



Ministry of Infrastructure & Water Management  
Attn. H.E. Minister Cora van Nieuwenhuizen  
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The Netherlands

Ref. TUI Nederland N.V.  
Subject Revised AMvB Traffic Distribution Decree for Schiphol and Lelystad Airport  
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## ABSTRACT

*The purpose of the Traffic Distribution Rule is to create space at congested Schiphol Airport by transferring flights to Lelystad Airport. The government wants the vacated space to be filled with 'high-quality' air connections that contribute to Schiphol's so-called 'mainport role'. However, this must be done without compromising the functioning of the free market and connectivity.*

*The one-dimensional translation of the terms 'mainport' and 'high-quality connectivity' into transfer traffic only is outdated and not future-proof. Point-to-point traffic addresses highly demanded routes, is responsible for multiple job positions, delivers great economic welfare and is therefore of high quality and contributes to the added value of the mainport. In addition, business models are shifting towards each other and are gradually becoming closely aligned, overlapping and increasingly serving the same market.*

*Selectivity based on destinations and/or business models is discriminatory and simply illegal. Deleting a list of destinations for Lelystad is a good development, but maintaining such a list for Schiphol is contrary to EU legislation. In addition, the list does not take into account the fact that a very large number of long-haul flights and most non-Schengen flights can only be operated out of Schiphol because of customs facilities and infrastructure that are only sufficiently available there.*

*Before notifying the European Commission, TUI advocates amending the draft AMvB Traffic Distribution Decree in such a way that high-quality traffic is received with greater interpretability, non-discrimination and social acceptance for the mainport of Schiphol, always in compliance with the applicable regulation.*



Dear Minister van Nieuwenhuizen,

TUI Airlines Nederland B.V. and TUI Netherlands N.V. (hereinafter "TUI") would like to thank you for the public consultation on the amended version of the Traffic Distribution Rule (hereinafter "TDR") for Amsterdam Airport Schiphol (hereinafter "Schiphol") and Lelystad Airport (hereinafter "Lelystad") that was submitted to the House of Representatives on 17 January 2019. We welcome this opportunity to explain our expertise and vision on the subject and to share our legal arguments with you and your administration.

This document is a response to the changes made to the latest version of the TDR proposal. Since TUI's arguments and views on the unchanged elements in the proposal broadly remain valid, we refer the Ministry to previous documentation from TUI at earlier consultations. Our objections from previous views therefore remain relevant and applicable to unchanged parts of the decree.

#### **TUI: PRO-ACTIVE, EXPERIENCED AND INTERESTED**

With 1.7 million passengers, TUI is the market leader in the Dutch tourism sector. TUI ascribes great importance to sustainable tourism, and therefore, the most suitable means of transport is always carefully considered, taking into account the impact on people and nature. That is why TUI invests in the world's most ecologically friendly fleet for air travel. With its modern fleet of 44 aircraft, TUI transports over one million passengers a year to and from the Netherlands. Home base Schiphol is the most important Dutch airport in the TUI network because of its facilities for both medium and long-haul traffic. TUI connects the Netherlands with a number of unique destinations out of Schiphol, which contribute to the connectivity of the Netherlands with the rest of the world. TUI is therefore one of the primary stakeholders to respond to the renewed plan for a traffic distribution rule in Amsterdam.

Lelystad fits within TUI's strategy of being active where the customer wants us to be. We have already demonstrated this with successful operations from Rotterdam, Groningen and Eindhoven. However, Schiphol remains the crucial home base for TUI. TUI recognises that the Schiphol "mainport" benefits from high-quality connectivity,



but would like to point out that -if the necessary adjustments are not made- the current TDR proposal could be considered infringing European law and therefore be rejected by the European Commission. For this reason, TUI provides a number of suggestions for improvement at the end of this document.

### **TRAFFIC DISTRIBUTION RULE ANALYSIS**

Dutch aviation faces several challenges, of which the successful opening of Lelystad to decongest Schiphol is by far the biggest. The pressure on the climate is great and therefore the sustainability of aviation must be taken into account in the creation of new legislation.

#### *Restriction of the free market and discrimination*

Making room at the congested Amsterdam Schiphol Airport for "high quality" connectivity is positive. Effective decongestion could be achieved by transferring a number of flights from Schiphol to Lelystad, provided sufficient guarantees are given for an efficient, profitable and seamless flight operation without economic damage for airlines and giving an economic advantage to individual air carriers.

Such traffic distribution is also made possible within the framework of EU Reg. 1008/2008 and more in particular article 19, which sets out comprehensive conditions for traffic distribution. These are amongst others: *(i)* non-discrimination among destinations or on grounds of nationality, *(ii)* air carriers may not be unduly prejudiced in their commercial opportunities and *(iii)* air traffic is distribution is done with respect for the principles of proportionality and transparency, and shall be based on objective criteria.

However, the current proposal that advocates selectivity at Schiphol on the basis of destinations and business model (transfer flights are only specific to hub-carriers) is still in conflict with EU Reg. 1008/2008 and the above mentioned conditions, as well as the basic free market principle. Therefore, it cannot be ruled out that this proposal will be rejected by the European Commission on the grounds of discrimination.



