



30 May, 2018

Ministry of Infrastructure and Water Management

For the Attention: Her Excellence Mrs. Cora van Nieuwenhuizen-Wijbenga

Postbus 20901

2500 EX DEN HAAG

*Submitted electronically*

Dear Mrs. Cora van Nieuwenhuizen-Wijbenga,

We thank you for the opportunity to give our response to the internet consultation regarding the proposed changes to the “Besluit Slotallocatie”, the Dutch regulation for the determination of the accountability and powers to determine the capacity at Schiphol Airport. Although the consultation documents are in Dutch, we hope you will allow us to submit our contribution in English.

The International Air Transport Association (IATA) is the trade association for the world’s airlines, representing 280 airlines and 83% of total air traffic. We support many areas of aviation activity and help formulate industry policy on critical aviation issues to help standardise the industry. The allocation of slots is probably one of the most important issues in which we are involved together with other stakeholders and the authorities. IATA facilitates the development of standard best practice guidance on slot allocation and management through the publication of the Worldwide Slot Guidelines (WSG), working with airlines and slot coordinators for more than 40 years. These established and proven recommendations contained in the WSG have also been formulated in to regulation and recognised in governmental policy for management of scarce airport capacity for decades. The European Union Slot Regulation (EEC 95/93) is a good example of WSG aligned slot policy in practice.

We noted the proposal of the Ministry of Infrastructure and Watermanagement (I and W) to change the ‘Besluit Slotallocatie’ and would like to make the following comments.

*Why has the proposal been made?*

In the introduction to the Dutch Parliament, we read the following motivation for the proposal: “because of the increasing scarcity at Schiphol Airport, the responsible parties do not succeed anymore to jointly establish a capacity declaration”. In the documentation however, we miss a thorough analysis of the root cause of this suggested lack of consensus, and what the roles and involvement of the several participants have been in that regard. This is essential background given it is proposed that this responsibility will therefore be taken away from the airlines. This joint responsibility, established in 2002, we understood was specifically the motivation for the change at

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that time of the Dutch Aviation Act. The simple statement that no agreement could be reached, does not seem to provide meticulous and proportionate grounds for allowing one of the original parties to now undertake the declaration unilaterally. Furthermore, we believe the system has worked for many years, and is in accordance with a process supported by our members. Even during the years when the capacity reached previous limits there was ability to consult among the interested parties and reach consensus. Therefore, we believe that a single statement has not depicted the situation is different from previous years and that an inability to agree does not show a failing in the process to agree capacity, but a need for evaluating all the parties views more thoroughly.

#### *The Balance needed for effective decision making*

On 27 June 2002, there was a fundamental change of the limitations for Schiphol Airport, where instead of noise zones, so called “grenswaarden” (limit values) were determined. In the amended “Wet Luchtvaart”, the Dutch Aviation Act (DAA), the involved stakeholders, being Royal Schiphol Group (RSG), Luchtverkeersleiding Nederland (ATC) and the airlines operating at Schiphol Airport, were given the powers to determine the way to make the best use of the available capacity within the given limits. Prior to this only ‘RSG’ made this assessment. At the same time, the same group of stakeholders was made accountable for the results of the use of the capacity within the limits. In other words, monitoring the use of the capacity to within the limits is the responsibility enforced on all the stakeholders.

IATA considers the arrangement from 2002 a fair example of balancing responsibilities and roles across all interested parties to determine the capacity of an airport and then its use within the set limits whilst best serving the airport’s users. IATA also recognizes all the stakeholders have an interest, and therefore none of the parties is neutral.

We have taken note that the Ministry of I and W has made a proposal on one side, to change the power to determine the capacity, while on the other side leaving the accountability with all the previous stakeholders. We do not see inclusion of a proposal to change that accountability as well to ensure fair and proportional responsibilities and powers to influence. This element is therefore no longer balanced.

We believe that giving sole power to only one of the interested parties, as is proposed here to RSG, would distort the balance of interests and create a situation whereby a unilateral decision can be taken without the involvement of those ultimately responsible for the outcomes; the use of the capacity within the limits. Should the airport declare capacity without consideration for wider implications there could be adverse outcomes for the consumer, in terms of delays and declining service levels. Airlines are responsible under EU261 for such operational impacts, but in this proposal have little voice in the decision making process. EU 95/93 Article 6.1 requires an objective analysis to be undertaken, and it is our belief that this objective analysis should not then be the sole right of a non-neutral party to determine the resultant capacity for allocation.

IATA would like to advocate to maintain a balance of decision making and management of use of the capacity. IATA is not convinced that by solely appointing RSG, the situation will improve. We see a growing and damaging tendency among airports to increase their influence and interests in relation

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to what should be, the fair and neutral allocation and use of capacity, to obtain more powers, whereas airports already have recognizable monopolistic positions on several other aspects. It should be noted that in the specific case of the Netherlands, the Dutch Competition Authority has already concluded that Amsterdam airport holds Significant Market Power.

