

Strictly Private & Confidential

26 September 2024

Irish Aviation Authority
The Times Building
11-12 D'Olier St
Dublin 2
Email: consultation@iaa.ie

By email

Re: IAA Draft Decision on Summer 2025 Coordination Parameters at Dublin Airport

Dear Sir/Madam,

Introduction

We refer to the above IAA draft decision dated 12 September 2024 (the “**Draft Decision**”).

Ryanair’s position is that the Draft Decision (if adopted as a final decision) is fundamentally flawed as it lacks any legal basis, is irrational, has taken into account irrelevant considerations and gives rise to significant negative effects for consumers and airlines operating at Dublin Airport that are disproportionate, irreparable, and avoidable. Moreover, the Draft Decision proposes a significant, unlawful interference with Ryanair’s vested property rights. It is also contrary to the national aviation policy of the State.

Irrelevant considerations

The Draft Decision considers condition 3 of planning permission F06A/1248 (PL06F.220670) and condition 2 of planning permission F06A/1843 (PL06F.223469) (the “**Conditions**”) to be “*relevant technical, operational and environmental constraints*” under Article 6(1) of Council Regulation (EEC) No. 95/93, as amended (the “**Slot Regulation**”) for the purpose of determining coordination parameters at Dublin Airport. However, Ryanair believes the Conditions are not a relevant constraint for the following reasons:

1. The Conditions impose a limit on the throughput of passengers for the terminals at Dublin Airport “*Having regard to the policies and objectives of the Dublin Airport Local Area Plan and capacity constraints (transportation) at the eastern campus.*” They were explicitly imposed on the basis of land use considerations (particularly vehicular traffic and transport) in the planning context. This would be understood by an ordinary person reading the Conditions. Such a person would also understand that there have been significant improvements in the road network serving Dublin Airport since the conditions were imposed. The Conditions are not relevant to slot allocation under the Slot Regulation, which process is to be “*based on an objective analysis of the possibilities of accommodating the air traffic, taking into account the different types of traffic at the airport, the airspace congestion likely to occur during the coordination period and the capacity situation*” (Article 6(1) of the Slot Regulation).

2. The definition of “*coordination parameters*” in the Slot Regulation is the “*expression in operational terms of all the capacity available for slot allocation at an airport during each coordination period, reflecting all technical, operational and environmental factors **that affect the performance of the airport infrastructure** and its different sub-systems*”. The Conditions are not “*relevant technical, operational and environmental constraints*” because they do not affect the *performance* of the airport infrastructure. They relate exclusively to historic constraints on vehicular access to / from Dublin Airport (concerns which are, in any event, now obsolete in light of infrastructural improvements) and not terminal, runway or stand parameters considered by the IAA under Article 6 of the Slots Regulation. Compliance with planning conditions is a matter only for daa plc and/or for Fingal County Council under planning legislation.
3. The Draft Decision fails to categorise the Conditions as any of the applicable constraints under the Slot Regulation. Any reasonably informed member of the public would understand that the Conditions have nothing to do with, and have never been linked to, environmental-specific reasons, nor to operational considerations of the airport management, nor to technical aviation-related matters. Rather than taking account of relevant constraints, the effect of the Draft Decision is to create and impose operational constraints which will artificially constrain capacity at Dublin Airport, resulting in cancellations and reduced frequency of services, which Dublin Airport is plainly able to accommodate. The infrastructure that the IAA is responsible for has the capacity to serve well in excess of the passenger cap.
4. The Conditions are too ambiguous to be implemented and, as a result, should not be taken into consideration by the IAA when setting coordination parameters. Regulatory conditions that are insufficiently precise are not enforceable and the IAA is wrong in law to base a decision on an interpretation which it itself has described as “*reasonably open*” (para. 4.39 of the W24 Decision, the reasoning of which has been adopted in the Draft Decision). It is fundamentally unlawful and unreasonable for the IAA to determine coordination parameters, which affect businesses and consumers, on this basis. The IAA has no margin of appreciation in construing these conditions and in making decisions which affect third party rights. It cannot make such decisions, which have far-reaching consequences, based on a construction which might be “*open*” to it. If (which Ryanair disputes) the Conditions are relevant considerations, it is only their true construction which could possibly be a relevant consideration. The IAA is proposing to decide, in effect, that the true construction of these conditions is an irrelevant consideration and to make decisions on that basis.
5. Moreover, the true construction of the Conditions is materially different from that which the IAA has espoused. The Conditions, if they were relevant (which Ryanair disputes) could only ever encompass origin and destination passenger capacity. The numbers of passengers in transit between terminals, for example, would have to be excluded as they are entirely irrelevant to any reasonable understanding of the Conditions, in their context and bearing in mind the (obsolete) purpose for which they were imposed. This has not been considered or analysed at all. It would make a clear and material difference to the decision-making process if it was.
6. The Draft Decision does not explain how passengers are to be counted for the purposes of the Conditions.
7. The IAA accepts that it is not responsible for compliance with the Conditions. It also accepts that the setting of coordination parameters at Dublin Airport cannot and will not procure compliance with those conditions (paragraph 4.17). If coordination parameters cannot have

