



**Final Decision**  
**on Summer 2025 Coordination Parameters**  
**at Dublin Airport**

10 October 2024

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## 1. Executive Summary

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- 1.1 The IAA is responsible for declaring coordination parameters at coordinated Irish airports. In this paper, we set out our reasoned Final Decision on the Dublin Airport coordination parameters for the Summer 2025 ('S25') season, which runs from 30 March to 25 October 2025 inclusive.<sup>1</sup> The coordination parameters are laid out in the Appendix. We have already, on Monday 7 October, published the coordination parameters themselves, having communicated them to the coordinator the previous week.
- 1.2 The Final Decision remains in line with the Draft Decision. We have therefore made the following changes relative to the Summer 2024 ('S24') parameters:
- Implemented the 'Wishlist 1' hourly runway capacity ('R60') limits, which involves a range of increases in the declared runway limits in the day hours, add 8 departure slots, 7 arrivals and increases the total limits by 28 per day.
  - To take account of the constraint represented by certain planning conditions which limit the combined capacity of Terminal 1 and Terminal 2 at Dublin Airport to 32 million passenger per annum (known as the '32mppa Conditions'), we have included a coordination parameter in the form of a seasonal seat cap of 25.2 million seats.
  - Stand counts are updated to reflect expected changes by apron area relative to S24. Otherwise, the form of this parameter is unchanged from S24.
- 1.3 Other coordination parameters are unchanged relative to S24.
- 1.4 We have relied on a range of evidence, and considered the advice provided by the Coordination Committee.<sup>2</sup> We commissioned fast-time simulation modelling of the airfield to assess a range of scenarios relating to potential increases in the runway limits. This work was carried out by Egis. The assessment of these scenarios takes the form of a comparison of a range of airfield metrics. The results from this assessment were shared with the Coordination Committee, and the final report is published alongside this document.
- 1.5 We have considered other evidence with which we have been presented, or which we sought. This evidence includes modelling work conducted by Dublin Airport, and its consultants.
- 1.6 We have also carefully considered the submissions which we have received in response to the Draft Decision, published on 12 September 2024 (the 'S25

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<sup>1</sup> As per the worldwide slot calendar: <https://www.iata.org/contentassets/4ede2aabfcc14a55919e468054d714fe/calendar-coordination-activities.pdf>

<sup>2</sup> Insofar as it can be properly considered to be 'advice' from the Coordination Committee for the purposes of Article 5 of the Slot Regulation. In that regard, Ryanair, in a letter dated 10 September 2024, copied to the IAA, stated that 'No "advice" sent by the Chair and/or Secretary to the IAA on this matter can be considered by the IAA to be the advice of the committee.' The IAA has also taken account of this and other correspondence between the Coordination Committee members in relation to the Coordination Committee process for S25.

Draft Decision'). Those submissions focused primarily on the proposed seat cap coordination parameter, with airlines, on the one hand, and daa/local residents, on the other, taking very different views as to whether such a coordination parameter can be, or ought to be, implemented for S25. For the reasons set out in detail in Section 4, we have decided not to make any change relative to our draft proposal.

## 2. Background

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### Legislation

- 2.1 Section 8(1) of the Aviation Regulation Act, 2001, as amended, provides that the IAA is the competent authority in Ireland for the purposes of Council Regulation (EEC) No. 95/93, as amended (the 'Slot Regulation'). The IAA is therefore responsible for:
- The designation of the Coordination status of Irish airports.
  - Appointing a qualified schedules facilitator or coordinator, as appropriate, at airports which have been designated as Schedules Facilitated or Coordinated.
  - The determination of coordination parameters at Coordinated airports in line with Article 6 of the Slot Regulation, taking account of relevant technical, operational and environmental constraints as well as any changes thereto.
  - Deciding whether to approve Local Guidelines proposed by the Coordination Committee.
- 2.2 Dublin Airport is designated as Coordinated by the IAA. Airport Coordination Limited (ACL) is the appointed coordinator.
- 2.3 Under Article 5(1)(a) of the Slot Regulation, one of the tasks of the Coordination Committee is to advise the IAA on the coordination parameters to be determined in accordance with Article 6. The IAA attends Coordination Committee meetings as an observer.
- 2.4 Article 6(1) states that the determination of the parameters '*shall 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*'. Thus, the determination of the parameters is a forward-looking projection in which we must take account of expected demand, capacity (including airspace capacity), and relevant constraining factors, during the relevant season, in an objective manner. This is primarily assessed through simulations of the operation of a forecast S25 flight schedule at the airport.
- 2.5 Article 6(3) of the Slot Regulation details the required interaction between the IAA and the Coordination Committee:
- 'The determination of the parameters and the methodology used as well as any changes thereto shall be discussed in detail within the coordination committee with a view to increasing the capacity and number of slots available for allocation, before a final decision on the parameters for slot allocation is taken. All relevant documents shall be made available on request to interested parties.'*
- 2.6 In that regard, as per previous seasons, when taking account of relevant

constraints in issuing a capacity declaration, we tend towards a maximal rather than minimal approach as regards declaring the airport capacity parameters. This is because of the requirement that discussion within the coordination committee is *‘with a view to increasing the capacity and number of slots available for allocation.’* This framing of the determination of the parameters is given further weight where a parameter is expected to have a constraining effect on demand, given that Article 6(1) requires the determination to be based on the *‘possibilities of accommodating the air traffic’*.

### *Coordination Committee Engagement Process*

- 2.7 To help inform the decision on the parameters, we engaged Egis to carry out simulations of the expected flight schedule for S25, using the Fast Time Simulation model of the apron, airfield, and airspace in the Dublin Airport TMA (Terminal Manoeuvring Area). This model was originally developed for us by Egis in 2017 and has been updated regularly to include changes to infrastructure and operational procedures. It has been used for various simulation exercises since, including the determination of the coordination parameters.
- 2.8 Prior to running the simulations, Egis re-validated the model. This involves simulating the flight schedule on a recent day of operations, and comparing the simulated airfield metrics (such as taxi time durations and runway throughput) with actual observed metrics on the same day. If necessary, adjustments are made to the model and the process is repeated until a satisfactory result is obtained whereby the model is replicating the actual operation with a sufficient degree of accuracy.
- 2.9 Airlines were asked to submit plans for S25 to ACL. Analysis carried out by ACL indicated that increases in the runway limits would be required to ensure that these plans could be fully facilitated by the runway parameters. A number of changes to the hourly runway (R60) limits relative to S24 were proposed by Dublin Airport (daa), informed by the analysis carried out by ACL.<sup>3</sup> Dublin Airport set out the capacity limitations it had applied to the compiled airline wishlist when developing its proposal, in particular that no changes would be made between 2200z and 0600z (or 11pm to 7am local time), and that R60 increases would be limited to no more than 10% in any one hour.

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<sup>3</sup> All references to times or hours are in UTC 24-hour format, unless stated otherwise. Where a reference is made to a particular hour, such as the 0500z hour, this refers to the time period one hour in length commencing from the stated time. To give an example, the 0500z hour spans from 5 am to 6 am UTC. During the summer season, UTC time is one hour ahead of Local time. Hence, the 0500z hour spans from 6am to 7am local time.

In each hour, a requested departure slot must not bust the hourly Departures limits or the hourly Totals limit, while a requested arrival slot must not bust the hourly Arrivals limit or the hourly Totals limit.

**Table 2.1: Dublin Airport Wishlist 1 Proposal for Summer 2025**

UTC Hour*	Arrival	Departure	Totals
0800	+2		+2
0900		+4	+2
1100			+2
1200	+4		+4
1300		+4	+4
1800			+3
1900	+1		+5
2000			+6
<b>Total</b>	<b>+7</b>	<b>+8</b>	<b>+28</b>

Source: Coordination Committee

- 2.10 Information provided by airlines was used to develop an anticipated flight schedule on a busy day in S25 (the 'S25 Schedule'). The operation of the S25 Schedule was simulated by Egis. To assess the effect of a potential decision to adjust the R60 parameters as proposed above, Egis coordinated the S25 Schedule according to both the Wishlist 1 limits, and alternatively the current S24 runway limits. Comparisons were provided between simulated taxi times, ground delay and runway holding delay. Further detail and results of this analysis is set out in Section 3, and the results of the Egis simulations were published alongside the Draft Decision.
- 2.11 In relation to the passenger terminal (PTB) parameters, Dublin Airport proposed no changes relative to S24 in respect of either the departures or arrivals hourly limits. It was noted that while the rollout of EDS CB C3 cabin baggage screening equipment should be complete in both Terminal 1 and Terminal 2 by the end of 2025, departure parameters should not be modified until the full benefits of this new technology can be identified, and as old lanes will be required to be taken out of service to allow C3 installation. In both cases, it was identified that the forecast demand can be accommodated within the existing S24 limits, i.e. the hourly PTB limits are not expected to be a constraining factor on the allocation of slots.
- 2.12 No other changes were proposed relative to the Summer 2024 limits, except updating the stand count by apron area to reflect expected changes in the count relative to Summer 2024.
- 2.13 The pre-meeting of the Coordination Committee took place on 8 August 2024. Ahead of the initial meeting, the Egis simulation modelling results were circulated. Dublin Airport also circulated various pieces of analysis and modelling results to Committee members ahead of the initial meeting, namely:
- An update on airfield performance, On Time Performance (OTP) in Summer 2024 compared to Summer 2023, prospective projects expected

to be delivered for Summer 2025, projects that are expected to be under construction in Summer 2025.

- Simulation modelling carried out for Dublin Airport by ARUP.
- An update from ACL.
- Coordination parameter proposals for Summer 2025.

2.14 At the pre-meeting, there was a suggestion by one airline in respect of an alternative capacity proposal, relative to the original Wishlist 1 proposal. The proposal was distilled into an alternative flight schedule for simulation, and labelled 'Wishlist 2', as shown in Table 2.2:

**Table 2.2: Wishlist 2 Proposal for Summer 2025**

UTC Hour*	Arrival	Departure	Totals
0600			+2
0700	+5		+5
0800	+2		+5
1000		+2	+3
1100			+3
1200			+2
1500		+1	+4
1800	+1	+3	+10
1900		+1	+5
2000			+1
<b>Total</b>	<b>+8</b>	<b>+7</b>	<b>+40</b>

Source: Coordination Committee

2.15 At this meeting, Dublin Airport also presented a proposal for a seasonal PATM seat cap for S25 of 25.2m seats. It noted that *'the IAA states that it introduced a seasonal Seat Cap for W24/25 to "take account of" the 32m Terminal passenger limit'*, and that *'daa assumes that the IAA will impose a corresponding seasonal Seat Cap in S25, which will achieve calendar year compliance with the limit.'*

2.16 On 14 August 2024, the IAA wrote to the Chairperson of the Coordination Committee, noting the likelihood that a seat cap set at this level may be insufficient to re-allocate all historic slot series from S24, implying a reduction in historic slots to be allocated for S25. We therefore requested that as part of the Coordination Committee discussions and advice in relation to the 25.2m seasonal PATM seat cap proposal presented by Dublin Airport, consideration and advice be given on how such a reduction, if such a seat cap were to be adopted, might optimally be implemented in practice, as well as any other considerations which the Coordination Committee thought should be taken into account. We stated that such consideration and advice could be provided



separately, and without prejudice to, any views which might also be taken by members of the Coordination Committee as regards whether any reduction in historic slots could, or ought to be, implemented for S25. The Coordination Committee met again on 22 August 2024 to discuss further.

2.17 At the meeting of the Coordination Committee on 22 August 2024, a representative from Mott MacDonald, appointed by the Chair of the Coordination Committee, sought to facilitate discussion on the matters raised in the IAA letter of 14 August 2024, relating to the PATM seat cap presented by Dublin Airport at the pre-meet. Mott MacDonald presented an estimate that, based on ACL data on current S24 historic baseline seats, a 5.6% reduction in seats could be required to meet a seasonal seat cap of 25.2m. Mott MacDonald laid out its possible approach as to how this could be done:

- The IAA would declare a S25 PATM seat cap of, for example, 25.2m seats, but at initial coordination, airline submissions for historic slots (including retimed historics) would be accepted above this limit.
- In allocating slots for S25, if the PATM seat cap parameter is exceeded due to historic slots, the coordinator would not allocate any new PATM slots or approve airline requests to increase total seats on historic slots, not re-allocate lost historic PATM slots/seat capacity, and not re-allocate any seat capacity voluntarily handed-back by airlines.
- After the series return deadline (15 January 2025), the total seats allocated for S25 (after hand backs) would be compared with the declared PATM seat cap. If total seats allocated were to exceed the PATM seat cap, then each airline will be assigned an 'Airline Seat Cap', which is a pro-rata reduction of that airline's number of seats allocated, with the same percentage reduction applied to each airline. Airlines must reduce scheduled seat capacity to comply with their Airline Seat Cap, via flight cancellations or other means available to the airline. Ad hoc seat reductions made to comply with the Airline Seat Cap are not reallocated to other carriers.

2.18 In addition, alternative options to prorate seat reductions were also presented:

- Exemption for small airlines (e.g., new entrants with less than 5 slots per day).
- Last-in-First-out reductions (i.e., airlines allocated slots more recently would need to reduce first).

2.19 The day before the final Coordination Committee meeting on 27 August 2024, Dublin Airport circulated material which, along with the results of the simulation modelling of both wishlists, outlined a series of questions for the Coordination Committee to vote on as part of the advice to the IAA in respect of any potential PATM seat cap parameter. Dublin Airport set out these questions such that holding a vote on questions 2-5 would be contingent on a majority 'yes' vote to Question 1:

- **‘Question 1:** *Should the Committee vote on questions 2 – 5 as requested by the IAA in its letter of 14 August 2024, noting that the IAA confirmed that this consideration could be separate and without prejudice to members’ views as regards whether any reduction in historic slots can, or ought to be, implemented for S25?*

*If a majority vote yes to the above question, then a vote will proceed on questions 2 – 5 below.*

- **Question 2:** *Should the IAA declare a PATM seat limit for S25 based on the principles in the W24 decision?*
- **Question 3:** *At what level should the PATM seat limit for S25 be declared by the IAA, noting the information from daa regarding 25,200,000 seats to take account of the 32m Terminal passenger limit in a calendar year?*
- **Question 4:** *Noting the IAA’s confirmation as set out above and in its letter of 14 August 2024, if a PATM limit declared by the IAA is insufficient to re-allocate all historic slot series from S24, should any reduction in Capacity be split evenly across all carriers operating PATM services at Dublin Airport?*
- **Question 5:** *Noting the IAA’s confirmation as set out above and in its letter of 14 August 2024, if a PATM limit declared by the IAA is insufficient to re-allocate all historic slot series from S24, should the implementation of the PATM include provision for individual airline seat limits as outlined by Mott MacDonald in the Coordination Committee meeting on 22 August 2024?’*

2.20 On the same day, the IAA communicated to the Chairperson of the Coordination Committee that, while respecting the Committee’s conduct of its own procedures, it would be helpful to the IAA, and benefit its decision-making, if the Committee and its members were to engage with Questions 2 – 5 with whatever responses, rather than possibly not addressing them at all if there was a Question 1, as proposed, and the majority answer to that ‘gateway’ question was in the negative. We outlined that, even if Question 2 yielded a majority ‘No’ vote, the votes and views of the Coordination Committee members on this question, and Questions 3 – 5, would be useful, as they would provide a full picture of each member’s position in relation to the PATM seat cap parameter, presented at 25.2m seats by Dublin Airport, that was under discussion within the Committee. We said that this approach could also provide potentially valuable perspectives for consideration generally by the IAA in its decision-making. This correspondence was relayed to the Coordination Committee in advance of the final Coordination Committee meeting on 27 August 2024.

### **Coordination Committee Vote**

- 2.21 The Coordination Committee met again on 27 August 2024 to finalise its advice for the IAA in respect of S25.
- 2.22 Clarification on the proposed terminal capacity parameters as regards the flown load factor was sought. However, as additional discussion and modelling was

not possible at this late stage, Committee Members were simply asked to vote whether to retain the S24 departure and arrival hourly limits by terminal, and whether to retain the referral parameters. No proposal for any specific alternative was provided.

- 2.23 Coordination Committee members voted on the other proposed coordination parameters. Voting rights for Committee members are set out in the Coordination Committee constitution. A set number of votes are allocated to Dublin Airport and AirNav Ireland (the Air Navigation Services Provider at Dublin Airport), with the rest allocated to airlines based on the number of movements flown at Dublin Airport in the preceding year, meaning that most of the voting weight is held by airlines and, in particular, Ryanair and Aer Lingus. Only those present (online or in person) can vote.
- 2.24 We note that the voting process is an indicative part of the Coordination Committee's advice to the IAA, rather than the IAA being bound by the result. As part of the process, we seek to take into account all positions set out by Coordination Committee members as well as any associated comments or evidence relevant to the parameter declaration.
- 2.25 The votes on the proposed R60 limits are set out in the appendix. There was a range of views:
- Dublin Airport supported Wishlist 1.
  - AirNav Ireland abstained.
  - Most airlines supported different scenarios in different hours, with all possibilities (i.e. Wishlists 1 and 2, and alternatively retaining the existing S24 parameters) receiving some support.
- 2.26 Overall, the vote was in favour of Wishlist 1 in all hours with the exception of the 0600z, 0800z, 1000z, and 1100z hours, where Wishlist 2 was the preferred option. No change was proposed in respect of the 10-minute runway limits. No other changes to airfield limits were proposed, other than updating the stand counts within the stand parameter to reflect changes in these counts, as usual.
- 2.27 The Committee voted, by a slim margin (48.3% in favour and 47.5% against), to retain the S24 departures and arrivals hourly limits by terminal. No specific alternative proposal was voted on. AirNav Ireland, American Airlines, Luxair, UPS, and TUI abstained.
- 2.28 As regards the referral parameters, the Committee voted to retain the S24 parameters. No alternative proposal was provided. Luxair, Qatar Airways, UPS, TUI, Iberia, and AirNav Ireland abstained.
- 2.29 Thus, overall, and aside from the question of the PATM seat cap proposal, the advice of the Coordination Committee is to implement Wishlist 1, except for the 0600z, 0800z, 1000z, and 1100z hours in which it recommends to implement Wishlist 2, update the stand counts, and otherwise make no changes to the parameters.

