IN THE MATTER OF:

SLOT REGULATION

ADVICE

A. INTRODUCTION

1. I have been asked to consider the following questions on the interpretation and effect of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (the "**Slot Regulation**"), namely:

   1.1. What is the scope of "environmental constraints" under Art 6(1) of the Slot Regulation? Does Art 6(1) allow a Member State to determine the number of slots available by reference to climate change and/or climate laws?

   1.2. Is the air carrier's interest in "historic" slots under Art 8(2) of the Slot Regulation proprietary in nature?

2. In summary, my views are as follows:

   2.1. First, on its proper construction, it is likely that Arts 2(m) and 6(1) of the Slot Regulation, as construed together, mean that a relevant "environmental constraint" must (a) affect the performance of the airport infrastructure and its different sub-systems, and (b) relate to or arise from environmental factors. Applying this test, climate laws which impose a binding legal requirement to reduce airport capacity for environmental reasons would fall within that definition. Outside of this example, climate change-related limitations and/or laws ought to fall under requirement (b), but the question of whether they "*affect the performance of the airport infrastructure and its different sub-systems*" (i.e. requirement (a)) is likely to involve a fact-sensitive enquiry.

   2.2. Second, whilst there is some uncertainty as to what counts as a proprietary interest in the context of the Slot Regulation, it is unlikely that an air carrier's interest in "historic" slots under Art 8(2) constitutes a property right. In particular, the air

carrier's entitlement is conditional and dependent upon the decision of the coordinator. The relevant preparatory materials also suggest that the purpose of the relevant amendments to the Slot Regulation in 2004 was to clarify that air carriers did not have a proprietary right in this regard.

3. However, the conclusions set out above and below are necessarily subject to some uncertainty. I am not aware of any case law in which these questions have been addressed by the English Courts or by the CJEU. In addition, these issues were recently raised in *daa plc v The Irish Aviation Authority* [2024] IEHC 758 and are presently the subject of a reference to the CJEU (Case C-857/24). Accordingly, the law in this area is subject to change.

4. For the avoidance of doubt, I have prepared this advice as a barrister qualified in England and Wales, and am not authorised to provide legal services in an EU jurisdiction.

B. THE CURRENT LEGISLATIVE FRAMEWORK

5. By way of broad overview, the Slot Regulation prescribes the following regime:

   5.1. Art 2(a) defines a "*slot*" as "*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*".

   5.2. Art 2(k) defines a "*series of slots*" as "*at least five slots having been requested for the same time on the same day of the week regularly in the same scheduling period and allocated in that way or, if that is not possible, allocated at approximately the same time*".

   5.3. Art 2(m) defines "*coordination parameters*" as "*the expression in operational terms of all the capacity available for slot allocation at an airport during each coordination period, reflecting all technical, operational and environmental factors that affect the performance of the airport infrastructure and its different sub-systems*".

5.4. Art 3 ("*Conditions for airport coordination*") provides for the conditions for Member States to designate an airport as "*schedules facilitated*" or "*coordinated*". In turn, Art 2(g) defines a "*coordinated airport*" as "*any airport where, in order to land or take off, it is necessary for an air carrier or any other aircraft operator to have been allocated a slot by a coordinator, with the exception of State flights, emergency landings and humanitarian flights*".

5.5. Art 6 ("*Coordination parameters*") applies to coordinated airports, and provides that:

> "1. At a coordinated airport the Member State responsible shall ensure the determination of the parameters for slot allocation twice yearly, while taking account of all relevant technical, operational and environmental constraints as well as any changes thereto.
>
> This exercise 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.
>
> The parameters shall be communicated to the airport coordinator in good time before the initial slot allocation takes place for the purpose of scheduling conferences.
>
> 2. For the purpose of the exercise referred to in paragraph 1, where the Member State does not do so, the coordinator shall define relevant coordination time intervals after consultation of the coordination committee and in conformity with the established capacity.
>
> 3. 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."

5.6. Art 8 ("*Process of slot allocation*") provides for, *inter alia*, the following regime:

(a) By Art 8(1):

> "Series of slots are allocated from the slot pool to applicant carriers as permissions to use the airport infrastructure for the purpose of landing or take-

off for the scheduling period for which they are requested, at the expiry of which they have to be returned to the slot pool as set up according to the provisions of Article 10."

