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We, Willem-Alexander,
By the grace of God,
King of the Netherlands,
Prince of Oranje-Nassau,
Etc. etc. etc.

Decree of

containing rules on the operation of Amsterdam Airport Schiphol (Amsterdam Airport Schiphol Operation Decree 2017)

On the nomination of the State Secretary for Infrastructure and the Environment of, No. IenM/BSK-, Directorate of Administrative and Legal Affairs, made in consultation with our Minister of Economic Affairs;

In view of Section 8.1b(1), Section 8.25di(1), Section 8.25e(12), Section 8.25f(8), Section 8.25fa(7), Section 8.25g(5) and Section 8.29a(2) of the Dutch Aviation Act (*Wet luchtvaart*);

Having heard the opinion of the Advisory Division of the Council of State (opinion dated, No.);

Having regard to the further report of the State Secretary for Infrastructure and the Environment dated, No. IenM/BSK-, Administrative and Legal Affairs Department, issued in consultation with Our Minister of Economic Affairs;

Have approved and decreed:

CHAPTER 1. GENERAL

Article 1. Definitions

1. In this decree, the following terms have the following meanings:

quality indicators benchmark: an overview of the development of quality indicators at the airport over the last five calendar years compared to the development of quality indicators over the last five calendar years at a number of foreign airports in a peer group;

capacity development plan: a substantiated description of the demand for and the desired offer of airport capacity over the next five financial years, to be calculated from the financial year in which the next charges period commences;

Euribor: the interest rate determined by the European Banking Federation on a daily basis, at which interbank deposits in euros with different maturities are offered on the money market, in those countries in which the euro is a payment instrument;

functional specifications: the requirements imposed – with a view to future use – on an investment project or components thereof that to be realised, phrased in terms of quantitative performance, where possible supplemented with quantitative and qualitative features;

initial overcapacity: the difference between projected capacity and expected demand for traffic and transport that exists at the time tangible fixed assets or a complex of tangible fixed assets are put into operation;

investment programme: an overview of investments relating to aviation activities, in full or in part, over the next five financial years, to be calculated from the financial year in which the next charges period commences;

cost benchmark: an overview of the development of the costs of aviation activities over the last five financial years preceding the proposals as referred to in Section 8.25e(1) and (2) of the Act and the forecasts of the costs in the current financial year and the remaining financial years of the current charges period;

airport: Amsterdam Airport Schiphol;

aviation activities: the activities of the airport operator as referred to in Section 8.25d(1) of the Act;

peer group: a group of as many foreign airports that are comparable to the airport as possible;

project group: the project group as referred to in Section 8.25df(1) of the Act;

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charges period: the three-year period as referred to in Section 8.25d(1) for which the airport operator determines the charges and conditions for aviation activities;

charges benchmark: an overview of the development of the various charges of the airport operator for transfer traffic, destination traffic and cargo traffic over the preceding five years, in the current year and in the remaining years of the current charges period, compared to the development of the rates applied at a number of foreign airports in a peer group over the last five years and – where possible – in the current year

allocation system: the allocation system as referred to in Section 8.25g(1) of the Act;

'unuiteiten' method: the depreciation method for tangible fixed assets or a complex of tangible fixed assets, with a constant amount in depreciations and capital costs per unit of product during their expected useful life, the value of which exceeds one hundred million euros and which is characterised by an initial overcapacity.

Act: the Dutch Aviation Act (*Wet luchtvaart*);

2. The amount for an investment project as referred to in Section 8.1b(1) of the Act is 20 million euros.

Article 2. Aviation activities

1. The aviation activities concern the activities of the airport operator for the purposes of:
 - a. the take-off and landing of aircraft, including in any case the use by aircraft of taxiways, runways and aprons;
 - b. aircraft parking, including in any case the use by aircraft of the parking facilities at the airport;
 - c. the handling of aircraft passengers and their baggage, as well as of cargo in connection with the take-off and landing of aircraft, including in any case:

1°. use of the passenger terminals; and

2°. use of the approach roads;

- d. the execution of civil aviation security, including border control facilities.
2. The other activities as referred to in Section 8.25dd(2) of the Act that are directly related to the aviation activities include:
 - a. the granting of a concession for aircraft fuel supply;
 - b. utility services;
 - c. activities by or on account of the airport operator that are charged to aviation activities and are billed to third parties; and
 - d. the granting of authorisations for secured areas to third parties.

CHAPTER 2. CHARGES AND CONDITIONS, INVESTMENT PROGRAMME AND INVESTMENT PROJECTS

§1. Determination of charges and conditions, adjusted charges, adjusted operating conditions, new charges and conditions and investment programme

Article 3. Announcement of the determination

1. The airport operator will announce the determination of the charges and conditions, adjusted charges, the adjusted operational conditions, the new charges and conditions and the investment programme as referred to in Section 8.25da(1), (4) and (5), Section 8.25db(4) and Section 8.25de(2) of the Act, respectively, by:
 - a. making the announcement available for inspection at, in any case, the offices of the airport operator at the airport;
 - b. notice of the announcement by digital means, in such manner that it reaches the users and representative organisations as efficiently as possible; and

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- c. – at the request of a user or representative organisation – sending the announcement to the address indicated by them.
2. In the notice of the announcement as referred to in subsection (1)(b), the airport operator will state the date on which the charges and conditions, the adjusted charges, the adjusted operational conditions, the new charges and conditions and the investment programme were determined, the period for which and the location and times at which these will be available for inspection.
3. In the notice of the announcement of the determination of the adjusted operational conditions as referred to in Section 8.25da(5) of the Act, the airport operator will also state the date on which these conditions will be implemented.

Article 4. Time of the announcement of the determination

1. The airport operator will announce the determination of the charges and conditions as referred to in Section 8.25da(1) of the Act and the determination of the investment programme as referred to in Section 8.25de(2) of the Act at least five months before the date on which the charges and conditions will be implemented.
2. The airport operator will announce the determination of the adjusted charges as referred to in Section 8.25da(4) of the Act and the new charges and conditions as referred to in Section 8.25db(4) of the Act at least five months before the date on which the adjusted charges and conditions will be implemented or the date the new charges and conditions will be implemented.
3. The airport operator will announce the determination of the adjusted operating conditions as referred to in Section 8.25da(5) of the Act at least eight weeks before the date on which the adjusted operating conditions will be implemented.

Article 5. Combination of the announcements of the determination

1. The announcement of the determination of the charges and conditions as referred to in Section 8.25da(1) of the Act will be combined with the announcement of the five-year investment programme as referred to in Section 8.25de(2) of the Act.
2. If the implementation of the annual adjusted charges as referred to in Section 8.25d(4) and (5) of the Act, coincides with the implementation of the charges and conditions as referred to in Section 8.25d(1) of the Act, or the new charges and conditions as referred to in Section 8.25db(1) to (3), the announcements of the determination of these charges and conditions will be combined into a single announcement.

Article 6. Contribution from non-aviation activities

The contribution as referred to in Section 8.25dd(1) of the Act will be determined with due observance of:

- a. the expected average annual return on the equity capital of the company to which the operator of the airport belongs in the rate period;
- b. the benchmark return determined for the next rate period on the equity capital of the company to which the operator of the airport belongs.

§2. Determination of the estimate, budget and realisation of investment projects

Article 7. Method for and time of the announcements regarding investment projects

The airport operator will make announcements regarding an investment project or any individual part thereof, as referred to in Section 8.25df(2), (4) and (5) of the Act to the project group in writing, in accordance with the arrangements made within the project group with regard to the method for and time of such announcements.

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Article 8. Contents of announcement of the determination of the estimate

In the announcement of determination of an investment project estimate as referred to in Section 8.25df(2), the airport operator will at least include the opinions the members of the project group have submitted with regard to the proposed estimate and functional specifications.

§3. Proposal for charges and conditions, adjusted charges, adjusted operating conditions, new charges and conditions and investment programme

Article 9. Method for announcement of and views on the proposal

1. The airport operator will announce a proposal for charges and conditions and new charges and conditions, a proposal for the individual settlements, the balance of those settlements and the resulting adjusted charges, a proposal for adjustment of the operating conditions and a proposal for the investment programme as referred to in Section 8.25e(1), (2), (3) and (6) of the Act, respectively, by:
 - a. making the announcement available for inspection at, in any case, the offices of the airport airport at the airport for a period of four weeks;
 - b. notice of the announcement by digital means, in such manner that it reaches the users and representative organisations as efficiently as possible; and
 - c. – at the request of a user or representative organisation – sending the announcement to the address indicated by them.
2. In the notice of announcement as referred to in the first paragraph, the airport operator will state the time from which and the location and times at which the proposal as referred to in Section 8.25e(1), (2), (3) and (6) of the Act, respectively, will be available for inspection.
3. Within four weeks of the day of the announcement as referred to in the first paragraph, users and representative organisations can communicate their opinion on the proposal to the airport operator, in writing.
4. For the duration of the term referred to in the third paragraph, the users and representative organisations may, upon request, provide an oral explanation of their views.

Article 10. Combination of the announcements of a proposal

1. The announcement of a proposal for charges and conditions made in view of the determination of the charges and conditions as referred to in Section 8.25d(1) of the Act will be combined with the announcement of the proposal for the five-year investment programme.
2. If the implementation of the annual adjusted charges as referred to in Section 8.25d(4) and (5) of the Act coincides with the implementation of the charges and conditions as referred to in Section 8.25d(1) of the Act, or the new charges and conditions as referred to in Section 8.25db(1) to (3) of the Act, the announcements of the proposals for these charges will be combined into a single announcement.

Article 11. Contents of a proposal for charges and conditions

The proposal for charges and conditions as referred to in Section 8.25e(1) of the Act, made in view of the determination of the charges and conditions as referred to in Section 8.25d(1) of the Act, will in any case contain:

- a. a substantiation of the charges and conditions in every year of the charges period;
- b. a specification of the estimated revenues from the other activities as referred to in Article 2(2) for every year of the charges period;
- c. an overview that indicates, in accordance with the allocation system, for every year of the next charges period, which tangible fixed assets will be used for aviation activities, and to which extent these will be used, as well as which costs will be allocated to the aviation activities, and the extent to which these will be allocated, with the costs broken down by cost

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- type and on the basis of security activities in their entirety and other aviation activities in their entirety;
- d. insofar as it concerns the tangible fixed assets as referred to in Article 29(9), the real constant amounts of the depreciation charges and capital costs per unit of use as referred to in the appendix to this decree;
 - e. for the aviation activities:
 - 1°. a forecast of the volume of the traffic and the transport of passengers and cargo in the current financial year and the next five financial years;
 - 2°. a forecast of the changes in the use of the tangible assets as referred to in Article 29(7) in any year of the subsequent charges period;
 - 3°. a forecast of the changes in the total revenues, including a specification of the revenues from the various charges, as well as of the total costs, with a further breakdown in accordance with the cost benchmark, for every financial year of the subsequent charges period compared to the current financial year;
 - 4°. a forecast of the efficiency gain that will be achieved in every financial year of the subsequent charges period compared to the current financial year;
 - 5°. a forecast of the return as referred to in Article 32 in every financial year of the subsequent charges period compared to the current financial year; and
 - f. the amount of the contribution as referred to in Section 8.25dd(1) of the Act and the distribution thereof over each of the years in the subsequent charges period.