*Narrow interpretation of the terms 'mainport' and 'high quality connectivity'*

The view that transfer flights (inherent to the hub-and-spoke model) are the only ones that contribute to high-grade air connectivity and strengthening Schiphol's mainport role is incorrect and outdated. In an aviation sector that has been changing for decades worldwide, point-to-point flights play an equally important role as transfer flights for a large hub as Schiphol. Hub airlines and origin-destination airlines are complementary as they contribute both to the high-quality connectivity and mainport role of Schiphol. Two out of three passengers at Schiphol travel with a leisure motive (holiday or Visiting Friends & Relatives, VFR).

The extensive networks of carriers such as TUI play an important role for the mainport, alongside the networks of hub airlines. Many cities, regions and countries are only connected to the Netherlands by point-to-point flights. Schiphol is also the only airport from which many of these flights can be organised (for infrastructural and migration reasons).

*Lelystad infrastructure restriction: unsuitable for widebody aircraft and inter-continental flights*

The deletion of a destination list at Lelystad is to be encouraged. However, we understand from the amended proposal that such a list will continue to exist for Schiphol, through the condition of operating so-called "transfer flights".

In its current form, this list is unsatisfactory in that the conditions of EU Reg. 1008/2008 are not met since it threatens to disconnect the Netherlands from new connectivity with numerous cities and countries. This is because many destinations are missing from the list, which can only be flown to, and from Schiphol:

- For long-haul destinations or destinations that necessitate a large capacity the runway and terminal infrastructure at Lelystad are unsuitable, as these flights require larger (widebody) aircraft that have a larger flight range and/or a bigger seat capacity.
- Many of these long-haul destinations also require border control facilities that, with the exception of Schiphol, are not provided at any other Dutch airport.



In the absence of changes to the TDR proposal, implying broadening the list, new routes to destinations such as Cancun (Mexico), Varadero and Holguín (Cuba), the Dominican Republic, Orlando and Miami (USA) and Paramaribo will no longer be able to grow within the boundaries of this TDR, making it discriminating, disproportionate and procuring a disputable competitive advantage to individual air carriers at Schiphol. It is unthinkable that this form of connectivity with other parts of the world, especially with countries with which the Netherlands has very close ties, will deteriorate because it would not be labelled as 'high-quality transport'.

### **CONCLUSION AND RECOMMENDATIONS**

For the Dutch connectivity, the development of aviation and upcoming debates regarding mobility it is positive that, as from 2020, flights can be offered from Lelystad (without coercion) to create space at Schiphol. TUI already works closely with regional airports in the Netherlands and a freely accessible Lelystad Airport fits in this strategy.

However, it is clear that Lelystad in its current form does not offer sufficient capacity to accommodate all leisure-related flights. Therefore, the new airport must offer sufficient opportunities to airlines that want to make an effort to relocate activities, a smooth operation of flights and space for expansion plans.

Excluding destinations at Schiphol solely based on the number of transfers is discriminating and clearly counterproductive for the connectivity of the Netherlands with the rest of the world. Moreover, contrary to expectations, it impairs the high-quality connectivity and mainport role of Schiphol.

It is therefore advisable to review the selectivity policy based on destinations. In its current form, the policy is not only counterproductive for the mainport, it is also conceivable that the European Commission could reject the TDR proposal based on this list of reasons. Above all, the policy should include sustainable criteria, in order for the TDR to contribute to the climate objectives. If sustainability becomes one of the main criterion, discrimination based on destinations or business model of the



airline can be avoided. It offers the possibility of combining scarcity management at Schiphol with the sustainability of aviation growth in the Netherlands.

The list of destinations should disappear as a rigid guideline and simply become a result of practical, objective and non-discriminatory parameters which safeguard commercial opportunities of air carriers. Airlines cannot be disadvantaged based on the business model.

- First, all long-haul flights and flights that require a large seat capacity must be made possible from Schiphol.
- In addition, destinations requiring a higher degree of border control formalities should also be accepted at Schiphol, as only this airport has sufficient facilities.
- On top of that, point-to-point destinations with a high added value for Amsterdam as a hub can be added to the list in a fair manner and in the interest of Dutch connectivity.

The selectivity policy is based on provisions from 2008. However, the aviation sector is constantly evolving. It must be prevented that the Netherlands loses the initiative within the constantly changing international environment and ends up in short-sighted protectionism.

Aviation policies should endorse relevant market developments within international aviation in order to promote and optimise sustainability, fair competition and market forces. Attention to the environmentally and economically efficient use of scarce capacity for flight movements and a system to reward this should be encouraged.

In the interests of employment, economic growth and the environment, a hybrid model for Schiphol should be created. Key point-to-point transport should be included, because it contributes strongly to the competitive strength of the Dutch economy. In this way, models complement each other and offer synergy benefits.



### **TOWARDS A SUCCESSFUL TDR**

We appreciate that our arguments are taken into account before the final TDR proposal is submitted to the European Commission. It is clear that TUI wishes to be a constructive partner to make Lelystad Airport a success. We are therefore pleased to offer the government a hand in the search for a solution to the broad mobility issue.

TUI is happy to continue the dialogue with your ministry to further clarify our vision in detail. In addition, we would be pleased to send you a separate suggestion of modifications to the TDR in the upcoming days.

Yours sincerely,

A handwritten signature in grey ink, appearing to be 'G. Hofman', written in a cursive style.

**Günther Hofman**

Managing Director

TUI fly Benelux