#### Case Study: Heathrow Airport determination of capacity

Due to the scarcity of capacity at Heathrow Airport in the UK, procedures have been developed that provide a collaborative and effective method for optimizing capacity and resilience needs, whilst also balancing the needs of all the stakeholder. The Coordination Committee (including airlines) works closely with Heathrow Airport Limited (HAL), the ATC provider (NATS) and the Coordinator (ACL UK) in Runway and Terminal Scheduling Limit (RSL & TSL) meetings to set seasonal capacities and in Slot Performance Committee (SPC) meetings to improve punctuality and adherence to allocated slots and the night regime. Airlines enjoy a collaborative relationship with HAL and NATS when it comes to setting seasonal capacity parameters. The airlines have generally been well consulted, listened to and heavily involved in refining capacities over many years. All stakeholders involved have adopted a common disciplined approach and stick to an efficient and strictly controlled process which maximises opportunities to adjust capacities in line with demand, but only where it improves or at least preserves resilience and the overall performance of the airport.

#### *Input of Interested Parties in a timely manner*

As a consequence of the proposal of the Ministry of I and W, the airline's involvement will now be severely diminished. Compared to the current way of determining the capacity, the direct and frequent involvement in the pre-phase in multiple meetings in advance of a capacity declaration (during 2-3 months before) is now replaced by a simple 'consultation option' by the Coordination Committee (CC). This CC meets regularly twice per year, the frequency of which is not easy to increase, as many airlines are required to travel from abroad into AMS. This would potentially take away many opportunities to understand, discuss and improve the detail of the capacity declaration upfront. IATA would like to encourage a more intensive involvement of all interested stakeholders in the determination through a collaborative process of agreeing the capacity declaration prior to final decision making with the operating carriers. This would better follow the requirements of EU 95/93 Article 5. 1(a) for the CC to propose and advise on the coordination parameters to be determined, not after the decision has been taken.

Furthermore the Air Traffic Control (ATC) provider for the airport and airspace should have a role in defining the useable capacity to ensure coordination parameters are set that reflect airspace, airport terminal and runway capacity, otherwise the allocation could result in delays.

#### *Capacity analysis*

A mandatory feasibility check by means of a capacity analysis is introduced in the proposal, which is a very good step forward and brings Schiphol Airport in line with EU 95/93 as well as the WSG. However, in the proposal, this analysis is only required once every three years, instead of every

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season, or at least annually. IATA believes that according to the regulations, a capacity analysis (or an update at least) should be made in order to determine the available capacity in that specific upcoming season while checking it against regulatory limits, environmental limits and also operational limits, answering the question: can the declared capacity deliver reliable operational performance for AMS's customers; the airlines and passengers?

#### *Set of standards*

IATA believes that determining a set of standards, to which the declared capacity has to comply in order to be feasible, is a basic requirement in order to serve the process of decision making towards a capacity declaration. This may also solve many discussions on that subject and allow a more reasonable conclusion of joint agreement among the interested parties.

#### *Government intervention*

Should no conclusion be made in a timely and reasonable manner, a neutral party could determine the final assessment based on independent analysis and stakeholder inputs.

In the proposal, the Minister claims the power to make binding interventions through decisions in the process of capacity declaration. It is unclear what kind of interventions may take place and what the impact will be. This may create a great amount of uncertainty for the airlines, as they will not know which interventions could be used and in what timeframe. We would be concerned that the interventions may distort competition or the economic structure, or be purely politically driven. There is also an uncertainty because the proposal has room for appeal to these interventions, knowing appeals may take time up to years to process, which does not support the 'cycle of slots' which is bi-annual.

#### *Night slot example of intervention*

In the 'Note of explanation', the only example related to the intervention powers of the Ministry, states that for example the Ministry can order the airport (ex-ante) to reduce the number of night slots that can be allocated in order to stay within a limit of the number of night movements. As all night slots at Schiphol Airport have been allocated as historic slots, this could imply that historic rights may have to be withdrawn in order to reduce this number of historic night slots. IATA acknowledges the sensitivity of night regimes and the fragile balance of needs in this area, especially for the communities impacted by night noise. Therefore, IATA would like to see a careful approach to any measures regarding night regimes including EU 598/2014 and the ICAO Balanced Approach<sup>1</sup>. Before any action is taken we would expect clear analysis of the reason for excess night movements, measures in accordance with the reasons and opportunity for resolution, before proportional decisions were made.

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<sup>1</sup> <http://www.iata.org/policy/environment/Documents/paper-on-operating-restrictions-august-2013.pdf>



IATA would like to see more clarification on this element and the range and impact to which this could be applied. In addition, we would like to see the provision in this decree for a thorough analysis of: cause, effect, pros and cons before any such intervention is placed.

In conclusion, IATA proposes:

1. To keep the declaration of capacity with the current group of stakeholders in order to ensure the balance between these interested parties is not distorted, specifically that the airlines are able to have meaningful and collaborative input to the decision making, as should the airport and air traffic control provider.
2. To implement a mandatory seasonal capacity analysis (or update thereof)
3. To create a set of standards to which the declared capacity has to comply in order to be feasible for the users of the airport and provide reliable operating conditions for consumers.
4. To characterize any government intervention to specific predefined elements.

Yours sincerely,

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