Article 12. Contents of a proposal for adjusted charges

The proposal for adjusted charges as referred to in Section 8.25e(2) of the Act will in any case contain:

- a. an overview of each of the individual settlements owed by the users to the airport operator as referred to in Section 8.25dg(1) to (9), (11) and (12), in which the interest payments to be settled with regard to the balances of the amounts to be settled are stated separately;
- b. a proposal to cancel or postpone until no later than the last of the three consecutive charge years, in full or in part, one or more of the settlements owed by the users in the next charge year, as referred to under a.;
- c. a proposal to deduct or cancel the interest payment as referred to under a.;
- d. an overview of each of the individual settlements owed by the airport operator to the users as referred to in Section 8.25dg(1) to (9), (11) and (12), with the interest payments to be settled with regard to the balances of the amounts to be settled;
- e. the period in which the settlements as referred to under a. and d. will be passed on in the adjusted charges;
- f. an overview of each of the differences between the actual expenditure and the budget of every investment project or any individual part thereof as referred to in Section 8.25dg(10) of the Act, if the difference between the expenditure and the budget of an investment project or an individual part thereof is equal to or greater than 5%. The overview will also state the remaining number of years in which the difference in depreciation charges, capital costs and operational costs will not be included in the costs and rates in accordance with Section 8.25dg(10) of the Act; and
- g. an overview of the changes in the various settlements as referred to under a., and of each of the settlements remaining in the financial accounts as referred to in Article 30 for the financial years preceding the proposal.

Article 13. Contents of a proposal for adjusted operating conditions

The proposal for adjusted operating conditions will in any case contain:

- a. a description and substantiation of the proposed adjustment; and
- b. the date on which the adjusted operating conditions will be implemented.

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Article 14. Contents of a proposal for new charges and conditions

The proposal for new charges and conditions as referred to in Section 8.25e(1) of the Act, made in view of the determination of the new charges and conditions as referred to in Section 8.25db(1) to (3) of the Act, will in any case contain:

- a. a substantiation of the new charges and conditions in every year of the charges period;
- b. an overview and substantiation of the extent of the change in the costs of the airport operator as a result of exceptional and unforeseen circumstances as referred to in Section 8.25db(2) of the Act, or the decision or court ruling as referred to in Section 8.25db(3) of the Act; and
- c. insofar as the new charges and conditions are due to unforeseen and exceptional circumstances as referred to in Section 8.25db(2) of the Act, a substantiation of why – with due observance of the conditions of Article 22 – the relevant circumstances can be considered exceptional and unforeseen.

Article 15. Information preceding the announcement of a proposal for charges and conditions

Prior to the announcement of a proposal for the charges and conditions as referred to in Section 8.25d(1) of the Act, the users must provide the airport operator with information on the following, with regard to each of the next five financial years:

- a. the forecasts of the volume of their traffic and transport;
- b. the forecasts of the composition and the scheduled use of their fleet;
- c. their development projects at the airport; and
- d. their needs at the airport.

Article 16. Information on the proposal for the investment programme

1. The airport operator will provide the following information on the proposal for the investment programme:
 - a. an overview of the planned investments for the benefit of the aviation activities, broken down by aviation activities and the security of civil aviation as referred to in Article 2(1), under d.;
 - b. the effect on the costs, also indicating, with regard to each investment with a financial value of one million euros or more, the financial value for the benefit of aviation activities and the time at which it will be put into operation, and the effect of each investment project on the net expenses; and
 - c. an overview of the planned investment expenditure for the benefit of aviation activities in the period to which the investment programme pertains:

1°. of each investment included in the investment programme, the financial value for the benefit of aviation activities of which, in the period to which the investment programme pertains, amounts to one million euros or more;

2°. of groups of similar investments for the benefit of aviation activities, if, in the period to which the investment programme pertains, the relevant investments individually amount to less than one million euros.

2. Supplementary to the information as referred to in the first paragraph, the airport operator will provide the capacity development plan.
3. The airport operator will inform users and representative organisations on an annual basis of the progress made with the investment programme, no later than at the time of the announcement as referred to in Section 8.25e(2) of the Act.

§4. Proposals for investment project estimates

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Article 17. Project group

1. At least three months before the announcement of the proposal for an estimate for an investment project or any individual part thereof, as referred to in Section 8.25e(7) of the Act, the airport operator will set up a project group for each investment project.
2. Participation in the project group is open to any user or representative organisation.
3. The airport operator will issue an invitation to participate in the project group as referred to in the first paragraph, by:
 - a. making the invitation available for inspection at, in any case, the airport operator's offices at the airport for a period of four weeks after it is made available; and
 - b. notice of the invitation by digital means, in such manner that the users and representative organisations are reached as efficiently as possible.

Article 18. Method for and time of announcements regarding the proposal for an estimate

The airport operator will announce the proposal with regard to the estimate for an investment project as referred to in Section 8.25e(7) of the Act to the project group in accordance with the arrangements made within the project group with regard to the time of and method for such announcements, in writing.

Article 19. Information on the proposal for an estimate

1. Supplementary to the information as referred to in Section 8.25e(7) of the Act, the airport operator will provide the following information on the proposal for the estimate for an investment project or an individual part thereof, as referred to in that subsection:
 - a. the opinion of the investment committee or another similar body of the airport operator; and
 - b. a substantiation of any differences between the outcomes of the cost-related review and the expenditure estimate.
2. If, in connection with exceptional and unforeseen circumstances as referred to in Section 8.25dg(10) of the Act, another proposal is submitted with regard to the estimate of an investment project or an individual part thereof, the airport operator will also provide in the announcement of this proposal as referred to in Section 8.25e(7) of the Act, a reasoned account of:
 - a. why – with due observance of the conditions of Article 23 – these circumstances should be considered exceptional and unforeseen; and
 - b. how these circumstances might affect the investment budget.

§5. Settlements

Article 20. Time of and method for settlement

1. The settlements for any financial year as referred to in Section 8.25dg(1), (2), (6) to (8), (11) and (12) of the Act will be divided equally over the next three consecutive financial years after adoption of the financial accounts.
2. The settlements for any financial year as referred to in Section 8.25dg(3) to (5) of the Act will take place in the first financial year after adoption of the financial accounts.
3. The interest payments to be settled with regard to the balances of the amounts the airport operator owes the users that are yet to be settled will be calculated from the end of the financial year in which the duty to settle arose and to which the financial accounts pertain, until the time the adjusted charges in which the amounts or parts thereof that are yet to be paid are passed on are implemented.
4. The third paragraph applies by analogy to the interest payments to be settled with regard to the balances of the amounts the users owe the airport operator that are yet to be settled.

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5. The airport operator will use the 12-month Euribor for the calculation of the interest payment owed.

Article 21. Difference between investment expenditure and investment budget

The difference between the actual investment expenditure of an investment project or any individual part thereof, and the investment budget as referred to in Section 8.25dg(9) and (10) of the Act, is 5%.

§6. Exceptional and unforeseen circumstances

Article 22. Exceptional and unforeseen circumstances (charges and conditions)

Exceptional and unforeseen circumstances as referred to in Section 8.25db(2) of the Act, are circumstances:

- a. that the airport operator could not have foreseen at any time in the period preceding the announcement of the determination of the charges and conditions as referred to in Section 8.25db(1);
- b. that have a disproportionately significant effect on and disrupt the scope of the aviation activities and the associated portion of the revenues, costs and results of the airport operator;
- c. that the airport operator has no or limited influence on;
- d. whose consequences the airport operator cannot mitigate, or can only mitigate to a limited extent; and
- e. in which, according to the standards as referred to in Section 8.25dc(1), (3) and (4), unchanged maintenance of the relevant charges cannot be expected.

Article 23. Exceptional and unforeseen circumstances (investment project)

Exceptional and unforeseen circumstances as referred to in Section 8.25dg(10) of the Act, are circumstances:

- a. that arise after the investment estimate is determined;
- b. that the airport operator could not have foreseen at any time in the period preceding the announcement of the determination of the estimate and the associated functional specifications as referred to in Section 8.25df(2) of the Act with regard to any investment project or any individual part thereof;
- c. that were not caused by the airport operator;
- d. that are beyond its control and are non-commercial or non-financial in nature; and
- e. that have a disproportionately significant effect on the investment estimate for the investment project or any individual part thereof.

§7. Joint, transparent system of charges

Article 24. Joint, transparent system of charges

In the determination and prior announcement of a proposal for charges and conditions for the benefit of a joint, transparent system of charges as referred to in Section 8.25dj(2) and (3) of the Act, this decree applies by analogy to the airport operator, in its entirety, and Article 2(1), Article 3, Article 4, Article 9, Article 11(a), Article 15 and Article 27(1) apply by analogy to the operators of the participating other civil airports that apply a joint, transparent system of charges.

Article 25. Contents of the proposal for a joint, transparent system of charges

Without prejudice to the conditions of Article 24 in conjunction with Article 11, the proposal for the charges and conditions for the purpose of a joint, transparent system of charges as referred to in Section 8.25dj(4) of the Act will in any case contain:

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- a. a list of the facilities and services that are made available on payment of airport charges, as referred to in Article 2(1);
- b. the methods used for the determination of the airport charges;
- c. the general cost structure of the facilities and services to which the airport charges pertain;
- d. the revenues from the various airport charges and the total costs of the facilities and services covered by the airport charges;
- e. any government funding of the facilities and services pertaining to the airport charges;
- f. forecasts of the situation of the airport with regard to the airport charges, developments in the traffic and transport, as well as the investment programme;
- g. the actual use of the airport infrastructure and equipment during a certain period; and
- h. the predicted results of the investments included in the investment programme in terms of their effect on the capacity of the airport.

