Bulletin of Acts and Decrees of the Kingdom of the Netherlands

331
Act of 29 June 2006 entailing amendment of the Aviation Act regarding the operation of Amsterdam Airport Schiphol

We, Beatrix, by the Grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who shall see or hear these presents! Be it known:
Whereas We have considered that, in order to safeguard the public interest in the operation of Amsterdam Airport Schiphol, it is advisable to lay down rules on an operating licence, setting charges and conditions and sector-specific competition regulation, We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

SECTION I

The Aviation Act is amended as follows:

A. Section 8.1 is amended as follows:

1. For (f) and (g) there is substituted:
   f. *airport operating licence*: the licence referred to in section 8.25;
   g. *airport operator*: N.V. Luchthaven Schiphol, or the holder of the airport operating licence if this is a different entity;

2. After (g) there are inserted three points reading as follows:
   h. *inspector-general*: the inspector-general of the Inspectorate for Transport, Public Works and Water Management;
   i. *user*: an airline, or a natural or legal person other than an airline, that operates flights;
   j. *board*: the board of directors of the Netherlands Competition Authority, as referred to in section 2 of the Competitive Trading Act.

Aa. After section 8.2 there is inserted a new section, reading as follows:

Section 8.2a

1. Public authorities must have at least a majority interest, in legal and economic terms, in the airport operator.
2. Our Minister of Finance must designate, by order, one or more public-sector organizations to meet the requirement stated in subsection 1.
3. The order to be issued pursuant to subsection 2 is in any event to relate to the manner in which the requirement stated in subsection 1 will be met and the manner in which the public sector will perpetually ensure the continuity of the main port.

4. The proposal for the order to be issued pursuant to subsection 2 is to be made by Our Minister of Finance in agreement with Our Minister of Transport, Public Works and Water Management and is not to be made more than four weeks before the draft is submitted to the House of Representatives of the States General (Lower House of Dutch Parliament).

B. Section 8.25 is renumbered as section 8.24a.

Ba. After section 8.24a there are inserted sections 8.25 to 8.25j, reading as follows:

Section 8.25

1. Operation of the airport is prohibited without a licence from Our Minister of Transport, Public Works and Water Management.
2. An airport operating licence is granted for an indefinite period of time.

Section 8.25a

The airport operator is required to operate the airport and to that end, subject to section 8.3, it must take the measures necessary to properly handle airport air traffic and the associated passenger and goods transport at the airport.

Section 8.25b

1. Our Minister of Transport, Public Works and Water Management may revoke a licence if:
   a. the airport operator is engaged in mismanagement, thereby endangering the continuity of the airport;
   b. national spatial planning policy no longer envisages an airport in the location concerned.
2. Our Minister of Transport, Public Works and Water Management may revoke the licence at the airport operator's request if revoking it is not in conflict with the public interest.

Section 8.25c

If there are serious suspicions that a situation as described in section 8.25b(a) threatens to arise, Our Minister of Transport, Public Works and Water Management may issue instructions to the airport operator to take measures within a time limit to be set by him to prevent mismanagement.

Section 8.25d

1. At least once a year, the airport operator must set the charges and conditions for the activities of the airport operator connected to the use of the airport by users. The airport operator must give notice of the charges and conditions before the time period to which the charges and conditions relate.
2. The charges and conditions are to be reasonable and non-discriminatory.
3. The charges for the activities referred to in subsection 1 are to be cost-oriented with regard to the activities in their entirety.
4. Without prejudice to subsection 3, the security charges for passengers and their baggage are to be cost-oriented for security activities in their entirety.
5. When setting the charges, the airport operator must take account of the allocated revenues from other activities of the airport operator that are directly associated with the activities referred to in subsection 1.