the effect of complying with the Conditions, it follows that the Conditions cannot be relevant to the setting of coordination parameters. It is not a function of the IAA to provide “assistance to daa” (paragraph 4.18).

8. The Draft Decision purports to apply a 25.2m PATM seat cap for Summer 2025, despite the IAA’s decision for Winter 2024, which also applied a seat cap (of 14,405,737), being subject to three separate judicial review proceedings initiated by daa, Aer Lingus, and Ryanair.

The IAA, in its Draft Decision, has conflated and confused passenger throughput at Dublin Airport, with the capacity of Dublin Airport. The IAA is required by the Slot Regulation to consider the capacity of Dublin Airport by determining the number of slots available for allocation, having regard to what the terminals can potentially accommodate. This is not, however, evident from the Draft Decision. The IAA has instead proposed to determine coordination parameters with a view to capping the throughput of passengers, though it has no power to do so. Moreover, the proposed PATM seat cap would artificially (and unlawfully) limit the capacity of Dublin Airport. These are not, and are not relevant to, the IAA’s functions under the Slot Regulation.

Historic slot rights

The application of the seat cap would be unnecessary, unlawful, disproportionate to any legitimate concern and incompatible with the IAA’s statutory functions as competent authority for the purposes of the Slot Regulation. The removal or interference with historic slot rights acquired by Ryanair on foot of a final decision would be an unlawful interference with our property rights as protected by the Irish Constitution, Article 17 of the EU Charter of Fundamental Rights, and under Article 1, Protocol 1 of the European Convention on Human Rights.

It would, with respect, be a fundamental error if the IAA was to decide that slots are temporary, ephemeral rights which can be abrogated or restricted as the IAA sees fit. Moreover, it would be a serious error for the IAA to decide that slots are not property rights at all.

In fact, slots are valuable rights, which entitle airlines to use airport infrastructure for the purpose of their businesses. The Slot Regulation does not expressly entitle the IAA to interfere with those rights, or set out a basis on which this could be done. It does not contain any standards or factors by reference to which such an exercise could be undertaken. On the contrary, it provides for the accretion of historic slots and the protection of rights to use such slots in accordance with Article 8(2). The Draft Decision unlawfully removes or interferes with these historic slots acquired by airlines using Dublin Airport. Even if the IAA concludes that it is empowered to interfere with these historic rights (which Ryanair strongly disputes), it does not follow that they are not property rights.

The general rule for the process of slot allocation does not apply where an air carrier can satisfy the requirements of Article 8(2) of the Slot Regulation by showing that it has used a series of slots for the operation of scheduled and programmed non-scheduled air services and can demonstrate to the satisfaction of the coordinator that the series of slots in question has been operated by that carrier for at least 80% of the time within the scheduled period for which it has been allocated. In such case, that series of slots “shall **entitle** the air carrier concerned to the same series of slots in the next equivalent scheduling period, if requested by that air carrier within the time-limit referred to in Article 7(1).”

