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House of Representatives

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Amendment to the Aviation Act in connection with an evaluation of the Act of 29 June 2006 amending the Aviation Act regarding the operation of Amsterdam Airport Schiphol

No. 3

EXPLANATORY MEMORANDUM

GENERAL SECTION

1. Introduction

The provisions of Chapter 8.4 'Operation of the airport', to which this legislative proposal relates, were included in the Aviation Act by virtue of the Act of 29 June 2006 amending the Aviation Act regarding the operation of Amsterdam Airport Schiphol (Bulletin of Acts and Decrees, 2006, 331). Chapter 8.4 incorporates two separate regulations, each with its own monitoring tool. First, to prevent abuse of the dominant economic position of Amsterdam Airport Schiphol, the setting of charges and conditions for Schiphol airport and the sector-specific supervisory task to be exercised by the Authority for Consumers and Markets are both regulated. The aforementioned Act also states that the charges and conditions must be non-discriminatory, transparent and wholly cost-oriented, in accordance with the principles of competition law. In addition, the airport operating licence for Amsterdam Airport Schiphol is regulated. This is to protect the public interest in the continuity of the airport as a vital link in the mainport. Within the constraints laid down by the Aviation Act, the operator has scope to exercise its business activities in a responsible manner. In doing so, Schiphol will take into account the importance of the airport as a high-quality hub for domestic and international air traffic. The power to revoke the airport operating licence in the event of mismanagement and the power to instruct that measures be taken if there are serious grounds to suspect mismanagement, make it possible to intervene if the continuity of Amsterdam Airport Schiphol is compromised. The Minister of Infrastructure and the Environment does not have the ability, through his oversight in the context of the operating licence, to retrospectively influence the establishment of charges and conditions.

A number of conditions have been defined with the aim of preventing abuse of a dominant position and protecting the public interest in continuity of the airport, including:

- creating sufficient incentives to invest in airport facilities, with a view to traffic and transport developments;
- offering a sufficient return to achieve the efficient, economic and healthy operation of the airport as a whole;
- making it possible for the airport to offer competitive charges and conditions.

This legislative proposal expressly does not seek to implement a substantial change in policy. The improvements to be made through this legislative proposal build on the existing system. The amendments contained in the legislative proposal are the result of an evaluation of the Act of 29 June 2006. This Act has been evaluated over the period since it took effect on 1 July 2006, by the Ministries of Infrastructure and the Environment and Economic Affairs, in collaboration with the Ministry of Finance, airlines, Schiphol, the Board of Airline Representatives in the Netherlands (BARIN), the Schiphol Airline Operators Committee (SAOC) and the Authority for Consumers and Markets. The government has formulated its position in response to this evaluation.

The main conclusion of the evaluation is that in light of its objectives, the system of statutory requirements has performed well. Consequently, both the objectives of the Act and the standards and conditions mentioned above will remain in full force. The same applies to the application of the Competition Act and of European competition law.

With the aim of preventing abuse of a dominant economic position in aviation activities and to ensure compliance with competition law, this legislative proposal will see sector-specific oversight remain in the hands of the Authority for Consumers and Markets. However, this legislative amendment will expand the role of the Authority for Consumers and Markets to include an 'assessment of process' for investment project proposals and for the presence of an analysis of the effects of proposed charges on network quality. Other monitoring, including

monitoring of the operation of the airport in a broad sense, will be carried out by the Minister of Infrastructure and the Environment.

The evaluation also looked at the future viability of the regulations in light of new policy goals and developments. This relates to the importance, preservation and potential strengthening of the quality of the network of air links and the corresponding need for a competitive cost structure and good value for money. In the Aviation Policy Document (Parliamentary Papers II, 2008/9, 31 936, No. 1), the continuity, quality and network development of Amsterdam Airport Schiphol are characterised as a vital link in the Dutch economy and a public good. The evaluation noted that the current law aimed at achieving these objectives offers few tools for doing so.

In the context of the evaluation, it was noted that there is room for improvement in a number of areas. The letter of 4 April 2012 (Parliamentary Papers II, 2011/12, 33 231, No. 1) reported that, in line with the conclusions of the evaluation, the government did not consider any major systemic changes to be necessary. The current 'dual till' system, in which only aviation activities (and activities directly connected with aviation) are regulated, will be retained. The government does consider it desirable to improve certain aspects of the current system. This involves a coherent package consisting of improvements to existing elements and the addition of certain new elements to the existing system. The central themes revolve around:

- improving consultation;
- introducing multi-year plans for charges and conditions;
- limiting fluctuations of charges through an settlement equalisation system;
- introducing efficiency incentives;
- a mandatory financial contribution to aviation activities from non-aviation activities;
- the effects on network quality;
- retaining the existing accounting rules;
- obtaining a reasonable return on invested capital (WACC).

The letters of 5 June 2013 and 2 September 2013 (Parliamentary Papers II, 2012/13, 33 231, Nos. 2 and 3) elaborated on these topics in greater detail. Further details can be found in this legislative amendment and in an amended Amsterdam Airport Schiphol Operation Decree.

2. Guiding principles for the legislative proposal

In addition to the central themes listed in the introduction, greater transparency for users is also extremely important: they should be given more insight into the relationship between transport developments, cost evolution, desired service quality levels and proposed investments on the one hand, and the proposed charges on the other. Following on from the outcomes of the evaluation, when setting charges Schiphol must also observe greater transparency explaining how the views of users have been taken into account.

The key guiding principles of the Act, such as ex ante cost orientation in terms of the total revenue from charges, and the principles of reasonableness and non-discrimination with regard to individual charges and conditions, remain in full force. The requirement for cost orientation of charges is justified, because the airport operator enjoys a dominant position with regard to aviation activities. As indicated above, the requirement is largely unchanged both for aviation activities in their entirety and for security activities.

The criterion of non-discrimination in this Act should be seen in the light of the European freedom of movement rules and Article 15 of the Chicago Convention on International Civil Aviation of 7 December 1944 (Treaty Series 1954, 18). That article states that distinguishing between airlines on the basis of nationality is discriminatory. Furthermore, no distinction may be made on the basis of the identity of the user. In light of these two rules which give effect to the concept of non-discrimination, when it comes to providing equal benefits, the nationality or identity of users may not lead to the application of different charges or conditions. The regulatory aim of this Act is focused on preventing abuse of a dominant economic position. For this reason, discrimination is also forbidden if it could lead to abuse of a dominant economic position as defined by competition law in general (Section 24 of the Competition Act and Article 102 of the Treaty on the Functioning of the European Union (previously the EC Treaty) (Treaty Series 2003, 150)).

According to legislative history, an explicit connection was made in the Aviation Act to this abuse-of-power issue, and it was confirmed that the concept of non-discrimination must be applied in accordance with its competition-law meaning. Furthermore, the Trade and Industry Appeals Tribunal has confirmed that general competition law should be taken into consideration when applying the Aviation Act.

The 'reasonableness' rule must be understood in the light of the Act's objective of preventing abuse of a dominant economic position. This sector-specific rule is thus oriented towards competition law in a sector-specific context. The quality of the service delivery can be important when assessing the question of whether the charges and conditions set by the airport operator are reasonable in relation to the service provided. In terms of charges, the reasonableness rule means that the charges must be in proportion to what is provided in return. Whether the charges for each individual aviation activity are reasonable can be assessed by comparing the service provided with the price paid, through a comparison of the charges and conditions for comparable activities at other comparable airports (benchmarking), or by comparing the charge to the underlying costs. The question of whether these tests are used, and if so, to what extent they factor into the assessment of reasonableness, depends on the economic relevance in the specific case.

