

## EXPLANATORY MEMORANDUM

### GENERAL SECTION

#### **Introduction**

The extensive network of (inter)continental destinations which is offered at Schiphol, is of essential importance to our economy and business climate. The Netherlands has a large number of companies which operate all over the world, and the cabinet wants the Netherlands to remain an attractive business location for foreign companies in the future. In the years to come the demand for air transport will increase further. This has been indicated in both the White Paper on Dutch Aviation (2009) and the Schiphol Action Programme (2016). The coalition agreement (2017) has reaffirmed that priority must be given at Schiphol to flights which reinforce the (inter)continental network. Eindhoven Airport and Lelystad Airport are important airports for leisure destinations. For that reason this decree distributes the traffic between the airports Schiphol and Lelystad. By relocating leisure destinations to Lelystad, capacity will be created at Schiphol for flights which are essential to the intercontinental network.

#### **Schiphol as mainport**

Schiphol Airport acts as a mainport. The annual added value of this mainport has been calculated at around 9 billion Euros, and the number of jobs which are related directly or indirectly to the airport amounts to 114,000<sup>1</sup> (directly and indirectly backwards). Thus it can be stated that Schiphol contributes greatly to the Dutch economy. The mainport consists of two elements. These are in the first place the hub function of the airport, and in second place the metropolitan area around the airport.

##### *Hub function*

The extensive network of intercontinental destinations can only be guaranteed as a result of Schiphol acting as an intercontinental junction, a hub.

The central feature of this is that passengers from all kinds of, mostly European, destinations transfer at Schiphol to an intercontinental destination, and the other way round. It is because of these transferring passengers that the intercontinental destinations can be carried out from Schiphol. The fact is that only a limited share of the intercontinental destinations could be operated at a profit on the basis of just the national market. As a consequence these destinations would disappear if Schiphol's hub operation were to expire, and travel would have to be arranged by way of a foreign hub to be able to realise the connection between this destination and the Netherlands. As a result of the loss of Schiphol's hub operation, nearly 40 percent of the direct network will disappear<sup>2</sup>. This will lead to a decrease of the added value of more than 4 billion Euros and the loss of more than 55,000 jobs in the short term. The negative effects on prosperity of longer travelling times and higher ticket prices amount to more than 630 million Euros<sup>3</sup>. The loss of Schiphol's hub operation therefore has great consequences for the Dutch economy. That the disappearance of the hub operation is not imaginary, has been proved in the past by the airports of Zürich, Brussels, Milan Malpensa and Budapest. In addition the loss of the hub function has proved to be irreversible in nearly all cases. Schiphol's hub operation is accordingly not a matter of course.

Because of the Netherlands' small home market, a (European) network of connections to feed these intercontinental destinations is indispensable. Both functions, the intercontinental destinations and the matching (European) network of so-called "feeder flights", together make up the intercontinental major hub function at Schiphol.

The great importance of European hubs is also endorsed by the European Commission. It considers the presence of several major hubs on EU territory to be of great economic and strategic

---

<sup>1</sup> Economisch belang van de mainport Schiphol. Analyse van directe en indirecte economische relaties, Decisio (2015)

<sup>2</sup> Economisch belang van de hubfunctie van Schiphol. SEO-report 2015-22, SEO (2015)

<sup>3</sup> Economisch belang van de hubfunctie van Schiphol. SEO-report 2015-22, SEO (2015)

significance for the EU's external aviation policy,<sup>4</sup> also in view of the competition from fast-growing hubs like Istanbul and Dubai. As a result of the expected Brexit, the relevance of strong European hubs will probably only increase.

The cabinet therefore sees preserving and strengthening Schiphol's hub function as an essential public interest which should be guaranteed. The cabinet also sees the protection of so-called captive users – from the perspective of competition – as a public interest<sup>56</sup>. Airlines which serve intercontinental destinations – or the feeder traffic connected with them – are bound to a specific airport infrastructure – both physically and logistically – which in the Netherlands can only be offered at Schiphol. To guarantee this public interest it is essential to accommodate the hub operation at Schiphol and the leisure traffic at Lelystad.

#### *Metropolitan area*

Schiphol airport is situated in an urbanised area of national importance. In this area a great many available facilities of great diversity and quality have come into being. This also denotes a favourable business climate and a self-reinforcing process; because more industry reinforces the occurring advantages of scale and more of these advantages again attract more industry.