§8. Security activities for the benefit of civil aviation

Article 26. Derogating rules in the event of a special direction

1. In derogation from Articles 4 and 9, the following provisions apply if Our Minister of Security and Justice has issued a special direction as referred to in Section 37ac(2), of the Aviation Act, based on which the airport operator has taken measures, insofar as those measures pertain to the security of civil aviation.
2. In the event that, whether at the request of a foreign state or an alliance or of his own accord, Our Minister of Security and Justice determines that a temporary measure taken in connection with a special direction is to be converted into a structural measure, he will inform the airport operator, the users and the representative organisations thereof, at the same time as Our Minister of Infrastructure and the Environment.
3. The costs arising from a structural measure will be at the expense of the airport operator from the moment at which, in accordance with the fourth paragraph, the charges and conditions are implemented.
4. If Our Minister of Security and Justice applies the second paragraph, the airport operator can determine new charges as referred to in Section 8.25db(1) of the Act in connection with the costs arising from the structural measures, with due observance of the following:
 - a. Our Minister of Security and Justice will communicate the need to convert a temporary measure into a structural measure at least 21 weeks before 1 April or 1 November respectively, i.e. no later than 7 November or 7 June;
 - b. insofar as it is associated with the costs of the structural measures as referred to under a., the airport operator will announce a proposal for new charges, as referred to in Section 8.25e(1) of the Act, within three weeks of the communication as referred to under a.;
 - c. the airport operator will consult the users and the representative organisations within two weeks of the announcement of the airport operator as referred to under b.;
 - d. the airport operator will announce the determination of new charges in connection with the introduction of safety measures within two weeks of the consultation as referred to under c.
5. Our Minister of Security and Justice may rule that a structural measure will be revoked as of a date to be determined by him. Our Minister of Security and Justice will inform the airport operator thereof, at the same time as the users and representative organisations and Our Minister of Infrastructure and the Environment.
6. The airport operator will stop implementing the relevant structural measure as of the date referred to in the fifth paragraph, which will cause the associated costs to lapse as well.
7. If Our Minister of Justice applies the fifth paragraph, the airport operator will determine the new charges for the security of civil aviation as referred to in Section 8.25db(1) of the Act. The fourth paragraph applies by analogy.

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§9. Right of complaint to and assessment of process by the Netherlands Authority for Consumers and Markets

Article 27. Contents of request to the ACM

1. A request as referred to in Section 8.25f(1) of the Act will in any case contain:
 - a. the grounds for the opinion of the user or representative organisation that the charges and conditions as referred to in Section 8.25d(1) of the Act, the adjusted charges and conditions as referred to in Section 8.25d(4) and (5) of the Act, the operating conditions as referred to in Section 8.25d(6) of the Act or the new charges and conditions as referred to in Section 8.25db(1) to (3) of the Act are contrary to the rules under or pursuant to the law;
 - b. details of the specific charges and conditions determined by the airport operator as referred to under d. or the adjustments to which the request pertains, and
 - c. – if applicable – a listing of other institutions that have been asked to express an opinion on the relevant charges and conditions or adjustments.
2. The conditions in the first paragraph, under a. to c. apply by analogy to a request as referred to in Section 8.25fa(1) of the Act.
3. The request as referred to in the second paragraph will contain the grounds for the opinion of the project group participant that the rules under this decree with regard to the procedure as referred to in Section 8.25e(7) of the Act or the consultations as referred to in Section 8.25e(9) of the Act were not complied with on time, were not fully complied with or were not complied with correctly.

§10. Benchmarks

Article 28. Setting of benchmarks

1. After consulting with the users and the representative organisations the airport operator will:
 - a. set up a peer group in order to set a charges benchmark, on an annual basis;
 - b. set up a peer group in order to set a quality indicators benchmark, on an annual basis;
 - c. draw up a list of quality indicators with regard to the airport in order to set the quality indicators benchmark on an annual basis; and
 - d. create a model in order to set a costs benchmark, on an annual basis.
2. The airport operator will set up the peer groups, draw up the list and create the model as referred to in the first paragraph following consultation of the users and representative organisations about the proposals for these peer groups, this list and this model.
3. The airport operator may change the peer groups, the list and the model as referred to in the first paragraph in accordance with the conditions of the second paragraph.

§11. Allocation system and financial accounts

Article 29. Allocation system

1. The operating costs and the costs of the operating assets to the extent used for aviation activities will be determined and allocated in accordance with acceptable commercial principles.
2. The annual costs of aviation activities are allocated as follows:
 - a. all the costs of aviation activities, with the exception of the costs of interest-bearing debts, are allocated to these activities,
 - b. the costs of operating assets solely used for aviation activities are fully allocated to these activities,
 - c. the costs of operating assets that are not used for aviation activities at all are not allocated to these activities; and

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- d. the costs of operating assets partially used for aviation activities and partially used for other activities are allocated in accordance with the allocation formulas contained in the allocation system, which are based on the actual use of these operating assets for aviation activities.
3. The allocation system contains the principles on the basis of which it is determined to what extent operating assets are used for aviation activities.
4. The tangible assets used for aviation activities are divided into assets solely used for these activities and assets partially used for these activities, and allocated accordingly.
5. Tangible fixed assets are not used for aviation activities until such time as they are put into operation for that purpose.
6. Goodwill is not included in tangible fixed assets as referred to in the fourth paragraph.
7. Tangible fixed assets that are partially deployed for aviation activities are allocated based on the allocation formulas for those activities that are contained in the allocation system.
8. The value of the tangible fixed assets allocated to aviation activities pursuant to the fourth paragraph is determined on the basis of historical cost and using the depreciation method specified by the airport operator.
9. In derogation from the eighth paragraph, the value of tangible fixed assets allocated to aviation activities on the basis of the fourth paragraph, exceeding a hundred million euros in value, with a production time exceeding one year and in respect of which, at the time of the investment decision, there is expected to be an initial overcapacity after they are put into operation, is determined based on historical cost, and the assets are depreciated over their normal useful life based on the '*unuiteiten*' method.
10. Every six years, the airport operator will determine the real constant amount of the depreciation charges and capital costs per unit for the assets to which the '*unuiteiten*' method applies, which six years will be linked to the cost calculation of two consecutive charges periods.
11. The value of the tangible fixed assets of aviation activities as referred to in the fourth paragraph is referred to as the Regulatory Asset Base.
12. The allocation formulas as referred to in the seventh paragraph and the allocation formulas of other operating assets are used for the allocation of costs to aviation activities, with regard to which the following applies:
 - a. the costs will be allocated directly or, insofar as this is not possible, be allocated as directly as possible, using the allocation formulas based on the relevant activities, with due observance of the principles of market conformity, proportionality and integrality as referred to in Section 8.25g(1) of the Act, and
 - b. those costs that cannot be allocated to a certain activity on the basis of conditions as referred to under a. will be allocated proportionally on the basis of the share of the costs of aviation activities in the total costs.
13. Revenues from aviation activities and revenues from the other activities as referred to in Article 2(2) which are directly connected to aviation activities are allocated as revenues from aviation activities.

Article 30. Financial accounts

1. In drawing up the financial accounts as referred to in Section 8.25g(3) of the Act, the allocation system as determined in accordance with Section 8.25g(1) of the Act will be applied.
2. The explanatory notes as referred to in Section 8.25g(3) of the Act comprise:
 - a. an overview of the categories of tangible fixed assets, specifying the allocation formulas used in accordance with Article 29, and the extent to which these have been used for aviation activities;
 - b. a breakdown of the costs and revenues relating to aviation activities, including details of the allocation formulas used in accordance with Article 29;

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- c. a specification of the contribution as referred to in Section 8.25dd(1) of the Act that has been taken into account in the determination of the charges in the relevant financial year in the relevant charges period, as referred to in Section 8.25d(1) of the Act;
- d. a specification of the state at the start and the end of the relevant financial year of each of the types of settlement as referred to in Section 8.25dg of the Act, and the changes per type of settlement in the relevant financial year, which will in any case include:
 - 1°. the amounts that were settled on in the charges as referred to in Section 8.25d(4) and (5) of the Act in the relevant financial year;
 - 2°. the amounts, the settlement of which the airport operator has decided to postpone to a later charges year;
 - 3°. the amounts with regard to which the airport operator has decided to cancel the settlement altogether, as a result of which the right to settlement lapses as it cannot be postponed to a later year;
 - 4°. the value of the settlements that arose in the relevant financial year, stating the number of calendar years over which those settlements will be spread;
- e. a specification of the assets put into operation in the past financial year;
- f. a specification of the difference in depreciation charges, capital costs and operating costs that arises from the difference between the actual investment expenditure for investment projects and the investment budget as referred to in Section 8.25dg(10) of the Act, if the difference between that expenditure and that budget is equal to or greater than five percent; and
- g. a specification of the efficiency result achieved in the past financial year.

Article 31. Approval of the allocation system

The Netherlands Authority for Consumers & Markets will approve the allocation system for a maximum of six years, which six years will be linked to a maximum of two rate periods.

Article 32. Projected return

1. In determining the charges for the aviation activities, the projected return on the Regulatory Asset Base as referred to in Section 29(11) in every financial year of the next charges period will be used as a standard.
2. The projected return as referred to in the first paragraph will be calculated on the basis of the formula contained in Part A of the appendix to this decree and will not exceed the weighted average annual capital costs calculated for the subsequent charges period with due observance of the formula contained in Part C of the appendix to this decree.
3. In calculating the projected return as referred to in the first paragraph on the security activities, Part B of the appendix to this decree will be taken into account as well.
4. In calculating the projected return as referred to in the first paragraph, the settlements as referred to in Section 8.25dg of the Act will not be taken into account.

CHAPTER 3. REPORTING

Article 33. Contents of operational report

1. The report as referred to in Section 8.29a(1) of the Act will in any case contain:
 - a. the outcomes of the quality indicators benchmark as referred to in Article 28;
 - b. the progress of the investment programme;
 - c. the capacity development plan in relation to the realised and expected traffic and transport volumes;
 - d. the development of network quality;
 - e. the degree of support among users and representative organisations with regard to the information as referred to under a. to c. inclusive; and

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- f. a comprehensive description of the most important developments as referred to under a. to d. inclusive, considered in conjunction with each other, and their effect on the optimum use of the airport as referred to in Section 8.3 of the Act.
2. The description of the development of network quality in the preceding charges period on which the airport operator reports in implementation of Section 8.29a of the Act will in any case include:
 - a. the number of direct connections at the airport per year, distinguishing between intercontinental and European connections, compared to the four largest airports in Europe excluding Turkey, and the two largest airports in the Middle East and Turkey, measured by the total number of passengers;
 - b. the number of direct connections at the airport per year, distinguishing between business travel and non-business travel;
 - c. the annual traffic volume, cargo volume and passenger volume at the airport, measured by origin/destination and transfer, where possible compared to the four largest airports in Europe excluding Turkey, and the two largest airports in the Middle East and Turkey, measured by the total number of passengers;
 - d. the annual traffic development at the airport, at least distinguishing on the basis of hub-related and mainport-related traffic, cargo flights and non-business traffic; and
 - e. the hub quality of the airport per year, measured by the quality and the number of successful flight connections at the airport, where possible compared to the four largest airports in Europe excluding Turkey, and the two largest airports in the Middle East and Turkey, measured by the total number of passengers.
3. The description of the development of network quality as referred to in the first paragraph, under d. will also contain the expected development in network quality for the current charges period and an explanation of the manner in which the airport operator supports that development, insofar as this does not contain information that can be considered to be company confidential in nature.