It is not only the charges that have to comply with the reasonableness requirement. The same applies to the conditions. The reasonableness of the conditions can be tested by comparing them with conditions at other comparable airports, and by testing them against the criteria of relevance and objectivity. Application of the principle of reasonableness is related to ex ante cost orientation. Exclusively in terms of cost orientation, there is still no sufficient guarantee that airport users are paying reasonable charges for the various services. To ensure the reasonableness of the charges, also in view of the conditions and of the services provided in return for the charges and conditions, there is a provision – also described in the explanatory memorandum to the current Act – specifying that, in response to divergent views expressed by a user (with regard to the proposed charges and conditions) the airport operator must indicate, stating reasons, whether, to what extent and in what manner these views led to an adjustment of the charges and conditions.

3. Content of the legislative amendment

This legislative amendment contains the following substantive changes:

- improvements in consultation:
The evaluation revealed an issue with the airport operator's current consultation process, in that it does not provide sufficient information about whether, to what extent and in what way users' views have been taken into account in the final setting of the charges. The Amsterdam Airport Schiphol Operation Decree (Bulletin of Acts and Decrees 2006, 333, as most recently amended by Bulletin of Acts and Decrees 2013, 104) was silent on the matter. The government believes that an adjustment in this area would be desirable, because it would clarify the final level of support for proposed charges and conditions and for the investment programme, which would also be conducive to the expeditious handling of any complaint by the Authority for Consumers and Markets. The 'improvements in consultation' are included in Section 8.25da (notification of the setting of charges and conditions), Section 8.25de (investment programme) and Section 8.25e (notification of proposals and consultation).

- the introduction of multi-year charges and conditions:
The government has opted for a system in which the airport operator sets the charges and conditions for a three-year period (Section 8.25d(1) to (3)). With this legislative amendment, the system of the annual setting of charges and conditions is replaced by a system of charges and conditions that are set once every three years. Ex ante cost orientation still applies to these charges. The charges and conditions may differ from year to year within the three-year period, provided adjustments are proposed, consulted on and set in the context of the multi-year charges.

In addition, in section 8.25d(4) to (8), the legislative proposal regulates the adjustment of the charges and conditions that were set for three years under Section 8.25d(1). The charges will be adjusted annually, on the basis of the charges set for the year in question, by offsetting a number of cost and revenue differences. The annual offsetting of the adjusted charges is not so much about a full cost calculation as it is about the application of rules to incorporate into the multi-year charges the differences between the ex ante budget for costs and revenues in any given year, and the actual costs and revenues for that same year. The operating conditions set for three years under Section 8.25d(1) can still be adjusted, despite being set for multiple years, if there is reason to do so. The operating conditions concern matters such as the allocation of terminals, parking spaces, aircraft stands and check-in desks, and have no connection to the adjustment of charges for the use of the airport. The ability to adjust the operating conditions is necessary to allow the operator to continue organising the operation of its airport as efficiently as possible. This benefits both the operator of the airport and its users. The proposal, consultation and setting procedure also applies to the adjustment of the operating conditions.

In light of this ability to adjust the operating conditions if and when there is reason to do so, it would not seem logical, when setting the multi-year charges and conditions, for the option to be invoked as referred to in Section 8.25d(2) of setting different operating conditions for each year within the three-year period.

Certain exceptions apply to this system of multi-year charges and conditions, such as the charges and conditions listed in Section 8.25db.

The 'charges system' is included in Sections 8.25d (multi-year charges system) to 8.25dd (the financial contribution, revenues from other activities and costs of 'structural security measures' which are taken into account in the setting of the charges), Section 8.25dg (settlements) and Section 8.25dh (period for which charges and conditions are set).

- limiting fluctuations of charges through a settlement equalisation system:
As described in the previous point, the government has decided to introduce to the regulatory system a method making it possible in a number of cases to offset ex-post, and in most cases spread over multiple years, the financial consequences that arise in the three-year charge period in question (such as differences in traffic volumes, differences in depreciation costs and the cost of capital as a result of differences between estimated and actual investment expenditure). This makes the multi-year charges more flexible. The settlements are calculated annually. For the sake of the users and representative organisations, these settlements must be transparent.
In Section 8.25dg the principles of the various forms of rights to, or obligations regarding settlement are described

- the introduction of efficiency incentives:

In its letter of 5 June 2013 to the House of Representatives, the government announced that a system of efficiency incentives would be introduced for certain investment projects. This concerns investments dedicated entirely or partially to aviation activities. The budget overruns (difference between actual investment expenditure and the investment project budget) in a certain period will be fully absorbed by the airport operator, while cost advantages in a certain period will be shared equally between the airport operator and users. This gives the airport operator an incentive to keep the actual costs of an investment project within budget. This is deemed desirable in light of Schiphol's dominant economic position in aviation activities. To a large extent, this dominant position enables Schiphol to pass on the costs of aviation activities to users through charges. As a follow-up to the feasibility and enforcement review by the Authority for Consumers and Markets, the departments involved decided to extend the duration of the efficiency incentive to a maximum of two charge periods, in combination with the introduction of a percentage of the difference between the actual investment expenditure and the budget, which will act as a threshold: only if the percentage is exceeded will the efficiency incentive system be applied. This legislative amendment will expand the role of the Authority for Consumers and Markets to include an 'assessment of process' for investment project proposals. Further details of the efficiency incentives can be found in Section 8.25df (efficiency incentives for investment projects), Section 8.25dg (settlements) and Section 8.25fa (assessment of process by the Authority for Consumers and Markets on consultation regarding investment projects). In addition, in its letter of 5 June 2013 the government stated that Schiphol's position with regard to value for money in relation to other airports must be maintained. To that end, benchmarks will be used. With the airport charges benchmark and the quality indicators benchmark, the airport operator can compare itself at both a quantitative and a qualitative level with a peer group of competitor airports with the aim of improving its own performance. Since a reliable comparison with other airports in terms of cost efficiency is not feasible in practice, the airport operator will have to make the evolution of its own costs transparent. The different benchmarks are explained in greater detail in the explanatory notes to individual sections under Section I, Part F. The benchmarks will be included in the explanatory notes accompanying the notification of proposals for charges and conditions. The benchmarks will thus contribute to the necessary improvement referred to earlier in the information provided by the airport operator to users as part of the consultation process.
- a mandatory financial contribution to aviation activities from non-aviation activities:

Partly due to the importance of Schiphol to the Dutch economy, the government considers it desirable to strengthen Schiphol's competitive position. The introduction of a mandatory contribution from non-aviation activities (such as retail and commercial property) to aviation activities should assist with this aim. The size of the current voluntary contribution has, in the past, led to discussions involving the shareholder and the policy-making department. Making the contribution mandatory should obviate the need for this discussion and allow the operator to make a decision about the size of the contribution to aviation activities from non-aviation activities, preventing unnecessary interference in business operations. At the same time, a greater degree of clarity and transparency will be created around this contribution than around the voluntary contribution that was included in Section 8.25d(8) of the 2006 legislative amendment (Bulletin of acts and Decrees 2006, 331). The government has therefore decided to adapt the regulatory system in such a way as to make the contribution explicit and mandatory. The principle of the non-aviation contribution is included in Section 8.28dd(1). Further details can be found in the Amsterdam Airport Schiphol Operation Decree.
- the effects on network quality:

Promoting network quality has been part of the policy for quite some time. The legislative proposal will not alter that policy. In Section 8.3, this is currently referred to as 'the optimum use of the airport as a high-quality hub for domestic and international air traffic'. This legislative proposal updates that description, and incorporates the concept of 'network quality' in the Aviation Act. Under Section I, Part A of the explanatory notes for individual sections, there is a more detailed discussion of the public interest in network quality. In its letter of 5 June 2013, the government stated that the legislation would stipulate that, in setting the charges and conditions, the airport operator must provide insight into the effects of those charges and conditions on network quality. This legislative amendment therefore requires the airport operator to provide insight, based on analysis, into the possible effects of the proposed charges on the network. The airport operator must include this analysis, with a clear explanation, in the notification of the proposed charges (Section 8.25e(1)) and in the notification of the setting of the charges and conditions (Section 8.25da(2)). It is expected that an analysis of the effects of the charges on network quality and the reporting on the development of network quality will increase the awareness of the parties concerned with regard to this issue. Moreover, this will reduce the likelihood of the airport operator making proposals that could have unnecessarily detrimental effects on the network of Amsterdam Airport Schiphol. However, it is up to the airport operator to decide, when setting charges, to what degree it should take account of the consequences of the charges for network quality; when setting charges and conditions it must also comply with EU law regarding fixed limitations and frameworks.