(b) Art 8(2) covers entitlements to "historic" slots (also known as grandfather rights) and the "use it or lose it" rule. It provides that:

> "Without prejudice to Articles 7, 8a and 9, Article 10(1) and Article 14,[1] paragraph 1 of this Article shall not apply when the following conditions are satisfied:
>
> — a series of slots has been used by an air carrier for the operation of scheduled and programmed non-scheduled air services, and
>
> — that air carrier can demonstrate to the satisfaction of the coordinator that the series of slots in question has been operated, as cleared by the coordinator, by that air carrier for at least 80 % of the time during the scheduling period for which it has been allocated.
>
> In such case that series of slots shall entitle the air carrier concerned to the same series of slots in the next equivalent scheduling period, if requested by that air carrier within the time-limit referred to in Article 7(1)."

(c) By Art 8(3):

> "Without prejudice to Article 10(2), in a situation where all slot requests cannot be accommodated to the satisfaction of the air carriers concerned, preference shall be given to commercial air services and in particular to scheduled services and programmed non-scheduled air services. In the case of competing requests within the same category of services, priority shall be given for year round operations."

5.7. Art 8a ("*Slot mobility*") provides for transfers or exchanges of slots by or between air carriers or companies.

[1] By way of overview: (1) Art 7 sets out, *inter alia*, requirements for air carriers to provide to schedules facilitators and coordinators all relevant information requested by them; and (2) Art 9 applies where public service obligations have been imposed on a route. Arts 8a, 10(1) and 14 are summarised below.

5.8. Art 10 ("*Slot pool*") relates to the pool of slots which contains all the slots not allocated on the basis of Art 8(2) and (4), including all new slot capacity determined pursuant to Art 3(3). In particular:

(a) By Art 10(2):

> "A series of slots that has been allocated to an air carrier for the operation of a scheduled or a programmed non-scheduled air service shall not entitle that air carrier to the same series of slots in the next equivalent scheduling period if the air carrier cannot demonstrate to the satisfaction of the coordinator that they have been operated, as cleared by the coordinator, by that air carrier for at least 80 % of the time during the scheduling period for which they have been allocated."

(b) Art 10(4b) provides that "*[w]hen the non-utilisation of a slot is justified by the restrictions referred to in paragraph 4 or 4a, the coordinators shall consider that the slot was operated within the series of slots concerned*". In turn, Art 10(4) and (4a) provide for various exceptions where 80% usage of the series of slots cannot be demonstrated.

5.9. Art 14 ("*Enforcement*") provides for, *inter alia*, circumstances in which the coordinator can withdraw the series of slots allocated or provisionally allocated to an air carrier. In particular, Art 14(6) provides that:

> "Without prejudice to Article 10(4) and (4a), if the 80 % usage rate as defined in Article 8(2) cannot be achieved by an air carrier, the coordinator may decide to withdraw from that air carrier the series of slots in question for the remainder of the scheduling period and place them in the pool after having heard the air carrier concerned.
>
> Without prejudice to Article 10(4) and (4a), if after an allotted time corresponding to 20 % of the period of the series validity no slots of that series of slots have been used, the coordinator shall place the series of slots in question in the pool for the remainder of the scheduling period, after having heard the air carrier concerned…"

C. RELEVANT LEGISLATIVE HISTORY

6. The Slot Regulation was originally adopted in January 1993. As originally enacted, the relevant parts of the Slot Regulation provided as follows:

6.1. By Art 6(1):

> "At an airport where slot allocation takes place, the competent authorities shall determine the capacity available for slot allocation twice yearly in cooperation with representatives of air traffic control, customs and immigration authorities and air carriers using the airport and/or their representative organizations and the airport coordinator, according to commonly recognized methods. Where the competent authority is not the airport authority it shall also be consulted.
>
> This exercise shall be based on an objective analysis of possibilities of accommodating the air traffic, taking into account the different types of traffic at that airport.
>
> The results of this exercise shall be provided to the airport coordinator in good time before the initial slot allocation takes place for the purpose of scheduling conferences."