- 2.30 In relation to the PATM seat cap proposal, the Chair asked the Committee whether the initially-proposed method of voting on the parameters of the PATM seat cap under discussion should be amended to meet the request by the IAA outlined above. Committee members were not receptive to the IAA's suggested approach, nor to providing any indication of their views on the parameters presented by Dublin Airport by means of a vote. Some members of the Committee stated that a pre-question would be more appropriate, asking the members whether it was appropriate to provide such advice. As a result, questions on the potential inclusion of a PATM seat cap and its construction for S25 were not put to the members in full for an official vote, but were limited to Question 1 and Question 2. Committee members were directed by the Chair to correspond with the IAA if they wished to provide further commentary or views in an individual capacity.
- 2.31 There was then a subsequent dispute among a number of the Coordination Committee members as to whether any 'vote' had taken place in relation to any questions on the PATM seat cap proposal, and also whether certain actions of the Chair and Secretary of the Coordination Committee were undertaken in their roles as such, or in their roles as daa representatives. Aer Lingus stated in its letter of 10 September that the *'purported advice letter did not accurately reflect the proceedings of the S25 AGM at which the clear majority view was that no vote should be taken in respect of a PATM seat cap for S25 at least until, as stated above, such time as the IAA's powers in this regard have been clarified in the pending legal proceedings'*. Ryanair, in its most recent letter of 10 September, stated that the *'9 September letter proceeds to record daa's hypothetical vote on questions which were not agreed by the Coordination Committee, and were not put forward for voting to the Coordination Committee following the AGM on 27 August.'*
- 2.32 Dublin Airport, in that letter of 9 September, sent separately from the letter of the same date which was asserted to be the Coordination Committee 'advice', stated that:
- 'daa accepts, with disappointment, that a majority of the Committee did not wish for members of the Committee to have a vote on questions relating to the operation of a PATM for Summer 2025. However, contrary to what is suggested in the correspondence from the Airlines, there was no consensus on this issue. daa and DHL are recorded as voting "Yes" and others abstained. As is clear from the AGM meeting minutes, whilst the Chair of the Committee acknowledged that it appeared there would be a majority "No" for Question 1 and Question 2, no formal vote on the Questions was held at the AGM. Therefore, daa notes that in accordance with usual practice in previous seasonal coordination processes, Questions 1 and 2 were circulated to the Coordination Committee in order to formally record the views of the Committee.*
- ....
- daa cannot discern what impact is alleged to have occurred from recording the answers to questions 1 and 2 (the refusal of the committee to vote on the questions, and the vote against the PATM limit) in the minutes, as opposed to*

*recording the answers through the usual voting process.'*

2.33 In that regard, what has been asserted by the secretary of the Coordination Committee to be the 'advice' of the Coordination Committee, sent to the IAA on, and dated, 9 September, and published alongside the S25 Draft Decision, does contain the results of what is asserted to be 'Vote 3', relating to the PATM proposal. As appears from that 'advice', the Coordination Committee overwhelmingly 'voted' against Question 1 and Question 2 in relation to the PATM seat cap proposal:

- **Question 1:** Should the Committee vote on questions 2 – 5 as requested by the IAA in its letter of 14 August 2024, noting that the IAA confirmed that this consideration could be separate and without prejudice to members' views as regards whether any reduction in historic slots can, or ought to be, implemented for S25?

93% opposed, 4% in favour, Luxair, UPS, TUI, and AirNav Ireland abstained.

- **Question 2:** Should the IAA declare a PATM seat limit for S25 based on the principles in the W24 decision?

93% opposed, 4% in favour, UPS, TUI, and AirNav Ireland abstained.

2.34 As set out in the meeting minutes and the subsequent letter from daa, Dublin Airport has clarified that it would have voted yes to each of Questions 1, 2 and 3, meaning that it supports a seasonal PATM seat cap of 25.2m for S25, which is otherwise unchanged from the seat cap coordination parameter set for W24 in terms of its proposed application. No other Coordination Committee member addressed Question 3, and no Coordination Committee member addressed Questions 4 or 5 at all, despite the IAA explaining that it would be helpful and appropriate for the Coordination Committee to do so, and this could be considered without prejudice as to the question of whether any non-reallocation of historic series could or should occur at all.

2.35 We also note more broadly that the Coordination Committee 'advice', as finally provided on 9 September, was more than a week late, although the IAA did receive earlier draft advice (which was itself the subject of dispute among Coordination Committee members) on 5 September. As appears from the foregoing overview, this 'advice' also demonstrates the high level of contention within the Coordination Committee, not only on the substantive issues to be considered for S25, but also in relation to whether and how any such issues should be considered at all. For example, on page 4 of the 'advice' letter:

*'Following the AGM, and, Ryanair states, despite no agreement on the proper questions to be posed (if any), questions 1 and 2 were sent forward unilaterally by (in Ryanair's view) daa for a formal vote in order to formally record the views of the Committee. daa's position is that the questions were sent forward by the Chair.'*

2.36 The IAA sought to limit the knock-on impact of the delayed 'advice' on the rest

of the process, and still provided the standard two week consultation period. As noted in section 1, the IAA also provided the final S25 coordination parameters ahead of publication of the S25 Final Decision, given this delay and the subsequent large volume of submissions which we received in response to the S25 Draft Decision, including submissions raising various issues which were not raised within the Coordination Committee by that stakeholder, and/or by stakeholders which did not attend the Coordination Committee meetings at all.

### 3. Airfield Coordination Parameters

3.1 This section addresses, in turn:

- Runway parameters
- Stand parameters

3.2 In relation to the runway coordination parameters, we have decided to implement Wishlist 1 for the S25 season, as shown in Table 3.1.

**Table 3.1: Changes to runway limits for Summer 2025 (Wishlist 1)**

UTC Hour*	Arrival	Departure	Totals
0800	+2		+2
0900		+4	+2
1100			+2
1200	+4		+4
1300		+4	+4
1800			+3
1900	+1		+5
2000			+6
<b>Total</b>	<b>+7</b>	<b>+8</b>	<b>+28</b>

*Source: Coordination Committee*

3.3 We make no changes to the respective R10 limits for dual and single runway operations.

3.4 We retain the stand parameter as a hard constraint. Where demand for stands exceeds supply as per the count in the appendix, movements are referred to Dublin Airport for detailed assessment.

### Runway Capacity

3.5 In this subsection, we consider runway capacity limits.

#### *Egis Airfield Modelling*

3.6 As described above, Egis first validated the airfield model and then simulated the S25 flight schedule under the following scenarios:

- The S25 Schedule coordinated to the proposed S25 Wishlist 1 limits
- The S25 Schedule coordinated to the existing S24 limits

3.7 The model validation process was based on 31 May 2024, using actual block times. On this day, 100% of operations were westerly.

3.8 The simulated metrics (taxi out times, runway throughput, counts of aircraft coming on block, off block, lifting off and touching down) show a close match

with the actual data both in magnitude and daily profile. Across the day, the difference between the average simulated and average actual taxi out time is 24 seconds, with the simulation generating slightly lower taxi out times than were observed in reality.

- 3.9 Taxi out time measures the time elapsed from the aircraft coming off blocks until it crosses the runway stopbar. Departure ground delay is the accumulation of all delay experienced in the same period, i.e. all components of taxi-out time other than unimpeded taxi-time. The estimated effect of proposed airfield capacity increases on these metrics is, in our view, the best way to assess the infrastructural and operational capacity of the airfield to deliver a flight schedule.
- 3.10 Efficient towing of aircraft occurs in the model. Taxiway, towing, runway, and runway exit usage restrictions and patterns have been implemented in the model. Given the close match in the model validation outputs, it is our view that no significant airfield capacity affecting element has been omitted from the model. Airfield infrastructure was updated in the model, based on the expected situation during S25 in relation to any closures for works and projects expected to be complete. No changes are assumed in respect of operating procedures for minimum aircraft separations.
- 3.11 In each scenario, for the purposes of properly assessing airfield/runway capacity only, it is presumed that increased demand materialises as per the S25 Schedule. We have previously observed a general pattern whereby airlines may accept sub-optimal slots (whether in relation to timing, series fragmentation, or both) in order to meet demand for an operation. In order to capture this trend, our baseline scenario assumes that this redistribution effect occurs, with these new services operating at the nearest available time, given the effective runway limits for that scenario, in the simulation.
- 3.12 The S25 Schedule was based on expected S25 demand, but also with sufficient operations to properly test out the proposed R60 capacity increases. It contains a total of 888 flights, of which 99 are new operations. Most of these movements could be accommodated at the times requested without any changes to the runway limits.
- 3.13 This level of assumed growth means that some of the modelled operations may not materialise in S25 (particularly given the constraints on terminal capacity, as described in Section 4), and thus the schedule can be considered as an aggressive growth scenario, with a likelihood that the performance metrics produced by the model may be worse relative to those likely to be observed if growth is weaker. It may be that additional runway capacity will not facilitate growth, given other constraints, but rather allow more air carriers to operate at their preferred times. Nonetheless, we consider it important to fully test out the potential impact of a decision to increase the capacity, and that capacity is used. To assess the effect of a decision to implement the respective wishlists relative to maintaining the S24 limits, we asked Egis to simulate the S25 Schedule scenario.
- 3.14 Table 3.2 summarises the results of the Wishlist 1 and S24 limits simulations,



as provided to the Coordination Committee. Further details are set out in the Egis simulations published alongside the Draft Decision.

**Table 3.2: Departure Taxi Out Time under S24 limits and Wishlist 1 Proposal**

Time (UTC)	Wishlist 1	S24 Limits	Difference
Daily average	00:12:36	00:12:24	00:00:12
Peak	00:22:54	00:22:42	00:00:12

*Source: Egis, Slide 21. Taxi times in hours, minutes and seconds.*

*Peak times refer to the window with the highest average value. Values are in hours, minutes and seconds.*

- 3.15 Ahead of the final Coordination Committee meeting, Wishlist 2 was also simulated, with the results shown from slide 29 of the Egis slides. This showed no overall material difference with Wishlist 1, although a further increase of the peak taxi-out time to 00:24:18 was observed.
- 3.16 In summary, relative to maintaining the Summer 2024 limits unchanged, both wishlists are not expected to have a material impact on taxi-out times on average across the day, with the exception of the peak taxi-out time during first wave departures for Wishlist 2.

### *Other Modelling*

- 3.17 Dublin Airport commissioned ARUP to carry out simulation modelling on its behalf, which was also presented to the Coordination Committee. Modelling by ARUP similarly showed little difference between both wishlists, and thus also did not suggest that any of the wishlist scenarios would lead to a significant deterioration in airfield performance.

### *Taxi Out times and On Time Performance (OTP) in Summer 2024*

- 3.18 At the Coordination Committee pre-meeting, Dublin Airport provided an update on outturn operational performance in Summer 2024 compared to Summer 2023, from April to July inclusive.
- 3.19 On Time Performance (OTP) has improved in each month of S24 (to date) compared with the same period of S23. Notably, despite July being the busiest month in the history of the airport at the time of the pre-meeting, OTP was 7 percentage points better than July 2023. As we have noted previously, there are many factors which influence OTP at Dublin Airport other than those which relate to airport capacity. Delay coded to En Route Air Traffic Flow Management (ATFM), which is related to insufficient air traffic control capacity in the Flight Information Regions (FIRs) of other states, rather than to Dublin Airport capacity, remains the most significant contributor.
- 3.20 Across the full day, average taxi-out times to RW 28 have improved compared with S23. In S23, the North Runway (28R) was operational from 0800z until July, and then from 0600z (7am local) in July. Average taxi-in times have also improved on S23. Average first wave taxi-out times have improved by close to 20 seconds compared with S23.

## *Draft Decision*

- 3.21 Under the Slot Regulation, the runway parameters are to be reviewed with a view to increasing the capacity and number of slots available for allocation, based on an objective analysis of the possibilities of accommodating the air traffic.
- 3.22 In the S25 Draft Decision, we stated that the simulation modelling results of both Wishlist 1 and Wishlist 2 appear acceptable, with little overall impact or difference with respect to taxi times and delay. We noted the simulation evidence suggesting that the +6 additional morning wave departures in the Wishlist 2 scenario could lead to an increase in peak taxi-out time of c1.5 minutes, although it was noted in the Coordination Committee meeting that this may be related to stand allocation rather than genuine taxi-out delay, and thus may not necessarily be indicative of airfield congestion. We noted that the Coordination Committee members voted for one of the three possible scenarios by hour, rather than voting for an entire scenario on a discrete basis. This resulted in Wishlist 1 being the favoured scenario in most hours, but Wishlist 2 being the favoured scenario in 4 hours.
- 3.23 However, we noted that no modelling has been carried out to simulate the results of any such hybrid of the two scenarios. We noted that the Wishlist 2 proposal from the Coordination Committee is, in this case, not additive or incremental to Wishlist 1, but a different and alternative scenario proposed by Ryanair. We stated that wishlist 1 was based on the bottom up wishlist requests from across a range of carriers which, in many cases, are substantiated with reference to specific operations. Wishlist 2 was not, but rather a request from a single airline. We noted that Ryanair had itself voted for Wishlist 1 in a number of hours. We also noted that Wishlist 1 had been supported in full by Dublin Airport, and overall, was the most favoured discrete scenario.
- 3.24 For these reasons, we considered that a discrete and fully-modelled wishlist scenario better reflected runway coordination parameters which had been objectively analysed as a constraint, and Wishlist 1 better reflected the expected air traffic and was the discrete scenario favoured by the Coordination Committee. We thus proposed to amend the hourly runway limits in line with the Wishlist 1 proposal, as shown in Table 3.1 above.
- 3.25 We stated that in recent capacity declarations, we have sought to take account of the potential constraining factor represented by Condition 5 of the North Runway planning permission.<sup>4</sup> This condition gives rise to complex questions of planning law, EU law, and international law, and is currently the subject of High Court proceedings to which the IAA is a notice party. In August 2023, daa obtained leave to apply for judicial review of Fingal County Council's enforcement notice (issued on 28 July 2023) in relation to alleged non-compliance by daa with Condition 5. A stay on the enforcement notice was also granted. The hearing commenced before the High Court on 12 March. On 13

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<sup>4</sup> See, in particular, section 3 of the S23 Declaration: [cp5-2022-final-decision-on-summer-2023-coordination-parametersf238415a-5893-4288-8556-8a4bb98220bf.pdf](https://www.iaa.ie/paramettersf238415a-5893-4288-8556-8a4bb98220bf.pdf) (iaa.ie)

March, with the consent of all parties, the proceedings were adjourned, with a view to the Court being updated at a later date in relation to An Bord Pleanála's decision regarding the introduction of a new noise quota count system to replace Condition 5. The stay on the enforcement notice remains in place.

- 3.26 Thus, with any clarification of this matter still pending, and consistent with each declaration since S22, we propose no changes to the R60 limits in the night hours relative to those which were in place prior to completion of the North Runway. This again means that no capacity has been added between 2300 and 0700 local time since completion of construction of the North Runway, meaning that the North Runway cannot lead to more flights in this period than were previously possible under the single Runway 28L based capacity declaration.

### *Response to Draft Decision*

- 3.27 Aer Lingus, British Airways, Vueling and Iberia express support for the hourly runway limits as set out in the S25 Draft Decision.

- 3.28 In respect of Condition 5:

- St Margaret's The Ward Residents Group states that we should modify the R60 limits for the nighttime period to take account of the An Bord Pleanála draft recommendation to grant permission for the Relevant Action, adding that while this is a draft decision, it is a recommendation which the IAA should assume will stand. William Dempsey and a further group of residents also make this point regarding ABP's recent (draft) decision and state that *'Separate seasonal tables should be provided within the summer 2025 decision to clearly show the allowable limits at nighttime during summer and winter'*.
- The IAA has also received a large number of responses from individuals who, we understand, are generally residents living in the vicinity of the airport. A number of residents share the view of SMTW Residents Group, and state that the hourly runway schedules should be amended to reflect the recent Relevant Action decision by An Bord Pleanála, to include an annual aircraft movement limit of 13,000 between the nighttime hours of 23:00 and 06:59 with aircraft movements split between winter and summer. In addition, residents suggest that separate seasonal tables should be provided, clearly distinguishing between the winter and summer allocations.
- daa asserts that the IAA is obligated to take account of Condition 5 in its decisions in respect of capacity declarations for Dublin Airport.
- Councillor Dean Mulligan urges the IAA to reintroduce a strict cap on the number of night-time flights in addition to a Noise Quota System (NQS) to prevent an increase in sleep disturbance for residents living under flight oaths. Furthermore, he states that the Balanced Approach to noise management, as prescribed by EU Regulation 598/2014, emphasizes that noise restrictions should balance operational needs with environmental

and public health concerns.

### *Final Decision*

- 3.29 We note that daa repeats its fully unparticularised submission in respect of Condition 5, a condition which daa also asserts, in the aforementioned proceedings, to be unenforceable. We continue to adopt the approach outlined above in respect of the night hours referenced by Condition 5.
- 3.30 There is no basis to take account of the An Bord Pleanála draft decision in respect of the Relevant Action, as part of the S25 coordination parameters. Any such Operating Restrictions must first be finalised, and then follow the requisite notification and introduction processes under EU Regulation 598/2014, before they can be lawfully considered a relevant constraint for the purposes of Article 6 of the Slot Regulation.
- 3.31 We therefore confirm our draft decision in respect of the runway parameters.

### **Parking Stands**

- 3.32 We proposed to retain the hard constraint on stands, while updating the stand count to take account of any changes to stand availability in the various apron areas. Dublin Airport proposed maintaining the current parameter while updating the count, as usual, to reflect seasonal changes and the addition of the Apron 5H project, which will provide 12 new narrow body equivalent stands. There was no objection or alternative proposal made within the Coordination Committee. We confirm this approach.

## 4. Terminal Building Coordination Parameters

- 4.1 We have decided to roll forward the S24 rolling hourly Passenger Terminal Buildings (PTB) limits, which are set out in Table 4.1, to the S25 season.
- 4.2 We also maintain the load factor assumptions of 95% for scheduled services in Terminal 1, 85% in Terminal 2, and 100% for charter services. We maintain the referral parameters in relation to Terminal 2 check-in desks and US Preclearance as per the S24 capacity.

**Table 4.1: Hourly Terminal Limits – S25**

	Departures	Arrivals
<b>Terminal 1</b>	4,130	3,960
<b>Terminal 2</b>	3,600	3,400

*Source: Coordination Committee*

- 4.3 We have also decided to set a seasonal seat cap coordination parameter of 25.2m seats in respect of Terminal 1 and Terminal 2 combined.

### *Proposed Hourly Limits – Dublin Airport*

- 4.4 Dublin Airport proposed to roll forward the PTB hourly limits. It was noted that the hourly PTB limits are unlikely to be a materially constraining factor on the allocation of slots in S25, relative to other limits.
- 4.5 Ryanair objected to this proposal on the basis that the load factor assumption of 95% is too high. However, no specific reasoned or evidenced basis for an alternative proposal was provided, nor were Coordination Committee members asked to vote on any other proposal. We noted that the load factor assumptions, in the case of the hourly PTB limits are not intended to reflect seasonal average load factors, but rather ‘busy hour’ load factors. The Coordination Committee vote indicated an overall preference to retain the proposed terminal hourly limits.

### *Responses and Final Decision*

- 4.6 A number of airlines, in particular Aer Lingus, BA, Iberia Express, Vueling support the hourly terminal limits as set out in the S25 Draft Decision.
- 4.7 Ryanair reiterates its objection to the assumed Terminal 1 load factor of 95%, stating that Ryanair accounts for 75% of Terminal 1 traffic and has delivered a load factor of 89% in S24 to end August, meaning that all other carriers would need to deliver load factors of 113% to generate a seasonal average of 95%. Ryanair proposes an assumption of 90%.
- 4.8 As explained in the S25 Draft Decision, the load factor assumptions in the case of the hourly PTB limits are not intended to reflect seasonal average load factors, but rather ‘busy hour’ load factors, because the prospect of hourly terminal capacity being potentially insufficient arises in those hours. We have

already noted above that the PTB limits are unlikely to be a materially constraining factor during S25 in general. They will not, of course, be materially constraining outside of busy periods, and the hourly terminal capacity parameters and associated load factor assumptions will not constrain Ryanair's operational flexibility in the manner submitted.

- 4.9 We therefore disagree with Ryanair's analysis and retain the 95% assumption as proposed.

### *Proposed Referral Limits – Dublin Airport*

- 4.10 Dublin Airport proposed retaining the referral parameter for Terminal 2 check-in desks 1-28, where demand exceeds 28 desks. It also recommended retaining the referral for US Preclearance, which applies to any new flights, or time changes to pre-existing flights, intending to use this facility.
- 4.11 Ryanair objected to this proposal. However, no specific alternative proposals were provided. The Coordination Committee vote indicated an overall preference for retaining the referral parameters. No further substantive submissions were received in response to the S25 Draft Decision, and we confirm our draft proposals in relation to these parameters.