In addition to the above-mentioned substantive changes, this legislative amendment contains a number of more technical improvements to the regulations. These include:

- A rearrangement and new subdivision of the subsections of the former Section 8.25d of the Aviation Act in order to emphasise how certain subsections in separate Sections are interrelated, and thus to improve the clarity and readability of the provisions, also in relation to the incorporation of new rules that are intended to improve the regulatory system;
- Removal of certain textual ambiguities;
- Editorial changes that are not intended to be substantive amendments.

4. Realisation of the legislative proposal

The evaluation of the current Act was started in 2009. External consultants were engaged to assist with the process. Both with regard to the letters to the House of Representatives referred to above and in the preparatory phase of this legislative amendment, there were consultations with the airlines, Schiphol, BARIN and SAOC, and they were offered the opportunity to comment. In addition, there have been intensive consultations with the Authority for Consumers and Markets with a view to optimising the feasibility and enforceability of the regulations.

In the fourth quarter of 2013 a written consultation on the draft of this legislative amendment was conducted among users and representative organisations and the airport operator. Following that, an information session was held in the first quarter of 2014; it was attended by users, representative organisations and the airport operator. At the meeting, the questions asked and suggestions offered by the parties concerned were discussed, and there was an opportunity to ask further questions. Key topics during the written consultation and the information session included: the charges system, settlements, network quality, efficiency incentives, and the supervisory task of the Authority for Consumers and Markets.

It was also important to acknowledge that this legislation is aimed at professional parties, such as the airport operator, users, representative organisations and the Authority for Consumers and Markets. Those who have to work with the legislation indicated that they would be able to work with the content of this legislative amendment.

5. Effects of the legislative proposal

In the explanatory notes to the Amsterdam Airport Schiphol Operation Decree, which came into force in 2006, the amount of 228,000 euros per year was specified for administrative costs. As part of the evaluation, in 2011 the research agency Ecorys calculated the annual administrative costs and compliance costs of the current regulations at 1.2 million euros. Both calculations are based on figures declared by Schiphol.

Taking into account the proposal to amend the legislation, new estimates of the administrative and compliance costs have been calculated with Schiphol and users. The average annual administrative and compliance costs for Schiphol and users are currently estimated at 950,000 and 150,000 euros respectively. These amounts do not include any possible external legal costs, the costs of the evaluation of the Aviation Act, or the one-off costs for development of the quality benchmarks, estimated at 17,000 euros. The introduction of the three-year charges period will mean that a number of activities need only be performed once per period, instead of on an annual basis.

The costs referred to above do not include the costs of implementation or enforcement by the Authority for Consumers and Markets.

6. Feasibility and enforceability

As the supervisory authority of the airport operator pursuant to the economic regulations, the Authority for Consumers and Markets was asked, in a letter from the Ministry of Infrastructure and the Environment dated 20 December 2013 and in accordance with the Aviation Act, to conduct a feasibility and enforcement review of this legislative amendment. In a letter dated 13 February 2014, the Authority for Consumers and Markets reported to the State Secretary for Infrastructure and the Environment on its findings.

The Authority for Consumers and Markets concluded that the legislative amendment is feasible and enforceable, provided the recommendations in its letter and the supplementary comments in the annex to its letter are taken into consideration. The recommendations and supplementary comments of the Authority for Consumers and Markets have largely been incorporated. However, this does not include the recommendation to introduce a new threshold value for investment projects of a hybrid nature (aviation and non-aviation). That recommendation was not incorporated because the selected system better reflects the purpose of the Act, which is to regulate aviation activities. A system has consciously been chosen which applies a single threshold value of 20 million euros for investment projects relating to aviation activities. By introducing an additional threshold value for investment projects of a hybrid nature, the airport operator may be obliged to involve users and representative organisations in investment projects that have little to do with aviation activities.

In its feasibility and enforcement review, the Authority for Consumers and Markets also made a comment regarding the efficiency incentive, which it did not expect to be particularly effective. According to the Authority for Consumers and Markets, this was largely because of the relatively short period over which the cost differences would be offset. As a result of this comment, in consultation with the departments involved the system of efficiency incentives for investment projects was adjusted by extending the duration of the incentive from a single three-year charge period to two of those periods, and by introducing a percentage which must be reached before

the efficiency incentive will apply. Once the difference between the actual expenditure on an investment project and the investment budget reaches or exceeds five percent (as a positive or negative amount), the efficiency incentive will apply and the differences can be fully offset (in the case of higher-than-budgeted expenditure) or partially offset (in the case of lower-than-budgeted expenditure). This means that the efficiency incentive will be applied only for significant discrepancies, and not for minor under or overspending, which in practice will always happen and for which the airport operator should keep separate records. The use of a percentage threshold value limits administrative costs for the airport operator.

7. Co-signature

This legislative proposal is intended to be co-signed by the Minister of Economic Affairs, in view of his involvement in the subjects regulated by this legislation.

EXPLANATORY NOTES TO INDIVIDUAL SECTIONS

Section I

A

This section provides a definition of network quality, which is partially taken from the Aviation Policy Document (Parliamentary Papers II 2008/9, 31 936, No. 1). The definition is important because, in the amended Act, the airport operator must provide information about the possible effects of a proposal for charges and of set charges on network quality. The concept of 'network quality' relates to a network of air links contributing to the accessibility of the Netherlands and thus to the national and regional economies.

Preserving and strengthening network quality is in the public interest. Network quality supports Schiphol's mainport function; without an international network, there can be no mainport. The mainport is important to the Dutch economy (business climate, employment opportunities). At the same time, the quality of Schiphol's international network of connections is essential to the Netherlands' accessibility.

The Aviation Policy Document examines the public function of Schiphol, one component of which is 'serving those airlines as efficiently as possible that make the biggest contribution to network quality'. The Aviation Policy Document also explains in detail what optimal network quality means. Some of the elements mentioned:

- The airport's network must include connectivity appropriate to the desired level of spatial and economic development;
- In addition to connections with the major economic centres, optimal network quality also includes other elements such as direct connectivity and hub quality. To this end, the following indicators were specified to monitor the network:
 - Direct connectivity, measured by the number of economically relevant destinations served from Schiphol on a daily basis, compared to the three largest hub airports: London Heathrow, Frankfurt and Paris Charles de Gaulle.
 - The passenger, cargo and traffic volumes at Schiphol and the totals for the airports of national significance.
 - Schiphol's hub quality, measured by the number of flights of the SkyTeam alliance and other network carriers that successfully connect at Schiphol. This hub quality is compared with that of Frankfurt, Paris Charles de Gaulle and London Heathrow.
 - Economic analyses are linked to the network of connections to provide a picture of the quality of the network with regard to connections with the global economic centres that are key to the Dutch economy.

To preserve and strengthen the quality of Schiphol's network, both 'destination traffic' (arriving and departing passengers) and 'transfer traffic' (transferring passengers) are important. Because of the relatively limited domestic market, transfer traffic is essential to ensure an extensive and frequently-served network at Schiphol.