Article 34. Issue and provision of the report

1. The airport operator will always issue the report at the end of the charges period as referred to in Section 8.25d(1) of the Act and before 1 June of the financial year in which the charges period ends, unless, pursuant to Section 8.29a(1) of the Act, Our Minister of Infrastructure and the Environment communicates to the airport operator, in writing and before 1 November of the current financial year, that he wishes to receive a report before 1 June of the next financial year.
2. The airport operator will provide the report as referred to in Section 8.29a(1) of the Act to the users and representative organisations upon request.

CHAPTER 4. Transitional provisions and final provisions

Article 35. Transitional provisions

1. The Amsterdam Airport Schiphol Airport Operation Decree, as it applied immediately before the present decree enters into effect, will continue to apply with regard to:
 - a. the announcement of a proposal for charges and conditions as referred to in Section 12.6a(2)(a) of the Act, as this Section reads at the time the Act of 22 June 2016 amending the Aviation Act in connection with the evaluation of the Act of 29 June 2006 amending the Aviation Act regarding the operation of Amsterdam Airport Schiphol (Bulletin of Acts and Decrees 2016, No. 272) enters into effect, the proposal for charges and conditions to which this announcement pertains and the subsequent determination of the charges and conditions;

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- b. the announcement of a proposal for charges and conditions as referred to in Section 12.6b(1) of the Act, as this Section reads at the time the act as referred to under a. enters into effect, the proposal for charges and conditions to which this announcement pertains and the subsequent determination of these charges and conditions;
 - c. the information that must be provided prior to the announcements as referred to under a. and b.;
 - d. the allocation of the costs to airlines and the approval of the allocation system that take place in view of the proposal for charges and conditions as referred to under a., and the subsequent determination of these charges and conditions;
 - e. the preparation of the financial accounts for the financial year for which only annual charges as referred to in Section 8.25d(1) of the Act apply, as this Section reads immediately before the act as referred to under a. enters into effect;
 - f. the explanatory notes to the financial accounts for the financial year for which annual charges as referred to in Section 8.25d(1) of the Act apply in part, as this Section reads immediately before the act as referred to under a. enters into effect, insofar as it concerns the specification of the difference between the estimated and the actual revenues from the charges for the period within this aforementioned financial year for which the annual charges apply;
 - g. a structural measure implementing a special direction as referred to in Section 37ac(2), of the Aviation Act and the adjustment of the charges in connection with the costs of this measure, provided that these costs can be settled with charges that apply in the period before the first-time application of the charges and conditions as referred to in Section 8.25d(1) of the Act, as this Section reads at the time the act as referred to under a. enters into effect for the first time;
 - h. the request to the Netherlands Authority for Consumers and Markets as referred to in Section 12.6a(2)(c) of the Act, as this Section reads at the time the act as referred to under a. enters into effect; and
 - i. the operating report for the period for which only annual charges as referred to in Section 8.25d(1) of the Act apply, as this Section reads immediately before the act as referred to under a. enters into effect.
2. Article 20 applies by analogy to the settlements as referred to in Section 8.25d(10) and (11), as these subsections read before the act as referred to in the first paragraph, under a. comes in to effect, that take place pursuant to Section 12.6a(3) of the Act in the determination of the charges for three years and the adjusted charges as referred to therein.

Article 36. Revocation of the decree

The Amsterdam Airport Schiphol Airport Operation Decree will be revoked.

Article 37. Date of commencement

If the Act of 22 June 2016 amending the Aviation Act regarding the operation of Amsterdam Airport Schiphol (Bulletin of Acts and Decrees 2016, No. 272) enters into effect, this decree will enter into effect at the same time.

Article 38. Short title

This decree will be referred to as: Amsterdam Airport Schiphol Operation Decree 2017.

We hereby order and command that this Decree and the accompanying Explanatory Memorandum be published in the Bulletin of Acts and Decrees.

THE STATE SECRETARY FOR INFRASTRUCTURE AND THE ENVIRONMENT,

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Appendix to Article 32

CALCULATION OF THE PROJECTED RETURN

The forecast return (in percentage points) in the three financial years in the next charges period is equal at most to the weighted average cost of capital (WACC) as determined in Part C of this appendix, excluding the settlements as referred to in Section 8.25dg of the Act.

The return on the total of the airport operator's aviation activities will be determined in accordance with Part A of this appendix.

The individual returns on the airport operator's security activities will be determined in accordance with Part B of this appendix.

The weighted average cost of capital (WACC) with regard to the airport operator's aviation activities will be determined in accordance with Part C of this appendix.

A. CALCULATION OF THE (PERMITTED) RETURN

The return on the Regulatory Asset Base (<<RAB>>) after taxes in financial year t will be calculated by dividing the results to be allocated to the aviation activities in financial year t by the value of the Regulatory Asset Base for that year. The following steps are prescribed for this calculation.

Revenues allocable to aviation activities (AR)

Aggregate revenues (AR) = total revenues from charges (a) + revenues from other activities that are directly associated with aviation activities (b) + mandatory contribution from non-aviation activities to aviation activities (c)

where

- (a) aggregate revenues from charges include the revenues, being the sum of the products of the number of occupancy units multiplied by the charges set for landing, take-off, parking, passenger handling and security.
- (b) revenues from other activities that are directly associated with aviation activities include revenues from the airport operator's activities as referred to in Article 2(2).
- (c) the mandatory contribution from non-aviation activities to aviation activities concerns the contribution as referred to in Section 8.25dd(1) of the Act.

Costs allocable to aviation activities (AC)

The total cost of aviation activities, excluding capital costs and corporation tax (AC) = costs (1) + depreciation charges on tangible fixed assets on the basis of the 'unuïteiten' method (2),

where

1. costs = operating costs (d) en depreciation charges (e)

(d) operating costs include – among others – personnel costs, costs of material, external deliveries and subcontracted services, maintenance and cleaning, intercompany deliveries and other costs.

The operating costs are determined and allocated to the aviation activities on the basis of the allocation system and in accordance with acceptable economic principles.

(e) depreciation charges on tangible fixed assets, excluding depreciation charges on tangible fixed assets, the depreciation of which takes place on the basis of the 'unuïteiten' method.

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The costs are determined and allocated to the aviation activities on the basis of the allocation system as referred to in Article 29 and in accordance with acceptable economic principles.

2. Depreciation charges on tangible fixed assets, the depreciation of which takes place on the basis of the '*unuïteiten*' method (f) = the total amount in depreciation charges on tangible fixed assets on the basis of the '*unuïteiten*' method (g)

(f) tangible fixed assets, the depreciation charges of which are determined on the basis of the '*unuïteiten*' method and which concern investments, the sum of the expenditure and the construction period interest of which exceed one hundred million euros, the manufacturing period of which exceeds a year and where, at the time of the investment decision, an initial overcapacity after commissioning is forecast.

When this decree enters into effect, the '*unuïteiten*' method will continue to apply to the investments that have already been put into operation, the original sum of the expenditure and construction period interest of which exceed one hundred million euros and where, at the time of the investment decision, an initial overcapacity after commissioning was forecast.

(g) depreciation charges on the tangible fixed assets as referred to under f. are calculated according to the '*unuïteiten*' method. Based on this method, the annual depreciation charges are set at a real constant amount c per unit of use on the basis of the historic investment expenditure, including construction period interest, plus capital costs in every year of the useful life. In determining the annual depreciation, account is taken of the initial overcapacity, which is equal to the difference between the projected capacity and the capacity required for the expected demand for airport air traffic, transport of passengers and cargo, as foreseen at the time of the investment decision. Pursuant to Article 29(9), the depreciations on the fifth runway are effected in accordance with the '*unuïteiten*' method.

Depreciations in accordance with the '*unuïteiten*' method are determined on the basis of the below formulas:

The starting principles are real constant costs (depreciation charges and capital costs) per unit (c)

$$\text{or } c = \frac{w}{\text{CAP}}$$

where the amount w is calculated as follows:

$$\sum_{t=1}^n \left\{ \frac{(1-x)^t \cdot w \cdot (1+p)^t}{\left(1 + \frac{D}{1-p}\right)^t} \right\} - I_0$$

where:

c = real constant costs (depreciation charges and capital costs) per unit.

CAP = number of transport units or traffic units to be delivered per year at maximum capacity.

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I_0 = the present value of the major investment, including construction period interest, during the construction period.

w = real constant amount of the depreciation charges and capital costs per year with full utilisation of the available capacity.

$1 - x$ = projected use (in percentage points) of the capacity in year t , with the initial overcapacity $x = a, b, \text{ etc.}$

D = discount rate: nominal WACC (after tax) as determined in accordance with Part C of this appendix.

t = useful life from the moment of being put into operation (years 1 to n);

T = the current statutory corporation tax rate (in percentage points).

p = projected annual inflation percentage based on the consumer price index estimated by Statistics Netherlands in its Macroeconomic Outlook.

The above calculation will be made at the time tangible fixed assets are put into use or, for tangible fixed assets that have already been put into use at the time this decree enters into effect, the original sum of the expenditure and construction period interest of which exceeds one hundred million euros and where, at the time of the investment decision, an initial overcapacity was forecast after commissioning, and subsequently every six years. The remaining useful life is derived as anticipated at the time of the investment decision. The calculation must be made in accordance with acceptable business principles. The period for which the calculation is made is linked to two consecutive charges periods.

After w is determined, the annual depreciations (in nominal terms) can be determined by means of the below formula:

$$AF_t = (1-x) \times w \times (1+p)^t - \left(\frac{D}{1-T} \times BW_t \right)$$

where:

AF = depreciation on tangible fixed assets in nominal terms, in which AF is the amount entered into the formula for the costs allocable to aviation under 2(g).