### **Seasonal Terminal Seat Capacity Constraint - Draft Decision Overview**

- 4.12 For the W24 season, we put in place a Passenger Air Traffic Movement (PATM) seat capacity coordination parameter to take account of certain planning conditions relating to Terminals 1 and 2 at Dublin Airport. Specifically, Condition 3 of the Terminal 2 planning permission F06A/1248 (PL 06F.220670), from 2007, states that:

*'The combined capacity of Terminal 2 as permitted together with Terminal 1 shall not exceed 32 million passengers per annum unless otherwise authorised by a further grant of planning permission.'*

- 4.13 Similarly, Condition 2 of a Terminal 1 extension planning permission (06F.223469 & F06A/1843), from 2008, states that:

*'The combined capacity of Terminal 1 (including the extension authorised by this grant of permission) and Terminal 2 granted permission under planning register reference number F06A/1248 (An Bord Pleanála appeal reference number PL 06F.220670) shall not exceed 32 million passengers per annum unless otherwise authorised by further grant of planning permission.'*

- 4.14 We refer to these conditions collectively as the '32mppa Conditions'. As set out in the S25 Draft Decision and in the W24 decision, the IAA had no role in the decision to impose the 32mppa Conditions, and has no power to amend or revoke them. The role of the IAA, under Article 6(1) of the Slot Regulation, is to take account of relevant constraints when determining the seasonal coordination parameters.



- 4.15 In the S25 Draft Decision, we noted that these conditions have been the subject of discord and controversy both within the Coordination Committee, and more broadly among interested parties and other stakeholders. In that regard, our Decision on Winter 2024 Coordination Parameters at Dublin Airport (the 'W24 Decision')<sup>5</sup> and the PATM seat cap within the decision are currently being challenged in separate judicial review proceedings brought by each of daa, Aer Lingus, and Ryanair (the 'W24 Proceedings'). As regards the 32mppa Conditions, broadly, the airlines argue that they are not a relevant constraint, or if they are, we took account of them in an overly conservative way, whereas daa makes the opposite complaint that we allegedly took account of them insufficiently. The cases are scheduled for hearing by the High Court on 3 December 2024.
- 4.16 We noted that, notwithstanding the W24 Proceedings, it is necessary to communicate the S25 coordination parameters to the coordinator by early October, which is before those proceedings will be determined. Based on the issues that have arisen in the proceedings, and in correspondence and other materials relating to the S25 Coordination Committee process, we noted that there appears to be two key questions to address for S25:
- Whether the 32mppa Conditions are a relevant constraint within the meaning of Article 6(1) of the Slot Regulation for S25, and if so, the manner in which they should be taken account of, as required by that article.
  - If the 32mppa Conditions are a relevant constraint for S25, and taking account of them appropriately means that there is likely to be insufficient capacity for the coordinator to reallocate all historic slot series from S24, whether it is permissible under the Slot Regulation for the coordination parameters to nonetheless be determined accordingly, i.e. with the effect that certain historic slot series may not be reallocated by the coordinator for S25.

### *Relevant Constraint*

- 4.17 In the S25 Draft Decision, we noted that certain airlines had taken the position, in respect of the W24 Decision, that the 32mppa Conditions are not a relevant constraint within the meaning of Article 6(1) of the Slot Regulation. Aer Lingus wrote to us on 10 September 2024 to make the same submission. Aer Lingus stated that, because the question of whether the 32mppa Conditions are a relevant constraint under Article 6(1) is currently before the Courts, no decision should be taken in respect of a PATM seat cap for S25 at least until such time as the IAA's powers in this regard have been clarified in the pending legal proceedings.
- 4.18 We said that, in circumstances where the W24 Decision was made on the basis that the 32mppa Conditions are a relevant constraint, the Court has not yet determined the proceedings challenging the W24 Decision, and there is no

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<sup>5</sup> [w24-final-decision\\_final.pdf \(iaa.ie\)](#)

order restraining the IAA from proceeding on foot of that decision or making any further decision, and the determination of coordination parameters is a time bound process which cannot be deferred in that regard, we must proceed on the basis that we have a function to determine coordination parameters, which falls to be exercised now for S25, and which we must exercise taking account of what we consider to be relevant constraints. We noted also that the legal proceedings include a challenge by daa, which is of the view that the 32mppa Conditions do represent a relevant constraint and that the IAA did not properly or adequately reflect that constraint. Therefore, it is also clearly not the case that the inevitable outcome of the various pending legal proceedings is that Aer Lingus' position that the 32mppa Conditions are not a relevant constraint will be found to be correct.

- 4.19 We noted that the reasons why we decided that the 32mppa Conditions should, for W24, be reflected as a relevant constraint within the meaning of Article 6(1) of the Slot Regulation, and decided on the manner in which they should be reflected as such, were set out in detail in Section 4 of the W24 Decision. As is apparent from that document, interested parties, including Dublin Airport, airlines, and local residents, have taken very different positions on whether the 32mppa Conditions should be considered a relevant constraint, and, if so, how they should be reflected in the coordination parameters.
- 4.20 We further noted that, as outlined in Section 2 above, those different positions have again been reflected in the Coordination Committee 'advice' for S25. Most airlines have not only opposed any such coordination parameter, but have refused to engage on the topic at all, such as in relation to how an associated seat cap might be estimated or put into effect in practical terms, even on a without-prejudice basis, as the IAA had suggested. On the other hand, daa has supported the imposition of a seat cap and, unlike for W24, it has outlined a specific estimate of the appropriate seat cap for S25.
- 4.21 For the W24 season, we agreed with Dublin Airport that the existence of different possible interpretations of the 32mppa Conditions does not provide a basis not to reflect the constraint in the declared capacity at all. On any of the suggested interpretations, we considered that, based on then-current data and traffic forecasts, an annualised capacity of 32mppa was likely to be a limiting constraint on demand by, at the latest, 2025. In the S25 Draft Decision, we said that this remains the case for S25, and it is now clear that, if the status quo continues from a planning perspective, it will be a number of years before the 32mppa Conditions can be amended or revoked. We also said that no arguments over and above those made during the W24 process have been advanced by the airlines which would lead us to a different conclusion on this point.
- 4.22 We reiterated that, as had been set out in the W24 Decision, we reject the conflation on the part of daa between the taking account of a relevant constraint as required by Article 6(1) of the Slot Regulation, and daa complying with its planning conditions. The IAA is not responsible for ensuring that daa complies with its planning conditions, and, in the particular case of the 32mppa Conditions, it is not in any event possible for us to do so. In that regard, there



is disagreement over what exactly the 32mppa Conditions require, and uncertainty over how exactly daa will operate the airport in terms of, for example, how many transfer passengers will use the capacity of Terminal 1 or Terminal 2. The coordination parameters cannot, in any event, deliver a specific volume of outturn passengers, if that is what is required for daa to comply with the 32mppa Conditions.

- 4.23 In that regard, and noting Dublin Airport's assertion at the Coordination Committee pre-meet on 8 August 2024 that it assumed the IAA would impose a seasonal seat cap for S25 '*which will achieve calendar year compliance with the limit*', we reiterated that the IAA is not responsible for the enforcement of, or compliance with, the 32mppa Conditions, nor for determining how they ought to be interpreted. We said that, while we expect that the imposition of such a seat cap would be of significant assistance to daa in materially complying with the 32mppa Conditions, it is for daa, as the owner of the relevant planning permissions and as the entity proceeding with development in accordance with those permissions, to determine the appropriate actions to ensure that it complies with conditions attached to those permissions.
- 4.24 We outlined that, for W24, in circumstances where Dublin Airport had failed/refused to provide a specific proposal of its own within the Coordination Committee in the way it ordinarily does, we developed our own estimate of an appropriate seat cap parameter. This was based on an objective analysis of the possibilities of optimally accommodating the air traffic, subject to the constraint on terminal capacity set out in the 32mppa Conditions. We noted that, for S25, Dublin Airport had, in the Coordination Committee, adopted our methodology, while using its own inputs specific to S25. The proposed inputs include a seasonal average load factor assumption for S25 of 86%, a 4.3% proportion of total airport passengers not using the capacity of Terminal 1 or Terminal 2, and an assumed passenger volume of 21.67m for the season. These inputs, as presented by Dublin Airport, yield a PATM seasonal seat cap coordination parameter of 25.2m. We noted the following in relation to the inputs:
- Dublin Airport has adopted our estimate from the W24 Decision (14.4m seats) as being the winter seasonal seat cap, has considered more recent data in respect of load factors, and estimated the summer seasonal seat cap accordingly.
  - Dublin Airport's S25 load factor estimate is 86%, similar to the emerging S24 load factor. Whereas the IAA's W24 load factor assumption was based on the W23 outturn seasonal load factor, in this case the S24 outturn seasonal load factor is not yet available because the season is ongoing.
  - Dublin Airport assumed 4.3% of total airport passengers as not being relevant to the capacity of Terminal 1 or Terminal 2, equivalent to what it anticipates that proportion to be in 2024. We noted that, while we expect Dublin Airport to be able to take measures to reduce the relative capacity of Terminal 1 and Terminal 2 compared to the whole airport, to a certain extent, we also expect that additional upward pressure might on the other

hand arise from the resulting capacity constraint for S25 relative to S24 being below the level of historic slot series, thus beyond that which was necessary from W23 to W24.

- 4.25 In summary, we set out our draft position that it is again necessary to take account of the 32mppa Conditions for S25, for the same reasons as set out in Section 4 of the W24 Decision. We also said that the optimal manner in which to take account of the 32mppa Conditions is, as for W24, by means of a seasonal seat cap, also for the same reasons set out in detail in Section 4 of the W24 Decision. We considered that the S25 seat cap should be particularised in the same way as for W24, and proposed to accept Dublin Airport's estimate of 25.2m seats as being reasonable overall in that regard. We therefore set out our Draft Decision that, in all of the circumstances, having considered all the materials and information available to us, and noting the absence of any alternative proposals, it is appropriate to take account of the 32mppa Conditions for S25 by means of a seasonal seat cap of 25.2m seats.
- 4.26 We noted further that, at the Coordination Committee pre-meeting on 8 August, Dublin Airport had outlined its estimate that a seat cap of 25.2m would be approximately 1m seats, or 4%, below the total incoming historic seats from S24. That is, adopting it as a coordination parameter would require that, on Dublin Airport's estimate, approximately 4% of historic seats not be reallocated for S25. We noted that Dublin Airport has not, however, set out what it considers to be the legal basis for such an approach. Dublin Airport also did not provide any input on whether, if such a legal basis exists, how any non-reallocation should be effected in practice. By its letter dated 9 September 2024 to the IAA, Dublin Airport confirmed that its position on questions 4 and 5, as set out at paragraph 2.19 above and which were not voted on by the Coordination Committee, would have been to abstain. The S25 Draft Decision therefore went on to consider this question, as summarised in the next subsection.

### *The Nature of Historic Slots*

- 4.27 We noted that, as part of the W24 process and then in the W24 Proceedings, and in the Coordination Committee meetings and related correspondence (including Aer Lingus' letter of 10 September) in respect of S25, a number of airlines have asserted that historic slot entitlements are in the nature of property rights which, they say, are protected under the Irish Constitution, and also the EU Charter of Fundamental Rights. They have adverted to the provisions of Articles 8(2) and 8a of the Slot Regulation, and, in those regards, to the entitlement to the same series of slots in the next equivalent scheduling period under the '80/20' principle and the entitlement to transfer and exchange slots.
- 4.28 They have also suggested that, insofar as any restriction or limitation of these entitlements is to be effected, this must be done in a lawful manner, and refer, in particular, to previous decision-making pre-dating the W24 decision; the rationality, or otherwise, of the PATM seat cap parameter and its relationship to the aims and objectives of the Slot Regulation; and to the proportionality, or otherwise, of the measure and the need to ensure its adoption impairs the entitlements of air carriers as little as possible.

4.29 As regards the nature of slots and series of slots under the Slot Regulation, and

- (i) the nature of the entitlements of air carriers
  - under Article 8(2) of the Slot Regulation to the same series of slots in the next equivalent scheduling period under the “80/20” “use-it-or-lose-it” principle, and
  - under Article 8a to transfer and exchange slots,

and

- (ii) whether air carriers enjoy protected property rights in these things,

we noted, in the S25 Draft Decision, that the IAA has not been able to identify any authority in these regards (for example, in the form of decisions of relevant courts of competent jurisdiction, dealing with these issues).

4.30 In seeking to gain an understanding of the nature of the entitlements under the Slot Regulation, we considered carefully the wording and provisions of the Slot Regulation itself. We noted that a reading of the Slot Regulation suggests that the primary objective is to provide a system to ensure that airlines have access to coordinated airports, while they are coordinated, on the basis of principles of neutrality, transparency and non-discrimination, via the allocation of slots in accordance with the rules set out in the Slot Regulation.

4.31 We assessed that, taking the elements of a slot/series of slots by reference to the Slot Regulation, a slot/series of slots would appear to constitute:

- (i) a permission
- (ii) given by the coordinator
- (iii) in accordance with the Slot Regulation
- (iv) to an air carrier who is and remains for the time being licensed as such
- (v) for the scheduling period for which it is requested
- (vi) to use relevant infrastructure owned by an airport, that is necessary to operate an air service at the particular coordinated airport
- (vii) on specific dates and times
- (viii) for the purpose of landing or take-off
- (ix) as allocated by the coordinator in accordance with the Slot Regulation
- (x) which permission expires at the end of the scheduling period concerned (or sooner than that) and must be returned to the slot pool
- (xi) save where an air carrier can demonstrate that the permission was utilised 80% or more in that scheduling period, in which case the air carrier can request that the slot/series of slots be renewed for

the next equivalent scheduling period

- (xii) and which permission may be transferred to, or exchanged with, others, as provided for in the Slot Regulation.

- 4.32 We considered that the incidents above are to be read in the light of the provisions of the Slot Regulation as a whole, including the provisions of Article 8b, which expressly contemplates that the entitlement to series of slots referred to in Article 8(2) can be the subject of *'limitation, restriction or elimination'*, and that any such thing imposed under Community law shall not give rise to any claims for compensation. We noted that Aer Lingus had submitted that, in correspondence relating to Condition 5 of the North Runway Planning Permission, the IAA *'appear[ed] to rely on Article 8B of the Slot Regulation as providing a potential legal basis for withdrawing historic slots.'* We said that the IAA's view of Article 8b is that it expressly contemplates that the entitlement to series of slots referred to in Article 8(2) can be the subject of *'limitation, restriction or elimination'*.
- 4.33 We said that it is clear from the scheme of the Slot Regulation that the allocation by the coordinator of slots follows from the prior declaration by the IAA of the coordination parameters, which are *'the expression in operational terms of all the capacity available for slot allocation at an airport during each coordination period'*.
- 4.34 It therefore seemed to us that the Slot Regulation contemplated that the slots available for allocation in any coordination period would proceed from a prior declaration of the capacity available for allocation in that coordination period. If, for whatever reason, the capacity is more constrained relative to demand in the current period than in the previous corresponding coordination period, or previous periods, this might result in insufficient capacity being available to enable the coordinator to deliver on the entitlement, otherwise enjoyed by particular air carriers, to being allocated the same series of slots in the next equivalent scheduling period. Thus, depending on the nature and extent of the capacity reduction concerned, there might be the kind of *'limitation, restriction or elimination'* of the entitlement to that series of slots contemplated by the Slot Regulation (which things do not, according to the Slot Regulation, attract claims for compensation, if imposed under EU law).
- 4.35 We noted that the entitlement to transfer or exchange slots would seem to be conditional on there being capacity to allocate the slots concerned in the coordination period concerned, in the first place.
- 4.36 Further, we noted that, as per Article 8a(1)c of the Slot Regulation, the entitlement to transfer or exchange slots does not appear to be in the nature of an entitlement to alienate a slot enjoyed by the carrier for the time being by way of simple 'sale', but, rather, is an entitlement, where the slot is allocated on foot of sufficient capacity being declared, only to swap slots, and we note that consideration is only paid where the value of one slot being swapped is greater than the value of the other being received. This topic was further addressed by the European Commission in section 5 of its Communication of 30 April 2008

(COM(2008) 227).<sup>6</sup>

- 4.37 Separately, we noted that Article 3(7) of the Slot Regulation provides that, where the capacity of a coordinated airport becomes sufficient to meet demand, it shall no longer be designated as coordinated. Relatedly, the World Airport Slot Guidelines (the ‘WASG’) makes it clear at paragraph 1.1.2 that *‘Coordination is not a solution to the fundamental problem of a lack of airport capacity. In all instances, coordination should be seen as an interim solution to manage congested infrastructure until the longer-term solution of expanding airport capacity is implemented.’* Paragraph 6.6.2 of the WASG also notes that *‘IATA monitors all coordinated airports to identify opportunities to reduce the number of coordinated airports.’*
- 4.38 In the event of any coordinated airport reverting to Level 2 or Level 1 status, as contemplated by both the Slot Regulation and the WASG, the question of slot allocation, including historic slots, falls away entirely. We suggested that this appears to be a further example of the temporary nature with which the Slot Regulation appears to contemplate the concept of slots.
- 4.39 We also referenced the commentary of the European Commission, as contained in the explanatory memorandum in relation to its proposal to amend the Slot Regulation,<sup>7</sup> which was adopted (Regulation (EC) No 793/2004). The proposal was to amend the definition of ‘slot’,<sup>8</sup> which, it was stated, was to clarify the legal nature of slots. The Commission explained, under the heading *‘legal nature of slots’*, that:

*‘11. The current rules on slot allocation have given rise [sic] to discussions about the legal nature of slots, notably at Europe’s severely congested airports where market access has been particularly difficult. The definition of a “slot” in the current Regulation is expressed in purely factual terms. As a consequence, the “use-it-or-lose-it” rule along with the existence of grandfathered rights has led to situations where certain airlines, on the one hand, have claimed that slots are their property assets on which their networks are build [sic], while airports, on the other hand, have argued that slots constitute their property rights as they are inextricably linked to the airport infrastructure. Therefore, there is apparent need to clarify the legal status of slots so as to create a solid basis for an allocation system, which allows both air carriers and airports to plan operations in the most effective way and ensure that scarce airport capacity is optimally used.*

*12. In the light of that, this Regulation stipulates that slots constitute*

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<sup>6</sup> [Microsoft Word - EN 227 original.doc \(europa.eu\)](#)

<sup>7</sup> [Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation \(EEC\) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports - COM/2001/0335 final](#)

<sup>8</sup> The definition of “slot” proposed by the Commission in COM/2001/0335 final was “*the entitlement established under this Regulation, of an air carrier to use the airport infrastructure at a coordinated airport on a specific date and time for the purpose of landing and take-off as allocated by a coordinator in accordance with this Regulation*”. A variation on that definition was introduced by the [Common Position adopted by the Council](#), which is the definition now included in the Slot Regulation: “*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*”

*entitlements to access the airport infrastructure at specific times of the day during the scheduling periods. In that way it becomes clear that slots do not constitute property rights but only entitle air carriers to use the airport facilities by landing and taking-off at specific dates and timings.*

*Accordingly, the slot allocation system should be considered as a system whereby the slots are allocated as public goods, based on certain rules, to the most deserving air carrier. In conformity with long established international practice (IATA Scheduling Procedures), slots are allocated as entitlement to access and use the airport facilities for the purpose of landing and take-off at specific dates and times for the duration of one scheduling season (winter or summer). If air carriers observe certain usage rules and can demonstrate to the satisfaction of the coordinator that they have been effectively using their slots, they can “renew” their entitlement for the next equivalent scheduling seasons. This possibility corresponds to the existing international practice of grandfather rights. If these conditions are not met, the slot entitlements are returned to the pool (in practice withdrawn by the coordinator and placed as unused slots into the pool) for re-allocation; this situation does not give the carrier concerned any legal claim.’*

- 4.40 We noted that Recitals (8) and (9) of amending Regulation 793/2004, adopted following the Commission’s proposal, now state the following, and make it clear that the ‘grandfather rights’ to series of slots must be subject to the ability of/requirement for Member States (in this case, the IAA) to take account of operational and environmental constraints when defining capacity parameters (and therefore are conditional on, and subject to, declarations of relevant capacity parameters accordingly):

*‘(8) It is also necessary to make clear that slot allocation should be considered as giving air carriers permission to access the airport facilities for landing and taking-off at specific dates and times for the duration of the period for which the permission is granted. The need to develop rules and procedures for coordinating airport and airway slots should be examined.*

*(9) However, in the interest of stability of operations, the existing system provides for the reallocation of slots with established historical precedence (“grandfather rights”) to incumbent air carriers. In order to encourage regular operations at coordinated airports it is necessary to provide that grandfather rights relate to series of slots. At the same time, Member States should, when defining capacity parameters, be able to take account of operational and environmental constraints.’*

- 4.41 We noted that elsewhere, by way of comparative interest, in the United States, the Code of Federal Regulations, Title 14, § 93.223 (a), provides as follows:

*‘Slots do not represent a property right but represent an operating privilege subject to absolute FAA control. Slots may be withdrawn at any time to fulfil the Department’s operational needs, such as providing slots for international or essential air service operations or eliminating slots.’*

4.42 In addition, the WASG provides, at Section 6.10.3, that:

*‘[a] capacity reduction after the Initial Submission Deadline, or a capacity reduction that cannot accommodate historic slots must be avoided except in exceptional circumstances’.*

4.43 The WASG clearly contemplates that there may be capacity reductions which will result in an inability to accommodate historic slots.