Since changes in charges and the pricing structure can have an impact on network quality, the airport operator is required to provide insight, based on analysis, into the possible effects of proposed charges on the network. The airport operator must explain the analysis in both the notification of the proposed charges and the notification of setting of the charges and conditions. If, in the period between notification of the proposal and setting of the charges and conditions, no major changes are made to the pricing structure or the level of the charges, then in the notification of setting of the charges and conditions it will be sufficient for the airport operator to refer to previous analyses.

A user or representative organisation may ask the Authority for Consumers and Markets to assess whether the airport operator has performed the above-mentioned analysis regarding network quality (an 'assessment of process' in terms of the obligation to inform). The assessment of process does not affect the ability of the Authority for Consumers and Markets to review the set charges and conditions against the principles of reasonableness and non-discrimination.

B

The policy objectives for Amsterdam Airport Schiphol listed in Section 8.3 are unchanged. 'Network quality' has been added to this Section as a characteristic of the airport, to emphasise the importance of that quality in the Act. The Aviation Policy Document (Parliamentary Papers II, 2008/9, 31 936, No. 1) refers to the continuity, quality and network development of Amsterdam Airport Schiphol as a public good, constituting a vital link in the Dutch economy. Network quality has already been explained in detail in Part A of the explanatory notes to individual Sections.

C

System of charges

General

With this legislative amendment, the system of the annual setting of charges is replaced by a system of charges and conditions that, in principle, are set once every three years.

Certain exceptions apply to this system of multi-year charges, such as the charges and conditions listed in Section 8.25db in connection with adjustments to security measures, in the case of exceptional and unforeseen circumstances, and in response to a decision of the Authority for Consumers and Markets or court ruling concerning charges. In those cases, there is the option of setting new charges and conditions to take effect on 1 April or 1 November of any year.

The adjusted charges are assessed with due regard for the general requirements of reasonableness and non-discrimination, the consistency of the adjustments with the requirements as referred to in or pursuant to Section 8.25dg, and the factual accuracy of the adjustments made by means of settlements.

For both the multi-year charges and the new and adjusted charges relating to the introduction of the charges referred to in Section 8.25db(1) to (3), the same process steps are followed (proposal of charges, consultation, possible submission of views, setting of charges, possible submission of an application for an opinion from the Authority for Consumers and Markets). The substance of these process steps may vary.

Multi-year plans for charges and conditions (Section 8.25d)

Like the current system of single-year charges, the multi-year charges system is based on expectations with regard to traffic developments, the evolution of costs, and passenger and cargo volumes. The level of the charges set for the three-year period may vary from year to year within that period. The same applies to the content of the conditions. With regard to the payment terms, such as the invoicing method, payment deadlines and payment method, in the proposals of charges and conditions and in setting the charges and conditions the airport operator must explicitly state which conditions will not change during the next charges period, and which conditions will change, and must specify the substance and timing of the change. It goes without saying that the users and representative organisations must also be consulted on these proposed differences and changes before the charges and conditions in question are set.

A multi-year plan for charges and conditions gives the airport operator more certainty around charges and income over a longer period and gives users more certainty on the costs they will be charged for their use of the airport. 'Use of the airport' includes taking off, landing and parking of aircraft, the handling of passengers and their baggage and cargo handling.

As a result of the enforcement of ex ante cost orientation, which now relates to a longer period, users do not pay more than the actual costs, while the airport operator has the certainty that it will be able to cover its costs. The most significant exception to this cost recovery is the efficiency incentive system that is being introduced, which may result in a temporary gap in the cover of depreciation, capital and operating costs, or in a temporary additional benefit for the airport operator and the users.

Annual adjustments to the multi-year charges (Section 8.25d(4) and (5))

Further details on the annual setting of adjusted charges can be found in the Amsterdam Airport Schiphol Operation Decree. These details include the timing and manner of settlement. The explanatory notes on the settlement equalisation system cover the calculation system in more detail.

Adjustments to the multi-year operating conditions (Section 8.25d(6))

The airport operator applies operating conditions, such as the use of infrastructure, check-in points and piers. These conditions may be adjusted if there is reason to do so. Such adjustments are subject to the same requirements in terms of notification of a proposal, consultation, the possibility of submission of views, the obligatory setting of the conditions and the application of the powers of the Authority for Consumers and Markets. Further details of these requirements in relation to the operating conditions can be found in the Amsterdam Airport Schiphol Operation Decree.

Rearrangement of the former Section 8.25d

The subsections of Section 8.25d have been recast and re-divided to emphasise how certain subsections are interrelated and thus improve readability. At the same time certain editorial changes have been made, although these are not intended to be substantive amendments. Furthermore, in addition to the multi-year charge agreements, certain other substantive changes have been made; these will be explained individually below.

Setting of charges (Sections 8.25d and 8.25db)

With regard to the annual adjustment of charges referred to in subsections (4) and (5), the Amsterdam Airport Schiphol Operation Decree states that the airport operator must produce a full overview of the annual settlements relating to the annual charge adjustments, including the underlying methodology and substantiation. The aim is to

provide clarity around the various types of settlements and their effects on the charges in any given year. This is important for the enforceability of the charges system.

By way of illustration, the following is a list of the various elements applicable to the calculation of the charges:

- projected costs for a specific year within the three-year charges period, based on the estimates from the charges consultation for the previous three-year period, including the regulated return for that period (minus)
- mandatory contribution from non-aviation activities (minus)
- settlements as referred to in Section 8.25d(4) (plus)
- settlements as referred to in Section 8.25d(5), if the airport operator so decides (minus)
- revenues from other activities, as referred to in Section 8.25dd(2), based on the estimates from the previous three-yearly charges consultation (plus)
- cost of structural measures for the implementation of special directions issued by the Minister of Security and Justice, as referred to in Section 8.25dd(3), from the start date of the new charges.

In addition to the adjustments relating to settlements, Section 8.25db also provides for the possibility to have adjusted charges come into effect from 1 April or 1 November of any year. These charges may relate to a recalculation of the costs of aviation activities. The recalculation of costs would lead to a change in the projected costs, as stated under 1 above.

D

Notification of the setting of charges (Section 8.25da(1)) and weight given to users' views in setting the charges (Section 8.25da(2))

When giving notice of the setting of the charges and conditions, the airport operator must, in the interests of all parties involved, report all views that were contributed during and after the consultation, and must explain whether, to what extent and in what manner the views led to any adjustment to the proposed charges and conditions. If the views of a user or representative organisation are categorised as confidential by that user or representative organisation, the airport operator will ensure, at the request of the user or representative organisation concerned, that the information about the views of that user or representative organisation in the notice of the setting of the charges cannot be traced back to that user or representative organisation. In such a case, the airport operator can only communicate in general terms about those views, at the expense of the objective of transparency.

Effective date for charges in connection with adjustments to security measures and exceptional and unforeseen circumstances (Section 8.25db(1) and (2))

Adjustments to security measures may give rise to new charges and conditions from 1 April or 1 November of any given year, during the three-year period of the multi-year charges. The existing option of having the charges come into force on two dates is thus retained. As with the setting of the regular charges and conditions for the three-year period, in these situations too it is imperative to strike a balance between the interests of the airport operator and those of the users. The new charges and conditions will apply for the remainder of the original three-year period, unless the security measures are adjusted again. In that case, these new conditions will be applied in place of the already-adjusted charges and conditions.

Exceptional and unforeseen circumstances arising during the fixed three-year period for which the multi-year charges are set can make it necessary to set interim new charges and conditions, effective from 1 April or 1 November of any year.

The concept of 'exceptional and unforeseen' indicates that the circumstances occur infrequently. This category does not include circumstances (or the risk thereof) which the airport operator had been able to take into account in the charges proposal and consulted the users and representative organisations about. If exceptional and unforeseen circumstances arise, in the charges proposal and when setting the new charges in connection with changes to costs the airport operator must seek a balance between the interests of the airport operator and those of users. The term 'exceptional and unforeseen' is explained in more detail in the Amsterdam Airport Schiphol Operation Decree.