These two elements of the mainport Schiphol – the hub function and the metropolitan area – are intertwined with each other. The demand for air connections is also determined by the volume of the industry and population in the area around Schiphol. It has also been expressed in the Schiphol Action Programme that the airport itself supplies attractive surroundings for companies to establish themselves. The Zuidas as a potential international prime location would be unthinkable without a strong international airport. The auction cluster around Aalsmeer, the port of Rotterdam, and the connections by road and water to the European hinterland are other examples of industry with a strong connection to Schiphol. Schiphol, the hub network and the metropolitan area of Amsterdam have helped each other to develop into the Mainport Schiphol. Together they provide an intercontinental junction for the flow of people, goods, money, information, knowledge and culture.

### **Background**

#### *1. Growth Schiphol*

To guarantee the capacity for developing the hub, agreements have been entered into to develop Schiphol, Lelystad and Eindhoven in connection with each other. To protect the environment, the capacity at Schiphol has been limited. Up to and including 2020 there is capacity for 500,000 aircraft movements at the most. After that time sustainable growth is possible on the basis of the 50/50 principle. The basic assumption is that half of the environmental benefit which is gained by flying with less impact to the environment, accrues to the surrounding environment. The other half may be utilised for more aircraft movements.

At the same time the demand for aircraft movements at Schiphol is great. In the year 2015 451,000 aircraft movements were carried out, in the year 2016 479,000, and the prognosis for the year 2017 is 498,000. In the meantime demand outstrips supply, and the expectation is that this will put more pressure on the available slot capacity in the years to come which is shown in figures 1 and 2.

---

<sup>4</sup> 'The EU's External Aviation Policy - Addressing Future Challenges' COM (2012) 556 final of 27.09.2012.

<sup>5</sup> The government realises its duty to guarantee the public interest of legal security for civilians and companies (Tweede Kamer, vergaderjaar 1999-2000, 27 018, nr. 1)

<sup>6</sup> There is all the more reason because Schiphol occupies an economic position of power in some segments of the market in relation to the airlines and particularly the hub operation (Tweede Kamer, vergaderjaar 2001-2002, 28 074, nr. 6)