4.44 In light of the above, while it is not unknown for air carriers to assert property rights in slots/series of slots, as they have done in the current circumstances, we said in the S25 Draft Decision that it is the understanding of the IAA that the entitlements provided for in the Slot Regulation are not intended to be regarded as property rights, and are attended by incidents that are inconsistent with a conclusion to the contrary.

4.45 We further said that, even if the entitlements are properly to be regarded as property rights, the precise nature and extent of these rights is as delineated and circumscribed by the provisions of the Slot Regulation, as outlined above.

4.46 Accordingly, on the premise that the IAA is correctly taking into account the 32mppa Conditions in the determination of the parameters for slot allocation as a ‘relevant constraint’ within the meaning of Article 6(1), and on the premise that the process currently being undergone to determine the appropriate parameters is an appropriate one being appropriately conducted, we assessed that any right which might exist, and that might be restricted or limited as a consequence of the coordination parameters for S25, would be so restricted or limited to an extent, and in a manner, contemplated by the Slot Regulation, and therefore, in a lawful manner.

4.47 On the basis of this analysis, our draft conclusion was that there is no basis to conclude that the Slot Regulation does not permit the application of a seat cap of 25.2m for S25, even if that requires a certain proportion of historic seats from S24 to not be reallocated, where this is an appropriate way to take account of a relevant constraint such as the 32mppa Conditions.

### *Practical Implementation*

4.48 The S25 Draft Decision then went on to consider matters of practical implementation. As set out above, while Mott MacDonald outlined a possible approach to the Coordination Committee on the practical application of a PATM seat cap which falls below the level of incoming historic slots, we noted that no Coordination Committee members ultimately supported this approach. Despite the IAA stating that the Coordination Committee should consider this issue, entirely without prejudice to any views that member might take as regards whether any such reduction in historic slot entitlements is permissible and/or warranted, it did not do so.

4.49 The approach proposed by Mott MacDonald suggests allocating all airline requests for historic slots at initial coordination (SALs), and to the extent that

subsequent handbacks do not meet the PATM seat capacity limit by the HBD, airlines will then be required, on a pro-rata basis, to reduce seats to achieve compliance with the parameter. We noted, however, that this proposal does not address the basis for withdrawal of seats/slots under the Slot Regulation, once those have already been allocated through the SALs and if airlines do not comply with their pro-rata reduction contribution. Mott MacDonald did not address the question of enforcement of any such seat reduction, nor how the approach can be reconciled with the requirement of Article 6 that the coordination parameters are to be set based on relevant constraints (and slots are to then be allocated on foot of those coordination parameters). Thus, our draft view was that any such reduction should occur on foot of the declaration of coordination parameters, as part of the SALs.

- 4.50 We said that we agree, however, with Mott MacDonald that any such required reduction should be imposed on a pro-rata basis, across all air carriers with incoming historic seats from S24. Such an approach is consistent with the principles of transparency and non-discrimination which underpin the Slot Regulation. We said that, if the situation materialises whereby the level of incoming historic seats is greater than the 25.2m PATM seat limit, ACL shall allocate seats only to the PATM seat limit. In doing so, a pro-rata reduction would be allocated to each carrier in order to ensure that the PATM seat limit is not breached.
- 4.51 In terms of practicalities, we said that an approach could be adopted in which ACL would remove seats from historic slots up to the percentage reduction required, leaving all other elements intact. We said that an effort could be made by ACL to concentrate on slots in off-peak periods based on terminal capacity, leaving carriers flexibility to move seats as required. This would mean that carriers retain flexibility as to how to achieve their percentage seat reduction across their portfolio. For example, it might be delivered by cancelling services, or reducing a frequency (e.g. six days rather than a daily service), or downgauging aircraft, or various combinations of those things. In such a scenario, no new slots would be allocated.
- 4.52 In all other respects, we proposed that the S25 PATM seat cap coordination parameter would be specified in the same manner, and with the same application, as the W24 PATM coordination parameter.
- 4.53 The proposed PATM seat parameter would therefore be a seasonal limit applying to all passenger services using Terminal 1 or Terminal 2. Operations not using the passenger capacity of Terminal 1 or Terminal 2 would not be limited by the PATM seat cap. This means that cargo and General Aviation (GA) operations would not be limited by it, in the latter case because they enter via gateposts or the Platinum Services terminal, rather than Terminals 1 or 2. In the case of GA, this will be kept under review for future seasons pending the outcome of the disagreement over the meaning and effect of the 32mppa Conditions. We note that, in any event, the question is of limited materiality in the context of the volume of GA passengers.
- 4.54 In summary, we proposed a full-season PATM seat capacity parameter of



25.2m in relation to Terminal 1 and Terminal 2 combined for the S25 season, which we considered to be necessary to properly take account of the capacity constraint generated by the 32mppa Conditions.

## Responses to Draft Decision

4.55 The responses we received to the S25 Draft Decision focused largely on the proposed PATM seat cap parameter. We have considered all of these responses carefully. We address the following main points raised, which we have categorised by theme as follows:

- The roles, powers, and responsibilities of various parties, and whether the 32mppa Conditions are a relevant constraint for S25.
- The nature of historic slot series.
- Matters relating to open skies agreements.
- The Coordination Committee ‘advice’ and the IAA’s approach to it.
- The calculation and specifications of the proposed PATM seat cap parameter.
- The application/operation of the proposed PATM seat cap parameter.
- Other issues.

### *Roles, powers and responsibilities, and whether the 32mppa Conditions are a relevant constraint for S25*

4.56 Consistent with the position it has taken for W24 and in the W24 Proceedings, Aer Lingus submits that the 32mppa Conditions are not matters which the IAA is required to take account of in declaring coordination parameters. It submits that the 32mppa Conditions are not relevant constraints under Article 6(1) of the Slot Regulation, and that the IAA has acted unlawfully by taking them into account in making the W24 Decision, and would be acting unlawfully if it takes account of these conditions for S25.

4.57 Aer Lingus points to the IAA’s treatment of Condition 5 of the North Runway planning permission and states that the IAA has ‘*consistently refused*’ to treat this as a relevant constraint. It asserts that the IAA should adopt this approach to the 32mppa Conditions, particularly in circumstances where there is litigation pending before the Court as to the status and interpretation of the 32mppa Conditions and the power of the IAA to impose a PATM seat cap in order to ‘*give purported effect*’ to these conditions. It believes that the IAA has refused to follow its own precedent.

4.58 Aer Lingus states that, in its view, a number of factors to which the IAA has referred apply equally to the daa proceedings brought in respect of Condition 5, including (i) the proceedings have not been determined; (ii) the determination of the coordination parameters is a time bound process and (iii) daa’s challenge in respect of Condition 5 might be unsuccessful. Aer Lingus asserts that other factors relied on by the IAA, namely that the conditions were considered to be

a relevant constraint for W24 and there was no order restraining the IAA from proceeding on foot of that decision, fail to appreciate that such an order would not have been made by a Court where Aer Lingus, due to unique circumstances was able to mitigate the impact of the decision to impose the PATM seat cap for this winter season.

4.59 Aer Lingus submits that because issues in relation to the IAA's role, powers and responsibilities in that regard are before the courts as part of the W24 Proceedings, it would not be appropriate for the IAA to take account of the 32mppa Conditions for S25. It refers to the following:

- The question of the correct interpretation of the 32mppa Conditions, if they are relevant constraints (which it does not accept).
- The question of whether the IAA can impose a PATM seat cap *'in order to give purported effect to those conditions'*.
- That the proposed seat cap *'cannot in fact achieve compliance with the 32mppa Conditions, since the latter relate to throughput and the former relates to capacity'*. Aer Lingus further asserts that we are *'attempting to limit passenger throughput (as opposed to capacity)'*, which, Aer Lingus states, we have no jurisdiction to do.

4.60 Airlines for America (A4A) similarly states that the IAA has no role in ensuring compliance with the 32mppa Conditions, as we confirmed in the S25 Draft Decision. A4A asserts that if the 32mppa Conditions constitute an environmental constraint to be taken into consideration in the allocation of slots, this is a matter for local guidelines made by the Coordination Committee, not the IAA in making a decision under Article 8 [sic] of the Slot Regulation.

4.61 A4A notes that compliance with the 32mppa Conditions cannot be ensured by the slot allocation process and/or by the determination of coordination parameters. It states that in these circumstances, the imposition of a seat cap for the *'stated purpose'* of achieving compliance with the 32mppa Conditions is irrational and unreasonable. It asserts that planning conditions are not a relevant consideration for coordination parameters.

4.62 A4A also states that the 32mppa Conditions are not relevant *'technical, operational or environmental constraints'* that ought to be taken into account for the purposes of airport coordination or slot allocation. In its view, Article 6 of the Slot Regulation and the definition of 'coordination parameters' in Article 2(m) of the Slot Regulation have been misinterpreted and misapplied in the S25 Draft Decision.

4.63 A4A points specifically to the first paragraph of Article 6(1), which requires the IAA to determine the coordination parameters *'while taking account of all relevant technical, operational and environmental constraints as well as changes thereto'*. It states that, referencing paragraph 2 of Article 6(1), an environmental constraint is only relevant insofar as it relates to the capacity of a coordinated airport to accommodate air traffic, and that it is not the case with the 32mppa Conditions. A4A believes that this is reinforced by the definition of

‘coordination parameters’ in Article 2(m).

4.64 In more detail, A4A contends that the 32mppa Conditions are not a relevant consideration for the following reasons:

- Coordination parameters are expressly limited to the expression of capacity available for slot allocation ‘*at an airport*’ (Article 2(m), Article 3(3) of the Slot Regulation. They do not encompass an expression of passenger throughput capacity at the airport pursuant to the 32mppa Conditions. Passenger throughput capacity, along with other land-based capacity considerations such as traffic and transport infrastructure external to the airport, are regulated by the planning authority via planning permission.
- The reference in the definition of coordination parameters at Article 2(m) to the capacity for slot allocation ‘*at an airport*’ makes it clear that coordination parameters are concerned solely with activities at the airport. The 32mppa Conditions were prescribed by the planning authority to constrain passenger throughput based on historic lack of capacity of the surrounding transport network, which is necessarily outside the airport.
- No regard or no proper regard has been had by the IAA to the distinction between capacity for slot allocation and capacity for passenger throughput as prescribed in the 32mppa Conditions. The IAA, it states, has failed to take account properly, or at all, of this distinction.
- A4A states that the reflection required in the IAA’s determination of the coordination parameters is limited to technical, operational and environmental factors that affect the ‘*performance of the airport infrastructure and its different sub-systems*’. The 32mppa Conditions constrain and relate only to the throughput of passengers at Dublin Airport, not the performance of the airport infrastructure.
- The S25 Draft Decision, it argues, prescribes parameters in respect of ‘Airfield Coordination Parameters’ and ‘Terminal Building Coordination Parameters’. A4A asserts it is therefore clear that the focus of the S25 Draft Decision is properly on airport infrastructure and the capacity for slot allocation ‘*at an airport*’. However, the 32mppa Conditions, which are intrinsically linked to external land-based considerations, are not an environmental constraint for the purposes of the Slot Regulation.
- A4A states that the decision-making process required by Article 6(1) of the Slot Regulation is required 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*’. A4A therefore notes that while there is no definition of ‘capacity situation’ in the Slot Regulation, it is clear, in its view, from the context of Article 6(1) that the ‘capacity situation’ to be taken into account in this context is in respect of the air traffic specifically, and that planning conditions attached to a planning authority for reasons relating to traffic and transport infrastructure capacity outside of Dublin Airport are not relevant environmental

constraints and thus not valid considerations for the purposes of Article 6(1) of the Slot Regulation.

- 4.65 A4A further asserts that the IAA has failed to take account of a relevant consideration, namely that the reason for the imposition of the 32mppa Conditions was related to historic traffic and transport capacity, and that, since the imposition of the conditions, public transport capacity has substantially increased. It states that the capacity constraints on which the 32mppa Conditions are based no longer exist, because of improvements in road infrastructure and the availability of significant bus service to and from the airport that did not exist in 2007. It also states that the 32mppa Conditions are ambiguous.
- 4.66 Ryanair similarly asserts that the 32mppa Conditions are not a relevant constraint:
- The 32mppa Conditions, it states, 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.'* Ryanair therefore believes that the 32mppa Conditions were explicitly imposed on the basis of land use considerations in the planning context, and that there have been significant improvements in the road network serving Dublin Airport since the conditions were imposed. Therefore, it states, the 32mppa 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'*.
  - Referencing the definition of 'coordination parameters' in the Slot Regulation, Ryanair similarly states the 32mppa Conditions are not *'relevant, technical and environmental constraints'* because they do not affect the performance of the airport infrastructure, stating the conditions relate exclusively to historic constraints on vehicular access to/from Dublin Airport and not terminal, runway or stand parameters considered by the IAA under Article 6 of the Slot Regulation.
  - It states that we failed to categorise the 32mppa Conditions as any of the applicable constraints under the Slot Regulation, and that the 32mppa 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'*.
  - Ryanair believes that the 32mppa Conditions are too ambiguous to be implemented, arguing that 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 has described as reasonably open. Further, it believes that if (which Ryanair disputes) the 32mppa Conditions are relevant considerations, it is only their true construction which could possibly be a relevant consideration.

- 4.67 British Airways, Iberia, and Vueling also do not agree with the IAA's conclusion that the 32mppa Conditions are matters which the IAA is required to take account of in declaring capacity for S25, given that there are ongoing legal proceedings. They argue, individually, that to take account of the 32mppa Conditions would prejudice the outcome of the W24 Proceedings and would, they believe, lead to inevitable further challenges in respect of S25.
- 4.68 Conversely, Dublin Airport states that the 32mppa Conditions are a relevant constraint for S25 within the meaning of Article 6(1) of the Slot Regulation. It submits that the 32mppa Conditions are a relevant environmental, technical, or operational constraint.
- 4.69 St Margaret's The Ward Residents Group, as well as responses from a large number of other residents, also submit that the 32mppa Conditions are a relevant constraint to be taken account of for S25.
- 4.70 The US Department of Transportation alleges that the IAA is responsible for the '*exceedance of capacity allocated at DUB in 2024*'. It asks for an immediate and temporary solution that would allow carriers to retain their historic slots. We note that the US Department of Transportation has marked much of its submission as confidential. We have considered the entirety of this submission but only address, in this paper, those portions of it which are included in the publishable version.
- 4.71 Dublin Airport accepts that it is the grantee of the planning permissions which contain the 32mppa Conditions. However, it states that the IAA must determine the coordination parameters in a manner that is consistent with applicable limits on capacity at the airport. It states that the IAA is bound by the conditions attached to a grant of planning permission and compliance with those conditions is not the sole preserve of daa, but the IAA is equally bound to comply with and exercise its functions in a manner consistent with the limits imposed by the 32mppa Conditions.
- 4.72 Dublin Airport asserts that the IAA is an emanation of the State which is required to act in a manner consistent with the duty of sincere co-operation found in Article 4(3) of the Treaty of the European Union. It states that, consequently, the IAA is required to exercise its jurisdiction in a manner which is consistent with and gives effect to European law, which includes taking decisions which are consistent with and gives effect to European law and respect the jurisdiction exercised by other competent authorities pursuant to European law. daa thus submits that the IAA is obliged to take decisions which are consistent with and do not deviate from the 32mppa Conditions, which were imposed by another competent authority in exercise of functions governed by European law, including the EIA Directive.
- 4.73 Dublin Airport refers to its assertion included in its letter to the IAA dated 28 June 2024 regarding the Winter 2024 coordination parameters in which it stated "*the IAA has sole control of the declared number of movements that are permitted to be accommodated at Dublin Airport, which is the primary determining factor of how many passengers use the terminal. Consequently, it*

*is the IAA, and only the IAA, which controls whether the coordination parameters are set out in such a manner as to ensure that the number of flights allowed at the airport permits no more than 32 million passengers to use the Terminals per annum”.*

### IAA Response

- 4.74 The IAA had already considered and addressed many of these issues in the W24 Decision and/or in the W24 Proceedings. We refer generally to Section 4 of the W24 Decision, in which the IAA addressed certain of the submissions outlined which have now been made by the same and/or other parties in respect of S25.
- 4.75 We are not persuaded by the views of the airlines that the 32mppa Conditions should not be considered a relevant constraint for S25. We note that these submissions are premised on the following:
- Incorrect assertions that limitations or constraints on the throughput of airport infrastructure (such as the terminals) are not, in principle, relevant constraints for the purposes of Article 6 of the Slot Regulation.
  - The continued incorrect conflation between the taking account by the IAA of a relevant constraint for purposes of determining coordination parameters under Article 6 of the Slot Regulation, and matters of planning compliance and/or enforcement (which are the responsibility of daa, as the owner of the relevant planning permissions, and planning authorities, rather than the IAA).
  - Incorrect assertions as to the genesis/purpose of the 32mppa Conditions themselves and the relevance of that to the obligation on the IAA to take account of the associated constraint for S25, and to the effect that the IAA has taken inconsistent approaches as between Condition 5 of the North Runway planning permission, and the 32mppa Conditions.
- 4.76 We reiterate that, under Article 6(1) of the Slot Regulation, the parameters are to be declared taking account of all relevant technical, operational, and environmental constraints. Given that there is likely to be a limiting condition on the capacity of terminal infrastructure in 2025 such that demand cannot be fully satisfied for S25, we agree with daa and the residents that this constitutes a relevant constraint for the purposes of Article 6(1). The definition of coordination parameters in the Slot Regulation recognises that they are to reflect all technical, operational and environmental factors affecting the performance of the airport infrastructure. Such constraints are not limited to aircraft processors, but also are commonly set in respect of passenger terminal infrastructure, to take account of the factors which are expected to bear upon the capability of that infrastructure to process passengers, relative to demand.
- 4.77 The IAA has already explained, in the W24 decision, that, contrary to the submissions of airlines, the question of whether the 32mppa Conditions are a relevant constraint does not turn on whether they relate to throughput or to capacity. We note that the airlines, including Aer Lingus, now assert (and

contrary to the wording of the 32mppa Conditions) that they relate to throughput, rather than capacity. However, Aer Lingus, in its response to W24, expressly did not accept that the 32mppa Conditions relate to throughput. Dublin Airport also expressly submitted that the 32mppa Conditions ‘*of course*’ do not relate to throughput, but relate to capacity. Both of these parties have since contradicted their respective positions adopted in W24 in that regard, such as in their responses to the S25 Draft Decision.