6.2. By Art 8(1)(a), "*[s]ubject to the provisions of Article 10, a slot that has been operated by an air carrier as cleared by the coordinator shall entitle that air carrier to claim the same slot in the next equivalent scheduling period*". Art 8 also made provision for where requested slots could not be accommodated.

6.3. By Art 10(3):

> "Slots which are allocated to an air carrier for the operation of a scheduled service or a programmed non-scheduled service on a particular moment of a day and for the same day of the week over a recognizable period up to one scheduling period shall not entitle that air carrier to the same series of slots in the next equivalent period, unless the air carrier can demonstrate to the satisfaction of the coordinator that they have been operated, as cleared by the coordinator, by that air carrier for at least 80 % of the time during the period for which they have been allocated."

6.4. Art 10(5) then provided for exceptions where 80% usage of the series of slots could not be demonstrated, but the non-utilisation could be justified on the basis of one of an exhaustive list of reasons.

7. On 30 July 2004, Regulation (EC) No 793/2004 of the European Parliament and of the Council of 21 April 2004 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports ("**Regulation 793**") entered into

force. Regulation 793 amended the Slot Regulation, including by enacting, in materially similar form to their current versions, Arts 6(1) and 8(2) of the Slot Regulation.

8. So far as is material, the legislative background to Regulation 793 is as follows:

8.1. On 22 June 2001, the European Commission first submitted the proposed amendments to the Slot Regulation.[2] The explanatory memorandum stated as follows:[3]

(a) There had been discussions as to whether slots were the property assets of airlines or the property rights of airports, such that there was an "*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*" (at [11]). In light of this, "*this Regulation stipulates that slots constitute 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*" (at [12]).

(b) The Commission's proposal provided explicitly for environmental constraints to be taken into consideration in the context of the determination of airport capacity, in view of the growing environmental pressure at some major Community airports (at [14]). In this regard, the explanatory memorandum cross-referred to the Commission's position as set out in its Communication on Air Transport and Environment (Com (1999) 640), namely that "*the long-term policy target must be to achieve improvements to the environmental performance of air transport operations that outweigh the environmental impact of growth*".

8.2. On 20 March 2002, the European Economic and Social Committee adopted an opinion on the proposed amendments to the Slot Regulation,[4] in which:

[2] OJ C 270 E/131 (25 September 2001).
[3] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52001PC0335
[4] OJ C 125/8 (27 May 2002).

(a) The Committee described the proposed amendments as an attempt "*to re-focus upon the management of slots and in conjunction with that to reflect ATC, airports operation and capacity issues alongside current environmental objectives, to impart fair and transparent procedures to protect and encourage the industry and users alike and arbitrate upon congestion*" (at §1.1).

(b) The Committee welcomed "*the Commission explanation that slots are considered as 'rights to use infrastructure' and not 'property rights'*", but also noted that this "*beg[ged] the question of the proposed examination of slot trading and the inevitable challenge by flagship carriers that the 'grandfather right' embodied in the proposal is de facto their 'property'*" (at §4.4.1).

(c) The Committee opined (under the "*Environment*" heading) that "*[g]iven the recently adopted ESC Opinion on holistically minimising the noise and pollutant discharges around airports, it would be appropriate for local/regional government to be represented on the Coordination Committee*" (at §4.7.1).

8.3. On 11 June 2002, the first reading of (what became) Regulation 793 took place.[5] At the time, the Commission proposal (as amended) included the following provisions (with amendments in **bold**):

(a) Recital (9) provides that:

> "It is also necessary to clarify that slot allocation must be considered as a right of usage**, subject to the relevant terms and conditions of use,** giving air carriers the entitlement to access the airport facilities by landing and taking-off at specific dates and timings for the duration of the period for which the entitlement has been granted. **It should at the same time be made clear that airport slots can be assigned for scheduling purposes only, since on the day of flight an airway slot must be available to be allocated in accordance with the prevailing air-traffic situation. It will be necessary in future to**

[5] OJ C 261 E/116 (30 October 2003).

devise rules and procedures to improve the coordination of airport and airway slots."

(b) Recital (10) provided that:

"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; whereas, in order to encourage regular operations at a coordinated airport it is necessary to provide that grandfather rights relate to series of slots. **At the same time Member States may restrict an entitlement to a series of slots in response to changed environmental protection conditions at the airport concerned.**"

(c) Recital (13) provided that:

"In order to ensure the efficient use of capacity and reduce the environmental impact at congested airports and to further promote intermodality it is necessary to also consider in the process of slot allocation the existence of adequate services of satisfactory quality provided by other modes of transport."