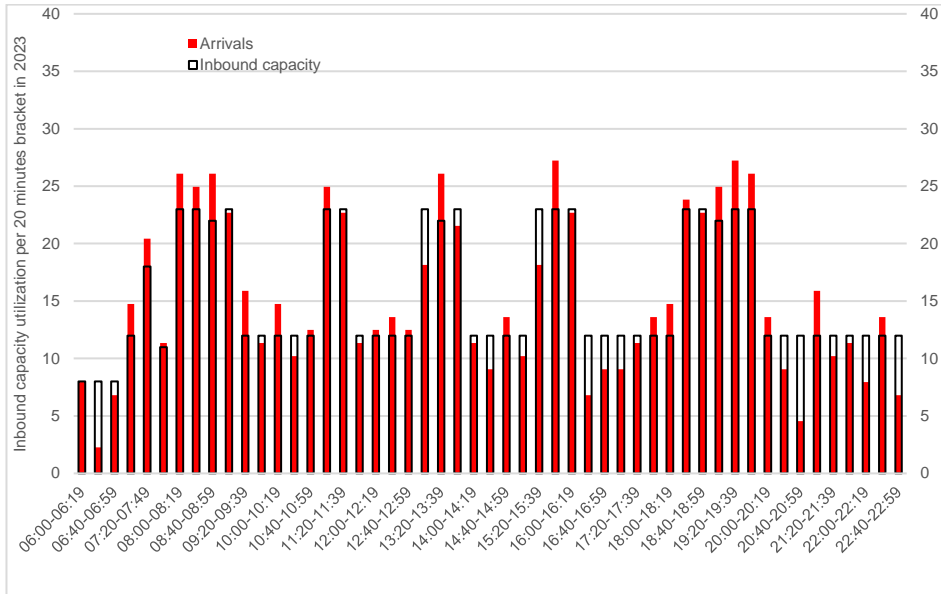


Figure 1 Scheduled arrivals versus inbound capacity in 2023<sup>7</sup>

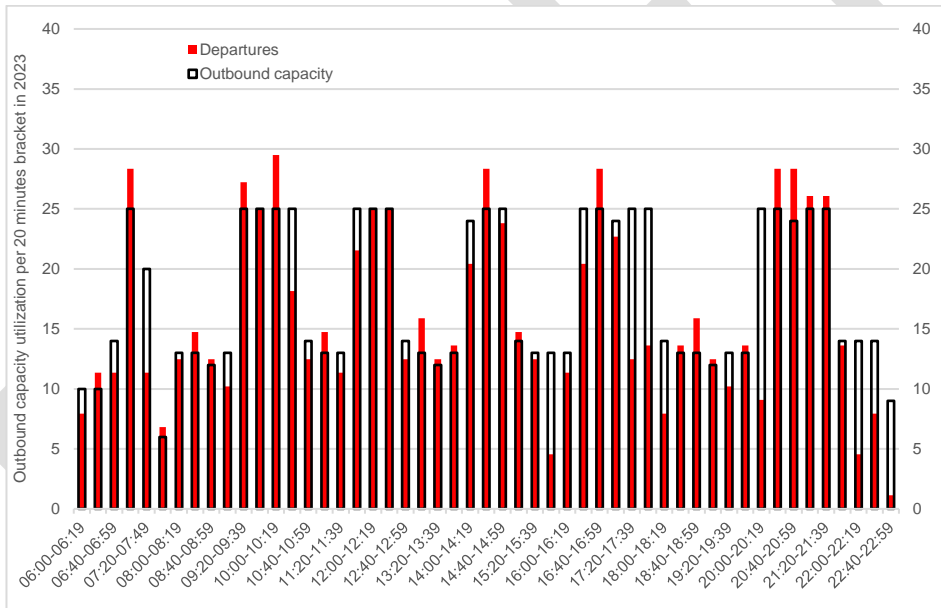


Figure 2 Scheduled departures versus outbound capacity in 2023<sup>8</sup>

To maintain and strengthen Schiphol's position as mainport within the environmental capacity which is available, it is important to control the kind of traffic which is accommodated at Schiphol. In this context Schiphol is primarily intended for the intercontinental traffic and the feeder traffic which is connected with it. At the same time it was agreed that the air traffic which is not necessarily connected to the hub operation, will make use of Lelystad and Eindhoven as much as possible. Lelystad and Eindhoven are therefore important airports for leisure flights. The cabinet decision on the long-term exploration Schiphol (2008) has indicated that Lelystad and Eindhoven are the most attractive locations to fulfil the function of a so-called 'overflow location'.

<sup>7</sup> Capacity demand at Schiphol Airport, SEO/To70 (2017)

<sup>8</sup> Capacity demand at Schiphol Airport, SEO/To70 (2017)

## 2. Important terms of use: Peak capacity

In connection with the recent robust growth at Schiphol, the agreed limit of 500,000 aircraft movements will be reached even before 2020. Considering the market prognoses there will be scarcity at Schiphol even after 2020. This will first arise during the arrival and departure time periods at Schiphol which are essential to the hub operation. In the performance of its role as an intercontinental junction, the hub operation is particularly dependent on capacity in the morning peak hours and capacity in the evening peak hours. These are crucial time periods during which the (flights to and from) intercontinental destinations – mostly from the United States and Asia – arrive and depart. This is what the hub operation is based on, and there is hardly any capacity for growth in these crucial time periods. Therefore this puts great pressure on Schiphol's function as an intercontinental junction. It is not just the environmental capacity at Schiphol which forms a limitation, but also the operational handling capacity on the ground and in the air.

For that reason it is important that capacity is created for the traffic which is inextricably bound up with Schiphol. The counterpart is that traffic which can also be accommodated elsewhere, will be relocated. For that reason air traffic will be distributed through the present decree; the traffic to designated leisure destinations will be relocated from Schiphol to Lelystad, starting with destinations in the time periods which are the most crucial to the hub operation.

The current scarcity at Schiphol is most acute in the blocks which are most relevant to the hub operation: blocks 2 (morning peak hours) and 6 (evening peak hours). This scarcity puts a great deal of pressure on the reinforcement of the (inter)continental network of connections. This illustrates the importance of the selectivity policy which is shown in figures 3 and 4.



Figure 3 Utilisation of inbound capacity in 2016<sup>9</sup>

<sup>9</sup> Capacity demand at Schiphol Airport, SEO/To70 (2017)