- 4.78 In any event, if the 32mppa Conditions do constrain throughput rather than capacity, the assertion that they are, for that reason, not a relevant constraint for the purposes of Article 6 of the Slot Regulation, is incorrect and does not make sense. There is no such thing as a factor which constrains terminal throughput, but not terminal capacity. All terminal capacity parameters, including the hourly terminal limits at Dublin Airport, are based on passenger throughput, in that they are derived from passenger throughput capabilities or estimates. Similarly, for example, condition 3(d) of the North Runway Planning Permission limits the permitted throughput of the North Runway to zero between 2300 and 0700, and this is reflected in the runway coordination parameters.
- 4.79 Setting coordination parameters requires a forward-looking estimate of whether any given factor is likely to constrain the ability of an airport subsystem to process passengers or aircraft (that is, constrain throughput) at the anticipated level of demand, over the scheduling season. If so, a coordination parameter (capacity) should be estimated and set in respect of that subsystem accordingly, to limit the extent to which presenting passengers/aircraft are likely to exceed the capability of that subsystem to process passengers/aircraft (i.e., that the throughput capability is not exceeded by too much). That capability is to be determined in practical terms by reference to factors which appear likely to bear on that capability. Hence, the parameter is set based on the ‘*possibilities of accommodating the air traffic*’.
- 4.80 Capacity and throughput are, of course, closely related concepts, not distinct from each other in the way asserted by the airlines. In this case, capacity is being maximised subject to the seat cap parameter, which has been calculated on the basis of limiting the annual combined capacity of Terminal 1 and Terminal 2 to 32 million passengers, which is a constraining factor which appeared (and appears) likely to bear on the capability of Terminal 1 and Terminal 2 to process passengers during S25.
- 4.81 The IAA has already explained, in detail, the distinction between taking account of a relevant constraint under, and for the purposes of, Article 6 of the Slot Regulation, and matters of planning enforcement/compliance. The airlines and daa continue to incorrectly conflate these two matters, but then, respectively, draw precisely opposite conclusions from the same incorrect conflation. In that regard, daa incorrectly asserts that the IAA is required to ensure that daa complies with planning conditions attached to planning permissions granted to daa, whereas the airlines assert that because the IAA is not responsible for complying with or enforcing the 32mppa Conditions (which is correct), those conditions are not a relevant constraint at all (which is incorrect, and a *non-*

*sequitur*). We note also that the airlines have submitted that, as an emanation of the State, the IAA is required to ensure that they will be reallocated all of their historic slot series, whereas Dublin Airport has submitted that, as an emanation of the State, the IAA is required to ensure that daa complies with the 32mppa Conditions.

- 4.82 Contrary to the submission of, for example, A4A, nowhere has the IAA said that the purpose of the taking account of the constraint for scheduling purposes is to *ensure* that daa will actually comply with the associated planning conditions. That is not the case. As with all other constraints based on or related to planning conditions, the IAA proposed to take account of the 32mppa Conditions in a way which amounts to a prediction of how the relevant airport subsystem(s) are likely to be operated by the operational stakeholders in the relevant season. It is not a determination as to how they must be operated, which is a matter for those operational stakeholders. For example, the current runway parameters are declared on the assumption of the runways being operated in compliance with planning conditions 3a to 3d of the North Runway Planning Permission. Taking account of these conditions provides no guarantee that the runways will actually be operated in compliance with these conditions, with the daily operation of the runways being primarily a matter for AirNav Ireland, in conjunction with daa. Those parties could subsequently decide to operate the runways in a manner which breaches conditions 3a to 3d, in which case the IAA would have no role in respect of any resulting planning enforcement. Taking account of those conditions as a relevant constraint for the purposes of Article 6 of the Slot Regulation does not amount to an enforcement of those conditions.
- 4.83 That the runway coordination parameters, of themselves, cannot '*ensure*' compliance with conditions 3a to 3d does not mean that the IAA should ignore the runway planning conditions, and set the runway coordination parameters on the assumption of unrestricted mixed mode, 24/7, runway operations occurring during the relevant season. No party has ever made such a suggestion in respect of any of the coordination parameter decisions made to date.
- 4.84 Similarly, we proposed to set the coordination parameters for S25 on an assumption that daa will comply with the 32mppa Conditions, rather than on an assumption that daa will operate the terminals in breach of those conditions. This does not ensure that daa will actually comply with the conditions, and does not amount to a purported planning enforcement or compliance action on the part of the IAA. In that context, the assertion that a planning condition is only a 'relevant constraint' for the purposes of Article 6 of the Slot Regulation if the taking account of it will ensure compliance by daa with the relevant planning condition(s) is to misunderstand the nature of the Slot Regulation, and is misconceived.
- 4.85 The IAA has not taken an inconsistent approach as between Condition 5 of the North Runway, and the 32mppa Conditions. We have already addressed the question of ambiguity as regards the interpretation of the 32mppa Conditions in the W24 Decision, and adopt that analysis here. Importantly, and unlike Condition 5, the enforceability of the 32mppa Conditions is not disputed by the



owner of the associated planning permissions, with daa having instead set out a detailed view on how they ought to be interpreted. Nor has the validity and/or enforceability of the 32mppa Conditions been credibly challenged by any other party. The IAA has not 'ignored' Condition 5. As a result of Condition 5, the IAA has frozen the runway coordination parameters in the relevant hours. Further, and also unlike Condition 5, the 32mppa Conditions are not so vague and imprecise as to require a series of further judgements by the IAA as to their meaning and effect, in order to be reasonably converted into coordination parameters. In that regard, the 32mppa Conditions are more akin to Condition 3 of the North Runway planning permission, than Condition 5. In the case of the 32mppa Conditions, there are a number of different, but individually specific and sufficient, interpretations available for the purpose of estimating seasonal capacity parameters.

- 4.86 As outlined in the S25 Draft Decision, the fact that the W24 Proceedings remain ongoing does not provide a basis to not take account of the 32mppa Conditions for the S25 coordination parameters. Daa has also issued proceedings in which it complains that the approach taken by the IAA was insufficiently restrictive. As noted in the S25 Draft Decision, there is no order restraining the IAA from proceeding on foot of the W24 Decision or from making any further decision, and the IAA has a function to perform which is time-bound. Aer Lingus' assertions regarding its not having sought a stay in the W24 Proceedings does not change the fact that the IAA does not currently stand restrained from performing its functions under the Slot Regulation. Accordingly, there is no practical reality in awaiting, or legal imperative to await, clarification of the matter in the pending legal proceedings.
- 4.87 We note the submissions in relation to whether or not the 32mppa Conditions are an 'Environmental' constraint for the purposes of Article 6, and further note that Ryanair submits that the S25 Draft Decision did not specify whether we consider the 32mppa Conditions to be an 'Operational', a 'Technical', or an 'Environmental' constraint.
- 4.88 Rather than compartmentalise these three concepts, in our view, the correct approach is to view these terms collectively and in light of each other and in light of the rest of the Slot Regulation, in particular the definition of coordination parameters and the general requirement that they '*shall be based on an objective analysis of the possibilities of accommodating the air traffic*'. As well as being (in the IAA's view) the correct approach, this approach additionally reflects the varied constraining factors that are encountered in practice. Constraining factors are often interrelated and overlapping, and are not, or not necessarily, distinct from each other, such that they can be compartmentalised in the manner suggested. We note that the Slot Regulation does not define or compartmentalise these concepts, or require any different weight to be assigned to a constraint on the basis of which form(s) of constraint it is said to be.
- 4.89 In practice, and on the true interpretation of Article 6, anything that appears likely to bear on the possibilities of accommodating the air traffic demand at Dublin Airport for the relevant season should be taken account of as a relevant

constraint, insofar as possible. Moreover, a purposive interpretation of Article 6 suggests that it is to be construed broadly, as intending the IAA to take due account of any such factor. The IAA is not aware of an approach being adopted at any other airport whereby each constraint is individually categorised in the manner now suggested, and neither the Coordination Committee, nor the IAA, has done so to date in respect of any other coordination parameters.

- 4.90 The IAA notes the following in respect of the 32mppa Conditions themselves. Certain of the assertions made by airlines (and in particular those of Ryanair and A4A) as to the genesis and primary purpose of the 32mppa Conditions are not correct. It is apparent from the Terminal 2 planning material, in particular the report of the An Bord Pleanála inspector, that the 32mppa Conditions were instead specified as the direct result of a policy objective in a 2006 Dublin Airport Local Area Plan (LAP). That LAP contained a high-level objective that terminal passenger capacity beyond 30mppa should be provided by a third terminal on the western campus.<sup>9</sup> The 32m annual limitation on terminals 1 and 2 was set on the basis that, if the capacity of those terminals were to exceed 32m, this might compromise the viability of this putative third terminal on the western campus (2mppa was added to the 30mppa figure for, effectively, contingency/flexibility purposes). It was, expressly, not calculated based on any road traffic concern (which concerns would, of course, not be effectively mitigated by an annual limitation in any case), or otherwise as a mitigation measure to address an environmental concern. We note that daa's submission that the 32mppa Conditions were each attached to the identified grants of planning permission following the carrying out of an environmental impact assessment completed pursuant to Council Directive 2011/92/EU, is also incorrect. The 2006 LAP upon which the 32mppa Conditions were actually based has since lapsed, and been replaced by a new LAP which provides, instead, for 40mppa on the eastern campus.<sup>10</sup>
- 4.91 The assessment of the road traffic impacts of the proposed development of Terminal 2 was carried out separately, as part of the associated EIA, and based on annual passenger numbers of 35mppa. This assessment indeed anticipated improvements in public transport capacity relative to the 2007 situation; most notably, that Metro North (as it then was) would be completed in 2012.
- 4.92 However, submissions that the IAA should not take account of the 32mppa Conditions because those conditions are themselves unmeritorious, and/or obsolete, are misconceived. The IAA, which is not a planning authority, cannot take it upon itself to not take account of the 32mppa Conditions because those conditions themselves are unmeritorious and/or obsolete. Such conditions, as specified, are an input to the process envisaged by Article 6 of the Slot Regulation. Any decision to revoke or amend or not enforce the 32mppa Conditions on the grounds that they are obsolete and/or unmeritorious is a matter for planning authorities, not the IAA.
- 4.93 Without prejudice to the IAA's general view that it is not necessary to

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<sup>9</sup> <https://www.fingal.ie/sites/default/files/2019-03/2.4.4.A.1%20Airport%20Local%20Area%20Plan%20Document.pdf>

<sup>10</sup> <https://www.fingal.ie/dublin-airport-local-area-plan-2020>

compartmentalise each constraint as being either technical, environmental, or operational, we consider, if it were necessary to do so, that planning conditions which restrict the operation of airport infrastructure relative to demand, such as Condition 3 of the North Runway planning permission or the 32mppa Conditions, would most appropriately be viewed as operational constraints. That is so regardless of the purpose or genesis of the particular condition. The 32mppa Conditions are a constraint on the permitted mode of operation of terminals 1 and 2, in that they specify that the combined annual capacity of those terminals shall not exceed 32m. The 32mppa Conditions do not constrain infrastructure external to the airport.

- 4.94 The IAA has already addressed, in the W24 Decision, the question of ambiguity as regards the 32mppa Conditions, and adopts that analysis for the purposes of this decision. The question of the interpretation of the 32mppa Conditions upon which to base the seat cap is addressed below.
- 4.95 As to the submissions of Dublin Airport, and while we agree with and accept the position that the 32mppa Conditions are a relevant constraint for S25, we reiterate that the continued conflation between the taking account of a relevant constraint under Article 6 of the Slot Regulation, and the obligation on daa to actually comply with its planning conditions, is incorrect.
- 4.96 In that regard, the IAA rejects the incorrect assertion on the part of the US Department of Transportation that the IAA is *‘responsible for the exceedance of capacity allocated at DUB in 2024.’* The basis upon which the Department makes this assertion, or has arrived at this conclusion, is not clear. We note the following:
- The responsibility to comply with the 32mppa Conditions rests with the airport operator, daa. The IAA has previously, for W23 and S24, set the terminal coordination parameters on the basis of daa’s own proposals.
  - Whether there is an *‘exceedance of capacity’* across 2024 remains to be seen, and depends upon whether or not daa actually complies with the 32mppa Conditions in 2024. It thus also depends on the proper interpretation of those conditions (for example, whether they constrain throughput, or constrain capacity).
  - In the event that there is an *‘exceedance of capacity’* in 2024, this will have resulted from the combined effects of those daa proposals, and the subsequent refusal of airlines to reduce capacity during S24, as they were requested to do by daa, and the rejection by airlines of daa’s proposed Local Guideline in respect of ad-hoc operations.
  - That there was no seat cap coordination parameter in place for S24 (or W23) has no bearing on a requirement to specify a seat cap coordination parameter of 25.2m for S25.

### *The nature of historic slot series*

- 4.97 Aer Lingus states that any reduction in historic slots would be unlawful, would

interfere with Aer Lingus' property rights, and would have very significant financial implications, potentially causing irreparable harm, given its planned growth for S25 and beyond.

4.98 Aer Lingus rejects our draft interpretation of the nature of the entitlements conferred on the holders of historic slots under the Slot Regulation. In particular:

- It asserts that there is no authority, in the form of decisions of relevant courts of competent jurisdiction, which indicates that there is any legal basis for withdrawing historic slots in the current circumstances.
- It asserts that there is no precedent in any EU Member State for the withdrawal of historic slots in the current circumstances.
- It states that Article 8b of the Slot Regulation provides no legal basis for not reallocating historic slot series, but instead merely provides that a claim for compensation would not arise *'in respect of any limitation, restriction or elimination thereof imposed under Community law, in particular in application of the rules of the Treaty relating to air transport'*. Secondly, Aer Lingus asserts, if (which it denies) an implied right to eliminate historic slots under community law could be read into Article 8b, this does not assist the IAA in this case. It states that the 32mppa Conditions are not imposed under Community law or the application of EU rules on air transport but were imposed solely as a matter of policy, primarily in order to facilitate the future development of a western campus at Dublin Airport. Aer Lingus therefore believes the 32mppa Conditions cannot provide any legal basis for interference with historic slots.
- Aer Lingus states that the various materials referenced in the S25 Draft Decision do not constitute binding legal authorities in this jurisdiction. It states that the European Commission of 30 April 2008 (COM(2008) 227) supports the argument that historic slots constitute property rights in that it acknowledges that *'exchanges of slots for monetary and other consideration more commonly referred to as secondary trading, are taking place at a number of congested Community Airports'* and further notes that the Slot Regulation is *'silent on the question of exchanges with monetary and other consideration to reflect differences in value between slots at different times of day and other factors'*.
- Aer Lingus states that, even if (which it does not accept) historic slots should not be conceived of strictly as property rights, they clearly constitute explicit statutory rights or entitlements, under Article 8(2), which are enjoyed by the holders of historic slots where certain conditions are satisfied. For such entitlements to be extinguished, it asserts, there would need to be an explicit basis or mechanism provided for. Aer Lingus believes, as it has previously submitted, that there is no such legal basis or mechanism set out in the Slot Regulation or elsewhere to provide for the withdrawal or extinguishment of historic slots, and states that we have not identified any such legal basis or mechanism, and that the matters relied upon are not sufficient to extinguish or withdraw such statutory entitlements.

4.99 Aer Lingus further disputes that the matters relied on at paragraph 4.22 of the S25 Draft Decision support the proposition that historic slots can be withdrawn. In its view:

- The argument made at paragraph 4.31 based on Article 8a(1)(c) relates to whether the historic slots are property rights or not, and does not support the argument that these statutory rights/entitlements can be withdrawn.
- With reference to the matters set out at paragraphs 4.32 to 4.33, in the event that an airport is no longer designated as coordinated, airlines which previously held historic slots will continue to be able to use such slots. This in no way supports the position that that statutory entitlement to historic slots at a coordinated airport can be extinguished.
- With reference to paragraph 4.34, this is not a binding legal authority. Even on its own terms, this does not go any further than supporting an argument that historic slots do not constitute property rights. This does not support the position that the statutory entitlements to historic slots can be withdrawn.
- With reference to paragraph 4.35, the terms of Recitals 8 and 9 do not support the position that 'grandfather rights' are subject to the ability of member states to take account of operational and environmental constraints; rather it indicates that the ability of member states to take account of operational and environmental constraints must take place without impacting on such rights.
- With reference to paragraph 4.36, this is of no binding authority in this jurisdiction. This in fact supports the position that, had the EU legislature wished to provide that historic slots are not property rights and/or can be withdrawn, it could have done so in similar terms as did the US legislature. The EU legislature, unlike the US legislature, did not do so.
- With reference to paragraphs 4.37 to 4.38, this is of no binding authority in this jurisdiction. Furthermore, this supports the position that the EU legislature, having provided a statutory entitlement to historic slots, had it wished to provide that historic slots can be withdrawn in exceptional circumstances, could have done so in similar terms to this provision in the WASG.
- At paragraph 4.40, the IAA states that even if historic slots are properly to be regarded as property rights, they are rights that are circumscribed by the provisions of the Slot Regulation. However, even if this is correct, there is nothing in the 'circumscribing' provisions of Slot Regulation to provide that the explicit statutory entitlement to these slots can be withdrawn.

4.100 A4A similarly asserts that the IAA's proposed approach encroaches impermissibly and without justification on historic slot allocations. Such an approach, in its view, constitutes a clear breach of Article 8(2) of the Slot Regulation, which, it states, guarantees airlines the right to historic slots if they meet the 80/20 use-it-or-lose-it rule. It points to the W24 Decision, asserting

that there is a '*striking contrast*' between that and the Draft S25 Decision in that the W24 Decision appeared to recognise the obligations imposed by Article 8(2) and preserved all historic slots.

- 4.101 A4A asserts that neither the Slot Regulation, nor the WASG, support any reduction in historic slots in the manner contemplated in the S25 Draft Decision. It states that, to the contrary, Article 6.10.3 of the WASG provides that a '*capacity reduction that cannot accommodate historic slots must be avoided except in exceptional circumstances*'. A4A asserts that we have not demonstrated that any such exceptional circumstances exist here, and states that surface transportation access to and from Dublin Airport does not constitute an exceptional circumstance.
- 4.102 A4A notes that we acknowledged, in the S25 Draft Decision, that we have not found any authority dealing with the nature of entitlements of air carriers under Article 8(2). It does not accept our position that Article 8(2), which in its opinion is entirely clear, must be interpreted in light of Article 8b.
- 4.103 A4A notes that we suggested that Article 8b contemplates that the entitlement to series of slots referred to in Article 8(2) can be subject to '*limitation, restriction or elimination*'. However, A4A states that this is only the case where the '*limitation, restriction or elimination*' is imposed under EU law, in particular in the application of the rules of the Treaty relating to air transport. It believes that this provision has no application here, and does not justify the withdrawal of historic slot entitlements under any other circumstances.
- 4.104 It refers to our conclusion at paragraph 4.29 of the S25 Draft Decision, that it '*therefore seems that the Slot Regulation contemplated that the slots available for allocation in any coordination period would proceed from a prior declaration of the capacity available for allocation in that coordination period*'. A4A states that no provision of the Slot Regulation is cited for this conclusion, which it believes does not follow from Article 8 or Article 8b.
- 4.105 A4A notes that the language from the European Commission proposal, as part of which it was outlined that slots are not property rights, was not adopted in the final Council text. It also states that the Commission is not conferred with the authority to conclusively interpret EU legislation, but this also refers to a proposed change in the law and, as such, does not provide any reliable guidance in respect of the current position.
- 4.106 In respect of paragraph 4.40, A4A believes that this reasoning is incoherent, and ignores the fact that, even if historic slot allocations are not a property right and characterised 'merely' as a valuable vested entitlement under the Slot Regulation, they can only be taken away in accordance with the Slot Regulation. It asserts that the IAA has failed to identify any basis in the Slot Regulation for interfering with existing historic slot allocations to which the air carriers are entitled under Article 8(2), and that Article 8b does not apply on the facts here. It believes Article 8(2) is mandatory in its terms, and that the S25 Draft Decision does not identify any other provision of the Slot Regulation said to authorise the IAA to interfere with the entitlements of air carriers acquired

thereunder.