6. When setting the charges, the airport operator must take into account the costs of structural measures for implementing special instructions from Our Minister of Justice, as referred to in section 37ac, subsection 2 of the Aviation Act, insofar as those measures relate to the security of passengers and their baggage.
7. When setting the charges the airport operator may, notwithstanding subsections 3 and 4, take into account a contribution from other activities than those referred to in subsections 1 and 5.
8. When setting the charges the contribution referred to in subsection 7 is to be allocated, in proportion to the costs, to the activities relating to the security of passengers and their baggage referred to in subsection 4 and the other activities connected to the use of the airport by users, referred to in subsection 5.
9. After setting the charges subject to subsections 2 to 8, the airport operator must make an adjustment for the difference between the estimated and actual revenues and costs in connection with the projected and actual volume of airport air traffic, passenger and cargo transport achieved and investments made, according to the financial statements for the financial year preceding the date on which the charges are set.
10. After setting the security charge for passengers and their baggage subject to subsections 2 to 8, the airport operator must make an adjustment for any extra revenues generated from the security of passengers and their baggage that are received after a structural measure as referred to in subsection 6 is cancelled and before the security charge for passengers and their baggage is adjusted accordingly.
11. The airport operator must apply the charges and conditions set pursuant to subsection 1 during the time period for which the charges and conditions were set.
12. Further rules are to be laid down, by or pursuant to a general administrative order, regarding:
    a. the activities, connected to the use of the airport by users, for which charges and conditions as referred to in subsection 1 are set;
    b. the activities, referred to in subsection 5, which are directly associated with the activities connected to the use of the airport referred to in subsection 1;
    c. the manner in which and date on which notice is to be given as referred to in subsection 1;
    d. the cost-orientation referred to in subsections 3 and 4;
    e. the date on which the charges and conditions are to be set and come into force;
    f. the manner in which the airport operator, if necessary in derogation from the rules referred to in (e), must implement subsection 6.

Section 8.25e

1. Before the charges and conditions referred to in section 8.25d, subsection 1 are set, the airport operator must give notice to the users of the airport of the proposed charges and conditions, including a description of the services to be rendered in return, as well as explanatory notes containing supporting economic information and a description, based on indicators, of the level of quality for the services to be provided that are connected to the use of the airport.
2. The airport operator must consult the users of the airport on the proposal referred to in subsection 1 before setting the charges and conditions.
3. When setting the charges and conditions, the airport operator must take account of the views of the users of the airport that emerge as a result of the consultation referred to in subsection 2, and must explain its own position regarding the views expressed.
4. Further rules are to be laid down, by or pursuant to a general administrative order, regarding:
    a. the manner in which and date on which notice is to be given as referred to in subsection 1;
    b. the manner in which the consultation referred to in subsection 2 is to take place;
    c. the indicators referred to in subsection 1;
    d. the information to be included by the airport operator in the proposal for the charges and conditions referred to in subsection 1 and the accompanying explanatory notes.

Section 8.25f

1. If a request to this effect is submitted by a user within four weeks after notice is given of the charges and conditions having been set, as referred to in section 8.25d, subsection 1, the board must determine whether the charges and conditions are in conflict with rules laid down by or pursuant to this Act. The board must inform the airport operator immediately that a request from a user has been received.
2. The board must decide on the request as soon as possible and within three months of receiving it. This time limit may be extended once by at most eight weeks.
3. If the board determines that the charges and conditions are in conflict with rules laid down by or pursuant to this Act, it must so inform the airport operator immediately. The airport operator must set new charges and conditions, having regard to the board's conclusions pursuant to subsection 1.
4. Subsection 1 and section 8.25e do not apply to the setting of charges and conditions as referred to in subsection 3.
5. The airport operator must apply the charges and conditions set pursuant to subsection 3 for the remainder of the time period for which the charges and conditions under section 8.25d, subsection 1 were set.
6. From the date on which the board determines that the charges and conditions referred to in subsection 1 are in conflict with rules laid down by or pursuant to this Act until the date on which the charges and conditions referred to in subsection 3 are set, the airport operator must apply the charges and conditions that were in effect in the time period before the time period for which the contested charges were set.
7. Further rules are to be laid down, by or pursuant to a general administrative order, regarding the request to the board, as referred to in subsection 1, and the setting of charges and conditions as referred to in subsection 3.