If the exceptional and unforeseen circumstances still exist at the end of the multi-year period, they must be taken into account in the proposal of charges and conditions for the subsequent multi-year period. When the exceptional and unforeseen circumstances end, new charges and conditions will come into force on 1 April or 1 November of any year, after the applicable procedures for proposing and setting charges and conditions have been followed.

New charges in response to structural changes (Section 8.25db(3))

In response to a decision by the Authority for Consumers and Markets (either a decision as referred to in Section 8.25f(4) or a decision made under Section 11.24) or in response to a court ruling, the airport operator is permitted

to adjust the charges and conditions for the remainder of the original three-year period if that decision or ruling impacts on the structure of charges.

If the Authority for Consumers and Markets makes a decision that, for example, impacts on the charges for boarding and departing passengers, without adjustment of the other charges this could mean that the cost orientation requirement is no longer met for the remainder of the three-year period. For these reasons, the airport operator is permitted to set and effect new interim charges for the remainder of the multi-year charges period. Any such adjustment must be in compliance with the rules for making charge proposals.

General principles (Section 8.25dc)

In this legislative proposal, subsections (2) and (4) of Section 8.25d are incorporated into subsections (1) and (3) of Section 8.25dc with no substantive changes. Ex ante cost orientation in terms of the total revenues from charges, and the principles of reasonableness and non-discrimination with regard to individual charges and conditions, remain in full force, as explained in greater detail in Part 2 of the general part.

Subsection (3) of Section 8.25d was introduced with the amendment to the Aviation Act resulting from the implementation of the Airport Charges Directive, No. 2009/12/EC (Bulletin of Acts and Decrees 2011, 67) and in this legislative proposal has been incorporated unchanged into Section 8.25dc(2).

The provision concerning security measures (Section 8.25dc(4)) has been amended, because the current wording may not provide sufficient scope to work with other cost units (such as aircraft). The amendment to this security measures provision is not intended to change the principles of cost allocation between aviation and non-aviation activities.

Aviation activities and non-aviation activities (Section 8.25dd(1))

The size of the contribution from non-aviation activities must be set prior to the three-year charges period in question and incorporated into the charges proposal. The airport operator will determine how the contribution is spread over the years, with the aim of ensuring maximum stability in the evolution of charges. The contribution from non-aviation activities will be determined in compliance with the benchmark return on the equity capital of Schiphol Group during the multi-year charges period, maintenance of a single A credit rating, the ability of the airport operator to finance investments, the return generated in the previous period, and other circumstances and considerations relevant to the airport operator.

Further details of how the contribution will be determined can be found in the Amsterdam Airport Schiphol Operation Decree. By their nature, the decision regarding the determination of a contribution to aviation activities from non-aviation activities and the level thereof are not subject to consideration by the Authority for Consumers and Markets. This is regulated by Section 8.25f(1). The technical handling of the contribution through an adjustment of the charges, and the assessment of whether, after implementation of the contribution, the charges will meet the material requirements for charges (reasonable and non-discriminatory), are obviously subject to consideration by the Authority for Consumers and Markets.

Activities directly connected with aviation activities (Section 8.25dd(2))

Subsection (6) of the former Section 8.25d is unchanged. The activities referred to in this subsection still relate, for example, to the granting of a concession for aircraft fuel supply, and the granting of a concession for aircraft catering.

Five-year investment programme (Section 8.25de)

For the purpose of justifying the costs and charges for the multi-year charges period, an investment programme will be established for the first three years. The investment programme for the time remaining after the three-year charges period will be indicative.

The investment programme is primarily important for providing insight into the effects of the investments under the programme which wholly or partially relate to aviation activities, on the costs and charges for the subsequent multi-year charges period. Consultation on the investment programme must therefore be synchronised with consultation on the three-year charges and conditions. This is why the timing of the establishment of the investment programme must coincide with the timing for the setting of the multi-year charges and conditions. The Authority for Consumers and Markets will not review the investment programme as such, but may on request examine the effect of the investment programme on the charges and conditions and any conflict with any rules established in or pursuant to this Act. In addition, on request the Authority for Consumers and Markets may examine whether an adequate process was followed to obtain support for the charges proposal and the multi-year investment programme.

In the description of the 'consultation of users' part below, consideration is given to an interactive process between the parties concerned prior to the formal consultation ('pre-consultation'). The effects of the investment programme on the charges can be clarified by discussing the investment programme in that pre-consultation phase before discussing the charges and conditions.

In the same manner as for charge proposals, a user or representative organisation may categorise its views as confidential. In such a case the airport operator will ensure, at the request of the user or representative organisation, that the information about the views of that user or representative organisation in the notice of the establishment of the investment programme cannot be traced back to that user or representative organisation. In such a case, the airport operator can only communicate in general terms about those views.

By its nature, the investment programme must remain dynamic and be able to be adjusted to changing circumstances and insights. When such changes occur, it is important to use the support obtained for the investment programme from the users or representative organisations as a framework. The annual consultation about the proposals for adjusted charges can also be used to obtain support from users for these changes to the investment programme. Interim adjustments to the investment programme will not lead to interim adjustments to the charges set for the three-year period.

For consistency reasons, the wording 'users and representative organisations' is retained in subsection (3)(b). The investment programme will also include investment projects for aviation activities that exceed a specific expenditure amount, including the cost of capital, set by a general order in council. More detail on the individual investment projects is given below.

In the event that an investment included in the first three years of the investment programme is implemented earlier or later than planned, or does not take place at all, Section 8.25dg contains rules governing the ensuing financial consequences.

Efficiency incentives (Section 8.25df)

Efficiency incentives for investment projects over a specific threshold value

General

In view of the purpose of this Act, namely to regulate the aviation activities of the airport operator, the efficiency incentives system will relate only to investment projects or any individual component thereof concerning aviation activities.

The total projected amount of expenditure for aviation activities of such an investment project is equivalent to the sum of the price stated by the successful tenderer(s) in their tenders, the expenditure on the works contracted for the investment project outside the tendering process (under an umbrella contract for example), the expenditure on the airport operator's own project office and the capitalised costs of the work in progress. The total of this expenditure must then exceed an amount to be set by a general order in council.

In the letter of 5 June 2013, a threshold value of 20 million euros was mentioned. The threshold value therefore exclusively concerns expenditure relating to aviation activities. An investment project with, for example, a total projected level of expenditure of 25 million euros, of which 22 million euros related to aviation activities, would fall under the efficiency incentives system. If the portion of the projected investment expenditure relating to aviation activities amounted to 15 million euros, this investment project would not fall under the efficiency incentives system.

Section 8.1(b) (Part A of this legislative proposal) contains a definition of the concept of 'investment project'. It is understood to mean the totality of associated services, goods or works included as such in the investment programme, of which the expenditure on aviation activities exceeds a specific amount to be set by a general order in council. Included in that totality are:

- a. services, goods or works, or combinations thereof that are comparable to the public procurement contracts for services, goods or works referred to in Section 1.1 of the Public Procurement Act 2012, for which a tendering process is required in accordance with that Act; and
- b. services, goods or works, or combinations thereof for which no tendering process is required.

Investments – particularly those over a certain value – tend to have long lead times, comprising a number of phases with differing degrees of uncertainty, before they are contracted out or put out to tender, completed and put into service. They may also be implemented in phases. For these reasons, individual investment projects cannot immediately be fitted into a fixed timetable, such as the timetable for the making of proposals, the setting of multi-year charges and the establishment of the multi-year investment programme. It goes without saying that at a certain point in time these projects will also be included in the regular five-year investment programme (mentioned in Section 8.25de). The expenditure on such investment projects, plus the capitalised costs of the work, will be incorporated into the Regulatory Asset Base, the cost justifications and the charges. The Regulatory Asset Base is the value of the tangible fixed assets used for aviation activities.