- 4.107 A4A states that, for the avoidance of doubt, it considers that the vested rights and entitlement of air carriers to historic slot allocations under Article 8(2) are properly characterised as property rights, and that the IAA has failed to vindicate and protect what are, in its view, constitutionally protected property rights of the air carriers under Articles 40.3 and 43 of the Constitution, Article 17 of the Charter of Fundamental Rights of the European Union, and Article 1 of Protocol No.1 of the ECtHR. A4A states that the IAA, as a State body, is under an obligation to carry out its functions in compliance with the ECHR in accordance with Section 3 of the European Convention on Human Rights Act 2004. It further asserts that the IAA has carried out no proportionality analysis.
- 4.108 A4A further contends that, even if historic slot allocations do not constitute property rights, they are, at a minimum, valuable vested statutory entitlements which are critical to the carrying on by airlines of their businesses. It states that the freedom to conduct a business is protected by Article 16 of the Charter of Fundamental Rights of the European Union and any limitation on the exercise of that right can only take place in accordance with Article 52 of the Charter, which requires that the limitation be provided for by law and be proportionate.
- 4.109 Other airlines, such as Iberia Express and Vueling, similarly disagree with the IAA's draft conclusion in the above regard.
- 4.110 Ryanair similarly states that the removal or interference with historic slots would be an unlawful interference with its 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, Ryanair believes, 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*', and it would be a serious error for the IAA to decide that slots are not property rights at all.
- 4.111 Ryanair asserts that 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, as it does not contain any standards or factors by reference to which such an exercise could be undertaken. Ryanair believes that the Slot Regulation provides for the accretion of historic slots and the protection of rights to use such slots in accordance with Article 8(2). Even if the IAA concludes that it is empowered to interfere with these historic rights, Ryanair states, it does not follow that they are not property rights.
- 4.112 Ryanair states that 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 demonstrating that the series of slots in question has been operated by that carrier for at least 80% of the time for which it has been allocated. In such cases, that '*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)*'. Ryanair asserts that Article 8(2) expressly states that it is without prejudice to a number of articles in the

Slot Regulation. Article 6, it states, is not included in that express list. Therefore, it continues, the entitlement to retain historic slots is not in any way subject to, or restricted by, anything in Article 6.

- 4.113 On the basis of the above, Ryanair asserts that there is 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. Ryanair states that, to its knowledge, this has not been done at any coordinated airport in the EU or major international airport elsewhere, and would be without precedent. It also believes that the S25 Draft Decision is contrary to the WASG, to which the IAA is required to have regard under the Slot Regulation.
- 4.114 Ryanair states that, if slots are removed or interfered with, they will be lost or rendered unviable, and that the IAA has not carried out any proportionality analysis and no alternatives to the abrogation/diminution of historic property rights have apparently been considered by the IAA.
- 4.115 Ryanair concludes that applying the proposed seat cap would be unlawful, irrational, disproportionate, and a breach of the IAA's statutory duty under Article 6(1) of the Slot Regulation and Section 8(1) of the Aviation Regulation Act, 2001. It further believes applying the seat cap would constitute an unlawful interference with Ryanair's property rights, and a breach of its entitlement to retain historic slots under Article 8(2) of the Slot Regulation.

### *IAA Response*

- 4.116 As outlined above, the IAA carefully considered the legal position in relation to this issue in the S25 Draft Decision. In particular, we set out our draft position on the question of whether the imposition and implementation of the proposed PATM seat cap parameter and any resultant limitation, restriction or elimination of historic slot series entitlements otherwise enjoyed by air carriers under the 80/20, or 'use it or lose it' rule is lawful, has a basis in the Slot Regulation and/or would constitute an unlawful interference with constitutionally and/or otherwise-protected property rights, or statutory entitlements, enjoyed by air carriers, whether generally, or in the absence of the carrying out of a proportionality analysis.
- 4.117 As outlined above, the IAA considers the 32mppa Conditions to be a relevant constraint for the purposes of Article 6 of the Slot Regulation for S25. It is therefore a constraint which requires to be taken account of in the coordination parameters for S25.
- 4.118 We have had careful regard to the consultation responses and submissions of respondents, and to relevant information available from the W24 Proceedings, but remain of the view that the adoption of the PATM seat cap parameter as proposed in the S25 Draft Decision, and any consequent diminution of the availability of slots for allocation and/or non-honouring of historic slot allocations in S25, are *intra vires* and lawful. In that regard, we adopt the analysis outlined in the S25 Draft Decision and reiterated above, in relation to the nature of slots and slot entitlements, and to the legal justification for any diminution in slots



and/or non-allocation of historic slot allocations for S25 that may result from the adoption of the PATM seat cap parameter.

- 4.119 The material to which we referred in the S25 Draft Decision that tended authoritatively to suggest that slot series entitlements are not in the nature of property rights was not claimed by the IAA to be legally binding, but was adverted to because it is of some general relevance, and because there is a lack of any binding or other legal authority to refer to generally on the points that arise.
- 4.120 As regards the latter point, some respondents have referred to the IAA acknowledging that it cannot point to any legal authority for the analysis and preliminary conclusions set out in the S25 Draft Decision. The IAA does acknowledge this, but, as we also acknowledged, we have not, either, identified any authority to suggest that we are wrong in respect of the legal position set out in the S25 Draft Decision. Nor have the airlines identified any such authority.
- 4.121 The IAA does not believe that slot series entitlements are in the nature of property rights. We have already explained in the S25 Draft Decision why we do not consider the factor of the transferability/swapping of slots as between air carriers, even for monetary consideration, to suggest or establish that the conclusion should be otherwise.
- 4.122 We do not agree that Article 8(2) ‘guarantees’ that, no matter the circumstances, an air carrier which abides by the 80/20 rule in respect of a series of slots will be reallocated the same series of slots for the next equivalent scheduling season. The IAA considers that the 80/20 rule was not so much designed to build up a right, but was more designed to comfort air carriers that, if they used their allocated slots in the previous equivalent scheduling period by 80% or more, they could usually (but not always) expect to have those slots reallocated to them, rather than return to the slot pool. In any event, Article 8(2) does not, in the IAA’s view, guarantee an entitlement to be reallocated all historic slot series, in circumstances where all historic slot series do not fit within coordination parameters which have been lawfully determined in accordance with Article 6 of the Slot Regulation.
- 4.123 Even if slots and slot series entitlements were properly to be considered to be in the nature of property rights, or alternatively in the nature of (strong and valuable) statutory entitlements, which is not the IAA’s position, the IAA considers that in neither case is the entitlement absolute in any event, but is delineated and circumscribed by the provisions of the Slot Regulation and by the intended manner of operation of the capacity declaration and slot allocation regime.
- 4.124 Notwithstanding the submissions of airlines to the effect that there are no express references, procedures, criteria or the like, within the Slot Regulation, expressly providing for the non-allocation, in the current circumstances and for a forthcoming scheduling period, of the same series of slots allocated and used on the 80/20 basis in the previous equivalent period, the IAA considers that provision for this contingency is necessarily implicit in the Slot Regulation. The

IAA considers that a reading of the Slot Regulation clearly evinces an intention that slot allocation proceeds from an assessment of capacity and a declaration of coordination parameters flowing from same, at six-monthly intervals. Capacity might be constrained or might reduce for a variety of reasons, and where such happens, and the parameters reflect this (as they must), the Slot Regulation contemplates that those parameters, which are to be communicated to the coordinator, form the basis for the slot allocation process which is then to be effected by the coordinator. If the coordination parameters provide for insufficient capacity to enable all historic slot entitlements to be reallocated, then it is not possible for the coordinator to do so, and this was clearly envisaged as an inherent possibility by the Slot Regulation.

- 4.125 Similarly, the IAA disagrees that the WASG do not advert to the possibility of a decision such as the present one. We note that those Guidelines provide that a capacity reduction that cannot accommodate historic slots must be ‘*avoided*’, except in ‘*exceptional circumstances*’. The IAA cannot avoid taking due account of relevant capacity constraints, and, as outlined above, the IAA has considered that it has no alternative but to take appropriate account of the 32mppa Conditions as a relevant constraint for S25. We have sought to take account of that constraint in the most appropriate, proportionate and least deleterious way, not having identified any alternative, more appropriate, proportionate and less adversely impactful determination which we could make. The circumstances are exceptional, but are unavoidable, and not of the IAA’s making.
- 4.126 We disagree with the alternative readings of Article 8b put forward by certain respondents. We consider that Article 8b adverts to the possibility of limitations, restrictions or eliminations of series of slots which might be imposed under EU law, including through the determination of coordination parameters under Article 6 of the Slot Regulation, and to compensation claims not arising in such circumstances. We note that the express exclusion of compensation claims in Article 8b may indeed suggest that the Slot Regulation did not consider slot series entitlements to be in the nature of property rights as, otherwise, the Regulation would presumably have taken care to provide for compensation in the event of there having to be any limitation, restriction or elimination of any such rights.
- 4.127 As set out above, we agree with Aer Lingus that the 32mppa Conditions were primarily imposed as a matter of policy, in order to facilitate the future development of a western campus at Dublin Airport in the manner then contemplated in 2006. However, we do not believe that the role of the IAA properly extends to making a decision on whether or not to take account of a planning condition in the coordination parameters on the basis of how that condition came to be imposed, and/or on the basis of whether the IAA might itself consider the condition to be unmeritorious and/or obsolete. No evidence or credible assertion that the 32mppa Conditions were imposed in non-compliance with community (or other) law, or are otherwise unenforceable, has been adduced. Being extant and enforceable planning conditions which lawfully constrain the operation of the terminals relative to demand, they are a relevant constraint for the purpose of Article 6 of the Slot Regulation requiring to be taken account for S25 coordination parameters, meaning that any limitations,

restrictions or eliminations of slots flowing from taking proper account of that constraint occurs in line with community law, i.e. the Slot Regulation itself.

- 4.128 Regarding Article 16 of the Charter, we note that the freedom to conduct a business is one which is recognised '*in accordance with Union law and national laws and practises*'. In any event, it has not been properly explained how any of the respondents are not able to conduct a business by reason of the proposed S25 coordination parameters.
- 4.129 It is not correct, as asserted by A4A, that there is any '*striking contrast*' between the S25 Draft Decision and the W24 Decision as regards the nature of historic slot series. As is clear from the latter, the seat cap coordination parameter of 14.4m was based on the relevant constraint represented by the 32mppa Conditions. The W24 Decision also laid out our expectation that this seat cap would be sufficient to allow historic slot series from W23 to be reallocated. It is quite clear, however, that it was not estimated or set on that basis.
- 4.130 As to the question of proportionality, we have had regard to all of the information and submissions provided in response to the S25 Draft Decision, and provided by the Coordination Committee and/or members of the Coordination Committee, as well as information and submissions adduced by air carriers in the context of the W24 Proceedings, regarding the significant adverse financial and other consequences and impact which the adoption of the proposed PATM seat cap parameter would, it is asserted, have on their businesses. Having had regard to such information and submissions, the IAA has determined that the proposed PATM seat cap parameter is the most appropriate and proportionate measure available to it to adopt, with a view to reflecting the constraint represented by the 32mppa Conditions in the coordination parameters for S25.
- 4.131 We have not been able to identify any other measure(s) available to the IAA to adopt, which would serve to reflect the constraint represented by the 32mppa Conditions and have a lesser impact on the interests of air carriers, and/or which would result in a lesser impairment of any rights or entitlements enjoyed by them. Neither has an alternative such measure been proposed/properly particularised to the IAA in the responses to the S25 Draft Decision, or in the advice of the Coordination Committee. In that regard, for example, the seat cap mechanism is the closest proxy available for a passenger-related constraint, which would allow greater flexibility for air carriers relative to taking account of the constraint by means of an equivalent limitation on aircraft movements.
- 4.132 The IAA is therefore of the view that a relevant constraint has been identified, and that we are seeking to reflect that constraint appropriately and proportionately in the coordination parameters, as per our function under the Slot Regulation in that regard. We have also had regard to the achievement of the purposes of that Regulation, and to the potential impact on all air carriers, as well as other impacts, with a view to minimising the impact on affected persons, and impairing any rights and entitlements as little as possible.
- 4.133 Any limitation or restriction of property rights or other entitlements that occurs as a result of the imposition of the PATM seat cap parameter (and insofar as it

truly derives therefrom, as opposed to the 32mppa Conditions themselves) will occur on foot of the due performance by the IAA of its legal functions under the Slot Regulation, and is therefore provided for at law. Moreover, any such limitation/restriction of such rights (to the extent that any arises) is proportionate. In the latter regard, and contrary to the submissions of some respondents, the IAA has indeed considered and appropriately weighed the proportionality of its proposed decision.

### *The Open Skies Agreements*

4.134 A4A states that the proposal is incompatible with the Open Skies Agreements to which Ireland is a party. A4A states that these have not been referred to and appear to not have been taken into account in the S25 Draft Decision, the net effect of which, it asserts, unilaterally limits the volume of traffic, frequency and regularity of service that airlines that are protected by the Open Skies Agreements may provide. A4A submits that these international agreements and obligations must be taken into account, and notes the decision of the Supreme Court of the Netherlands quashing the Dutch government's 20% reduction of capacity at Amsterdam's Schiphol Airport (the 'Proposed Restrictions at Schiphol Airport') on the basis that these restrictions violated that government's obligations under international law.

4.135 A4A has adverted, in particular, to the following:

- Article 2 of the EU-US ATA (and the corresponding Article 11(2) EU-Canada ATA), which provides that *'[e]ach Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement.'*
- Article 3.4 of the EU-US ATA (and the corresponding provision, Article 13(2) of the EU-Canada ATA), which provides that *'neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the airlines of the other Party.'*
- Article 15(2) of the EU-US ATA (and the corresponding Article 18(3) of the EU-Canada ATA), which provides that where one of the signatories *'is considering proposed environmental measures at the regional, national, or local level, it should evaluate possible adverse effects on the exercise of rights contained in this Agreement, and, if such measures are adopted, it should take appropriate steps to mitigate any such adverse effects'*.
- Article 15(3) of the EU-US ATA, which provides that any environmental rules are to be applied *'in accordance with Article 2 and Article 3(4) of th[e] Agreement'* (in other words in accordance with the principle of *'fair and equal opportunity'* in Article 2, and the prohibition on unilateral restriction or limitation in Article 3(4), of the EU-US ATA, referred to above).
- Article 11(3) of the EU-Canada ATA provides that *'[e]ach Party shall ensure that its procedures, guidelines and regulations to manage slots applicable to airports in its territory are applied in a transparent, effective and non-discriminatory manner.'*

- 4.136 A4A asserts that the proposed PATM seat cap parameter has severe implications for those carriers (including prospective users of the airport) that are reliant on ‘*ad hoc pool slots*’, which are likely to be virtually eliminated. It asserts that the PATM seat cap in both the W24 Decision and the S25 Draft Decision disproportionately impacts these carriers, meaning that new entrant carriers (including A4A members such as JetBlue), or carriers that do not already fly to and from Dublin, are much more likely to be denied slots, which effectively precludes opportunities for new entrant carriers to operate at Dublin Airport to provide competition for existing airlines and choice for passengers. This, it claims, is wholly incompatible with the Open Skies Agreements (Article 3(4) of the EU-US ATA and Article 13(3) of the EU-Canada ATA) and the objectives of the Slot Regulation, which expressly and repeatedly emphasises the importance of facilitating competition.

### *IAA Response*

- 4.137 The IAA has considered submissions made by A4A to the effect that adopting the proposed PATM seat cap parameter would entail a breach of the Open Skies Agreements. We note firstly that, as outlined further below, A4A did not take up its entitlement to participate in the Coordination Committee in respect of S25 and to raise these matters. Consequently, or otherwise, these matters did not feature in the Coordination Committee advice provided to the IAA.
- 4.138 It has also been submitted in general terms that the circumstances that have led to the proposal to impose a PATM seat cap parameter for S25 should not jeopardise the existing access of any US carrier at Dublin Airport, and that, if that should occur as a result of a reduction in slots, it might be appropriate to seek to remedy that situation under the EU-US ATA.
- 4.139 The IAA is cognisant of the fact that, pursuant to section 14(1)(j) of the Irish Aviation Authority Act 1993, its objects include to ‘*take such measures as it considers necessary or expedient to give effect to the purposes of ... international agreements or conventions to which the State is a party, in so far as those purposes relate to matters to which functions of the [IAA] relate....*’ We consider, however, that the adoption of the PATM seat cap parameter as proposed in the S25 Draft Decision does not entail a breach of the Open Skies Agreements.
- 4.140 The IAA is familiar with these matters in this context, as they have previously arisen in the case of Condition 5 of the North Runway Planning Permission, as reflected, in particular, in the S23 Decision. In the present case, however, the restriction or limitation on air traffic is the 32mppa Conditions themselves, which were imposed by An Bord Pleanála, and which crystallised, in 2007 (and 2008 in the case of the second condition, which merely reiterated the same restriction). The 32mppa Conditions thus pre-date the coming into effect of the Open Skies Agreements, and also pre-date EU Regulation 598/2014. They are, therefore, distinct from Condition 5 in that regard, which crystallised (or purported to crystallise) in August 2022, and also are distinct from the Dutch government’s since-quashed Proposed Restrictions at Schiphol Airport, for the same reason.

- 4.141 The taking account of the existing 32mppa Conditions by means of a coordination parameter for S25, alongside all of the other coordination parameters limiting the extent to which air traffic can be scheduled to operate at Dublin Airport during S25, in circumstances where those conditions are expected to constrain traffic during 2025, does not amount to the introduction of a new measure of the type now contemplated by the Open Skies Agreements. That the 32mppa Conditions did not require to be parameterised in most of the intervening time period between 2007, and S25, was because they were not limiting relative to demand. Coordination parameters are typically only set in respect of constraints which may be limiting relative to demand.
- 4.142 Insofar as the imposition, by An Bord Pleanála in 2007, of the constraint represented by the 32mppa Conditions constituted a measure of a type now contemplated by the Open Skies Agreements, the provisions of those Agreements relating to, for example, the nature and effect of any such measure, its pre-introduction evaluation, and/or the manner of its introduction, did not apply at the relevant times, and do not now apply retrospectively.
- 4.143 Without prejudice to the foregoing, and insofar as it is contended that the inclusion of a PATM seat cap coordination parameter (in the W24 Decision and/or in this decision) is a measure, or *the* measure, that, in A4A's view, falls foul of the Open Skies Agreements as a unilaterally introduced restriction or limitation on air traffic, we disagree that same is/are within the scope of those Agreements, and note the following in that regard:
- The Open Skies Agreements implicitly recognise that regulatory action, including slot regulation, will occur within the relevant jurisdictions, and, accordingly, that relevant constraints will be taken into account according to the requirements of the relevant slot regulation regime, and in a manner that is, amongst other things, transparent, effective and non-discriminatory, and that this may, of course, result in an assessed limitation on capacity, and commensurately-reduced possibilities for accommodating air traffic (with consequent impacts on slot allocation and possible slot-limitation, restriction or elimination). As noted above, in the United States, the Code of Federal Regulations, Title 14, § 93.223 (a), provides as follows: *'Slots do not represent a property right but represent an operating privilege subject to absolute FAA control. Slots may be withdrawn at any time to fulfil the Department's operational needs, such as providing slots for international or essential air service operations or eliminating slots.'*
  - The Open Skies Agreements expressly exclude from their general proscription of unilateral restrictions and limitations, such restrictions or limitations as may be required for customs, technical, operational, or environmental reasons.
  - The PATM seat cap parameter, whilst it will affect US and Canadian air carriers, will also affect all other air carriers, including in particular, Irish and EU carriers, and is a measure that will apply across the board (as described further below). Thus, it is non-discriminatory, and does not

engage the principle of whether or not fair and equal opportunities are, or are not, being afforded to the airlines of the respective parties to the Open Skies Agreements to compete in providing the international air transportation governed by those Agreements.

