Decree of [date] laying down rules to distribute traffic between Schiphol Airport and Lelystad Airport (Schiphol and Lelystad Airports (Traffic Distribution) Decree)

On the recommendation of the Minister of Infrastructure and Water Management, no. IenM/BSK-..., Administrative and Legal Affairs Department;

Having regard to Regulation (EC) no. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293/14) and section 8a.52 of the Aviation Act;

Having heard the Council of State (report no. ...);

Having seen the further report of the Minister of Infrastructure and Water Management, no. IenM/BSK-..., Administrative and Legal Affairs Department;

Have approved and decreed:

§1. General

Article 1

For the purposes of this Decree, the following definitions apply:

commercial traffic means air transport services operated by air carriers that are open to individual bookings for passengers, cargo or mail that are regular flights, that is to say scheduled flights or commercial flights operated on a fixed route to a published schedule, or non-regular flights, that is to say charter passenger or cargo flights or non-regular commercial flights;

Our Minister means Our Minister of Infrastructure and Water Management;

point-to-point flight means a flight designated by ministerial order as a point-to-point flight;

scheduling period means the scheduling period referred to in article 2 (d) of the Slot Regulation;

slot means a slot within the meaning of article 2 (a) of the Slot Regulation;

slot coordinator means a coordinator within the meaning of the Slot Regulation;

Slot Regulation means Council Regulation (EEC) no. 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14);

transfer flight means a flight designated by ministerial order as a transfer flight.

§2. Lelystad Airport

Article 2

1. An air carrier may use capacity at Lelystad Airport to take off or land only in so far as that air carrier:
   a. has transferred historical slots at Schiphol Airport to another air carrier or the slot coordinator; or
b. henceforth uses historical slots to operate transfer flights.

2. Paragraph 1 applies only to slots at Schiphol Airport that were used in the previous corresponding scheduling period or in at least three of the four previous corresponding scheduling periods to conduct point-to-point flights.

3. Point-to-point flights and transfer flights are designated as such by ministerial order laying down rules on the criteria the flights must satisfy. The flights are designated once every two years and are made known at least a year before entering into force.

4. The dates and times of the capacity at Lelystad Airport need not correspond with those of the slots at Schiphol Airport referred to in paragraph 1.

5. An air carrier that applies paragraph 1 must inform Our Minister, the slot coordinator and, where applicable, the recipient air carrier thereof, stating which slots at Schiphol Airport are concerned. When informing Our Minister, the air carrier must demonstrate that paragraph 2 has been satisfied.

6. The grandfather rights attaching to the slots relinquished at Schiphol Airport and the relevant provisions of the Slot Regulation apply mutatis mutandis to the capacity received at Lelystad Airport in accordance with paragraph 1.

7. Paragraph 6 does not apply if Lelystad Airport is designated as a coordinated airport as referred to in article 2 of the Slot Allocation Decree.

**Article 3**

1. Depending on the time block in which the slots at Schiphol Airport referred to in article 2, paragraph 1, fall, the operator of Lelystad Airport must give priority to traffic at Lelystad Airport in the following order of priority:

<table>
<thead>
<tr>
<th>Priority</th>
<th>Time Block</th>
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</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>07.20 – 10.59 hours local time</td>
</tr>
<tr>
<td>Priority 2</td>
<td>18.00 – 21.39 hours local time</td>
</tr>
<tr>
<td>Priority 3</td>
<td>11.00 – 12.59 hours local time</td>
</tr>
<tr>
<td>Priority 4</td>
<td>13.00 – 14.59 hours local time</td>
</tr>
<tr>
<td>Priority 5</td>
<td>15.00 – 17.59 hours local time</td>
</tr>
<tr>
<td>Priority 6</td>
<td>07.00 – 07.19 hours local time</td>
</tr>
<tr>
<td>Priority 7</td>
<td>21.40 – 22.59 hours local time</td>
</tr>
<tr>
<td>Priority 8</td>
<td>23.00 – 06.59 hours local time</td>
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</tbody>
</table>

2. In the event of conflicting requests from air carriers with equal priority, the operator must consult the air carriers concerned in order to reach agreement on the allocation of the available capacity.