(d) Art 8(2) included the following wording:

"… **Without prejudice to Article 9 and the relevant provisions of Regulation (EEC) No 2408/92,** Member States may limit **on a non-discriminatory basis** such entitlement to series of **slots in response to changed environmental protection conditions at the airport concerned, whilst taking into account local guidelines adopted according to paragraph 6.**"

8.4. On 19 February 2004, the Council adopted Common Position (EC) No 22/2004.[6] In particular, the version of (what became) Regulation 793 that was adopted by the Council was materially different from the provisions set out above. For example, the wording in Art 8(2) set out above was not included. The "*Statement of the Council's Reasons*" does not specifically explain why these provisions or amendments were not accepted.

[6] OJ C 95 E/16 (20 April 2004).

8.5. On 21 April 2004, Regulation 793 was adopted. In its final form, Recital (9) provided that:

> "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."

D. THE INTERPRETATION OF EU REGULATIONS

9. By way of brief overview, *Craies on Legislation* (13th ed, 2025), §33-038 explains that the normal approach of the CJEU to the construction of European legislative instruments is to (in descending order):[7]

9.1. Start with the terms of the instrument in question, including its preamble;

9.2. Turn to the preparatory documents;

9.3. Consider the usual meaning of expressions used and, in particular, comparison of different language texts of the instrument; and

9.4. Consider the purpose and general scheme of the instrument to be construed.

10. This is also supported by the case law. For example, in *CILFIT Srl v Ministro della Sanita'* (Case 283/81) [1983] 1 CMLR 472, the CJEU explained (at [18]-[20]) that:

10.1. First, the interpretation of a provision of EU law involves a comparison of the different language versions, which are all equally authentic.

10.2. Second, even where the different language versions are entirely in accord with one another, EU law uses terminology which is peculiar to it and legal concepts do not necessarily have the same meaning in EU law in the law of the various Member States.

10.3. Third, every provision of EU law must be placed in its context and interpreted in the light of the provisions of EU law as a whole, with regard to the objectives

[7].

thereof and to its state of evolution at the date on which the provision in question is to be applied.

E. ART 6(1): THE SCOPE OF "ENVIRONMENTAL CONSTRAINTS"

11. I consider that Art 6(1) of the Slot Regulation permits coordinators to determine coordination parameters by reference to issues relating to climate change and/or climate laws, but only insofar as these issues affect the performance of the airport infrastructure within the meaning of Art 2(m). This follows from both a literal and purposive construction of Arts 2(m) and 6(1) of the Slot Regulation.

12. First, the natural and ordinary meaning of the language in Art 6(1) of the Slot Regulation – of "*all relevant… environmental constraints*" – is wide enough to encompass constraints arising from climate change and/or climate laws. However, this must also be read together with the definition of "*coordination parameters*" in Art 2(m), which refers to "*all… environmental factors that affect the performance of the airport infrastructure and its different sub-systems*".

13. In light of this, and based on the language of Arts 2(m) and 6(1) of the Slot Regulation, my view is that for the purposes of Art 6(1) a "*relevant environmental constraint*" must: (a) affect the performance of the airport infrastructure and its different sub-systems; and (b) relate to or arise from environmental factors. There is no apparent reason why the latter requirement could not and should not include climate-related issues.

14. In practice, climate laws that impose requirements or restrictions on airport capacity are likely to fall within the foregoing definition. Wider issues of climate change that do not presently impose binding legal requirements *might* also suffice, but that is a fast-sensitive enquiry that is likely to depend on how and to what extent the performance of the airport infrastructure might be affected.

15. Second, this wide reading of Art 6(1) of the Slot Regulation is also supported by the preparatory materials and the purpose of this provision. The language of "environmental constraints" was first introduced in Regulation 793, as part of the Commission's goal of achieving improvements to the environmental performance of air transport operations (see paragraph 8.1(b) above). This is a wide-ranging goal which encompasses issues relating to climate change.