4.144 Without prejudice to the position that the inclusion of a PATM seat cap coordination parameter for S25 (or W24) to take account of the 32mppa Conditions does not engage the provisions of the Open Skies Agreements, we further note the following. Insofar as those Agreements do apply, and require evaluation of the impact which the PATM seat cap coordination parameter would have on the exercise of rights contained in those Agreements, as well as transparency, fairness, proportionality and/or non-discrimination in arriving at this decision, the IAA notes that we have engaged in an open, transparent, fair and non-discriminatory process regarding this decision, involving, among other things:

- The seeking of the proposals and advice of the Coordination Committee, and specifically the seeking of proposals and advice on the most appropriate, fair and equitable manner in which the proposed PATM seat cap parameter (or other parameter) might, in accordance also with the Slot Regulation, be implemented so as to mitigate its effects, spread them in a fair and non-discriminatory way, and minimise to the greatest extent possible the impacts on all air carriers.
- The publication of, and consultation on, the S25 Draft Decision.
- The careful consideration of the submissions received in response to the S25 Draft Decision, including responses and submissions of air carriers referring to the loss and damage and overall adverse impacts which they assert will accrue from this decision.
- The evaluation of whether the proposed PATM seat cap parameter is the most appropriate and proportionate parameter open to the IAA to declare in the circumstances, with a view to maximally accommodating air traffic at Dublin Airport subject to relevant constraints for S25, with a view, in turn, to the coordinator then allocating slots on foot of that decision fairly and transparently across all relevant air carriers (be they US, Canadian, Irish, or EU air carriers) in accordance with the Slot Regulation.

4.145 As regards the likely absence of ad hoc/pool slots, and the associated consequences asserted in respect of, in particular, new entrants, we note that the likely absence of such slots flows from the nature of the 32mppa Conditions themselves (applying on annual basis), combined with the provisions of the Slot Regulation.

#### *Coordination Committee 'Advice'*

4.146 A4A asserts that the IAA failed to have regard to the proposals made and advice provided to it by the Coordination Committee on the coordination parameters to be determined in accordance with Article 6, and accordingly, the IAA failed to have regard to a relevant consideration and failed to comply with Article 5 of



the Slot Regulation. It contends that the IAA did not express any concluded view in respect of the status of the advice provided by the Coordination Committee, and asserts it is evident that the IAA only had regard to the views of Dublin Airport and ignored the views expressed by the majority of the members of the Coordination Committee.

- 4.147 A4A refers to paragraph 2.24 of the S25 Draft Decision, which states: *'We note that the voting process is an indicative part of the Coordination Committee's advice to the IAA, rather than the IAA being bound by the result. As part of the process, we seek to take into account all positions set out by the Coordination Committee members as well as any associated comments or evidence relevant to the parameter declaration.'* A4A asserts that it is unclear what is meant by this, and the legal basis for this view on the part of the IAA, which is erroneous, is not explained by reference to the provisions of the Slot Regulation.
- 4.148 A4A states that the IAA failed to engage with the Coordination Committee to seek to accommodate air traffic and increase the capacity and number of slots available for allocation, as required by the Slot Regulation. A4A states that a recognition by the IAA in the W24 Decision that it is appropriate to tend towards a maximal rather than minimal approach as regards declaring the airport capacity parameters was not complied with in the S25 Draft Decision.
- 4.149 A4A states that the IAA is under an obligation, in accordance with Article 6(1), to determine the parameters for slot allocation on the basis of an objective analysis of, inter alia, *'the possibilities of accommodating the air traffic'*. It states the IAA is further required, in accordance with Article 6(3), to discuss the determination of the parameters and the methodology used, as well as any changes thereto, in detail with the Coordination Committee, *'with a view to increasing the capacity and the number of slots available for allocation'*, before a final decision on the parameters for slot allocation is taken. In its view, the IAA failed to comply with its obligations in this regard.
- 4.150 Ryanair notes that the Coordination Committee overwhelmingly voted against the PATM seat cap proposal. It states that the IAA has completely disregarded this advice in the S25 Draft Decision, and that this renders the consultation process meaningless. It continues that 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'*, and asserts that the IAA has instead proposed material restrictions, the mechanism for which was not put before the Coordination Committee. On this basis, Ryanair contends 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 S25 Draft Decision.

### *IAA Response*

- 4.151 We reject any assertion that we ignored the Coordination Committee 'advice' and/or proposals, either in respect of any proposed PATM seat cap coordination parameter, or other coordination parameters, for S25. These incorrect assertions are readily disproved by the S25 Draft Decision document,



as reiterated above. Regardless of whether the materials provided by the Coordination Committee can properly be considered ‘advice’ as envisaged by Article 5 of the Slot Regulation, or alternatively whether the Coordination Committee has, as in the W24 process, again failed to properly carry out the tasks entrusted to it by Article 5 of the Slot Regulation, the IAA has in any event considered all of the material provided to it by the Coordination Committee and/or by members of the Coordination Committee.

- 4.152 We note that A4A did not attend the Coordination Committee meetings in respect of S25, despite Article 4.1 of the Coordination Committee constitution entitling it to do so, and Schedule 1 expressly entitling it to vote. A4A does not explain why it did not attend the Coordination Committee, and did not exercise its voting entitlement. This meant that, for example, A4A did not raise matters such as the Open Skies Agreements within the Coordination Committee in the first instance.
- 4.153 We also reject the bare assertion on the part of A4A that our description of the nature of the advice provided by the Coordination Committee, and of the IAA not being bound by that advice, and that the IAA also takes account of all positions set out by the Coordination Committee, is erroneous. A4A does not explain what, specifically, it considers to be erroneous, and on what basis. That the IAA is not bound to follow the majority advice is clear from Articles 5 and 6 of the Slot Regulation, which empower the IAA to determine the coordination parameters while taking account of all relevant technical, operational and environmental constraints, and provide that the Coordination Committee is to ‘advise’ the IAA in respect of those coordination parameters. The clear and ordinary meaning of these provisions is that the IAA is required to consider any such advice, but that it is not bound to follow it and/or to follow the majority position.
- 4.154 The IAA is also entitled to have regard to the positions expressed by the members of Coordination Committee, as well as any associated comments or evidence (if not, indeed, obliged to do so, where the taking account of such material would constitute taking into account relevant considerations). In that regard, Article 5(3) of the Slot Regulation requires this material to be reported to the IAA. There would be little point in any such material being provided to the IAA if it was not intended that we would have regard to it.
- 4.155 This principle did not, as A4A incorrectly asserts, originate in the W24 Decision. It is a principle which is based on the provisions of the Slot Regulation, and which has been established over a much longer period of time in relation to the determination of coordination parameters at Dublin Airport, and which has been accepted by both daa and airlines (and not previously been a source of contention or disagreement).
- 4.156 We note that A4A has misstated the provisions of Articles 5 and 6 of the Slot Regulation in a manner which inverts the order of obligations as between the Coordination Committee and the IAA. Article 6(3) of the Slot Regulation states that the determination of the coordination parameters and the methodology used, as well as any changes thereto, shall be discussed in detail within the

Coordination Committee, before the final decision under Article 6(1) is taken. The IAA is not a member of the Coordination Committee. The IAA is not required to, and cannot, force the Coordination Committee members to make proposals and/or discuss matters where they refuse to do so. The Slot Regulation envisages that the IAA would receive advice from the Coordination Committee, which is the product of those discussions within the Coordination Committee.

- 4.157 Without prejudice to the above, the Coordination Committee did, in fact, discuss increasing the capacity, specifically the runway capacity, as described in Section 3. More broadly, while it is correct that Article 6(3) requires the determination of the parameters to be discussed in detail within the Coordination Committee *‘with a view to increasing the capacity and number of slots available for allocation’*, the fact that an overall increase in the number of slots available for S25 may not ultimately be possible due to relevant constraints being taken account of in accordance with Article 6(1) does not, of course, generate any non-compliance with the terms of the Slot Regulation.
- 4.158 We have explained above how the IAA has determined the coordination parameters for slot allocation, including the seat cap coordination parameter, on the basis of an objective analysis of, inter alia, *‘the possibilities of accommodating the air traffic’*. We have also explained, in the W24 Decision, how the IAA has tended appropriately towards a maximal declaration parameters in specifying the approach to the seat cap coordination parameter, but not to the extent that the coordination parameter is based on assumptions which we consider to be unlikely to materialise. We adopt the same explanation here.

#### *The calculation and specifications of the proposed PATM seat cap parameter*

- 4.159 daa welcomes the proposed seat capacity parameter of 25.2m for S25 in relation to Terminal 1 and Terminal 2 combined, which it believes will *‘establish a pathway for compliance’* with the 32mppa Conditions for the 2025 calendar year. It states that the forecasts presented to the Coordination Committee and the IAA, on which the calibration of the proposed seat cap was based, remain valid.
- 4.160 Cllr. Dean Mulligan states that the IAA must *‘strictly enforce the passenger cap as stipulated in the planning conditions’*, using the official CSO figures to count passengers, including transit passengers. Cllr. Mulligan says that Dublin Airport’s efforts to alter these figures by removing transit passengers go against international aviation counting conventions.
- 4.161 St. Margarets the Ward Residents Group also addresses the question of the correct interpretation of the 32mppa Conditions, and claims that the IAA erroneously proposes to exclude 4.3% of passengers from the PATM seat cap, based on the daa interpretation. It says that this is *‘against the advice of Fingal County Council and An Bord Pleanála (ABP)’*.
- 4.162 The same question is referenced in, for example the submission of William

Dempsey, and those of other residents. It states that *'the IAA's S25 plan should use the CSO's figures rather than figures modified by the DAA to remove transit passengers, contrary to the International Aviation Convention'*. The submission from William Dempsey references how the CSO and Eurostat aviation statistics count transfer passengers twice, an approach which is not followed by daa in interpreting the 32mppa Conditions.

- 4.163 On the other hand, Ryanair claims that if the 32mppa Conditions are a relevant constraint (which it does not accept), then they only encompass origin and destination passengers. Ryanair asserts that the true construction of the 32mppa Conditions is materially different from that which the IAA has 'espoused'. It argues that this has not been considered or analysed.
- 4.164 A4A states that the IAA's proposed split in the PATM seat cap between winter and summer seasons is inflexible and reduces the scope for airlines to preserve capacity in the peak summer season. It continues that, when setting seasonal targets, the IAA should not divide the PATM seat cap on a straight 7/12 summer; 5/12 winter basis, but rather in a manner which allows airlines to preserve capacity in the peak summer season.

### *IAA Response*

- 4.165 The IAA has already addressed, in the W24 Decision, the reasons why the seat cap has been estimated based on the daa interpretation of the 32mppa Conditions. Having considered the submissions and all relevant information before us, we consider those reasons to stand.
- 4.166 The definitive correct interpretation of the 32mppa Conditions is a matter of law which has yet to be determined by a court. The IAA does not have the jurisdiction to determine definitively the precise correct legal interpretation of the 32mppa Conditions. As explained at paragraph 4.61 of the W24 Decision, the IAA reviewed the detailed analysis of daa, in particular that contained in its letter of 20 March 2024 to Fingal County Council, as well as the analyses provided by Aer Lingus (which Ryanair now reiterates above) and other parties, underpinning their respective interpretations. Ryanair has not, in our view, provided any compelling further evidence in support of the Aer Lingus interpretation, relative to the reasons we provided from paragraph 4.56 of the W24 Decision for basing the seat cap coordination parameter on the daa interpretation of the 32mppa Conditions. Equally, St Margaret's the Ward Resident's Group, and other residents, have broadly reiterated the same submissions which we have already considered and addressed in the W24 Decision.
- 4.167 Basing the seat cap coordination parameter on the daa interpretation of the 32mppa Conditions, for the reasons set out in the W24 Decision, is neither unreasonable nor inappropriate, and is an approach which is reasonably open to the IAA. That the definitive correct interpretation is not currently available to the IAA does not provide a basis to discount the constraint entirely, thereby allowing additional traffic to be scheduled to an extent which would not be consistent with even the most permissive interpretation of the 32mppa

## Conditions.

- 4.168 We note that A4A has misunderstood the split applied in respect of allocating capacity between summer and winter. The annual capacity was not, as incorrectly asserted by A4A, split by means of allocating 5/12 to winter, and 7/12 to summer. Instead, it was based on the outturn historic seasonality, as per the most recent actual seasonal splits available when the W24 seat cap was estimated. This was explained in the W24 Decision.
- 4.169 It would be possible, in principle, in the event that a similar approach is taken for future seasons, to rebalance the summer/winter split, if that is what airlines consider would make best use of the available capacity. As noted above, the IAA repeatedly asked the Coordination Committee to address such issues. For future seasons, if A4A and/or any other Coordination Committee member make any specific proposals as to the appropriate summer/winter split, the IAA will, of course, carefully consider it.
- 4.170 Equally, if A4A, or any other party, proposes a mechanism to transfer PATM seat capacity between the summer and winter seasons, such as through a Local Guideline proposed by the Coordination Committee, or otherwise, the IAA will, of course, carefully consider it. Any such mechanism should be considered in the first instance within the Coordination Committee.

## *The application/operation of the proposed PATM seat cap parameter*

- 4.171 Aer Lingus asks the IAA to clarify the following with reference to the PATM seat cap:
- What is meant by ‘off-peak periods’?
  - Will the same level of reduction be applied by ACL to all slots within a slot series or to specific identified slots within a slot series?
  - Will seat capacity on the slots identified by ACL for reduction be reduced by a specified percentage / number or be removed entirely?
  - Can a carrier transfer capacity from a slot which has not been subject to a reduction to a slot which has been subject to a reduction (subject to the original seat limit of the slot subject to the reduction and to compliance with its allocated PATM seat cap)?
- 4.172 Aer Lingus, A4A, British Airways, Iberia Express and Vueling all propose that any reductions should only take place after the Historic baseline Date (HBD). Aer Lingus asserts that our ‘objection’ to this approach on ‘technical’ grounds ‘does not stand up to scrutiny given the IAA’s very broad interpretation of its powers under the Slot Regulation which it believes includes a power to apply a reduction in historic slots despite the lack of a legal basis in the Slot Regulation’.
- 4.173 Furthermore, Aer Lingus states that, without prejudice to its position that the IAA should not impose a PATM seat cap, the implementation of same

immediately after the Historic Baseline Date ('HBD') (i.e. 31st January 2025) would facilitate the voluntary hand back of slots/seats between the date of the SAL and the HBD. In addition, Aer Lingus says that deferring the application of the PATM seat cap to the HBD would allow for the proceedings concerning the W24 Decision to take place, which it says would '*clarify the role and powers of the IAA under the Slot Regulation*'.

- 4.174 Aer Lingus, British Airways, Iberia Express and Vueling believe that carriers should be entitled to return slots/PATM under provision 8.7.2.2 of the WASG (Cancellations Before the Historic Baseline). The airlines say that this would '*reduce the impact on carriers being forced to reduce their PATM for S25*' and would '*allow carriers to voluntarily return periods of up to 5 weeks without impacting their historic precedence provided that the total number of cancellations does not exceed 20% (or another number deemed appropriate) between the first and last date of the slot series*'. Aer Lingus is of the opinion that ACL should apply section 8.7.2.2 of the WASG in the event of a PATM seat cap being applied in order to minimise the impact on carriers (though it is aware that this is currently not the practice of ACL).
- 4.175 Aer Lingus references Article 10(4) of the Slot Regulation, which provides for alleviation from the 80/20 usage thresholds where the non-utilisation of slots can be justified on the basis of '*interruption of air services due to action intended to affect these services which makes it practically and/or technically impossible for the air carrier to carry out operations as planned*'. Aer Lingus is of the view that the application of the PATM seat cap is within the scope of Article 10(4), and requests that the IAA confirm that such reductions will be subject to alleviation in accordance with Article 10(4)(b). A4A makes a similar submission.
- 4.176 Aer Lingus, British Airways, Iberia Express and Vueling submit that if a PATM were to be implemented, it should be done based on a last-in-first-out (LIFO) approach. Aer Lingus disagrees with the proposal that any required reduction in capacity be imposed on a pro-rata basis across all carriers with incoming historic seats from S24, because carriers who acquired slots for the first time in S24 will retain the bulk of those slots at the expense of carriers who held slots prior to that season. It asserts that '*the IAA's decision to disregard the 32mppa Conditions as a relevant constraint for the purpose of determining the coordination parameters in Summer 24 (despite being fully aware that the 32mppa Conditions were likely to be breached in 2024 when using the approach to counting passengers as proposed by daa and as accepted by the IAA) resulted in new airlines being allocated slots for the first time at Dublin Airport in Summer 24.*'
- 4.177 Ryanair asserts that, as a based carrier, it would be disproportionately impacted by a pro-rata approach to the PATM seat cap, as, it states, it would need to maintain aircraft based in Dublin to maintain historic slots, but utilisation of the aircraft would reduce due to the reduction in capacity at Dublin Airport arising from the proposed PATM seat cap. Ryanair says that, as a based carrier, it is more reliant on the historic slots than non-based carriers.
- 4.178 On the other hand, A4A submits that any seat reductions should be allocated

on an equitable basis which preserves all carrier-specific historic operations and applies seat reductions on a pro rata basis.

### IAA Response

- 4.179 We note that some of these submissions relate primarily to how ACL, in its role as coordinator, might allocate slots on foot of the proposed coordination parameters, rather than relating to the coordination parameters themselves. In that regard, issues such as how ACL would actually reduce the number of allocated seats in detail, the applicability or otherwise of JNUS, and the application or otherwise of provision 8.7.2.2 of the WASG, are matters for ACL, and the IAA suggests that carriers might engage directly with ACL on such matters.
- 4.180 As outlined in Section 2, the IAA repeatedly asked the Coordination Committee members to consider the question of practical implementation, without prejudice to any positions that might also be taken by them as to whether any such seat cap could or should be imposed. Most airline members, including Ryanair and Aer Lingus, refused to do so, yet have now belatedly done so only in response to the S25 Draft Decision. For that reason, no detailed discussion took place within the Coordination Committee in respect of, for example, the timing of application of any required seat reduction and whether it could be delayed beyond the SAL, and whether a pro-rata, or some other, approach might be adopted in respect of any required seat reduction. Further, there was no discussion on whether any of this might be done as part of the S25 coordination parameters and/or by means of, for example, proposing an accompanying Local Guideline to the IAA.
- 4.181 We note that, as set out in the S25 Draft Decision, the Mott MacDonald proposal that any reduction in historic seats be delayed until after the HBD did not address the basis for withdrawal of seats/slots under the Slot Regulation, once they have already been allocated through the SALs and if airlines do not comply with their pro-rata reduction contribution. The absence of an identified legal basis is not an objection to this approach on *‘technical grounds’*, as asserted by Aer Lingus. Regardless of whether such an approach would or would not be preferable in principle, the IAA is not aware of any mechanism available to take such an approach for S25. The airlines do not address the question of enforcement of any such post-HBD seat reduction, nor how the approach can be reconciled with Article 6 of the Slot Regulation. The Slot Regulation provides that slots are to be allocated through the SALs on foot of the coordination parameters determined in accordance with Article 6. Those coordination parameters must take account of all relevant constraints, which, for S25, includes the 32mppa Conditions.
- 4.182 Without prejudice to this, in the absence of an enforceable mechanism to ensure that any necessary seat reduction would occur after the HBD so as to unwind an initial over-allocation of seats through the SALs, the IAA has significant doubts as to whether all airlines would, at that point, voluntarily hand back seats. In that regard, we note that certain airlines have refused to accept that the 32mppa Conditions might, in principle, be a relevant constraint at all,



and have refused daa requests to reduce their capacity in 2024, and have refused to engage with the matter within the Coordination Committee. We also note that daa, rather than committing to any view as to whether such an approach would be permissible, expressly stated that it would have abstained on this question. We conclude that any such required reduction should occur on foot of the declaration of coordination parameters, as part of the SALs, as proposed in the S25 Draft Decision.