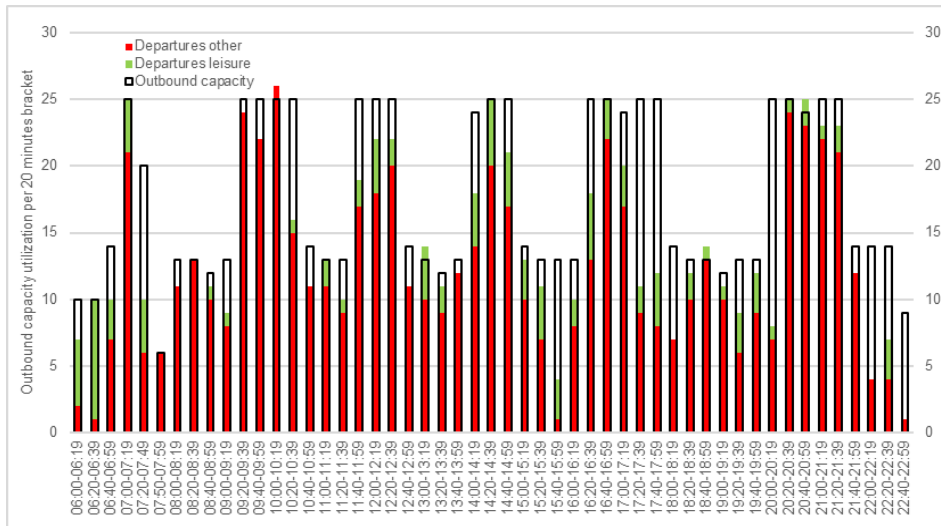


Figure 4 Utilisation of outbound capacity in 2016<sup>10</sup>

In figures 5 and 6 the scarcity at Schiphol in 2023 is represented with the application of the traffic distribution rule. The traffic distribution rule provides for the relocation of all leisure traffic from Schiphol to Lelystad during the peak hours of the blocks 2, 6, 3 and a part of 4. After 2023 the remaining leisure traffic may be relocated as a result of the rule. But the scarcity remains, also in the peak hours of the blocks. This traffic distribution rule is therefore a necessary measure to be taken (in case the market approach of Schiphol Group does not produce the intended effect), but not the only measure to create capacity for intercontinental traffic and the feeder traffic connected to it.

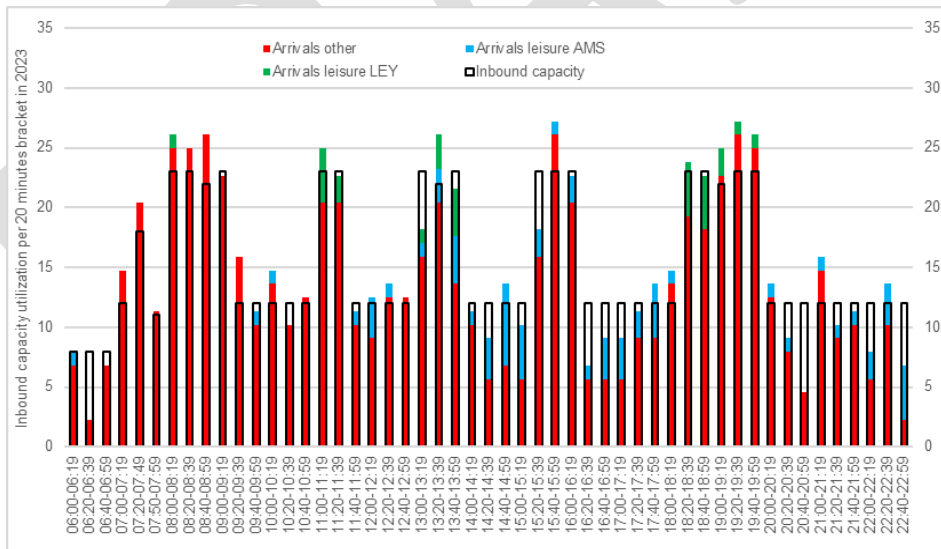


Figure 5 Utilisation of inbound capacity in 2023<sup>11</sup>

<sup>10</sup> Capacity demand at Schiphol Airport, SEO/To70 (2017)

<sup>11</sup> Capacity demand at Schiphol Airport, SEO/To70 (2017)