3. If the operator finds that agreement cannot be reached, the capacity is to be distributed among the air carriers pro rata the requested capacity.

4. Paragraphs 2 and 3 do not apply if Lelystad Airport is designated as a schedules facilitated airport as referred to in article 2 of the Slot Allocation Decree.

5. Article 2, paragraph 6 takes precedence over the rules on priority provided for in paragraphs 1 to 3.

6. This article does not apply if Lelystad Airport is designated as a coordinated airport as referred to in article 2 of the Slot Allocation Decree.

**Article 4**

Air carriers may conduct only point-to-point flights from Lelystad Airport.
Article 5

1. This part applies only to commercial traffic.
2. This part does not apply to
   a. emergency and precautionary landings;
   b. diverted flights.

§3. Schiphol Airport

Article 6

The slots at Schiphol Airport referred to in article 2, paragraph 1 are to be used by air carriers following their transfer within the meaning of article 2, paragraph 1 (a) for transfer flights only.

Article 7

1. Within two months of the end of the scheduling period, air carriers must provide Our Minister with information demonstrating how they have used the slots at Schiphol Airport referred to in article 6.
2. Each air carrier that receives the slots at Schiphol Airport referred to in article 6 must, in the event of those slots being transferred to another air carrier, inform the air carrier to which the slots are transferred of the fact that the slots may be used only in accordance with article 6.
3. An air carrier that transfers the slots as referred to in article 6 must inform the Our Minister and the slot coordinator of the transfer, the slots concerned and the identity of the air carrier to which the slots are transferred.
4. If the slot coordinator allocates the slots referred to in article 6 to an air carrier, the slot coordinator must inform that air carrier of the fact that the slots may be used only in accordance with article 6.

§4. Concluding provisions

Article 8

The provisions laid down by this Decree apply mutatis mutandis to destinations serving as the departure point of a flight.

Article 9

Within three years of this Decree entering into force, Our Minister must report to the States General on the effectiveness and impact of this Decree in practice.

Article 10

This Decree enters into force with effect from the day on which Lelystad Airport’s routes for commercial traffic are published in the Aeronautical Information Publication.

Article 11

This Decree may be cited as the Schiphol and Lelystad Airports (Traffic Distribution) Decree.
We order and command that this Decree and the explanatory memorandum pertaining to it be published in the Bulletin of Acts and Decrees.

THE MINISTER OF INFRASTRUCTURE AND WATER MANAGEMENT
NOTES ON INDIVIDUAL ARTICLES

Article 1
This article defines the terms used in the Decree. The definitions of the terms 'scheduling period', 'State flight' and 'slot' are consistent with those used in the EU Slot Regulation. The traffic distribution rules distinguish two types of flight: transfer flights and point-to-point flights. Transfer flights and point-to-point flights are designated by ministerial order. A relatively small proportion of point-to-point flights (less than 10%) entail transfers. The opposite is true of transfer flights. Point-to-point flights and transfer flights are therefore each other's antitheses.

Article 2

Paragraphs 1 and 2
Article 2, paragraphs 1 and 2 provides that Lelystad Airport is reserved for point-to-point traffic distributed from Schiphol Airport. Air carriers may use Lelystad Airport only in so far as they have transferred historical slots at Schiphol Airport to another air carrier or the slot coordinator or, if that air carrier uses the slots that had previously been used for point-to-point traffic for transfer flights.

'In so far' indicates that an air carrier will not be granted more capacity at Lelystad Airport than it has transferred or uses differently at Schiphol Airport. The slots, moreover, must be historical slots, that is to say slots on which the air carrier has accumulated grandfather rights under the Slot Regulation. This is because non-historical slots are in principle granted for a single season only. Only historical slots are granted for more than one season.