- 4.183 We note that Aer Lingus, again, conflates the question of compliance with the 32mppa Conditions with the question of taking account of relevant constraints. This incorrect conflation, and the associated criticisms of the IAA on the part of Aer Lingus, are rejected. The capacity of terminal 1 and terminal 2 over the first ten months of 2024 was set in line with the advice of the Coordination Committee (including Aer Lingus), which advice was, in turn, based on daa's proposals. Aer Lingus has previously acknowledged the distinction between taking account of constraints based on planning conditions, and actually complying with planning conditions. In its response of September 2022 to the S23 Draft Decision, Aer Lingus submitted as follows:

*'While clearly the [IAA] must, in accordance with its obligations take account of relevant technical, operational and environmental constraints (as well as any changes thereto), we believe that it would be wholly disproportionate for [IAA] to apply an arguably invalid condition (for the reasons set out below) as against applying the actual published decision of ANCA (who are the competent authority) into its final decision.*

*In this regard, we distinguish [IAA]'s responsibility to take relevant technical, operational and environmental constraints into account as against any suggestion that it is its responsibility to monitor, enforce and police planning matters.'*<sup>11</sup>

- 4.184 As noted above, whether there is an actual breach of the 32mppa Conditions across 2024 depends on whether or not daa operates the terminals in compliance with those conditions. If there is a breach, the refusal of Aer Lingus and other airlines to consider any of the measures mooted by daa to prevent such a breach across 2024 will likely have been contributory factors.
- 4.185 In that regard, the purpose of the seat cap coordination parameter is to take appropriate account of a relevant constraint for S25, not to ensure that daa will actually comply with the 32mppa Conditions and/or to remedy any breach of those conditions that might transpire in 2024. To the extent that other carriers may have grown their passenger volumes relatively more than Aer Lingus between S23 and S24, or that new carriers may have entered the market in S24, such that Aer Lingus would prefer a LIFO approach because it would result in Aer Lingus being allocated more seats at the expense of other carriers, this does not provide any basis to assert that a pro-rata approach '*cannot therefore*

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<sup>11</sup> [https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/aer-lingusb881dc6b-693f-43de-999f-38f89a2d6a04.pdf?sfvrsn=8f7c10f3\\_1](https://www.iaa.ie/docs/default-source/car-documents/1c-economic-regulation/aer-lingusb881dc6b-693f-43de-999f-38f89a2d6a04.pdf?sfvrsn=8f7c10f3_1)

*be considered to be fair, transparent and non-discriminatory.'*

- 4.186 We note that, within the Coordination Committee, both during the S25 process and previously in respect of Condition 5 of the North Runway planning permission, carriers with various forms of operations at Dublin (i.e. whether based carriers such as Ryanair and Aer Lingus, or non-based carriers) have asserted that their operations would be particularly prejudiced by any loss of historic slots. For example, the result of a LIFO approach would likely be that certain carriers, including new entrants for S24, would not be allocated any slots in the SAL, meaning that their operations at Dublin would be ended entirely. We note that the Slot Regulation does not provide for more weight to be attached to historic slot series entitlements depending on the number of seasons over which those entitlements have been held. More broadly, we note that the majority of slots will continue to be held by Ryanair and Aer Lingus as a result of a pro-rata approach. It is not considered that these submissions provide any compelling reason to deviate from the approach outlined in the S25 Draft Decision.

### *Other issues*

- 4.187 Cllr. Dean Mulligan raises issues relating to noise exposure, night flights and flight paths. Cllr. Mulligan states that the IAA should work to revert to the original straight-out flight paths, the IAA should reintroduce a strict cap on the number of night-time flights in addition to the NQS, and furthermore, the IAA should *'adopt the expanded insulation eligibility criteria to include residents impacted by 50 dB Lnight noise and those within 80 dB LAmax contours'*. The point regarding the straight-out flightpaths is also made by William Dempsey, and other residents, who claim that *'the IAA should not have approved the north runway flightpaths which are currently in use'*. To Cllr. Mulligan's point on noise exposure, a cohort of residents' state that daa has *'yet to assess the noise insulation installed in homes close to the runway'*.
- 4.188 daa states that the characterisation of the proposed seat cap as a daa proposal is not accurate, and any references to the PATM Seat Cap proposal as being a daa proposal should be removed and the proposal correctly characterised as that of the IAA.
- 4.189 daa then claims that the IAA has incorrectly stated that daa did not provide a proposal for W24. daa states that while it did make specific proposals for W24, it is nevertheless the responsibility of the IAA to determine the coordination parameters, *'and the exercise of that jurisdiction is not dependent on daa having made any specific proposal in respect of those coordination parameters'*.
- 4.190 daa notes its concern that the imposition of the PATM seat cap will reduce availability of seats which could have a knock-on effect of increased load factors. It further refers to the implementation of PATM seat caps at other airports (Luton and Stansted) to take account of planning condition related constraints. Amongst the example is Luton Airport where a seat cap has been imposed in the previous two seasonal capacity declarations. Luton Airport's



approach, daa notes, is to '*identify the scale of the issue and ask airlines to voluntarily reduce capacity by a percentage before the end of the season*'. daa states that it has recently attempted the voluntary route to no avail, but believes that a similar approach could be followed at Dublin Airport.

4.191 daa asks the IAA to confirm the following:

- How it proposes to monitor changes in load factors in the period covered by the PATM seat cap, so as to ensure compliance with the 32mppa Conditions in 2025 overall.
- If passenger numbers are trending above the numbers used for the calculation of a season's PATM, how will the IAA correct the overage into the following season.
- In circumstances where daa cannot manage/limit the number of seats sold, how will the IAA reconcile overages on the assumed load factors, and how will it address any potential overages in its capacity declaration for Winter 2025/2026, to ensure overall compliance in the calendar year 2025.

4.192 Ryanair states that the proposed PATM seat cap contradicts the objectives in Ireland's National Aviation Policy (NAP), which includes the stated goals of '*enhancing Ireland's connectivity, fostering growth and maximising the contribution of aviation to Ireland's growth and development*'. Ryanair also says that the cap deprives airlines of the benefit of their substantial contributions to the development of infrastructure at Dublin Airport.

4.193 St Margaret's The Ward Residents Group submits that it is clear that the 32mppa Conditions affect the noise climate around Dublin Airport, and limit access to or reduce the operational capacity of Dublin Airport and, therefore, fall into the category of an Operating Restriction for the purposes of Regulation EU 598/2014. It also references statements by ANCA in pre-planning meetings with daa, which, they assert, provides evidence that ANCA deem the 32mppa Conditions to be an Operating Restriction. IAA Response

4.194 In respect of the flightpaths, and while not directly within the scope of this decision, we note the following. Instrument flight procedures, such as arrival and departure flight paths, are the responsibility of the aerodrome operator or, if delegated, an air navigation services provider (ANSP). From a safety perspective, the role of the IAA is to ensure that the flight path submitted by the aerodrome operator or ANSP meets international safety requirements. The IAA does not have vires to, for example, '*work to revert to straight out flightpaths*', or to assess whether submitted flight paths are optimal from the perspective of residential amenity or noise pollution. Matters relating to noise insulation are not within the scope of this decision.

4.195 As regards daa's submissions, we note that daa simultaneously denies having made a proposal for S25, and also denies having not made a proposal for W24, in respect of a specific coordination parameter to take account of the 32mppa

Conditions. As outlined in the W24 Decision, daa, quite exceptionally, refused to make any proposal for the coordination parameters to be determined for W24. Now, and notwithstanding its effort to (for whatever reason) characterise the 25.2m proposal for S25 which daa presented within the Coordination Committee as an '*IAA proposal*', in substance, for S25, daa resumed its usual role in the declaration process, as part of which it makes a specific proposal. For S25, that included, appropriately, this specific proposal to take account of the 32mppa Conditions.

- 4.196 We note that daa has outlined examples of how Local Guidelines can be used to further manage the scheduling of aircraft movements in the context of constraints which are similar the 32mppa Conditions. As daa is aware, in the case of Dublin Airport, such Local Guidelines must be proposed to the IAA by the Coordination Committee. daa has not yet moved any such measure within the Coordination Committee. We note that, as set out in the daa submission, it is the respective airport operators, who are responsible for complying with their planning conditions, which monitor load factors in the manner suggested by daa. We note daa's submissions as regards the prospect that reduced capacity relative to demand may generate a circularity in terms of increased load factors. The IAA has already noted the same possibility in the S25 Draft Decision, as outlined above.
- 4.197 In that regard, we again reiterate that it is for daa, as the owner of the relevant planning permissions and as the entity proceeding with development in accordance with those permissions, to determine the appropriate actions to comply with conditions attached to those permissions, including (if the 32mppa Conditions do relate to throughput rather than capacity) monitoring the actual use of the relevant terminals, by passengers. The coordination parameters for S25 take account of the 32mppa Conditions in the manner outlined by daa within the Coordination Committee, which, as noted above, we expect to be of significant assistance to daa in complying with those conditions in an orderly manner. If daa considers that further actions are, or may be, necessary to ensure compliance with the 32mppa Conditions in 2025 or in future years, it is for daa to determine what those actions might be. The IAA is, of course, willing to further engage with daa in respect of any such further actions which daa might be considering, particularly insofar as those actions might relate to processes governed by the Slot Regulation.
- 4.198 We note the submissions from airlines on the impact the PATM seat cap is expected to have on their operations and on consumers, and in respect of the National Aviation Policy. However, such impacts flow from the 32mppa Conditions themselves, rather than our taking account of them in the S25 coordination parameters. We have no power to amend the 32mppa Conditions.
- 4.199 We note the view of St Margaret's the Ward Residents Group that the 32mppa Conditions are an Operating Restriction for the purposes of Regulation 598/2014, which cites the view of ANCA in that regard. As outlined above, the 32mppa Conditions pre-date the coming into force of that regulation. The question of whether they are an Operating Restriction is not, therefore, relevant to the question of whether they are a relevant constraint for S25.

4.200 We note that a number of other submissions from residents address other matters which are not of relevance to this decision. We have also considered any such submissions, but note, generally, that they are not of relevance to this decision.

## 5. Appendix: Summer 2025 Coordination Parameters

The Irish Aviation Authority has determined the following scheduling limits for the Summer 2025 season at Dublin Airport.

### Runway Scheduling Parameters:

Runway Hourly Limits			
Time UTC	Arrivals Limit	Departures Limit	Total Limit
0000	23	25	32
0100	23	25	32
0200	23	25	32
0300	23	25	32
0400	23	25	32
0500	23	36	40
0600	20	40	52
0700	25	25	45
0800	29	25	50
0900	27	30	54
1000	29	27	52
1100	30	30	54
1200	28	29	54
1300	28	30	56
1400	23	29	49
1500	26	27	47
1600	27	29	52
1700	26	28	51
1800	23	26	46
1900	26	22	46
2000	27	22	46
2100	33	25	44
2200	28	25	32
2300	23	25	32
Totals	<b><u>616</u></b>	<b><u>655</u></b>	<b><u>1062</u></b>

Maximum number of movements per 10 minute period- Dual runway operations	
Maximum Total	13
Maximum Arrivals	6
Maximum Departures	7

Maximum number of movements per 10 minute period- Single runway operations (2200z-0559z)	
Maximum Total	9
Maximum Arrivals	6
Maximum Departures	6*
*Exception: Maximum Departure Limit is 7 movements at 0500, 0510, 0520, 0530, 0540, 0550 UTC	

**Passenger Terminal Parameters (hourly):**

	Departures Hourly Limit	Arrivals Hourly Limit
Terminal 1	4,130	3,960
Terminal 2	3,600	3,400

Notes:

- 1) The hourly limit for passengers is rolled every 10 minutes.
- 2) Load factors of 95% are applied to Scheduled services for Terminal 1.
- 3) Load factors of 85% are applied to Scheduled services for Terminal 2.
- 4) Load factors of 100% are applied for Chartered services for both Terminal 1 and Terminal 2.

**Passenger Terminal Parameters (seasonal):**

	PATM Seat Capacity
Terminal 1 and Terminal 2 combined	25,200,000
Service type codes not using the capacity of Terminal 1 or Terminal 2: General Aviation (D), Special (FAA/Government) (E), Cargo Scheduled (F), Crew Training (other than GABA operators) (K), Air Ambulance (U), Military (W), Technical Stop (X).	

Notes:

- 1) A total seasonal limit applies to all service type codes other than those listed above as not using the capacity of Terminal 1 or Terminal 2. An individual airline seasonal quota is not applied.
- 2) To the extent that the seasonal PATM seat parameter may be insufficient to permit the full reallocation of historic slot series from S24, reductions in seats to be applied on a pro-rata basis across all air carriers holding historic seats from the Summer 2024 season.
- 3) Slots returned must include the seats assigned to that slot at the time of return to the pool.
- 4) Slots returned will be made available to other users, provided the slot request does not exceed the PATM seat parameter.

**Stand Parameters:**

	GA	Non-Turnaround		Turnaround Stands									All
	W.A.N	W.A.S	Total	5G	5H	Triangle	MRO	P1	P2	P3	P4	S.A	Total
Remote	8	16	24	15	12	3	6	3	-	-	-	-	63
Contact	-	-	-	-	-	-	-	22	10	11	19	9	71
All	8	16	24	15	12	3	6	25	10	11	19	9	134

Note: This table represents NBE stand capacity.

Area	Constraint
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Stands	Where demand for stands exceeds supply based on coordination allocation, flights to be referred to Dublin Airport for detailed assessment.
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**Referral Parameters:**

Area	Flag
T2 Check-in Desks 1-28 (T2 Operators excluding EI)	Demand exceeds 28 desks
US Preclearance	New flights and schedule changes

**Table A1: Coordination Committee Voting Summary – Runway Parameters.**

Member	0600	0700	0800	0900	1000	1100	1200	1300	1500	1800	1900	2000
Ryanair	W2	W2	W2	W1	W2	W2	W2	W1	W2	W2	W2	W1
Aer Lingus	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1
Air France	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24
American Airlines	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1
British Airways	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1
BACF	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1
Delta Airlines	W2	W2	W2	W1	W2	W2	W1	W1	W2	W2	W2	W1
DHL	W2	W2	W2	W1	W2	W2	W1	W1	W2	W2	W2	W1
Emirates	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24
Fedex	W2	Abs	Abs	Abs	Abs	Abs	Abs	Abs	W2	W2	Abs	W1
Finnair	S24	W2	W2	W1	S24	W1	S24	S24	S24	W2	W2	S24
Lufthansa	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1
Swiss	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1
KLM	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24
Luxair	Abs	Abs	Abs	Abs	Abs	Abs	W1	W1	W2	W2	Abs	Abs
Norwegian	W2	W2	W2	W2	W2	W2	W2	W2	W2	W2	W2	W2
Qatar Airways	W2	W2	W2	W2	W2	W2	W1	W1	W2	Abs	Abs	Abs
SAS	W2	W2	W2	W2	W2	W2	W2	W2	W2	W2	W2	W2
UPS	W2	W2	W2	W2	W2	W2	W2	W2	W2	W2	W2	W2
TUI	W2	Abs	Abs	Abs	Abs	W1	W1	Abs	Abs	W1	W1	W1

United Airlines	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24	S24
Vueling	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1
Emerald Airlines	W2	W1	W2	W2	W2	W2	W1	W1	W1	W1	W1	W1
Iberia	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1
AirNav Ireland	Abs	Abs	Abs	Abs	Abs	Abs	Abs	Abs	Abs	Abs	Abs	Abs
daa	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1	W1
Result	W2	W1	W2	W1	W2	W2	W1	W1	W1	W1	W1	W1
% of total votes	56%	47%	55%	82%	54%	54%	49%	91%	47%	47%	47%	91%



**Table A2: Retain S24 Departures and Arrivals hourly limits by Terminal**

Member	Answer	Yes	No	Abstain
Ryanair	No	0	428	0
Aer Lingus	Yes	263	0	0
Air France	Yes	10	0	0
American Airlines	Abstain	0	0	8
British Airways	Yes	18	0	0
BACF	Yes	15	0	0
Delta Airlines	Yes	9	0	0
DHL	Yes	0	0	0
Emirates	Yes	6	0	0
Finnair	No	0	3	0
Lufthansa	No	0	19	0
Swiss	No	0	8	0
KLM	Yes	14	0	0
Luxair	Abstain	0	0	2
Norwegian	No	0	1	0
Qatar Airways	No	0	6	0
SAS	No	0	9	0
UPS	Abstain	0	0	7
TUI	Abstain	0	0	5
United Airlines	Yes	9	0	0

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Vueling	Yes	6	0	0
Iberia	Yes	4	0	0
Emerald Airlines	Yes	88	0	0
AirNav Ireland	Abstain	0	0	20
daa	Yes	40	0	0
Total		483	475	43
		48.3%	47.5%	4.3%

**Table A3: Retain S24 Referral Parameters**

Member	Answer	Yes	No	Abstain
Ryanair	No	0	428	0
Aer Lingus	Yes	263	0	0
Air France	No	0	10	0
American Airlines	Abstain	0	0	8
British Airways	Yes	18	0	0
BACF	Yes	15	0	0
Delta Airlines	Yes	9	0	0
DHL	Yes	0	0	0
Emirates	Yes	6	0	0
Finnair	No	0	3	0
Lufthansa	Yes	19	0	0
Swiss	Yes	8	0	0
KLM	No	0	14	0
Luxair	Abstain	0	0	2
Norwegian	No	0	1	0
Qatar Airways	Abstain	0	0	6
SAS	No	0	9	0
UPS	Abstain	0	0	7
TUI	Abstain	0	0	5
United Airlines	Yes	9	0	0

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Vueling	Yes	6	0	0
Iberia	Abstain	0	0	4
Emerald Airlines	Yes	88	0	0
AirNav Ireland	Abstain	0	0	20
daa	Yes	40	0	0
Total		481	466	53
		48.1%	46.6%	5.3%

**Table A4: Question 1 on PATM (see section 4)**

Member	Answer	Yes	No	Abstain
Ryanair	No	0	435	0
Aer Lingus	No	0	267	0
Air France	No	0	10	0
American Airlines	No	0	9	0
British Airways	No	0	19	0
Delta Airlines	No	0	9	0
DHL	Yes	0	0	0
Emirates	No	0	7	0
Finnair	No	0	3	0
Lufthansa	No	0	20	0
Swiss	No	0	8	0
KLM	No	0	14	0
Luxair	Abstain	0	0	2
Norwegian	No	0	1	0
Qatar Airways	No	0	6	0
SAS	No	0	10	0
UPS	Abstain	0	0	7
TUI	Abstain	0	0	5
United Airlines	No	0	9	0
Vueling	No	0	6	0

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Iberia	No	0	90	0
Emerald Airlines	No	0	4	0
AirNav Ireland	Abstain	0	0	20
daa	Yes	40	0	0
Total		40	926	34
		4%	93%	3%

**Table A5: Question 2 on PATM (see section 4)**

Member	Answer	Yes	No	Abstain
Ryanair	No	0	438	0
Aer Lingus	No	0	268	0
Air France	No	0	10	0
American Airlines	No	0	9	0
British Airways	No	0	19	0
Delta Airlines	No	0	9	0
DHL	Yes	0	0	0
Emirates	No	0	7	0
Finnair	No	0	3	0
Lufthansa	No	0	20	0
Swiss	No	0	8	0
KLM	No	0	15	0
Luxair	No	0	2	0
Norwegian	No	0	1	0
Qatar Airways	No	0	6	0
SAS	No	0	10	0
UPS	Abstain	0	0	7
TUI	Abstain	0	0	5
United Airlines	No	0	9	0
Iberia	No	0	90	0

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Emerald Airlines	No	0	4	0
AirNav Ireland	Abstain	0	0	20
daa	Yes	40	0	0
Total		40	926	34
		4%	93%	3%