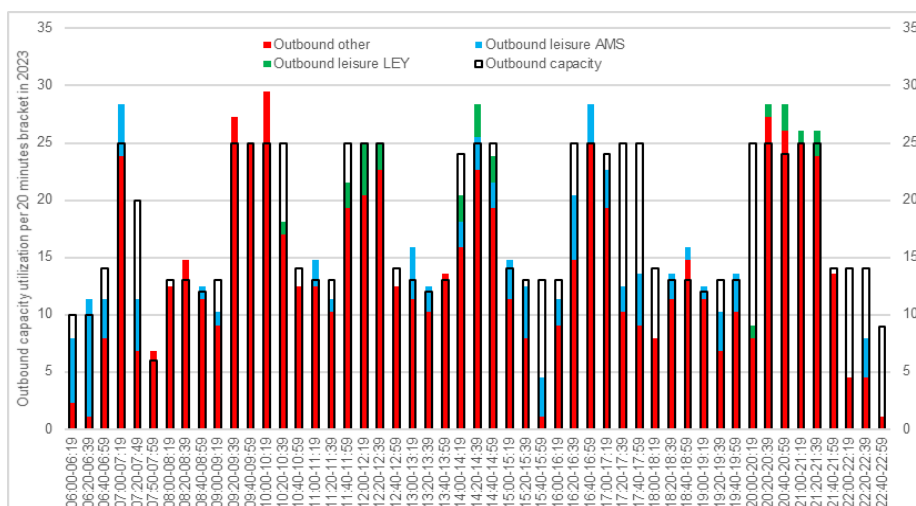


Figure 6 Utilisation of outbound capacity in 2023<sup>12</sup>

## Selectivity policy

The policy aims to give priority, within the scarce capacity at Schiphol, to intercontinental traffic and the feeder traffic which is related to it. It has been explained in the White Paper on Dutch Aviation of 2009 that the so-called non-business point-to-point traffic does not contribute directly to Schiphol's hub operation, and that the relocation of this traffic within the Netherlands does not lead to a loss of macroeconomic value. That can be explained by the fact that this leisure traffic, in contrast to the intercontinental traffic and feeder traffic connected to it, is almost completely based on demand from the Dutch home market, and is not coupled with a transfer, since those connections consist of one flight (point-to-point). Leisure destinations are furthermore not bound to the metropolitan area around Schiphol. That is why the basic assumption is that specifically this leisure traffic should make less use of Schiphol.

For the relocation of traffic which is not necessarily bound to Schiphol, a key role has been reserved, as has been said, for Lelystad and Eindhoven.

This is also called the selectivity policy. These regional airports support Schiphol's hub function in this way, and will therefore also be developed in connection with it.

The selectivity policy consists of the following three components:

1. The creation by the government of sufficient regional airport capacity at Lelystad Airport and Eindhoven Airport, and good accessibility over land. This has been realised in recent years by adopting the relevant airport decisions for the airports Lelystad and Eindhoven with 45,000 and another 25,000 aircraft movements respectively. The accessibility over land has been improved further within the framework of the Agreement accessibility over land Lelystad Airport and the administrative agreement Eindhoven Airport.
2. Designing an incentives policy by the operator of the airports - Schiphol Group - to stimulate airlines through market incentives to opt for the regional airports to serve leisure destinations which are relocated from Schiphol. The incentives policy deals, inter alia, with the fixing of tariffs, infrastructure and marketing.
3. A formal government measure for the distribution of traffic between Schiphol and Lelystad Airport. This instrument will be employed to facilitate Schiphol's selective development, in case the market approach of Schiphol Group does not produce the intended effect.

<sup>12</sup> Capacity demand at Schiphol Airport, SEO/To70 (2017)

Eindhoven Airport is part of the selectivity policy but excluded from this government measure because Eindhoven Airport does not satisfy the requirements of the EU regulation concerning the distribution of air traffic between airports (see from page 9 Relation to European law).

### **Necessity of government intervention**

The covering letter to this Explanatory Memorandum sets out how the market approach by the operator of the airport and the traffic distribution rule formulated by the government relate to each other in terms of contents and time schedule in order to express the selectivity policy effectively.

### **Organisation of the traffic distribution rule**

The traffic distribution rule consists in essence of the following three elements:

1. Designated leisure destinations will be relocated from Schiphol to Lelystad;
2. The capacity at Lelystad may only be utilised by the traffic which has been moved from Schiphol;
3. The released capacity at Schiphol may only be used by intercontinental traffic and feeder traffic.

These three elements will be explained briefly below.

#### *Ad 1. Designated leisure destinations will be relocated from Schiphol to Lelystad*

By virtue of this decree airlines are not allowed to carry out flights to designated leisure destinations from Schiphol. The leisure destinations will be designated by ministerial regulation. The ministerial regulation will also determine objective criteria on the basis of which destinations may be designated as leisure destinations.

#### *Ad 2. The capacity at Lelystad may only be utilised by the traffic which has been moved from Schiphol*

The basic assumption of a traffic distribution rule is that leisure destinations at Schiphol will be prohibited, but that these may continue to be served from Lelystad. For that reason it is necessary that capacity will be ensured at Lelystad for the flights which may no longer be carried out from Schiphol. The capacity at Lelystad is thus reserved, so Lelystad may function as an "overflow airport" for Schiphol.

#### *Ad 3. The released capacity at Schiphol may only be used by intercontinental traffic and feeder traffic.*

The goal of the selectivity policy is to offer capacity for the traffic that contributes to Schiphol's mainport function. For that reason the capacity which is released as a result of the traffic distribution rule, will be reserved for this kind of flight. The exact criteria for the flights which are allowed to use the released capacity, will be determined by ministerial regulation.