BW = book value of a tangible fixed asset, which is included in the Regulatory Asset Base (RAB) in nominal terms, on the basis of the actual investment expenditure, plus the construction period interest on this expenditure (from the moment the investment is put into operation).

Calculation of the return on aviation activities

After the above-mentioned steps, the return (r in percentage points) after tax on the Regulatory Asset Base (<<RAB>>) in financial year t can be calculated by dividing the results to be allocated to the airport activities (<<R>>) in financial year t by the value of the Regulatory Asset Base for that financial year t :

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$$r = \frac{R}{RAB_{\text{total}}}$$

with R being calculated as follows:

$$R = \text{EBIT} \times (1 - T) = (\text{AR} - \text{AC}) \times (1 - T)$$

where:

Earnings Before Interest and Taxes (EBIT) = result before interest and tax in year t.

Aggregate revenue (AR) = total revenue from charges (a) + revenue from other activities that are directly related to aviation activities (b) + mandatory contribution of non-aviation activities to aviation activities (c)

The total cost of the aviation activities, excluding capital costs and corporation tax (AC) = costs (1) + depreciation charges on tangible fixed assets on the basis of the 'unuiteiten' method (2).

The Regulatory Asset Base (RAB) as referred to in Article 29(11) = the average book value of the tangible fixed assets attributable to the aviation activities, calculated according to the acceptable business principles referred to in Article 29(8) and the historical cost.

This book value is determined on the basis of the average of the expected or realised value of the RAB on 1 January of year t and the expected (projected) or realised (accounts) value of the RAB on 31 December of year t.

In accordance with Article 29(5), tangible fixed assets are capitalised for the first time when they are put into operation, increased by the construction period interest on the amount of the investment to be capitalised in the period from the start of the investment until the time of delivery.

$$RAB_{\text{total}} = RAB_{\text{assets}} + RAB_{\text{tangible fixed assets on the basis of the 'unuiteiten' method}},$$

where:

RAB_{assets} = the average book value (projected value as at 1 January of year t, or the prognosticated value as at 31 December of year t, respectively) of the tangible fixed assets allocable to aviation activities (excluding the book value of the tangible fixed assets on the basis of the 'unuiteiten' method).

$RAB_{\text{tangible fixed assets on the basis of the 'unuiteiten' method}}$ = the average book value (projected value as at 1 January of year t, or the projected value as at 31 December of year t, respectively) of the tangible fixed assets attributable to aviation activities on the basis of the 'unuiteiten' method.

Construction period interest = the weighted average cost of capital (WACC) that applied during the construction period and as determined in accordance with Part C of this appendix.

In calculating the maximum permitted projected return in accordance with Article 32, the settlements as referred to in Section 8.25dg of the Act are not taken into account.

B. CALCULATION OF THE RETURN ON SECURITY ACTIVITIES

The return on security activities is calculated in the same way as the return on aviation activities as described in Part A of this appendix, on the understanding that:

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- the revenues from charges consist of the revenues from charges with regard to the security of civil aviation and any other revenues related to the security of civil aviation;
- in determining the costs, only the costs incurred by the airport operator for activities with regard to the security of the civil aviation, including the costs of anti-crime measures and public order, are allocated; and
- the calculation is only made on the Regulatory Asset Base for the security of civil aviation.

C. WEIGHTED AVERAGE CAPITAL COSTS (WACC)

The WACC calculation after tax

The WACC after tax is based on the so-called Capital Asset Pricing Model (CAPM). The WACC is calculated using the following formula, taking account of taxes:

$$\text{WACC} = g \times K_d \times (1 - T) + (1 - g) \times (R_f + (\text{EMRP} \times \text{Equity Beta}))$$

The parameters in the formula are the following:

- WACC: Weighted Average Cost of Capital (expressed in a percentage).
- g: gearing; the fixed value of the interest-bearing debts that are allocated to the funding of the Regulatory Asset Base, divided by the value of the Regulatory Asset Base; g is 0.4.
- R_f = risk-free yield (expressed in a percentage); the average effective yield ('yield to maturity') on a Dutch government bond with a remaining maturity of 10 years in the 24 months preceding 1 March in the year in which the airport operator submits a proposal for charges and conditions as referred to in Section 8.25e(1) of the Act.
- K_d = cost of capital of interest-bearing debts (expressed in a percentage); the credit surcharge K_d-R_f consists of a compensation for the systematic risk, a liquidity premium and a surcharge for bankruptcy-related losses. The credit surcharge is equal to the average of the difference between the IBoxx Euro Non-Financials A Rated portfolio, which contains bonds with a remaining maturity of approximately 10 years, and the 10-year interest on a government bond of a member state of the eurozone with the lowest interest percentage in the 24 months before 1 March in the year in which the airport operator submits a proposal as referred to in Section 8.25e(1) of the Act.
If the IBoxx Euro Non-Financials A Rated portfolio is no longer available, the airport operator will use a comparable portfolio of bonds with a remaining maturity of approximately 10 years. In that case, the proposal for charges and conditions as referred to in Section 8.25e(1) of the Act, made in view of the determination of the charges as referred to in Section 8.25d(1) of the Act, will contain a comparable portfolio of bonds with a remaining maturity of approximately 10 years, in addition to the information as referred to in Article 11.
- T = the current statutory rate for corporation tax (expressed in a percentage) at the time at which the airport operator submits a proposal for charges and conditions as referred to in Section 8.25e(1) of the Act. If, at the time of the proposal, it has been established that, as of 1 January of the financial year following the financial year in which the proposal is made, an amended statutory corporation tax rate will apply, the latter percentage will be used.

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- EMRP = Equity Market Risk Premium, the market risk premium for the equity capital (expressed in a percentage); the return investors require for the additional risk associated with investing in the market portfolio compared to investing in a risk-free investment; EMRP has been set at 5.0%.

Equity Beta = the measure of the market risk (systematic risk) of shareholders' equity that can be allocated to the funding of the Regulatory Asset Base.

- The Equity Beta to be used in the WACC formula is determined on the basis of the following formula, after the Asset Beta, Debt Beta and g have been determined.

$$\text{Asset Beta} + (\text{Asset Beta} - \text{Debt Beta}) \times g / (1 - g) \times (1 - T),$$

where the parameters in the formula are the following:

- Debt Beta = the measure of the market risk (systematic risk) of the interest-bearing debts that can be allocated to the funding of the Regulatory Asset Base. The Debt Beta has a fixed value of 0.08125.
- Asset Beta = the measure for the market risk (systematic risk) associated with the activities for which the Regulatory Asset Base of the airport operator is used.

The Asset Beta is determined as follows:

1. The airport operator makes a proposal for the selection of as many listed airports as possible (at least four at all times), which must be as representative as possible, in the areas in which the Agreement on the European Economic Area (EEA) applies and Switzerland, based on their comparability to the airport activities of the airport operator on the airport (a so-called peer group) and will consult the users and representative organisations on that proposal. Airports that are clearly not comparable will not form part of this group. If N.V. Luchthaven Schiphol is listed, it will always be one of the selected airports.
If the airport operator has proved sufficiently that, in terms of comparability to the airport, there are fewer than four listed, representative airports within the areas in which the Agreement on the European Economic Area applies and Switzerland, listed airports in comparable economic systems outside of the EEA and Switzerland that are representative in terms of comparability will be selected, until the aforementioned number of four listed airports that are representative in terms of comparability has been reached.
2. The Equity Beta of each of the selected airports is derived from the price returns of these airports measured over a period of two and five recent years. The price returns are calculated based on the average of two standard data sources. If only information covering a shorter period is available, the use thereof is permitted provided the information enables a reliable estimate to be made of the Equity Beta.
3. The Asset Beta for each of these airports will be determined by applying the above-mentioned Equity Beta formula. Each of these calculations is based on the relevant airport's actual capital ratio (g), with the book value of the interest-bearing debts of the company divided into the total book value of the interest-bearing debts plus equity market value.

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4. The calculations are furthermore based on the applicable statutory tax rate of the country in which the relevant airport is located (T) and the estimated cost rate and the market risk (systematic risk) of the borrowed capital of the airport (Kd, Debt Beta).
5. To determine the Asset Beta, the two and five-year median Asset Beta of the airports in the entire peer group are determined and the lowest of these two medians is selected.

The WACC calculation before tax

For the calculation of the costs allocable to aviation activities, the WACC before tax may be charged on in the costs. In calculating the costs allocable to the aviation activities as referred to in Article 2(1), the WACC before tax is used.

The maximum permitted rate of return before tax is calculated using the below formula:

$$RAB_{\text{total}} \times WACC \text{ (after tax)} / (1 - T)$$

RAB_{total} = in accordance with the calculation as contained in Part A of this appendix.

WACC (after tax) = in accordance with the calculation as contained in Part C of this appendix under the heading 'WACC after tax'.

T = the current statutory corporation tax rate (in percentage points).

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EXPLANATORY MEMORANDUM

1. Introduction

Firstly, the present decree implements the provisions of Part 8.4 of the Dutch Aviation Act regarding the economic regulation of the operation of Schiphol Airport (hereinafter: the Act). These provisions of the Act were amended by the Act of 22 June 2016 amending the Dutch Aviation Act in connection with the evaluation of the Act of 29 June 2006 amending the Aviation Act regarding the operation of Amsterdam Airport Schiphol Operation (Bulletin of Acts and Decrees 2016, No. 272) (hereinafter: the amendment act). The amendment to these provisions necessitates an amendment to the provisions of the Amsterdam Airport Schiphol Operation Decree that are based on Part 8.4 of the Act.

In addition, the present decree implements the provisions on the reporting within the framework of the operating permit (Part 8.5 of the Dutch Aviation Act). The amendment act also necessitates an amendment to the provisions of the Amsterdam Airport Schiphol Operation Decree that are based on Part 8.5 of the Act.

In view of the number of required amendments to the Amsterdam Airport Schiphol Operation Decree, it has been decided to revoke that decree and adopt the present decree.

This decision was taken in consultation with the Minister of Economic Affairs. This decision has also been discussed at length with the Ministry of Finance and the Netherlands Authority for Consumers and Markets (hereinafter referred to as: ACM).