16. Against this:

16.1. The preparatory materials suggest that at the time of enacting Regulation 793, a decision was made not to introduce further environmental restrictions into the Slot Regulation. For example:

(a) The explanatory memorandum states that the Commission considered introducing the possibility of adding environmental criteria, such as the noise performance of aircraft, to be used as a criterion for the allocation of slots, but reached the preliminary conclusion that such proposals should only be made after further assessment of the policy options (at [14]).[8]

(b) The Commission had previously proposed language in Art 8(2) which would make "*changed environmental protection conditions*" a basis for limiting air carriers' entitlement to "historic" slots, but this language was not included in the final version of Regulation 793 (see paragraphs 8.3 and 8.4 above).

Nevertheless, my view is that the fact that additional environmental requirements were not introduced in 2004 does not detract from the language and purpose of the "environmental constraints" provisions that were included in Regulation 793.

16.2. Further, the slot allocation regime as a whole is tailored towards "*ensur[ing] the fullest and most flexible use of limited capacity at congested airports*" (Recital (2) to Regulation 793). This is reflected by (e.g.) Art 6(3) of the Slot Regulation, which requires discussion within the coordination committee of the determination of coordination parameters and the methodology used, as well as any changes thereto, "*with a view to increasing the capacity and number of slots available for allocation*".

16.3. As a result, although it is fair to say that one of the purposes of the amendments introduced in Regulation 793 was to improve environmental performance, this must be set against the overarching purpose of the Slot Regulation as a whole. Notwithstanding this, my view remains that the construction of Art 6(1) of the Slot Regulation set out above is not incompatible with the overall statutory regime: climate change-related issues would only be one factor to be taken into account in

[8] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52001PC0335

setting the coordination parameters, and Art 6(1) expressly contemplates the consideration of "*all relevant… environmental constraints*" – which is separate from the categories of technical and operational constraints.

17. Third, when construing EU regulations, it is permissible to have regard to the provisions of EU law as a whole, including its current state of evolution (see paragraph 10 above). By way of example, Recital (7) of the European Climate Law[9] explains that:

> "… Without prejudice to binding legislation and other initiatives adopted at Union level, all sectors of the economy – including energy, industry, transport, heating and cooling and buildings, agriculture, waste and land use, land-use change and forestry, irrespective of whether those sectors are covered by the system for greenhouse gas emission allowance trading within the Union ('EU ETS') – should play a role in contributing to the achievement of climate neutrality within the Union by 2050…"

18. Although the Slot Regulation does not itself refer to wider provisions of EU climate law, this nevertheless provides relevant context when interpreting the meaning of "environmental constraints" in Art 6(1), and provides a further reason for why those words should not be construed in a restrictive manner.

19. For completeness, it should be noted that environmental factors are relevant not only to the determination of coordination parameters pursuant to Art 6(1) of the Slot Regulation, but also to:

    19.1. The designation of airports pursuant to Art 3, which requires a capacity analysis to determine any shortfall in capacity "*taking into account environmental constraints at the airport in question*" (Art 3(3));

    19.2. The role of the coordination committee pursuant to Art 5, whose tasks include making proposals concerning or advising the coordinator and/or the Member State on "*local guidelines for the allocation of slots or the monitoring of the use of allocated slots, taking into account, inter alia, possible environmental concerns, as provided for in Article 8(5)*" (Art 5(a)); and

    19.3. The confirmation of slot transfers and exchanges pursuant to Art 8a. The coordinator is required to "*decline to confirm the transfers or exchanges if they are*

[9] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999.

not in conformity with the requirements of this Regulation and if the coordinator is not satisfied that: (a) airport operations would not be prejudiced, taking into account all technical, operational and environmental constraints…" (Art 8a(2)).

F. ART 8(2): THE AIR CARRIER'S INTEREST IN "HISTORIC" SLOTS

(1) What is a property right?

20. I have considered briefly whether there is an EU law concept of what constitutes a proprietary right. In this regard, the academic commentary notes that within the EU, property law is mostly governed by the laws of Member States,[10] and that the impact of EU law on national property has to date been modest.[11] In light of this, I have not further investigated the possibility of an EU-wide concept of property rights.