Before the start of an investment project, a project group will be established in which all users and representative organisations may participate. The airport operator will consult the project group about the investment project from time to time. The general order in council, which is yet to be drafted, will set rules around the manner and timing of the creation of the project group. Participants will be expected to actively contribute to the work of the project group. In view of the confidential information they will obtain, it would be logical for participants to sign a confidentiality agreement.

The aim of the information to be provided by the airport operator to the members of the project group, the informal meetings and the formal consultations is to offer users an optimal price-quality ratio and to formulate a realistic budget.

The development of the efficiency incentives system took into consideration the current set-up of the airport operator's procurement process for investment projects.

*Investment project implementation process (Section 8.25df)
Developing an investment project proposal*

Before an investment project can be implemented, the airport operator must develop a proposal for the project. The project group will be involved in the various phases of developing this proposal. The time frames and the process to be followed will form part of the dialogue in the project group. In the absence of agreement, a time frame of no more than four weeks will apply.

Notification of an investment project proposal (Section 8.25e(7))

Before the start of the tendering or contracting process, the airport operator must give notice to the project group of a proposal for an investment project or any individual component thereof. This obligation to inform is contained in Section 8.25e(7). At a minimum, the proposal must contain the following elements, specified in the Amsterdam Airport Schiphol Operation Decree:

- a. the functional specifications of the investment project. Functional specifications describe a project in terms of the appropriate quantitative outputs specific to that project;
- b. the estimate of the project expenditure;
- c. a cost review, if it has been drawn up at the project group's request, which contains the findings of one or more independent third-party experts on the costs together with the justification for those findings, and the functional specifications, both individually and in conjunction with each other;
- d. the decision of the airport operator's investment committee on the project or project components (project assessment).

Consultation of the project group and opportunity to submit views (Section 8.25e(9))

The next step is formal consultation of the project group on the investment project proposal. For this consultation too, the airport operator and the members of the project group are expected to collectively find an optimal way of working, so as to minimise delays in the implementation of the project. In principle, any user can be involved in the consultation by participating in the project group. It goes without saying that the airport operator may provide sensitive and confidential information to the project group only under an obligation of confidentiality. The users and representative organisations in the project group may give their views on the proposal. In the absence of agreement, a time frame of no more than four weeks will apply for the submission of views.

Assessment of process by the Authority for Consumers and Markets on the consultation on an investment project proposal (Section 8.25fa)

A user or representative organisation that is a member of the project group may request the Authority for Consumers and Markets to assess whether the airport operator has sufficiently followed the rules concerning the creation of the investment proposal. From a time-saving perspective, a time frame of two weeks after receipt of the information has been chosen for the submission of an application. The complaint may relate to the lack of timeliness of the consultation, a failure to provide the required information or a failure to provide adequate information.

The Authority for Consumers and Markets will assess whether the process was followed in a timely, comprehensive and correct manner, but will make no substantive assessment of the usefulness or necessity of the investment project. The Authority for Consumers and Markets will process the application within two months. This two-month period will be suspended from the moment that a request (for information, for example) is sent to the airport operator until the moment that the airport operator provides a response to that request.

If the Authority for Consumers and Markets concludes that the airport operator did not fully comply with the procedural rules, it will so inform the airport operator, which must remedy the stated deficiencies in its process.

After a balancing the nature of an assessment of process against the limited role of the Authority for Consumers and Markets as an arbitrator, the interests of the airport operator in preventing disruptions to its business operations, the importance of being able to make investments in a timely manner, and the potentially significant loss of time with the standard avenues for appeal, it was decided not to allow any mechanisms or avenues for appeal from a decision by the Authority for Consumers and Markets.

Establishing the estimate of expenditure and functional specifications (Section 8.25df(3))

In its notice of the establishment of the estimate of expenditure and functional specifications, the airport operator must include the views of the members of the project group. It is for the airport operator to decide which views it will wholly or partially incorporate in its establishment of the estimate of expenditure and functional specifications. These elements may therefore differ from what is included in the notification of the proposal of an investment project or any individual component thereof.

Next, the tendering procedure is held in accordance with the rules in effect within the airport operator's organisation.

Notification of an investment budget (Section 8.25df(4))

After the tendering or contracting process, the airport operator will provide the project group with the information specified in the Amsterdam Airport Schiphol Operation Decree regarding the outcome of the process, including at a minimum the final tender amount and the key points of the functional specifications.

The notified tender amount plus the other projected project costs, mentioned previously, will be treated as the expenditure budget from the moment of notification.

Notification of actual expenditure (Section 8.25df(5))

After completion of the realisation phase, the airport operator will, at a minimum, provide the project group with information on the differences between the expenditure budget and the actual investment expenditure. If the difference exceeds a percentage to be determined by a general order in council, it will form the basis for determining the size of the efficiency incentive for the investment project in question during the remaining years of the three-year period and the subsequent three-year period, as well as whether the incentive will be allocated to the users or to the airport operator. Furthermore, the airport operator will provide insight into the functional specifications that were actually achieved, compared to the functional specifications as included in the outcome of the tendering process.

The Amsterdam Airport Schiphol Operation Decree specifies the information to be provided to the project group.

The efficiency incentives system (Section 8.25dg(9) and (10))

If there is a difference between the expenditure budget for an investment project and the actual investment expenditure, the effect of this difference on the annual costs associated with the investment project (depreciation, capital and operating costs) must be determined.

This system is described in greater detail in the Amsterdam Airport Schiphol Operation Decree, in accordance with the outline given in the letter of 5 June 2013 mentioned above. If the actual expenditure for certain investment projects exceeds the expenditure budget by a percentage to be determined by a general order in council, the difference in annual depreciation, capital and operating costs will be borne entirely by the airport operator. If the actual investment expenditure is lower than the percentage of the budget to be determined by a general order in council, the cost advantage in the form of the aforementioned annual costs will be allocated equally (50/50) between the airport operator and the users for the remaining years of the three-year period in which the investment is put into service and the subsequent three-year period. The efficiency incentive relates solely to the costs for the period prior to the point at which an investment project, or any individual component thereof, is put into service. 'Operating costs' means the non-capitalisable project costs, such as expenditure for the commissioning of initial sketches, or expenditure from the airport operator's own project office in the early stages of the investment project. The depreciation costs and costs of capital are based on the capitalised investment expenditure (in the Regulatory Asset Base).

The information about any difference that may occur between the actual and budgeted investment expenditure may become available to the airport operator at any time. The airport operator will make this information available to the users and representative organisations in the project group immediately upon completion of the investment project. The project group can then assess whether the investment project has been completed in accordance with the functional specifications and budget established after consultation of the project group by the airport operator. If the discrepancy between the investment budget and the actual investment expenditure exceeds the percentage to be determined in a general order in council, the difference in the annual depreciation, capital and operating costs resulting from the total discrepancy will either be deemed to be a settlement (Section 8.25dg(9)) or temporarily excluded from the costs and charges. The airport operator will ensure that this forms part of the consultation regarding the establishment of the annual charge adjustments.

Changes in the functional specifications at the request of the users and representative organisations in the project group are still possible during the realisation process, and, in accordance with Section 8.25df(6), will fall within the efficiency incentives system. The airport operator will clarify the consequences for the investment budget, reflected in the costs associated with this investment project or the components thereof and presented to the project group for consultation.

The efficiency incentive system does not apply to any cost differences arising if the investment project is put into service earlier or later than scheduled. In that situation, the settlement referred to in Section 8.25dg(6) applies.

The efficiency incentives system does not apply if the airport operator is able to demonstrate and substantiate that the actual investment expenditure has exceeded the budget due to exceptional and unforeseen circumstances. In such situations, the airport operator thus has an obligation to provide reasons to the users and representative organisations in the project group, indicating in a timely and justified manner what exceptional and unforeseen circumstances have arisen and what the impact of those circumstances will be on the set budget. After completion of the regular procedures for investment projects, the airport operator will have to establish a new estimate and budget.