2. Background

The amendment act was drawn up in connection with the evaluation of the Act of 29 June amending the Aviation Act regarding the operation of Amsterdam Airport Schiphol. The amendments are the outcome of the mandatory evaluation, the outcomes of which have been shared with the Dutch House of Representatives (Parliamentary Papers II 2012/13, 33 231, No. 1). In consultation with Schiphol, the users and representative organisations a cohesive package of measures has been drawn up to improve specific elements of the existing system. For a more extensive explanation of the package of measures and the amendment to the Act, reference is made to the letters to the House of Representatives of 4 April 2012, 5 June 2013 and 2 September 2013 (Parliamentary Papers II 2012/13, 33 231, Nos. 1, 2 and 3), the explanatory memorandum to the proposal for the amendment act (Parliamentary Papers II 2014/15, 34 197, No. 3) and the notes to the memorandum of amendment of 30 March 2016 (Parliamentary Papers II 2015/16, 34 197, No. 7).

The most extensive amendment concerns the replacement of the system of annual charges and conditions by the system of multi-year charges and conditions. This amendment required an amendment to almost all the provisions of the Amsterdam Airport Schiphol Operattion Decree through which the annual rate system is implemented. This amendment is explained in further detail in paragraph 3 and in the article-bases explanation.

The other measures that were included in the act as a result of the amendment act, require amendment of the Schiphol Airport Operation Decree as well. It concerns measures pertaining to – among other things – the limitation of rate fluctuations through settlement equalisation, the efficiency incentive for investment projects, the mandatory financial contribution of the non-aviation activities to the aviation activities and the reporting on the development of the network quality. These amendments will be clarified in the notes on individual articles.

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3. Relationship with existing regulations

As indicated in the explanatory memorandum to the proposal for the amendment act, two separate sets of regulations were included in the Aviation Act, each of which comes with its own supervision arrangement. First of all, it provides for the determination of the charges and conditions of Amsterdam Airport Schiphol and the ACM's sector-specific competition regulation thereof, to prevent abuse of the airport's dominant economic position. This is based on a regulation system that offers users sufficient protection against any abuse by the airport operator of its dominant economic position, while at the same time leaving as much room as possible for negotiations between the market parties. Within this framework, requirements are set for the airport operator with regard to consultations, publication and information and for the charges and conditions. The individual charges and conditions must be non-discriminatory and reasonable, and the charges entirely cost-oriented. In addition, the operating permit has been provided for, safeguarding the public interest in the continuity of the airport as a vital link in the mainport (Part 8.4), as well as the reporting within the framework of the operating permit (Part 8.5).

Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (PbEG 2009 L 70) (hereinafter: Airport Charges Directive) entered into effect on 15 March 2009, laying down joint principles for the levying of airport charges on community airports. At this time, given the threshold value of 5 million passenger movements as laid down in that directive, Amsterdam Airport Schiphol is the only Dutch airport that is within the scope of the Airport Charges Directive. In implementation of the Airport Charges Directive, the law of 27 January 2011 amending the Aviation Act for the benefit of implementation of Directive No. 2009/12/EC (Bulletin of Acts and Decrees 2011, No. 67) – among other things – added a provision to Part 8.4 of the Aviation Act that states that airport charges may be differentiated with a view to the public and general interest and that these charges must be relevant, objective and transparent. For a further explanation, reference is made to the explanatory memorandum to the Act of 27 January 2011 (Parliamentary Papers II, 2010/11, 32 519, No. 3).

The amendment act does not aim to make a substantial policy change. The improvements made through the Act elaborate on the existing system. The most important guiding principles of the Act, such as ex ante cost orientation for the whole and the requirement that the individual charges and conditions must be non-discriminatory and reasonable with regard to the individual charges and conditions. For a further explanation of these improvements, reference is made to paragraph 2 and the parliamentary papers referred to therein.

4. Main outlines of the decree

This decree is in line with the system of the Act as described above. Chapter 1 lays down definitions and describes the aviation activities to which the rules on the determination of the charges and conditions pertain. Chapter 2 provides for the method for determining the charges and conditions, the investment programme and investment projects, in implementation of Part 8.4 of the Act. Chapter 3 provides for the reporting required in view of the supervision to be conducted by the Minister of Infrastructure and the Environment within the framework of the operating permit, in implementation of Part 8.5 of the Act. Chapter 4 contains the transitional and final provisions.

The most substantial chapter is Chapter 2. First of all, Chapter 2 contains further rules on the determination of charges and conditions and investment programmes, including the preconditions for the determination of the mandatory contribution from non-aviation activities to aviation activities as referred to in Section 8.25dd(1) of the Act (paragraph (1)), and the determination of the estimate, budget and realisation of investment projects (paragraph (2)). In this connection, mention

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is also made of paragraph (5), which contains the settlements on the basis of which the adjusted charges are determined, and paragraph 6, which elaborates on the definition of 'exceptional and unforeseen circumstances' as used in the Act. Paragraphs 1, 2, 5 and 6 implement Section 8.25di(1) of the Act.

In addition, Chapter 2 contains further rules regarding proposals for charges and conditions and the investment programme (paragraph 3) and proposals for the estimate of investment projects (paragraph 4). In this connection, mention is made of paragraph 10 of the decree as well. Paragraph 10 contains further rules on the determination of the three benchmarks, which must be added to the proposals for charges and conditions by way of explanation. Paragraphs 3, 4 and 10 implement Section 8.25e(12) of the Act.

Paragraphs 7 and 8 contain rules that apply to both the determination of the charges and to the proposal preceding that. These paragraphs are based on both Section 8.25di(1), and Section 8.25e(12). Paragraph 7 concerns the determination of joint charges and paragraph 8 the determination of charges in connection with a structural measure relating to security activities. The provisions contained in paragraphs 7 and 8 were originally included in Article 14a and Article 5 of the Schiphol Airport Operation Decree respectively and, with the exception of the amendment to references to other articles, have not changed in terms of content.

Paragraph 9 contains further rules on the right of complaint and the assessment of process for the estimate of investment projects by the ACM. The rules concerning the right of complaint were originally provided for in Article 6 of the Schiphol Airport Operation Decree and have not been amended, on the understanding that these rules also apply to a request to assess whether the adjusted charges, the adjusted operating conditions and the new charges and conditions are contrary to the rules set. Section 8.25f(8) of the Act provides the basis for this. The rules concerning the assessment of process have been determined in connection with the expansion of the powers of the ACM with regard to the realisation of investment projects. These rules implement Section 8.25fa(7) of the Act.

Paragraph 11 contains further rules with regard to the set-up and approval of the allocation system, the allocation of assets to activities, the set-up of the separate records within the administration and the financial accounts. These rules were previously included in paragraph 4 of the Amsterdam Airport Schiphol Operation Decree and have been copied virtually unchanged. These rules implement Section 8.25g(5) of the Act.

5. Implementation and enforcement

By letter of 14 July 2016, the ACM informed the State Secretary of the Ministry of Infrastructure and the Environment that the decree was workable and enforceable, provided that account was taken of the recommendations and remarks as contained in the letter and its enclosure. A few remarks concerned the transitional law, which were honoured. In addition, the ACM particularly requested that some parts of the explanatory memorandum be clarified. Almost all the desired clarifications were included.

6. Consequences

6.1 Financial consequences for Schiphol, airlines and representative organisations

This decree involves compliance costs for the airport operator and for the users of the airport and representative organisations.

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These costs have already been outlined in the explanatory memorandum to the proposal for the amendment act. The average annual costs for the airport operator and the users and representative organisations are currently estimated at € 950 thousand and € 150 thousand respectively. These amounts are exclusive of possible external legal costs, the costs of evaluation of the act and the estimated one-off costs of the development of the quality benchmarks to the amount of € 17,000.

6.2 Financial consequences for the central government

The implementation of a mandatory financial contribution influences Schiphol's results, and, as a result, also affects the dividends that can be paid out to the shareholders, which includes the State (which holds 69.77% of the shares in Schiphol). The letter to the House of Representatives of 2 September 2013 (Parliamentary Papers II 2012/13, 33 231, No. 2) states that Schiphol's dividend policy provides for a maximum 'pay-out' of 50% of the result (attributable to the shareholders, excluding changes in value). The corporation tax on the net result amounts to 25%. Roughly estimated, a financial contribution from non-aviation activities would therefore lead to a reduction in dividend for the State that amounts to 26% of the financial contribution. It must be noted that, under the old system, Schiphol has already made a voluntary financial contribution on various occasions, so there have been financial consequences for the central government before due to a financial contribution from non-aviation activities.

6.3 Costs of implementation and enforcement by the Netherlands Authority for Consumers and Markets (ACM)

By letter of 13 February 2014, the ACM issued a substantiated statement that, on balance, it will require additional capacity to perform its supervisory duties. The ACM needs € 50,000 in additional means on an annual basis for this. The portion of these costs that is directly associated with the duties arising for the ACM from the Aviation Act will be charged to the sector in accordance with the Act establishing the Netherlands Authority for Consumers and Markets (*Instellingswet Autoriteit Consument en Markt*). This will be accounted for in the ACM's annual report.

7. Advice and consultation

As in the preparation stage for the amendment act, the users, the airport operator and representative organisations – being BARIN (Board of Airline Representatives In the Netherlands) and SAOC (Schiphol Airline Operators Committee) – were consulted and were given the opportunity to comment. In addition, there have been intensive consultations with the ACM so as to optimise the implementation and enforceability of the regulations.

Furthermore, prior to the Internet consultation, an information meeting was organised, in which users, representative organisations and the airport operator took part. At this meeting, a draft of the draft decree was explained, and the parties involved were given the opportunity to ask additional questions and make suggestions. The parties subsequently received the draft of the draft decree that was submitted to the ACM for an implementation and enforceability test.

The draft decree was consulted on from 11 August to 15 September 2014, through the Internet. This resulted in four reactions, two of which were public. Three reactions came from companies in the aviation sector (which included KLM and easyJet) and one was submitted by a market party outside of the aviation sector. A report was drawn up of the Internet consultation, containing a summary of the main outlines of the reactions submitted. Both the public reactions and the report can be found on www.internetconsultatie.nl.

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The reactions submitted within the context of the Internet consultation concerned: the definition of aviation activities, network quality, combination of announcements of charges and conditions, the mandatory financial contribution, the five-year forecast that users provide to the airport operator, the three benchmarks, several WACC parameters, the operating report, the efficiency incentives for investment projects and the role of the ACM.

Below is an explanation per subject of whether the reactions have led to an amendment to the draft decision. The name of the party who submitted the reaction is only given for those reactions that were public.