21. I have nevertheless found it helpful to consider the question that has been posed to me against the legal framework of what constitutes a property right in the first place. In particular, and by way of overview only:

    21.1. Art 17 of the Charter of Fundamental Rights of the European Union (the "**Charter**") protects the right to property. The CJEU has explained that "*the protection afforded by that article does not concern mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity, but concerns rights with an asset value creating an established legal position under the legal system, enabling the holder to exercise those rights autonomously and for his or her own benefit*".[12]

    21.2. As a matter of English law, *The Law of Personal Property* (3rd ed, 2022) opines (at §§1-005–1-008) that the principal characteristics of property rights consist of the three incidents of alienability, excludability and exigibility – in that property rights (a) are generally transferable or alienable by the person entitled to those rights to other persons, (b) allow a person to either exclude or permit access to or recourse by other persons to a particular asset, and (c) comprises rights which depend upon the existence of the asset to which an entitlement is claimed, so that

[10] S van Erp, 'European Property Law: Competence, Integration, and Effectiveness', in R Levine-Schnur (ed), *Measuring the Effectiveness of Real Estate Regulation* (Springer, 2020), p 205.
[11] E Ramaekers, 'What is Property Law?' (15 April 2015), p 22 <https://ssrn.com/abstract=2594790>.
[12] *Anic v Ministero dello Sviluppo economico* (Joined Cases C-798/18 & C799/18) at [33].

a right *in rem* cannot survive the extinction of its *res* and can only meaningfully be asserted against a person who has control over the asset claimed.

21.3. This is to some extent, but not wholly, consistent with the approach applied in some of the academic literature. For example, van Houten has considered whether slots are property rights by reference to the criteria of economic value, alienability, and non-interference by or enforceability against third parties (e.g. the coordinator).[13]

22. However, given the lack of certainty in this regard, I have not sought to apply the aforementioned criteria as a strict test for what counts as a property right.

(2) The construction of Art 8(2) of the Slot Regulation

23. My view is that it is unlikely that Art 8(2) of the Slot Regulation creates or provides for proprietary rights to "historic" slots. As explained below, this conclusion is primarily based on: (a) the wider regime provided by the Slot Regulation, which (i) confers upon the coordinator the exclusive role of allocating slots, (ii) states that the entitlement to "historic" slots is conditional, and (iii) makes provision for the inability to accommodate all slot requests; and (b) the preparatory materials in respect of Regulation 793 and the purpose of the amendments thereby introduced. I have also derived some support for my view from the fact that the Slot Regulation does not expressly provide for property rights in "historic" slots, and from the views of other commentators and bodies.

24. First, the language of the Slot Regulation does not conclusively answer this question. On the one hand, Art 8(2) of the Slot Regulation refers to the "*entitlement*" of the air carrier to the same series of slots previously used (subject to the 80% rule) in the next equivalent scheduling period. Similarly, Art 10(2) also uses the language of "*entitlement*". It therefore appears that air carriers have rights and entitlements to "historic" slots. On the other hand:

24.1. The Slot Regulation does not expressly describe those rights and entitlements as property or proprietary rights – such that the crucial question of what *type* of entitlement air carriers have is not expressly addressed by the Slot Regulation.

[13] LM van Houten, 'Flexing the slot regime: airport slot coordination in light of evolving market realities: a regulatory perspective' (16 December 2021), §5.2.4.1 <https://hdl.handle.net/1887/3247125>.

24.2. Other provisions of the Slot Regulation describe slots and grandfather rights in less strident terms. For example, Art 2(a) defines a slot as the "*permission*" given by a coordinator, and Art 8 uses the language of "*slot requests*". This suggests that grandfather rights are not guaranteed, and are conditional upon the permission and accommodation of the coordinator.

25. Although the language of the Slot Regulation does not answer this question decisively, I consider that (on balance) the ambiguity of the Slot Regulation in this respect points against the view that air carriers have proprietary rights to "historic" slots. That construction would have serious implications for air carriers and airports (amongst others), and would also involve the creation of a property right as a matter of EU law – which would be a material legal development. If that were the intention behind the Slot Regulation, I would expect this to be specifically addressed in the legislation itself.

26. However, I have not considered whether the different language texts of the Slot Regulation might shed light on its construction, which may affect the conclusions I have reached in this advice.