Settlement equalisation (Section 8.25dg replacing Section 8.25d(4) and (5))

Section 8.25dg describes the basis for the settlements. The existing forms of settlement are retained. These settlements were included in the Act or mentioned in the explanatory notes to the Amsterdam Airport Schiphol Operation Decree. Now, all forms of settlement are set out in the Aviation Act. In addition, several new settlements have been added. The table below provides further information.

Aviation Act (current)		Legislative amendment, Section 8.25dg
Section 8.25d(10)	Settlement for differences in revenues and costs in connection with traffic and transport projections and achievements	Subsection (1) Settlement for differences in revenues and costs in connection with traffic and transport projections and achievements
Section 8.25d(11)		Subsection (2) Additional revenues from charges for security following revocation of structural security measures where charges have not yet been adjusted accordingly
		Subsection (3) Settlement for differences in turnover resulting from Authority for Consumers and Markets decision on complaint
		Subsection (4) Settlement for differences in turnover resulting from official decision by Authority for Consumers and Markets or court ruling
		Subsection (5) Settlement for differences in turnover resulting from Authority for Consumers and Markets decision or court ruling with impact on structure of charges
Section 8.25d(10)	Settlement for investment performance	Subsection (6) <ul style="list-style-type: none"> • Settlement for differences in annual depreciation, capital and operating costs based on differences between planned and achieved investment expenditure (excluding efficiency incentives) • Settlement for commissioning or divestment earlier or later than scheduled
Explanatory Memorandum to the Decree	Additional/reduced costs in connection with investments	
Explanatory Memorandum to the Decree	Additional/reduced investment, including divestment (effect on depreciation and cost of capital for the Regulatory Asset Base)	
Explanatory Notes to Decree	Settlement for differences between estimated and actual costs related to activities imposed by government or at user's request	Subsection (7) Settlement for differences between estimated and actual costs related to activities imposed by government or at user's request
		Subsection (8) Differences between estimated and actual costs when exceptional and unforeseen circumstances start or end
		Subsection (9) Settlement for lower-than-estimated investment expenditure for investment

		project, where difference between budget and expenditure exceeds a percentage fixed by general order in council (efficiency incentive)
		Subsection (10) No settlement in case of higher-than-estimated investment expenditure for investment project, where difference between budget and expenditure exceeds a percentage fixed by general order in council (efficiency incentive)
Explanatory Notes to Decree	Insurance premiums for terrorism damage cover	Subsection (11) Settlement for insurance premiums for terrorism damage cover
Explanatory Notes to Decree	Delay in execution of activities relative to forecast time frame	Subsection (12) Settlement for delayed activities

In relation to the types of set-off included in this summary, the following comments can be made:

- In accordance with subsections (3) and (4), a number of settlements may be made that are related to decisions by the Authority for Consumers and Markets or to court rulings. Those decisions by the Authority for Consumers and Markets may relate to an application by a user or representative organisation regarding a conflict between the setting of charges or conditions, and certain rules established in or pursuant to the Act. This situation occurs only in relation to those charges and conditions, or adjusted charges and conditions, which the Authority for Consumers and Markets has designated to be suspended pursuant to Section 8.25f(2).
It might also relate to a decision by the Authority for Consumers and Markets.
Depending on the decision by the Authority for Consumers and Markets, retroactive revenue adjustments may be necessary.
- Subsection (5) also provides for a settlement for lost revenue arising as a direct result of a decision by the Authority for Consumers and Markets about charges, or the structure of charges, which impacts on that structure. If, for example, the Authority for Consumers and Markets made a decision which impacted on transfer charges, it would no longer be possible to adjust other charges, because the users could not be consulted in time. As a result of the introduction of charges for a three-year period the ex ante cost orientation requirement for the charges would no longer be met, and the financial consequences for the airport operator of such a decision could become excessive. For these reasons, the airport operator is permitted to incorporate that lost revenue into the annual charge adjustments by means of a settlement.
- The settlement mentioned in subsection (6) relates to investments and exclusively concerns a clarification relative to the current wording of the Act and in the explanatory notes for the Decree. Subsection (6) provides that the differences in annual depreciation, capital and operating costs resulting from differences in the extent of the planned and actual investment expenditure can be offset (with the exception of investment projects for which efficiency incentives apply). This includes settlements associated with an investment that is put into service earlier or later than scheduled, or an investment that is taken out of service earlier or later than scheduled.
- In accordance with subsection (8), differences in estimated and actual costs due to exceptional and unforeseen circumstances can be offset. This relates to an increase in costs in the event of new charges associated with those circumstances, or a decrease in costs when those circumstances cease to exist.
- The settlement mentioned in subsection (9) in the context of the efficiency incentives relates to the situation where the investment budget for an investment project relating to aviation activities exceeds an amount to be determined by a general order in council and is higher than the actual investment expenditure for that investment project, and the difference between budget and expenditure is greater than a percentage fixed by a general order in council. In that situation, half of the difference in depreciation, capital and operating costs, resulting from that difference between budget and actual expenditure, will be incorporated into the charges for a specified period.
- Subsection (10) provides that the difference in annual depreciation, capital and operating costs resulting from a difference between the investment budget and higher actual investment expenditure for an investment project, during a specific period, will be excluded from the costs and charges and thus also from the settlements in the context of the efficiency incentives, if the difference between budget and expenditure is greater than a percentage fixed by general order in council.

With the exception of the settlements associated with the efficiency incentives, the settlements in the context of this Act will, in principle, be spread over three consecutive charge years, regardless of the three-year charges period. The settlements will be made by means of annual charge adjustments. The general order in council, which is yet to be drafted, will set rules around how the settlements will be made.

Under Section 8.25d(4), the airport operator is required to offset an amount from a certain category if that leads to a reduction in charges. Under Section 8.25d(5), the airport operator, in view of the need to achieve maximum stability in charges, may, in any given year, taking account of the situation in the aviation sector and with the aim of keeping the evolution of charges as stable as possible, wholly or partially refrain from offsetting the amount

from a certain category if offsetting that item would lead to an increase in charges. In this way, the airport operator can allow the charges to move in line with general economic developments and specific aviation-related developments.

Refraining from a settlement in any given year does not exclude the possibility of that settlement being made in a subsequent year, provided the permitted settlement period of no more than three financial years, set by general order in council, is not exceeded.

During the annual consultation on the proposals for adjustments to the charges and conditions, the airport operator will provide insight into the extent of the various set-off options, with the intention of wholly or partially refraining from effecting the settlement if Section 8.25d(5) so permits, and into the balance of the amounts to be offset for the year in question, by which the charges will be adjusted.

The Amsterdam Airport Schiphol Operation Decree explains in greater detail the timing and procedure for effecting the settlements.

F

Benchmarks in the context of notifications regarding proposals for charges and conditions and adjusted charges (Section 8.25e(1) and (2))

In the notifications of proposals for charges and conditions (Sections 8.25d(1) and 8.25db(1) to (3)), in addition to the economic justification for the charges and the factors influencing that justification, consideration must also be given to the results of a number of benchmarks. These include the following:

- **Benchmark for the evolution of costs at Schiphol:**
This relates to the evolution of costs in the current year and a projection of the costs for the remaining years of the current multi-year period, in comparison with the evolution of costs over the past five calendar years. In the information concerning the evolution of costs, a distinction will be made between the various types of costs.
- **Benchmark for airport charges:**
This benchmark refers to the development of the airport charges of the operator of the airport for transfer, destination and freight traffic in the current year and the remaining years of the current multiannual period in comparison with the development of the airport operator. The airport charges applied in the last five calendar years and the airport charges in the last five years of a number of foreign airports in a yet to be determined peer group. The composition of the peer group takes place in consultation between the operator of the airport, the users and representative organizations, on the basis of a process to be determined by order in council
- **Quality indicator benchmark:**
This benchmark relates to the evolution of a number of quality indicators, with a focus on a comparison of their evolution at Schiphol over the preceding five calendar years with the evolution of the same indicators at a number of foreign airports in a peer group, which is yet to be composed. For a number of quality indicators, a comparison with airports in a peer group will not be possible due to a lack of data from foreign airports. In these cases, only the evolution of the quality indicators at Schiphol over the preceding five calendar years will be stated.
The quality indicators will be determined in consultation between the airport operator, users and representative organisations, based on a process to be determined by a general order in council.