Section 8.25g

1. The airport operator must set up a system for allocation of the costs and revenues of the activities referred to in section 8.25d, subsection 1, which system meets the requirements of conformity with market standards, proportionality and integratedness. The airport operator will submit the allocation system to the board for approval.
2. The airport operator must maintain separate records on its books of activities connected to the use of the airport by users. These records must account separately for the costs and revenues of providing security for passengers and their baggage, as referred to in section 8.25d, subsection 4.
3. On the basis of the separate records on its books referred to in subsection 2, each year the airport operator must draw up financial accounts for the preceding financial year, consisting of a separate operating statement and a list of the tangible fixed assets allocated to total activities referred to in section 8.25d, subsection 1. The financial accounts are to include explanatory notes and be accompanied by an audit report from an independent auditor.
4. Within five months of the end of its financial year, the airport operator must submit the financial statements for the preceding financial year, with the report from the independent auditor, to the board and to any users who so request.
5. Further rules are to be laid down, by or pursuant to a general administrative order, regarding the structure and approval of the allocation system referred to in subsection 1, the allocation of assets to the activities referred to in section 8.25d, subsection 1, the organization of the separate records on the books, referred to in subsection 2, and the financial accounts referred to in subsection 3.
6. Part 3.4 of the General Administrative Law Act applies to the preparation of a decision on approval of the allocation system.
7. Without prejudice to section 3:13 of the General Administrative Law Act, the users of the airport may present their views on the proposed decision on approval of the allocation system.
8. The board must take the decision on approval of the allocation system as swiftly as possible, and within three months after the allocation system is submitted to them for approval.

Section 8.25ga

Within five months of the end of the financial year, the airport operator must send the board and the users a report on the level of quality achieved for the services provided in connection with the use of the airport that are referred to in section 8.25e, subsection 1 for the preceding financial year, partly based on passengers' experiences. The report on the level of quality achieved must be based on the indicators referred to in section 8.25e, subsection 1.

Section 8.25h

1. The airport operator must send the board a copy of the notice referred to in section 8.25d, subsection 1 and the notice referred to in section 8.25e, subsection 1.
2. The board is authorized to demand from the airport operator all information and data that the board may reasonably consider necessary for the performance of its duties under this Act.
3. The airport operator must, within a reasonable time limit to be determined by the board, lend all assistance that the board may reasonably require to perform its duties under this Act. Section 4:15 of the General Administrative Law Act applies *mutatis mutandis*.
4. On request, the board must provide Our Minister of Transport, Public Works and Water Management with the information and data necessary to perform his duties.
5. On request, Our Minister of Transport, Public Works and Water Management and Our Minister of Justice will provide the board with the information and data that it requires to perform its duties.
6. The board may use the data and information that it obtains pursuant to this Act solely to perform its duties under this Act.
7. If subsection 3 is violated, chapter 8 of the Competitive Trading Act, except for sections 71 to 76 and section 80, applies *mutatis mutandis*.

Section 8.25ha

The board must report annually to Our Minister of Transport, Public Works and Water Management on the performance of its duties and exercise of its powers, as referred to in sections 8.25f and 8.25g.

Section 8.25i

1. An interested party may apply to the Administrative Jurisdiction Division of the Council of State for judicial review of a decision as referred to in section 8.25, subsection 2, section 8.25b or section 8.25c.
2. Notwithstanding section 8:7 of the General Administrative Law Act, the Rotterdam District Court is competent to hear applications for judicial review of decisions of the board under section 8.25f, subsection 1 and section 8.25g, subsection 1.
3. Section 7:1 of the General Administrative Law Act does not apply in the event of an application for judicial review of a decision as referred to in section 8.25f, subsection 1 or section 8.25g, subsection 1.

Section 8.25j

A proposal for a general administrative order pursuant to sections 8.25d to 8.25g is to be made by Our Minister of Transport, Public Works and Water Management in agreement with Our Minister of Economic Affairs.

C. After section 8.29 there is inserted section 8.29a, reading as follows:

Section 8.29a

1. Every three years, or at any time that Our Minister of Transport, Public Works and Water Management deems it necessary, the airport operator must report to Our Minister of Transport, Public Works and Water Management on the operation of the airport. The report must in any event include a description of the measures taken to implement section 8.25a, a list of all the relevant data and an account of the efficiency and effectiveness of those measures.
2. Further rules on the reporting procedure are to be laid down by or pursuant to a general administrative order.

D. Repealed

E. Repealed

F. In section 11.1 after "of the provisions laid down by or pursuant to this Act" there is inserted ", except for sections 8.25d to 8.25h".

