

H5: Advocate General's Opinion, Case C-857/24

Case Details

- Case: C-857/24
- Title: daa plc (formerly Dublin Airport Authority plc) and Others v Irish Aviation Authority, Airport Coordination Limited
- Advocate General: Manuel Campos Sanchez-Bordona
- Date of Opinion: 12 February 2026
- Referred by: High Court of Ireland, 11 December 2024
- EU law in question: Council Regulation (EEC) No 95/93 on common rules for allocation of slots at Community airports

Parties

Applicants: daa plc, Aer Lingus Ltd, Ryanair DAC, Air Transport Association of America Inc (trading as Airlines for America), Delta Air Lines Inc, JetBlue Airways Corporation, United Airlines Inc, Emerald Airlines Ireland Limited

Defendants: Irish Aviation Authority, Airport Coordination Limited

Subject Matter

Whether a national competent authority exercising its role in determining slot allocation parameters at a coordinated airport can take into account development consents granted by planning authorities that impose conditions limiting the combined capacity of airport terminals to a certain annual passenger limit (32 million passengers per year at Dublin Airport).

Key Findings of the Advocate General

Planning conditions as operational constraints

The AG determined that passenger limits imposed by planning authorities qualify as operational constraints relevant to slot allocation. He stated: "an annual passenger limit imposed by a planning authority may be taken into account when allocating slots at an airport with capacity problems" and that "compliance with the limit of 32 million passengers a year can be classified as one of the operating constraints."

Legal constraints are capacity factors

"The technical, operational or environmental factors affecting airport capacity are not only physical or material factors, as the air carriers suggest, but also the legal constraints imposed by the rules which, directly or indirectly, affect the use of the airport."

Slots are not property rights

The AG found that historic slots are "mere rights of use granted by the competent authority, in connection with certain airport infrastructure" (point 79), not property rights (point 78), and that "the right to use historical slots cannot, in the final analysis, disregard the airport's capacity as defined in the coordination parameters" (point 88).

Airport closure as enforcement

The AG found that the Slot Regulation "contains mechanisms which avoid decisions as drastic as the closure of an airport" (point 100). The airport managing body had described closure as "extremely detrimental" (point 101).

Significance for the ACCC Communication

This opinion is directly relevant to the Aarhus Communication in several ways:

1. It confirms that planning conditions (including the 32 million passenger cap) are legally binding constraints that must be taken into account in airport operations, undermining the argument that such conditions can simply be overridden or ignored.
2. It demonstrates that the Irish Government's response to this opinion (introducing the Passenger Capacity Bill 2026 to remove the cap entirely) constitutes a legislative override of an environmental planning condition, precisely because the AG confirmed the condition's legal force.
3. The parties to the case (daa, Ryanair, Aer Lingus, Airlines for America) jointly challenged the IAA's authority to enforce the planning condition through slot coordination, demonstrating the coordinated industry opposition to environmental enforcement.
4. The timing is significant: the AG Opinion was delivered on 12 February 2026, and within days Aer Lingus was publicly demanding immediate legislation to remove the cap (Irish Times, 20 February 2026).

Industry Responses

- Aer Lingus: Strongly disagreed, urged immediate government legislation to remove the cap
- Ryanair: Called it "absurd" that road infrastructure outside airports could regulate air traffic
- daa: Noted the opinion while supporting government action and infrastructure investment

Status

The AG Opinion is not binding. The full Court of Justice ruling is expected within months. However, AG opinions are followed in the majority of cases.

Sources

- EUR-Lex reference: <https://eur-lex.europa.eu/eli/C/2025/1744/oj/eng>
- InfoCuria: <https://infocuria.curia.europa.eu/tabs/document/C/2024/C-0857-24-00000000RP-01-P-01/CONCL/315510-EN-1-html>
- RTE News, 12 February 2026: <https://www.rte.ie/news/business/2026/0212/1558107-ecj-on-dublin-airport-passenger-cap/>
- TravelExtra.ie: <https://www.travelextra.ie/new-twist-to-saga-of-dublin-airport-passenger-cap-as-eu-court-upholds-iaa-restrictions/>
- Irish Times, 20 February 2026: <https://www.irishtimes.com/business/2026/02/20/politicians-must-axe-dublin-airport-passenger-cap-in-weeks-aer-lingus-warns/>