sanction, the coordinator will have regard to:

Regulation 5 of the Irish Regulation, which states:

5. In considering the amount of any financial sanction the Court or the coordinator, as the case may be, shall take into account the circumstances of the contravention or any failure by the air carrier to cooperate with the coordinator and shall, where appropriate in the circumstances, have regard to—

(a) the need to ensure that any financial sanction imposed—

(i) is appropriate and proportionate to the contravention, and

(ii) will act as a sufficient incentive to ensure future compliance in respect of the contravention

(b) the seriousness and frequency of the contravention or its continuation, and

(c) the turnover of the air carrier concerned.

To assess the above it may also be necessary to have regard to:

- whether the misuse is blatant.
- the extent to which the coordination parameters were broken, including over a particular scheduling period in respect of a series of slots.
- the extent to which airport or air traffic operations and/or other air carriers or passengers were or were likely to have been prejudiced by the misuse taking into account all technical, operational and environmental constraints
- previous and current slot performance; other behaviour and misuse by the same air carrier will be taken into account, i.e. whether this is this a first case of misuse or a "second offence".
- whether sanctions have been imposed on the air carrier for previous breaches
- the carrier's conduct following the misuse or earlier sanction for similar off slot operations, including action taken to correct the misuse and degree of cooperation of the carrier during the investigation.
- the possible benefits to the carrier from the misuse.
- the size of aircraft used and the number of passengers generally carried on it.

- 6.2 For an Uncontested Sanction the maximum amount per repeated incident of misuse is €3000, and for a Court Decision the maximum amount per repeated incident of misuse is €6000. The minimum total amount that the coordinator will apply for an Uncontested Sanction is €1000 and the minimum total amount that the coordinator will recommend to the Court is €2000, unless exceptional circumstances exist.
- 6.3 In general, the financial sanction that the coordinator will recommend to the Court will be twice the amount applied as an Uncontested Sanction.
- 6.4 Financial sanctions are payable by the air carrier concerned to the Commission. In accordance with Regulation 6 of the Irish Regulation, all financial sanctions received by the Commission are paid to the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.

7. OTHER ADMINISTRATIVE SANCTIONS

7.1 The Irish Regulation and these guidelines provide for the application of financial sanctions for repeated and intentional slot misuse, implementing the Article 14.5 of the Council Regulation. Article 14 of the Council Regulation also provides for other administrative sanctions and enforcement measures, specifically:

- Article 14.1 provides for the competent air traffic management authorities to reject an air carrier's flight plan if it intends to operate at a coordinated airport without a slot allocated by the coordinator.
- Article 14.4 states that air carriers that repeatedly and intentionally misuse slots as part of a series of slots shall lose 'historic rights' to those slots, and that the coordinator may withdraw the series slots for the remainder of the scheduling period after issuing a single warning.

These provisions of the Council Regulation are directly applicable, and the competent air traffic management authority (in the case of Article 14.1) and the coordinator (in the case of Article 14.4) may apply such administrative sanctions independently of any sanctions applied under the Irish Regulation and these guidelines.

8. AMENDMENT OF THESE GUIDELINES

8.1 These guidelines may be amended and updated from time to time by the coordinator following consultation with the Commission and the Dublin Airport Coordination Committee.