## **Growth path Lelystad Airport**

However, the present airspace structure has consequences for the growth path at Lelystad Airport. Although the Alders Advice and the Airport Decision offer capacity for a further growth to 45,000, within the present airspace structure there is capacity to fit in at most 10,000 aircraft movements per annum, without this having far-reaching consequences for the traffic to and from Schiphol. It is expected that when Lelystad opens in 2019, 4,000 aircraft movements can be accommodated, after that capacity will be added annually for 2,000 extra aircraft movements. It is expected that the number of 10,000 will be reached in 2023. For Lelystad's continued growth to 45,000 aircraft movements an adaptation of the airspace structure and an increase in the capacity of Dutch airspace are necessary.

### *Prioritisation of relocation*

Considering the limited capacity at Lelystad Airport during the first years after opening, not all leisure flights can be relocated at once. For that reason there will be a further selection through which a number of aircraft movements will be relocated insofar as there is capacity at Lelystad. This will be done by prohibiting the flights to leisure destinations at Schiphol only during certain time periods (also called "blocks" in jargon). The exact time periods and order in which these time periods may be designated, will be determined by ministerial regulation.

For the purpose of increasing the operational flexibility for airlines, they are free to determine for themselves at which time of day – between 06.00 and 23.00 hours – they will serve the relocated destination from Lelystad. Also for the purpose of increasing the operational flexibility, the airlines are free to serve all designated destinations from Lelystad.

Airlines which serve the designated leisure destinations in the blocks concerned, and which (can) no longer carry out their flight at Schiphol, will be given priority in the allocation of capacity at Lelystad. In this way it is ensured that every flight which may no longer be carried out at Schiphol, has a place at Lelystad.

### *Capacity at Lelystad Airport*

Possibly not every airline will actually relocate a flight to a designated leisure destination, but may discontinue the flight to that destination instead. In that case the capacity at Lelystad which is unfilled for that reason, may be allocated to the airlines which are prepared to relinquish flights at Schiphol to designated leisure destinations in the remaining blocks.

If the number of aircraft movements to be relocated in a designated block exceeds the available capacity at Lelystad, the flights to destinations which are served in the biggest bottlenecks of those blocks, will be relocated successively. In that case relocations will not be carried out by block, but instead of that smaller time periods will be used, for instance an hour.

Airlines – which serve designated leisure destinations – which decide to make use of Lelystad, must make this known to Lelystad Airport's operator at least six months before the relocation will take place.

### *Split operation*

A result of the relocation of activities to Lelystad could be that airlines would be carrying out a split operation between Schiphol and Lelystad. In response to the hearing early 2017 a study<sup>13</sup> has been executed to weigh its impact on the airline operation for the benefit of the decision process concerning the design of the traffic distribution rule. The results of this study show that successful split operations are carried at the moment in Europe and in the Netherlands. Airlines which have a base at Schiphol and qualify for relocation of a part of their operation to Lelystad, all have experience with running a split operation. There are no important reasons beforehand to be unable to carry out a split operation – with the exception of the preconditions of sufficient capacity and facilities. Certainly when it is contrasted with the alternative where there is insufficient capacity

---

<sup>13</sup> M3, Split operations (2017)



within the Netherlands to meet the demand for aviation. As a result of the creation of extra (regional) airport capacity at Lelystad to accommodate leisure traffic, a split operation is preferable.

At Lelystad the preconditions can be met for airlines to carry out successful split operations. In this context a growth path is under discussion. The development of Eindhoven Airport may serve as model for the growth path, during which in the first instance Lelystad will be called at for a few flights in combination with flights at Schiphol (in a so-called W-operation). Within the capacity that is planned for subsequent years, the entire flight plan of an aircraft may be completed from Lelystad.

### **Relation to European law**

The point of departure for European law is free access to the market. This means that airlines should in principle be able to choose at which airport they offer their services. This principle has also been expressed in regulation 1008/2008 (after this: the regulation).

However, the regulation also leaves member states room to regulate the distribution of air traffic between airports. Moreover a member state is allowed to pursue an active airport policy, in which a great many factors may be taken into account which according to the competent authorities deserve priority. In any event the reinforcement of Schiphol's mainport function can be regarded as such.

Nevertheless the traffic distribution rule needs to satisfy the requirements laid down in the regulation. In the following these requirements will be discussed separately.