Article 8(2) expressly states that it is without prejudice to a number of articles in the Slot Regulation (Articles 7, 8a, 9, 10(1) and 14). Article 6 is not included in that express list. Therefore, the entitlement to retain historic slots is not in any way subject to, or restricted by, anything in Article 6.

There is therefore no statutory basis for the IAA to interfere with entitlements to historic slots and the IAA is exceeding its powers by purporting to extinguish vested rights under the Slot Regulation. In addition, as far as we are aware, this has not been done at any coordinated airport in the EU or major international airport elsewhere and would be without precedent. The Draft Decision is also contrary to the Worldwide Airport Slot Guidelines, which IAA is required to have regard to under the Slot Regulation.

The IAA fails to recognise that Ryanair acquired historic slots over several years. If slots are removed or interfered with, as the IAA proposes, they will be lost or be rendered unviable. No proportionality analysis has been carried out and no alternatives to the abrogation / diminution of historic property rights have apparently been considered by the IAA.

Applying the proposed seat cap would be unlawful, irrational, disproportionate, and a breach of IAA's statutory duty under Article 6(1) of the Slot Regulation and Section 8(1) of the Aviation Regulation Act, 2001. It constitutes an unlawful interference with Ryanair's property rights under the above provisions of law and a breach of our entitlement to retain historic slots under Article 8(2) of the Slot Regulation.

Consultation process

The Coordination Committee overwhelmingly voted against the Passenger Air Transport Movement seat cap proposal. The IAA has completely disregarded this advice in the Draft Decision, which renders the consultation process meaningless. The Slot Regulation requires the determination of parameters for slot allocation to be discussed in detail within the coordination committee "*with a view to **increasing** the capacity and number of slots available for allocation*". The IAA has instead proposed material restrictions, the mechanism for achievement by which (as described in paragraphs 4.43 – 4.48) was not put before the Coordination Committee. Therefore, the purpose and function of the consultation process has not been adequately or properly fulfilled in the course of the decision-making process for the Draft Decision.

Irrational and ultra vires

The purpose of the Draft Decision is to determine the parameters for slot allocation. "*Slots*" are defined as "*the permission given by a coordinator in accordance with this [Slot] 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*". The Conditions, and the related proposed seat cap, are clearly irrelevant considerations in this context, as is evidenced by the fact that the IAA never took them into consideration before the W24 decision, which has been challenged in three separate judicial review proceedings initiated by daa, Aer Lingus, and Ryanair. It was irrational and inconsistent for the IAA to consider that the Conditions should have any bearing on the parameters for slot allocation.

Therefore the use of the Slot Regulation by IAA is for an ulterior, impermissible and ultra vires purpose.

Moreover, as set out above, it is for daa plc, as developer, to comply with planning conditions. The IAA has no such role. Moreover, it is common case that the IAA *cannot* procure compliance with the Conditions (even if they were a relevant consideration, which Ryanair disputes) by the setting of coordination parameters in general or the imposition of a PATM seat cap in particular.

Irreparable harm to Ryanair and consumers

A Summer 2025 final decision in line with the Draft Decision will result in irreparable harm to Ryanair and consumers. We estimate the Draft Decision, if implemented, would result in c. 3,085 of our historic slots in S25 being lost or otherwise rendered unviable by reason of the removal / interference with historic slot rights, equating to c.583k seats and c. €52m in lost revenue. This loss would recur annually. Based carriers such as Ryanair would be disproportionately impacted as, while Ryanair would have to maintain all its based aircraft in Dublin to maintain its historic slots, utilisation of these aircraft would reduce due to IAA's proposed artificial capacity reduction brought about by the seat cap. Utilisation is a key determinant in Ryanair reaching its publicly stated passenger targets and it underpins the low-cost economic model. Non-based Dublin Airport carriers would have the option to redeploy aircraft elsewhere in order to mitigate the effects of the seat cap (having far fewer remaining Dublin Airport historic slots to maintain with their existing fleet than based Dublin carriers), hence having a lesser impact.