The airport operator will publish the results of the benchmarks annually, and will send them to the Authority for Consumers and Markets as well as to the users and representative organisations, by no later than the time of the notifications referred to in Section 8.25e(1) and (2). Section 8.25ga has been amended accordingly.

Within the multi-year charges period, the results of the benchmarks will be discussed on an annual basis, in the context of the annual consultation, along with the progress of and changes to the investment programme.

Consultation of users and representative organisations (Section 8.25e(5))

The process for consulting users and representative organisations has been amended. Instead of the current annual consultation about charges and conditions, in future comprehensive consultation about the charges and conditions will take place only once every three years. This consultation will be conducted in several phases. In the three-yearly consultation, views on a proposal from an earlier phase will be incorporated into the discussion of any amended proposal in a subsequent phase of the process.

It is important that at the start of the formal consultation process about the charges and conditions for the next three-year charges period, a summary is presented of the key points with regard to the charges and conditions for the coming multi-year period that were discussed by the airport operator and the users and representative organisations during the preparatory phase. The same applies to charge adjustments through settlements in the next year of that period. For this reason, it was decided to allow for an interactive process to occur between the parties concerned, prior to the formal consultation ('pre-consultation'). The arrangements for this process will be left to the parties to decide. Section 8.25e(6) places an obligation on the airport operator to give advance notice to the users when it intends to establish a five-year investment programme.

In addition to the three-yearly consultation on charges and conditions and the investment programme, there will also be an annual round of consultations in which the airport operator will discuss with users the progress of the investment programme, including the investment projects with a value higher than a threshold to be set by general order in council, and the planned efficiency measures. Furthermore, during this annual consultation the airport operator will provide information about the individual settlements, the balance of the settlements, the adjustments to the charges as referred to in Section 8.25dg and the benchmarks. Further details about the consultations will be provided in the Amsterdam Airport Schiphol Operation Decree.

G

Right of complaint (Section 8.25f)

With the amendment to the Aviation Act resulting from the implementation of the Airport Charges Directive, No. 2009/12/EC of 11 March 2009 (PbEC L70), the arrangements regarding requests for an opinion from the Authority for Consumers and Markets about a possible conflict between the set charges and conditions and certain rules established in or pursuant to the Act were brought into line with the above Directive. No substantive amendments have been made to these arrangements. It goes without saying that the provisions take account of the present proposal. For reasons of system consistency, the settlement of differences in charges in the event that a conflict between the set charges and conditions and the provisions established in or pursuant to this Act is found by the Authority for Consumers and Markets, has been moved to Section 8.25df, where all of the settlements are located.

For the sake of completeness, it is noted that the assessment by the Authority for Consumers and Markets against the rules established in or pursuant to this Act is not provided for, or limited, in certain respects. This relates, for example, to the level of the non-aviation contribution (Section 8.25dd), the treatment of documents as confidential (Section 8.25e(13) and (14)) and the assessment of process concerning investment project proposals.

In the event of complaints concerning charges and conditions, in compliance with Article 11(7) of the Airport Charges Directive, No. 2009/12/EC of 11 March 2009 the Authority for Consumers and Markets will make a final decision within four months. In exceptional cases, this period may be extended by two months, for example if – partly to protect users – the airport operator is requested to provide information. The General Administrative Law Act also allows for the possibility of a complaint being handled in real time, i.e. the period is suspended whenever and as soon as the application is found to be incomplete, and Section 4:5 of the General Administrative Law Act is applied. Handling of the application must then be suspended, since the applicant must be given an opportunity to complete the application. If a great deal of information is required, it may become necessary to extend the decision-making period. Subsection (3) is in line with the basic principles of the General Administrative Law Act mentioned above.

I, K and M

These amendments relate only to changes to references resulting from the amendments to the Aviation Act.

L

Under Section 8.29a, the airport operator must periodically issue a report on the operation of the airport. The Amsterdam Airport Schiphol Operation Decree will specify that, in this report, the airport operator must describe the development of the network of air links during the reporting period, as well as the expected future development and the way in which the airport operator will support that development. In this context, the Minister of Infrastructure and the Environment will estimate whether the airport operator has sufficiently taken into account the development of network quality. There will be regular consultation between the airport operator and the Minister of Infrastructure and the Environment about this report, in which the annual monitor will also be involved, so that at the behest of the Minister of Infrastructure and the Environment the network development at Schiphol can be monitored in comparison with a number of competitor airports. In that regular consultation, participants can focus on the expected effects of charge proposals on network development and the actual effects on the network, partly in relation to other public interests and possible corrective measures. In that way, the provisions included in or pursuant to this Act in relation to the proposals, consultations and setting of charges and conditions and the powers of the Authority for Consumers and Markets will be taken into account. This excludes the possibility of overlapping powers (concurrent powers).

Section II

Section 8.25fa of the Aviation Act is inserted into Section 1 of Annex 2 of the General Administrative Law Act. Section 1 of Annex 2 contains the rules of administrative jurisdiction, which specifies the regulations for which, contrary to Chapter 8 of the General Administrative Law Act, a different avenue for appeal may apply. No appeal may be instituted against a decision made pursuant to a regulation referred to or otherwise described in this Section.

Section III Transitional arrangements

Transitional arrangements have been included for proposals for charges and conditions of which users have already been notified before this Act comes into force, for applications which have already been submitted to the Authority for Consumers and Markets before that date, and for charges and conditions which have already been set. The old law applies to these situations.

The charges and conditions set by the airport operator before this Act comes into force remain valid until such time as the multi-year charges and conditions take effect.

These provisions aim to organise the transition from the system of annual charges and conditions that have been set according to current procedures, to the charges and conditions which will be in effect for a period of three years. Without these provisions, there might be uncertainty both for the airport operator and for users about the charges and conditions to be applied.

The tendering process or the realisation of a number of investment projects or individual components thereof may have already commenced upon the entry into force of this Act. As part of the transitional arrangements, it is important to set out the possible applicability of the efficiency incentive system to these investment projects. It has therefore been proposed that the new provisions be applied only to investment projects of which the tendering process or realisation phase do not commence until at least three months after the entry into force of the Act. When the Act enters into force, there will be amounts to be offset that relate to years for which charges were set under the 'old' regulations. The transitional arrangements are necessary to establish how to deal with these settlements.

It has been proposed that the calculation and establishment of the settlement amounts, as set out in the Regulatory Accounts for the financial year in question, be based on the statutory provisions that applied at the time the charges were set for the charge year in question, i.e. on the 'old' regulations. The settlement in charges can then be effected pursuant to the provisions of the new Act, which implies that the settlement amounts will mostly be spread over three charge years.

Finally, it is important that the time between the date on which the Act comes into force and the date on which the charges and conditions are set for the first three-year period is sufficiently long to enable consultation on these charges and conditions in accordance with the procedures set out in the new legislation, including the time necessary for approval of a new allocation system. Bearing this in mind, a period of no more than fifteen months is necessary to be able to organise an effective process of consultation and pre-consultation and obtain timely approval for a new allocation system.

State Secretary for Infrastructure and the Environment
W.J. Mansveld