Fa. After section 11.2a there is inserted a section reading as follows:

Section 11.2b

1. Our Minister of Transport, Public Works and Water Management may institute an investigation into the airport operator for the purpose of supervising compliance with the obligations arising from the operating licence referred to in section 8.25a.
2. The supervisory officials appointed pursuant to section 11.1, subsection 1 are in charge of the investigation.
3. In derogation from subsection 2, Our Minister of Transport, Public Works and Water Management may assign one or more experts to perform the investigation.
4. The experts appointed pursuant to subsection 3 must consult users.
5. After the investigation a report thereon is to be drawn up.
6. A copy of the report is to be sent to the airport operator.
7. The airport operator will have the opportunity to present its views on the report orally or in writing within four weeks after the report is sent. A report is to be made of views presented orally.
8. Further rules on the investigation referred to in subsection 1 are to be laid down by or pursuant to a general administrative order.

G. After section 11.14 there is inserted a section reading as follows:

Section 11.14a

1. The officials of the Netherlands Competition Authority appointed by decision of the board of the Netherlands Competition Authority are charged with the supervision of compliance with provisions laid down by or pursuant to sections 8.25d to 8.25h. Sections 51, 53 and 54 of the Competitive Trading Act apply *mutatis mutandis*.
2. Decisions as referred to in subsection 1 are to be published in the Government Gazette.

H. In section 11.15 at the end of the sentence there is inserted "except for obligations as referred to in sections 8.25d to 8.25h".

I. After section 11.20 there is inserted a section reading as follows:

Section 11.21

Section 54a and chapter 7, except for section 63, of the Competitive Trading Act apply *mutatis mutandis* in the event of a violation of section 8.25d, subsection 1 to 11, or the rules laid down pursuant to subsection 12; section 8.25e, subsection 1, 2, or 3, or the rules laid down pursuant to subsection 4; section 8.25f, subsection 3, 5, or 6, or the rules laid down pursuant to subsection 7; section 8.25g, subsection 1, 2, 3, or 4, or the rules laid down pursuant to subsection 5; section 8.25ga; or section 8.25h, subsection 1 or 3.

J. After section 12.3 there is inserted a section reading as follows:

Section 12.3a

Within four years after sections 8.25d to 8.25h and sections 11.14a and 11.21 of this Act come into force and every five years thereafter, Our Minister of Transport, Public Works and Water Management and Our Minister of Economic Affairs must send a report to the States General on the effectiveness and impact of these provisions in practice.

SECTION II

In section 80a, subsection 1, of the Aviation Act, for "sections 36 and 37" there is substituted "section 37".

SECTION III

When section 8.25 of the Aviation Act comes into force, N.V. Luchthaven Schiphol is the holder of the first airport operating licence.

SECTION IIIA

1. Within twelve months after section 8.25d of the Aviation Act comes into force, charges and conditions are to be set for the first time.
2. Until the charges and conditions are set, as referred to in subsection 1, the operator of Amsterdam Airport Schiphol must apply the charges and conditions in effect on the day before section 8.25d of the Aviation Act came into force.
3. Within three months after section 8.25g of the Aviation Act comes into force, the operator of Amsterdam Airport Schiphol must submit the system for the allocation of the costs and revenues referred to in section 8.25g to the board of the Netherlands Competition Authority for approval for the first time.

SECTION IV

To the list in the annex to the Administrative Jurisdiction (Trade and Industry) Act there is added a part, reading "17. Section 8.25f, subsection 1, and section 8.25g, subsection 1, of the Aviation Act."

SECTION V

1. The sections of this Act are to come into force on a date to be determined by Royal Decree, which may vary for the different sections or points thereof.
2. From the coming into force of section I, part Ba with regard to section 8.25d of the Aviation Act until the coming into force of section II, sections 36 and 37 of the Aviation Act do not apply to Amsterdam Airport Schiphol.

We order and command that this Act shall be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials whom it may concern shall diligently implement it.

Done. The Hague, 29 June 2006 Beatrix

The State Secretary for Transport, Public Works and Water Management
M.H. Schultz van Haegen-Maas Geesteranus

Published on the eighteenth day of July 2006

The Minister of Justice,
J.P.H. Donner

This is an English translation of the original Dutch document. It should be noted that in the event of any disparity between the Dutch original and this translation, the Dutch text will prevail.