27. Second, it is necessary to consider the wider statutory regime provided for by the Slot Regulation. In this regard, my view is that (on balance) this points against Art 8(2) conferring upon air carriers proprietary rights to "historic" slots. As to this:

27.1. Art 4(5) states that "*[t]he coordinator shall be the sole person responsible for the allocation of slots*", who shall allocate the slots in accordance with the provisions of the Slot Regulation. In other words, the allocation of slots is a matter only for the coordinator to determine, within the confines of the Slot Regulation (including the coordination parameters determined pursuant to Art 6(1)). This is arguably inconsistent with any suggestion that grandfather rights are property rights that cannot be interfered with by the coordinator, which would partially displace the coordinator's exclusive role in this regard.[14] This is further addressed in paragraph 28 below, as to the purpose of the Slot Regulation.

27.2. Art 7(1) and (2) requires air carriers to provide the requisite information to the schedules facilitator or coordinator (as applicable) within the specified time-limit.

[14] See also LM van Houten, 'Flexing the slot regime: airport slot coordination in light of evolving market realities: a regulatory perspective' (16 December 2021), §5.2.4.3 <https://hdl.handle.net/1887/3247125>.

Art 8(2) further requires air carriers to make their slot requests within the same time-limit, as a pre-condition to their entitlement to "historic" slots.[15] It follows that grandfather rights are not unconditional rights, and the allocation of slots (including "historic" slots) is subject to the role and function of the coordinator – so that they are not fully autonomous and unconditional rights. Once again, this is a factor that points against grandfather rights being proprietary rights.

27.3. Art 8(3) makes provision for situations where all slot requests cannot be accommodated to the satisfaction of the air carriers concerned. Art 8(6) adds that if a requested slot cannot be accommodated, the coordinator shall inform the requesting air carrier of the reasons therefor and shall indicate the nearest available alternative slot. This undermines the argument that grandfather rights are property rights, in that Art 8(1) envisions a refusal to grant slot requests (including requests for "historic" slots) – such that grandfather rights can be unenforceable in certain circumstances. This is not affected by the fact that Art 8(3) is said to be without prejudice to Art 10(2): the latter provision only imposes a further positive requirement for grandfather rights, namely the "use it or lose it" rule.

27.4. Art 8(b) provides that the Art 8(2) entitlement "*shall not give rise to any claims for compensation in respect of any limitation, restriction or elimination thereof imposed under Community law*", including transfers required pursuant to competition law requirements. Accordingly, the Slot Regulation expressly contemplates limits upon or the removal of the entitlement to "historic" slots under Art 8(2).[16] Whilst Art 8b refers to transfers required by competition law, the language of Art 8b is wide enough to encompass any other limitations required by EU law – which could include (e.g.) an inability to accommodate slot requests following a reduction in capacity.

[15] This follows from the words "*... if requested by that air carrier within the time-limit referred to in Article 7(1)*" in Art 8(2).

[16] See also, by analogy, *Sky Österreich GmbH v Österreichischer Rundfunk* (Case C-283/11). The CJEU held (at [36]-[39]) that, in the context of Art 17 of the Charter, exclusive broadcasting rights did not constitute an established legal position under the legal system that enabled the holder to exercise those rights autonomously and for his benefit. This was because EU law required Member States to guarantee the right of broadcasters to make short news reports on events of high interest to the public which are subject to exclusive broadcasting rights, without the right-holders being able to demand compensation exceeding the additional costs directly incurred in providing access to the signal.

27.5. Against this, it must be acknowledged that Art 8a ("*Slot mobility*") envisions the transfer or exchange of slots, subject to the express confirmation of the coordinator. Slots are therefore alienable and valuable rights, which is relevant to the consideration of whether "historic" slots are property rights. However, this is not a conclusive factor in and of itself, and must be considered in light of the other matters set out above and below.

28. Third, I have also considered the preparatory documents and, more generally, the purpose of the Slot Regulation. My view is that once again, these factors point against Art 8(2) conferring proprietary rights to "historic" slots. In particular:

28.1. The preparatory documents for Regulation 793 show that part of the rationale for amending the Slot Regulation was to clarify the legal status of slots, so as to make it clear that slots do not constitute property rights (see paragraphs 8.1(a) and 8.2(b) above). In this regard, it is noteworthy that the definition of "slot" in the Commission's initial proposal of 22 June 2001 was largely retained in the final version of Regulation 793 (see below).