Aviation activities

KLM has requested that the definition of aviation activities be tightened. According to KLM, the current phrasing leaves room for the airport operator to design the aviation infrastructure in such a manner that non-essential facilities can be attributed to aviation activities. One example it has mentioned is Schiphol Plaza. In response to this, it is pointed out that, pursuant to the law, by means of the airport charges, airlines only pay for Schiphol's activities for the benefit of the use of the airport. The definition of aviation activities is in line with that. The decision itself only contains the description of the activities considered to be aviation activities. The list of activities included therein, which has been divided into various categories, is not exhaustive. To the extent that the activity qualifies as an aviation activity, the associated costs can therefore be passed on in the charges. This applies to Schiphol Plaza as well. The ACM supervises this. Therefore, the definition of aviation activities will remain unchanged.

One organisation wondered whether it would not be better to allow or oblige the airport operator to pass on all the security costs in the charges, mentioning the fire service facilities and police activities as examples. In response to this, it is pointed out that the costs of Schiphol's own fire service facilities and the security costs for the benefit of aviation activities are passed on in the charges, but that the costs of police services are not costs incurred by Schiphol itself, and Schiphol is therefore unable to pass them on.

Network quality

EasyJet has requested that rules be drawn up for the evaluation of network quality by the airport operator and emphasises that the charges must remain cost-oriented. In response to this, it is pointed out that the promotion of network quality has been part of the policy for a long time. The safeguarding of network quality as provided for in the amendment act is only intended to achieve that, in its proposal for charges and conditions and in determining these charges and conditions, Schiphol must indicate the potential consequences for network quality and that, within the framework of the operating permit, Schiphol must account for network quality. Article 33 of the present decree elaborates on the obligation to report within the framework of the operating permit, with a list of the elements that the description of the development of network quality must contain. For the rest, the key guiding principles of the Act, such as ex ante cost orientation at the level of the total revenues from charges, will remain in full force in this decree.

Combination of announcements

One organisation indicated that the provisions on combining the various announcements of the determination and proposals of charges and conditions and of the investment programme suggest that these are separate charges that are implemented at the same time. The wording of the provisions concerned has been amended partly in response to this observation. The provisions are now contained in Articles 5 and 10. This is discussed in further detail in the explanatory notes to these articles.

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Mandatory financial contribution from non-aviation to aviation activities

One organisation indicated that, in its opinion, it is not logical for the mandatory contribution to be suspended in the event of exceptional and unforeseen circumstances. It is pointed out that the provision on the suspension of the mandatory contribution has been deleted. Pursuant to Section 8.25dd of the Act, the mandatory contribution is taken into account in the determination of the three-year charges. If exceptional and unforeseen circumstances call for the determination of new charges and conditions for the remaining charges period, no mandatory contribution is taken into account.

One organisation indicated that, for the benefit of consistency between ex ante and ex post, the mandatory contribution should not be taken into account in the calculation of the return in accordance with Appendix A to the decree. In response to this observation, the calculation of ex ante and ex post has been made consistent in Appendix A. The explanatory notes to Appendix A emphasise that the revenues allocable to aviation do not solely consist of the revenues generated through aviation activities, but also comprise the mandatory financial contribution from non-aviation activities.

easyJet noted that, in the chosen dual-till system, the airport operator has considerable discretion in determining the amount of the mandatory contribution, and that this amount depends on the success of the other activities. In response to that, it is pointed out that maintaining the existing dual-till system was a conscious decision. In its proposal for multi-year charges and conditions, Schiphol must state the amount of the mandatory contribution. Article 6 provides for the manner in which this contribution is determined. Users and representative organisations are free to ask Schiphol to substantiate the amount of the contribution during the consultation. It is up to the shareholders to take a decision on the amount of the contribution, and up to Schiphol to decide on how it is to be spread over the years of the charges period concerned. Within the framework of a request submitted to the ACM, the question may arise as to whether, after the mandatory obligation is processed, the charges and conditions comply with the statutory requirements.

Five-year forecast of users sent to the airport operator

KLM has advocated maintaining the annual traffic and transport forecasts instead of a five-year forecast, in view of the dynamics and unpredictability of the market. In response to that, it is pointed out that this information provision is required within the framework of the determination of multi-year charges and conditions, and that this is in line with the Airport Charges Directive. In connection with this input, the explanatory notes to Article 15 emphasise that, in view of the dynamics and the unpredictability of the market, these forecasts are indicative in nature.

Benchmarks

easyJet has indicated that an independent and external test of the benchmarks is required to safeguard the reliability of the results. In response to that observation, it is pointed out that the system for determining the benchmarks is in line with the design of the regulation system, which is based on consultation with users and representative organisations. The present decree obliges the airport operator to consult with users and representative organisations on the composition of peer groups, the list of quality indicators and the model for a cost benchmark. The usability of the benchmarks may come up for discussion within the framework of a request to the ACM to assess whether the charges and conditions are contrary to the rules under or pursuant to the law.

WACC parameters

According to easyJet, the amount of the Equity Market Risk Premium (hereinafter referred to as: the EMRP) should be subject to a public consultation, rather than being fixed. KLM has advocated an integrated adoption of Boot's advice, both with regard to the EMRP (leaving it at 4%) and with regard

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to the construction period interest (maintaining the construction period interest). With regard to the Asset Beta, KLM has indicated a preference for the suggested Ligterink method to that of Boer & Croon. Following on from that, KLM has submitted a specific request for amendment of the phrasing of the peer group (asset base) and the basket for determination of the credit spread (debt risk premium).

In response, it is pointed out that Boot's recommendations and the actualisation of the WACC by Boer & Croon have been adopted almost in full. The phrasing will not be amended, as this is not in line with the arrangements made. Reference is made to the letter to the House of Representatives of 5 June 2013 (Parliamentary Papers II 2012/13 33 231, No. 2).

With regard to the EMRP, it is pointed out that the current regulations are already based on a fixed value for the EMRP. In the advice of Boot & Ligterink, it is noted that fixing this parameter for a longer term is the only sensible step, and will in any case provide some predictability. The WACC parameters are explained in further detail in the explanatory notes to Part C of the appendix.

Efficiency incentive for investment projects

According to KLM, the term for the efficiency incentive is too short and the threshold value of 5% is too high. In response, it is pointed out that the term for the incentive was provided for in the legislative proposal. In addition, the design of the efficiency incentives system is a clear improvement on the current regulatory system, which has no efficiency incentive for investment projects.

One organisation indicated that it has the impression that certain parties wish to bring specific parts of the package of measures up for discussion. One of the examples mentioned is the efficiency incentive. According to this organisation, extending the term for the efficiency incentive would have consequences for the WACC. It recommends reconsidering the entire package if certain elements require amendment. In response, it is pointed out that the package of measures about which the government has informed the House of Representatives is not up for discussion. These parts now add up to a balanced whole.

Investment projects

easyJet has noted that all the users must get access to the information that is to be shared with the project group of an investment project. It wonders what information representative organisations that participate in a project group are allowed to share with those they represent. In response, it is pointed out that the users and representative organisations are free to participate in a project group. What a representative organisation participating in a project group is allowed to share is determined in the project group. Due to the confidentiality of the information that could influence the tender procedure, Schiphol may decide to set requirements in this regard, which may mean that the representative organisations participating in the project group are not allowed to share certain information with those they represent.

KLM has noted that only the timing of an investment project should be under discussion in connection with exceptional and unforeseen circumstances, and not the estimate as such, as this may lead to the undesirable situation in which the estimate is increased for the same object. In this connection, these explanatory notes clarify that exceptional and unforeseen circumstances cannot be invoked to increase estimated costs that are not related to these circumstances. Reference is made to the explanatory notes to Articles 19 and 23.

Investment programme

In connection with one organisation's remark that, in a proposal for an investment programme, the effect on the net costs does not have to be indicated for smaller projects, the relevant provision has been amended. For every investment project, the effect on the net costs must be indicated as well.

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Operating report

One organisation noted that it is not desirable for the operating report to be sent at the same time as the financial accounts. KLM has requested that the obligation to distribute the operating report to users and representative organisations be maintained. Two organisations have made proposals concerning the wording of the report, particularly with regard to the part about network quality. In response to these remarks, the operating report has been disconnected from the financial accounts. In all other respects, the existing method for distributing the operating report will be maintained. Users and representative organisations may request the operating report from the airport operator. The proposed wording was largely adopted.

Role of the Netherlands Authority for Consumers and Markets

easyJet advocated a more extensive role for the ACM. In addition, the airline was concerned that in the field of network quality, there would be an overlap between the powers of the ACM within the framework of charge regulation on the one hand, and the Ministry of Infrastructure and the Environment on the other. In response, it is pointed out that the role of the ACM is inherently connected to the chosen regulation system, and that an evaluation has shown that the existing system has performed well and is being improved in certain respects. The role of the ACM will be maintained, and will be expanded in certain respects. In addition, it is pointed out that, within the framework of the operating permit, the Minister of Infrastructure and the Environment cannot influence the determination of charges and conditions. The ACM is responsible for the sector-specific supervision of charges and conditions.

Transitional law

With regard to the transitional law, there have been no specific remarks or requests for clarification. The transitional law was amended in various respects. For an explanation thereof, please see the explanatory notes to Article 35.

8. Date of commencement

This decree will enter into effect at the same time as the amendment act.

Explanatory notes to individual articles

Article 1

This article contains a number of definitions that supplement the definitions in Section 8.1b(1) of the Act.

The definition of the functional specifications primarily pertains to performances that can be measured in quantitative terms. In the event that an investment project is also intended to achieve an improvement in the quality of the services, qualitative and quantitative characteristics can be used as well, such as the number of check-in facilities and the number of passengers that can pass the security facilities in an hour.

The definition of the '*unuiteiten*' method has been made easier to understand, without substantive changes.

The phrase 'forecasts of the costs in the current financial year' as contained in the definition of the cost benchmark pertains to the consulted costs, which must be based on the actual costs and expected cost developments.

Article 2

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The activities to which the economic regulations pertain were already described in Article 2(1) of the Amsterdam Airport Schiphol Airport Operation Decree. The contents of that Article 2 have been copied to Article 2 of the present decree. Therefore, for an explanation of Article 2, reference is made to the explanatory notes to Article 2 of the Amsterdam Airport Schiphol Operation Decree (Bulletin of Acts and Decrees 2006, No. 333) that was revoked through this decree.

The present decree comes with only two amendments. First of all, this concerns a change in the phrasing as contained in the first paragraph of 'passenger security and the security of their baggage' to 'civil aviation security'. This is in line with Regulation (EC) No. 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (PbEG 2008 L 97). This amendment does not aim to change the cost allocation principles between aviation and non-aviation activities. In addition, in the second paragraph, 'the granting of a concession for aircraft catering' was removed as this no longer applies. In the second paragraph 'the granting of authorisations for secured areas' has been added.