Paragraph 3
Transfer and point-to-point flights are designated by ministerial order. Which flights are designated is determined by the destination. As the nature of flights to a particular destination can change, it must be possible to change the rules if there is a reason to do so. This is why it has been decided to set rules by means of ministerial order.

Paragraph 4
Paragraph 4 provides that the days and times of the slots relinquished at Schiphol Airport need not correspond with the capacity granted at Lelystad Airport. If a series of slots at 10.15 on Tuesday is relinquished, the capacity at Lelystad Airport need not relate to the same day and time. Both the day and the time may be different.

Paragraph 5
Sufficient information must be available in order to be able to enforce the traffic distribution rules. Paragraph 5 therefore lays down that air carriers that apply paragraph 1 must inform the minister thereof. By virtue of paragraph 5, the minister will know which slots at Schiphol Airport will be subject to the traffic distribution rules and may in future be used only for transfer flights.

It is also important that air carriers are aware of the fact that a particular slot is subject to restrictions. The recipient air carrier must therefore also be informed by the transferring air carrier. If slots ultimately revert to the slot coordinator, an air carrier that is allocated the slots should also be informed of the fact that they may only be used for transfer flights. This is laid down in article 7, paragraph 4. To ensure that the slot coordinator is also informed, a duty to inform the slot coordinator has been included. It should be noted that the slot coordinator is not responsible for enforcement, nor does it
allocate the slots in a way that departs from the provisions of the Slot Regulation. The Human Environment and Transport Inspectorate will enforce the rules.

Paragraphs 6 and 7
Paragraph 6 provides that the grandfather rights attached to the slots relinquished at Schiphol Airport apply mutatis mutandis to the capacity received at Lelystad Airport. This means that an air carrier is entitled to the same capacity at Lelystad Airport in the next corresponding season provided at least 80% of the capacity is utilised. This is provided for in the Decree because in the absence of slot coordination at Lelystad Airport this rule would not apply, yet it is essential for the position of carriers that relocate to Lelystad. Under the Slot Regulation, the rules on grandfather rights apply only at coordinated airports. If Lelystad Airport is coordinated, the Slot Regulation applies and accordingly the rules on grandfather rights also apply. Paragraph 7 therefore provides that paragraph 6 does not apply if Lelystad Airport is designated as a coordinated airport. It should be noted that slot coordination and traffic distribution would then exist alongside each other. Even if Lelystad Airport is coordinated, it is reserved for traffic distributed from Schiphol Airport in accordance with the traffic distribution rules.

Article 3
Article 3 provides priority rules for air carriers that voluntarily relocate to Lelystad Airport. It cannot be ruled out that several carriers will request the same capacity at Lelystad Airport. There may then be scarcity in certain periods. The Decree provides that priority is to be given to air carriers that relinquish slots at Schiphol Airport in time blocks with the highest priority. This is because there is a greater need at Schiphol Airport for capacity in time blocks such as 07.20 – 10.59 than in time blocks with lower priority. Slots with a higher relative value are granted higher priority. In the event of relinquished slots having the same priority and air carriers making incompatible requests, the parties should first try to reach agreement among themselves, for example by changing their requests. It is therefore provided that the operator will determine whether agreement can be reached. If it finds that agreement cannot be reached, capacity at Lelystad Airport will be distributed among the air carriers concerned pro rata the requested capacity in accordance with paragraph 3. For example, if air carrier A has requested capacity for 80 flight movements and air carrier B has requested capacity for 20 flight movements but capacity is available for only 60 flight movements, air carrier A will receive capacity for 48 flight movements and air carrier B capacity for 12 flight movements.

Paragraph 5 specifically provides that the application of article 2, paragraph 6 takes precedence over the application of article 3. An air carrier’s claims to grandfather rights will be honoured.