Commission proposal	**Regulation 793**[17]
"slot" shall mean 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;	"slot" shall mean the permission given by a coordinator in accordance with this Regulation to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator in accordance with this Regulation;

28.2. Recital (8) to Regulation 793 states that "*[i]t 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*". Accordingly, the final text of Regulation 793 also confirms that one of the reasons for amending the definition of "slot" was to clarify that a slot means having permission to use airport

[17] This is the same wording in Art 2(a) of the Slot Regulation.

facilities at a specific date and time, rather than a more wide-ranging right or entitlement – which points against any suggestion that Regulation 793 was intended to create (or reinforce) property rights to "historic" or other slots.

28.3. Recital (9) to Regulation 793 explains the rationale for grandfather rights, namely to encourage regular operations at coordinated airports (see paragraph 8.5 above). However, this rationale does not require these rights to be property rights, as opposed to a *prima facie* (personal) right to use "historic" slots. Further, the reference to operational and environmental constraints in the same Recital reinforces the view that grandfather rights are not necessarily decisive and conclusive.

28.4. More generally, I am not aware of any indication in the preparatory materials for Regulation 793 that suggest that there was an intention at the time to introduce or reinforce property rights for "historic" slots. At most, the European Economic and Social Committee merely noted that the Commission's proposal would result in an inevitable challenge by air carriers (see paragraph 8.2(b) above).

29. Fourth, I have also derived some support for my view from the wider commentary on this issue. By way of example:

29.1. *Shawcross & Beaumont: Air Law* (Issue 193, June 2025) states (at [138]) that "*[a]lthough there has been a tendency for airline operators to consider their right to a slot as a proprietary right, this is not the case*". However, the textbook does not provide any explanation for this view.

29.2. This issue has been considered in some detail by van Houten, who concludes – both under the Slot Regulation and under other regimes – that "*[a]lthough slots represent relevant operational, economic, legal and social interests, they cannot, in my view, be identified as property rights*".[18] In summary, van Houten notes that: (a) the definition of an airport slot (including in the Slot Regulation) does not explicitly state that airlines own slots in terms of being able to legally claim slots as property rights; (b) historic slots are always allocated conditionally to airlines; (c) there are doubts as to whether historic slots are enforceable against third parties;

[18] LM van Houten, 'Flexing the slot regime: airport slot coordination in light of evolving market realities: a regulatory perspective' (16 December 2021), §5.2.5 <https://hdl.handle.net/1887/3247125>.

and (d) the contrary position would erode the responsibility of the airport or any other competent authority to determine the limits of the maximum capacity of the airport, and affect the independent function of the coordinator.[19] Instead, van Houten considers that slots are public goods and grandfather rights are merely a creation of legislation within the boundaries of the declared capacity at any given time.

29.3. The UK Department for Transport's view is that the retained EU law version of the Slot Regulation "*does not describe an airport slot as a property capable of being owned by an airport or an airline*" and that "*[a]irlines have no formal property rights, under the terms of the Regulation, to the slots they hold, but the Historic Rights associated with slots mean that they are often treated as assets*".[20]

30. In contrast, IATA's Worldwide Airport Slot Guidelines (4th ed, 1 Aug 2025) (the "**WASG**") state (at §8.1.1(g)) that one of the key principles of slot allocation at a Level 3 airport is that:

> "Historic slots may not be withdrawn from an airline to accommodate new entrants or any other category of aircraft operator. Confiscation of slots for any reason other than proven, intentional slot misuse is not permitted."

31. This is a more robust approach to "historic" slots than is envisaged in the other literature canvassed above. However, the WASG does not state that historic slots are property rights. Further, despite the breadth of the statement at §8.1.1(g), the WASG nevertheless contemplate a capacity reduction that cannot accommodate historic slots, albeit the WASG say this "*must be avoided except in exceptional circumstances*" (at §6.10.3).

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[19] Ibid, §§5.2.4.2, 5.2.4.3 & 5.2.5.
[20] Department for Transport, 'Airport slot reform: a consultation on proposals to reform the airport slot allocation system' (Dec 2023), §§2.25 & 2.26.