The IAA's proposal to practically implement the PATM seat cap by way of a pro-rata reduction in historic slots compounds this irreparable harm to Ryanair as a based carrier that is far more reliant on the utilisation of historic slots than a non-based carrier, due to our aircraft having to leave Dublin early and arrive back late at night. Ultimately, based carriers are the operators that are able to deliver more routes and more frequencies to passengers using Dublin Airport than non-based carriers, and the IAA's proposal for implementation of the seat cap disproportionately and unreasonably damages based carriers' operations and consequently their ability to deliver a higher level of service to passengers.

In addition, it would constitute a disproportionate interference with Ryanair's low-cost business model which is based on being able to maximise historic slots, which we have a legitimate expectation to retain.

National Aviation Policy and adverse effect on competition and consumers

The IAA's proposed seat cap will artificially constrain capacity at Dublin Airport, despite a €320m investment in the new North Runway that enables the airport to reach its stated target of 40m passengers per annum, and major infrastructure investments such as Terminal 2. Artificially constraining capacity at Ireland's main international gateway would unfairly deprive airlines and passengers at Dublin Airport of the benefit of their recent substantial contribution to capital projects at the airport, while reducing competition between airlines, damaging economic growth, tourism and employment in Ireland.

The proposed artificial cap will inevitably have a harmful effect on passengers by reducing connectivity to and from Ireland's largest airport, limiting choice of routes and increasing costs for consumers.

The proposed artificial cap contradicts Ireland's National Aviation Policy which has the stated goals of:

1. enhancing Ireland's connectivity,
2. fostering the growth of aviation in Ireland, and
3. maximising the contribution of aviation to Ireland's growth and development.

The conflict between the Draft Decision and the Irish Government's own National Aviation Policy is particularly egregious given Ireland is a small island economy on the periphery of Europe, heavily dependent on aviation.

Other coordination parameters in Draft Decision

Ryanair also strenuously objects to the proposed assumed 95% load factor at Terminal 1. This proposed cap artificially constrains capacity at the terminal, reducing Ryanair's ability to grow its operations and to operate at commercially optimal times. The evidence provided to support this proposed load factor is deeply flawed, with daa providing selective analysis to highlight load factors at peak times. This analysis is misleading and is being used to set an inappropriately low terminal capacity limit across the day, week and season. This daa analysis is also clearly self-serving as peak passenger assumptions impact Dublin Airport's security resourcing requirements and an artificially low assumption will smooth out peak requirements, reducing operational and financial overhead at daa.

Ryanair delivers 75% of Terminal 1's traffic and has delivered an 89% flown load factor in flights operated to and from Dublin Airport (all of which operate to Terminal 1) during the S24 season to date (31 March to 31 August). We expect our load factor to reduce slightly for the remainder of S24 (and as a result, also reduce the average for the full season) as our flown load factor is typically slightly lower during the off-peak months of September and October. Notwithstanding this point, to support an assumed 95% load factor at Terminal 1 would imply all other carriers at Terminal 1 are delivering on average a 113% flown load factor. This is infeasible and mathematically impossible, highlighting the clear error in the assumed 95% flown load factor. Ryanair recommends the load factor assumption is lowered to 90% to reflect operational realities more clearly and to ensure capacity at Terminal 1 is not needlessly constrained.

In the circumstances, we urge the IAA not to impose a PATM seat cap or a load factor for Terminal 1, as set out in the Draft Decision. If the IAA does so, it would fall into error, with irreparable consequences for Ryanair.

Yours sincerely,



Eoin Kealy
Director of Regulatory & Competition