Paragraph 6 provides that article 3 does not apply if Lelystad Airport is coordinated, as in that case the priority rules in the Slot Regulation apply and there is no scope for separate rules in the Decree. If Lelystad Airport becomes slot coordinated, grandfather rights will be determined in accordance with the Worldwide Slot Guidelines, with reference to use in the most recent equivalent season prior to slot coordination. Air carriers will therefore not lose their position and rights if slot coordination is introduced at Lelystad Airport.

Article 4
Article 4 states that air carriers may operate only point-to-point flights from Lelystad Airport. Point-to-point flights are designated by ministerial order. In principle they are flights with a relatively low percentage of transfer passengers.
Article 5
Article 5 lays down that paragraph 2 of the Decree applies only to commercial traffic. Commercial traffic is defined in article 1. By way of example, the Decree does not apply to State flights, trauma flights and emergency flights. General aviation flights also fall outside the scope of traffic distribution rules. Training flights, MRO flights, business aviation and the like can continue to be operated from Lelystad Airport when the traffic distribution rules come into effect.

Article 6
Article 6 relates to Schiphol Airport. It provides that slots at Schiphol Airport that are used in accordance with article 2, paragraph 1 by an air carrier that moves to Lelystad Airport may be used only for transfer flights. This article is the mirror image of article 4. The transferred slots are earmarked. Air carriers that receive these slots, in whatever manner, may use them only for these two types of flight. This article also determines the scope of the traffic distribution rules at Schiphol Airport. The rules set for Schiphol Airport relate only to slots that are used in the context of a move to Lelystad Airport. Slots other than these slots fall outside the scope of this Decree.

Article 7
Under article 7, air carriers must provide information within two months of the end of the scheduling period, demonstrating how they have used the relinquished slots. It can then be established, for enforcement or other purposes, whether the slots have indeed been used for transfer flights only. Although the information is provided by the air carriers themselves, it will be relatively simple to check. Enough information is available to determine whether the flights concerned were indeed operated as indicated in the information provided. It is also relevant to this article that the obligation applies only to slots that are earmarked in accordance with article 6. Air carriers are not obliged to provide information on other slots, which fall outside the scope of this Decree. Further to these traffic distribution rules, the earmark follows the slot. Even if a slot is obtained by another air carrier, it is therefore important that the recipient air carrier be informed of the fact that the slot’s use is restricted. The recipient air carrier can receive the slot in one of two ways: from another air carrier or from the slot coordinator. Article 7 therefore provides for an obligation for both the transferring air carrier and the slot coordinator to inform the receiving air carrier of the status of a slot that falls under the scope of article 6 of the Decree. Again, it should be noted that the slot coordinator does not have an enforcement role or allocate the slots in a way other than laid down in the Slot Regulation.

Article 8
Article 8 provides that the provisions laid down by or pursuant to this Decree apply mutatis mutandis to a destination serving as the departure point of a flight. It is naturally the intention that the Decree should apply in both directions. Stating this separately in each article, however, would render the Decree less readable and comprehensible. Article 8 therefore contains a general provision on applicability mutatis mutandis to situations where the destination named is the departure point of a flight.

Articles 9, 10 and 11
The impact of the traffic distribution rules in practice will be evaluated within three years. The evaluation will concentrate on how Lelystad Airport and the slots released at Schiphol Airport are used. The practicability for the parties concerned and the enforcement authorities’ ability to enforce the rules will also be considered.
The impact of the traffic distribution rules will also be continuously monitored. This monitoring will be enabled in part by the information that must be provided under the Decree.

The Decree’s entry into force is linked to the actual opening of Lelystad Airport to commercial traffic. This will be the date that commercial traffic routes are published in the Aeronautical Information Publication. Finally, article 11 provides that the Decree may be cited as the Schiphol and Lelystad Airports (Traffic Distribution) Decree.

THE MINISTER OF INFRASTRUCTURE AND WATER MANAGEMENT