#### *Consultation*

On the basis of the regulation it is mandatory to consult the interested parties. This particularly concerns the airlines and airports involved.

On 31 January 2017 a hearing was organised to which all interested parties were invited. They were given the opportunity to contribute their observations both verbally and in writing.

The design of the traffic distribution rule has been made public through an internet consultation in the period from 8 November 2017 to 6 December 2017. This has been pointed out to all interested parties and they have been requested to respond to this public consultation.

#### *Preconditions to the airport*

The basic assumption is that designated leisure destinations will be prohibited at Schiphol and will be relocated to Lelystad. For that reason it is necessary that a good alternative is available in Lelystad. Within that framework the regulation sets the following requirements:

- a. The airports serve the same city or agglomeration;
- b. The airports are served by an adequate transport infrastructure which, as far as possible, supplies a direct connection which ensures that the airport can be reached within ninety minutes;
- c. The airports are connected through frequent, reliable and efficient public transport to each other and to the city or agglomeration they serve;
- d. The airports offer the airlines the necessary services and do not unduly prejudice their commercial opportunities.

Concerning the requirements with relation to the situation and accessibility, the airports Schiphol and Lelystad both serve Amsterdam and the conurbation of Western Holland. By way of the A6 the distance from Amsterdam to Lelystad Airport amounts to 57 kilometres. That distance can easily be bridged within the maximum of ninety minutes. Lelystad and Schiphol are furthermore connected both to each other and to Amsterdam through public transport. The travelling time by train between Lelystad Central Station and Amsterdam Central Station amounts to 38 minutes, and between Lelystad Central Station and Schiphol 42 minutes. The travelling time of the bus

connection between Lelystad Central Station and Lelystad Airport amounts to 19 minutes. The travelling time of the shuttle bus connection which will be realised, amounts to 10 minutes.

It is also essential that the airports offer the necessary services, and do not unduly prejudice the airlines' commercial opportunities. Lelystad will be provided with air traffic control, ground handling and passenger handling. Aircraft stands are also available. This makes it possible for airlines to offer their air services from Lelystad. To not impede the airlines' operational management unnecessarily, it is permitted to serve all designated leisure destinations from Lelystad; thus an airline is not bound to one or just a few destinations. In addition the entire time that Lelystad Airport is open may be utilised. This concerns the period from 06.00 to 23.00 hours. As is also shown by the business plan that has been drawn up for Lelystad, Lelystad is particularly suited to handling leisure traffic.

Because the capacity at Lelystad is limited during the first years, the reach of the traffic distribution rule will also be limited. There will be no more traffic relocated than there is capacity at Lelystad. After all, the underlying principle is that there is corresponding capacity available at Lelystad for the traffic which may no longer be carried out at Schiphol. This also entails that no traffic will be relocated from the night at Schiphol. Because Lelystad is not open during the night, which means that the relocation of night flights is not an option.

#### *Non-discrimination*

It is particularly relevant that the regulation prohibits discrimination. It concerns both discrimination on the basis of the nationality or identity of the airline, and discrimination between destinations.

The traffic distribution rule starts from objective criteria. No distinction is made on the basis of nationality or identity; the prohibition on carrying out flights to designated leisure destinations applies to every airline, irrespective of identity or nationality. The non-discrimination principle also contains a prohibition of any measure which *in practice* has a discriminatory effect, even if no explicit distinction is made by the nationality or identity of the airline. It is important that the traffic distribution rule does not provide a competitive advantage.

Within this framework it is relevant that *destinations* are relocated. This means that the traffic distribution rule has the effect that *all airlines* have to serve that destination from Lelystad in the relevant periods of the day, and accordingly there is no question of a competitive advantage of one airline over the other. It is a level playing field. Moreover the leisure destinations are designated on the basis of objective and transparent criteria.

Furthermore, Lelystad is a suitable alternative for Schiphol in offering flights to leisure destinations. Lelystad meets the requirements concerning the infrastructure from the regulation, it is easily accessible and the Business plan Lelystad Airport shows that passengers are willing to use Lelystad.

The traffic distribution rule is therefore not discriminatory in practice either.

Concerning the discrimination on the basis of destinations, it holds good that the relocated destinations are selected on the basis of objective criteria which are related to the goal of the selectivity policy. The criteria that have been discussed for this, are being applied equally to every destination. Furthermore it holds good (particularly) for the designated leisure destinations that Lelystad is a suitable alternative.

Finally, it may be stated that a distinction is being made to maintain and reinforce Schiphol's hub function. This is in the public interest and a legitimate goal. The means that is chosen, the traffic distribution rule, is appropriate and necessary to reach that goal. Therefore a justified distinction is being made between destinations.

### *Approval European Commission*

In addition to the material requirements, there is a formal requirement that the European Commission is informed of the intention to institute a traffic distribution rule. The European Commission tests whether the requirements which are set out in the regulation, have been met, and, if that is the case, decides to approve it. This decree will be published in the Official Journal of the European Union, and after that it will be possible to apply the traffic distribution rule.

### *Relation to slots*

At airports which are slot-co-ordinated, flights may only be carried out insofar as airlines are in the possession of a slot, or permission to use the airport infrastructure at a specific date and time to land or take off. The slots are allocated by the slot co-ordinator, who allocates the slots on the basis of the slot regulation.

An important mechanism within the slot allocation is that airlines may acquire historic rights. If an airline uses at least 80% of an allocated slot series, that airline is entitled to the same slot series in the following year. These are also called historic slots.

Schiphol is a slot-co-ordinated airport. Therefore it is relevant how the traffic distribution rule relates to the slot allocation. In that framework it is important that obtaining a slot on the basis of the slot regulation, and the right to carry out flights on the basis of regulation 1008/2008, are in a legal sense separate matters. An airline with landing rights can not use a co-ordinated airport without a slot, and the other way round.

The traffic distribution rule does not determine in which way slots must be allocated, or that airlines must relinquish their slot at Schiphol. It does determine in which way the slot must be used. Airlines are therefore free to retain the slot and use it in accordance with the traffic distribution rule.

Lelystad Airport is not slot-co-ordinated. It is not expected either that this will happen in the first years after opening, amongst other reasons because of the effect of the traffic distribution rule. After all, the traffic distribution rule closes off the capacity at Lelystad to new entrants, and only makes the capacity available to airlines who carried out flights to designated leisure destinations in the relevant blocks or, in second place, to airlines who are prepared to relinquish historic slots at Schiphol. It is not expected that demand will exceed supply.

So the rules for slot allocation do not apply at Lelystad. It is however important that airlines which relinquish (historic) slots at Schiphol, are also guaranteed capacity at Lelystad for a longer period. The traffic distribution rule regulates priority in the year of relocation, but the subsequent years are also important. For that reason it is determined in this decree that the rules concerning historic rights as these apply to slot-co-ordinated airports, also apply to the capacity which is allotted at Lelystad. That means that airlines which utilise their capacity for at least 80%, are entitled to that same capacity in the subsequent year.

### **Relation to international law**

The right to carry out international air transport, and to land for that purpose on a state's soil, may be agreed mutually by states through bilateral treaties, and by the EU with third countries through EU Treaties.

For member states within the European Union landing rights are no longer granted on the basis of bilateral treaties, but on the basis of regulation 1008/2008. Within the framework of regulation 1008/2008 it is possible to draw up a traffic distribution rule.

Treaties with third countries differ from each other. As a rule treaties are limited to regulated traffic. Unregulated traffic in that case derives no rights from the treaty. Treaties also only apply to designated airlines. It differs from treaty to treaty whether these are just a few airlines, or all airlines from the country concerned. Finally, it is possible that treaties leave room for the contracting parties to formulate their own legislation, which may limit the exercise of rights. In that case consultation would be necessary.

In view of the above, it is estimated that international law poses no substantial limits to the effect of the traffic distribution rule.

### **Financial consequences, administrative costs and compliance costs**

The expectation is that the measure will bring financial consequences, administrative costs and/or compliance costs for the parties concerned. This will, inter alia, be elaborated within the framework of the Dutch Advisory Board on Regulatory Burden (ATR).

### **Supervision and enforcement**

By virtue of article 11.15 of the Act on aviation the minister is authorised to impose a duty under administrative order to ensure compliance with the obligations under or pursuant to this Act. The General administrative act makes it possible that a duty backed by an astreinte is also imposed.

If it is established that a flight has been carried out in breach of the traffic distribution rule, a duty backed by an astreinte may be imposed, in which it is determined that with every subsequent breach a yet to be determined sum will be forfeit. On the imposition of the astreinte it will be considered what would be an appropriate level.

It is, considering all the data which are available and which are circulated for the execution of a flight, relatively simple to establish to which destination a flight is carried out.

Enforceability, executability and fraud proofing (HUF) will be elaborated in the HUF-test.

### **Advice and consultation**

As has already been explained, the draft decree has been made public through an internet consultation during the period from 8 November 2017 to 6 December 2017.

### **Coming into force**

This decree will come into force as of 1 April 2019 in the case the market approach of Schiphol Group has not produced the intended effect.