Article 3

This article provides for the manner in which the airport operator announces the determination of the charges and conditions, the adjusted charges, the adjusted operating conditions, the new charges and conditions and the investment programme.

The manner in which announcements of the determination of charges and conditions are made, as described in the first paragraph, has been changed in one respect: the announcement in at least one national daily or weekly newspaper or news magazine no longer applies, as the announcement is made to professional parties with a significant degree of computerisation.

Article 4

This article provides for the times at which the announcement of the determination of the charges and conditions, the adjusted charges, or the adjusted operating conditions must be made at the latest. The various times are in line with international practice and take account of the interests of the users and the interests of those using the users' services, and travel organisations in particular. As stated in Section 8.25d(2) of the Act, charges and conditions may differ per year within each three-year period.

The term of at least five months between the time charges and conditions are determined and the time these are implemented that applied under the Amsterdam Airport Schiphol Operation Decree has been maintained in this decree. In the event that it is requested to assess the lawfulness of the determined charges and conditions, this term give the ACM the opportunity to decide on that before the charges and conditions are implemented. If required, the airport operator can still determine new charges and conditions on time.

The term of at least five months between determination and implementation applies with regard to the adjusted charges and conditions and new charges and conditions as well. The only exception concerns the determination of adjusted operating conditions. This is subject to a term of at least eight weeks between determination and implementation. The right of complaint will continue to apply and may, in this case, result in the implementation of the adjusted conditions being postponed in the event that the ACM has been requested to take a decision on the lawfulness.

Articles 5 and 10

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Once every three years, the determination of the adjusted charges will coincide with the determination of the three-yearly charges. As this will not result in two separate charge regimes applying, and the settlements owed will be factored in the three-yearly charges and conditions, Articles 5 and 10 stipulate that the announcements regarding the proposals for these charges and conditions and the announcements regarding their subsequent determination will be combined into a single announcement. The above also applies in the event that the determination of the adjusted charges coincides with the determination of new charges and conditions.

Article 6

This article provides for the determination of the mandatory contribution from non-aviation activities to aviation activities as referred to in Section 8.25dd(1) of the Act. The airport operator determines the expected average return on equity per year and the average expected return on equity for the subsequent charges period. It is up to the shareholders to determine which portion of the difference between the expected average return and the norm return will be used for a contribution to the aviation activities. Pursuant to Section 8.25dd(1) of the Act, in determining the contribution, account must be taken of the continuity of the company and the financeability of the investments of the airport operator. This may include investments planned for the longer term. The airport operator will subsequently determine how the contribution is to be spread over the years within the relevant charges period.

Within the framework of any request to that end, the ACM may assess whether, after implementation of the mandatory contribution, the charges comply with the rules under or pursuant to the Act, such as the requirement that they must be cost-oriented, non-discriminatory and reasonable.

The determination of the annual norm return does not affect the rules on the calculation of the projected return and the weighted average capital costs, as contained in the appendix to this decree.

Article 7

This article stipulates that the manner and timing of the airport operator's announcement regarding determination of the estimate, budget and realisation of an investment project are to be determined by the arrangements made within the project group. The airport operator will take the decision to determine an estimate, budget and realisation of an investment project, even if the project group that must be consulted has not reached agreement.

Article 8

Section 8.25df of the Act stipulates which information the airport operator must at least provide upon determination of the estimate, the budget and the realisation of an investment project, or any individual part thereof. In addition, it stipulates that the airport operator must take account of the views submitted by the members of the project group when determining the estimate of an investment project. Furthermore, Article 8 of this decree stipulates that these views must be included in the announcement of the estimate.

Article 9

This article provides for the manner in which the airport operator announces the proposal for the charges and conditions, the adjusted charges, the adjusted operating conditions, the new charges

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and conditions and the investment programme. The announcement will be made in the same manner as the determination announcement.

Articles 11, 12, 13, 14 and 16

Section 8.25e of the Aviation Act lays down the obligation to announce the various proposals for charges and conditions for an investment programme and for the estimate of investment projects. In addition, this article already contains the most important information that must be included in these proposals. The present decree stipulates specifically which additional information must be included in the proposal for charges and conditions (Article 11), the proposal for adjusted charges (Article 12), the proposal for adjusted operating conditions (Article 13) and the proposal for new charges and conditions (Article 14), and which information must be provided with regard to the proposal for the investment programme (Article 16). This information, along with the benchmarks, must be provided to the users and representative organisations to allow them the opportunity to participate in the consultations. Through this information, the users will be able to get an idea of the nature, quality and price of the services. This transparency towards users may result in the parties being able to reach an agreement in principle during the consultation, which will decrease the need for the parties to turn to the ACM with a complaint about the charges and conditions as determined.

In particular, it is pointed out that information can be provided with regard to the tangible fixed assets and the costs in the form of distribution percentages and otherwise, as referred to in Article 11c. This will provide the users an insight into the extent to which the airport operator allocates costs of the use of – for example – the passenger terminal to these activities as part of aviation activities. The breakdown of costs by aviation activity concerns a specification of the security activities on the one hand and the other aviation activities on the other. Where possible, changes in the use of tangible assets will be in line with the traffic and volume forecasts and the investment programme.

For information on the expected use of the airport as referred to in Article 11e(1), the airport operator is largely dependent on the information on that subject that the users provide it with. In line with Article 7(2) of the Airport Charges Directive, this has been provided for in Article 15.

In addition, it is noted that, in view of the forecast as referred to in Article 11e(3), the revenues and costs will have to be broken down by financial year. It is desirable for that breakdown to align with the types of costs as used in the airport operator's records with regard to the airport activities and as used in the cost benchmark. The guiding principle for the cost estimate for the next three-year period for which the charges must be determined is the realised cost level of a financial year, as laid down in the most recent financial accounts, along with a recent forecast of the costs in the current financial year, which forecast may be based on the expected costs in the first quarter or the first five months of the year in which the users and representative organisations are consulted and which will not be adjusted (i.e. will be 'frozen') for the benefit of and during that consultation.

In addition, a forecast must be provided of the efficiency gain (on operating costs) that will be achieved in every financial year of the next charges period compared to the current financial year. If, at the end of the financial year, it is established that a higher than estimated efficiency gain has been realised, the airport operator may keep the profits. However, costs exceeding the estimate will not be passed on in the charges; instead, they are at the expense of the airport operator.

With regard to Article 12(a), it is noted that the airport operator will keep an overview of each settlement as referred to in Section 8.25dg of the Act. In that overview, the airport operator must indicate the starting level, the changes and the closing level of each settlement. The changes concern the airport operator's settlements passed on in the adjusted charges, the settlements that arose in a

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financial year, the settlements with regard to which the airport operator has decided to postpone inclusion in the adjusted charges to a later rate year, in full or in part, and the settlements the airport operator has decided to cancel altogether because the end of the period in which the settlement was allowed has been reached.

Furthermore, Article 14 prescribes that in its proposal for new charges and conditions, insofar as that proposal is due to exceptional or unforeseen circumstances, the airport operator must indicate, stating reasons, why the circumstances should be considered exceptional or unforeseen. Article 22 stipulates which circumstances may be considered exceptional or unforeseen.

With regard to Article 16, it is noted that the investment programme is particularly important in providing users and representative organisations an insight into the effects of the investments included therein that pertain to the aviation activities, whether in full or in part, on the costs and charges.

Of each investment for the benefit of aviation activities as included in the investment programme, the financial value of which amounts to more than one million euros, the overview must also state the total value ('End of Project': EOP), the scheduled time at which these are put into operation and the total effect of the investment programme on the costs, broken down by civil aviation security and other aviation activities. Investments for the benefit of aviation activities with a financial value of less than one million euros will be gathered together in the investment programme, provided that they are similar in nature. Management and maintenance projects are shown per category, without stating the EOP amount.

Article 15

This article stipulates which information users must provide the airport operator prior to the proposal for charges and conditions. Users must provide forecasts for the next five financial years to enable the airport operator to make well-founded proposals for the charges and the investment programme. The users must provide reliable forecasts ('best forecasts'). These are, by their nature, indicative due to the dynamics and unpredictability of the market. The airport operator will provide well-founded forecasts with regard to the use of the airport, based in part on the interplay between the various data provided by the users.

Article 17

This article provides for manner and timing of the airport operator's efforts to set up a project group for an investment project. For each investment project, the airport operator must set up a project group that will be involved in all the phases in the realisation of that investment project, regardless of whether the investment project is carried out in parts.

Article 18

This article stipulates that the manner and timing of the airport operator's announcement of the proposal with regard to the estimate of an investment project is determined by the arrangements made within the project group. This is left up to the project group for the benefit of the flexibility of the process.

Articles 19 and 23

In the event that exceptional and unforeseen circumstances arise, the airport operator, having followed the usual procedures for investment projects, may determine a new estimate and budget

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with regard to the additional costs associated with such exceptional and unforeseen circumstances. Article 19(2) prescribes that, in such a case, the airport operator must provide a reasoned statement as to why the circumstances are to be considered exceptional and unforeseen, and explain their consequences for the investment budget. The criteria as referred to in Article 23 above apply cumulatively. Should this new estimate also pertain to costs other than the additional costs associated with the exceptional and unforeseen circumstances, this estimate will, in that respect, not be decisive within the framework of the efficiency incentive.

Article 20

This article provides for the methods for the settlements and the interest payments to be settled. In the next three consecutive financial years, the airport operator may choose not to add the settlements owed to it by users to the costs on which the charges for the relevant rate year are based. If the airport operator decides not to pass on these settlements in the charges in the third year, the amounts associated with that settlement will lapse completely. The same applies in the event of a settlement that may only be effected in one charges year.

Article 21

This article provides for the percentage of the difference between the actual investment expenditure and the budgeted investment expenditure, including construction period interest, as referred to in Section 8.25dg(9) and (10) of the Act. That percentage amounts to 5%. That means that, if the actual investment expenditure equals 105% or more, or 95% or less, of the investment budget, the efficiency incentive provided for in those subsections applies.

Article 22

The criteria as laid down in Article 22 provide a further interpretation of the term exceptional and unforeseen circumstances with regard to charges and conditions. The criteria apply cumulatively. By their nature, the criteria will only apply very occasionally, and therefore without any regularity within the framework of normal business operations. The exceptional and unforeseen nature of the circumstances must also have a disproportionately significant and disruptive effect on the scope of the airport activities in the sense of generating volume differences of such magnitude that the normal settlement rules can no longer apply. This is a situation in which, according to standards of reasonableness and fairness, unchanged maintenance of the charges must be deemed impossible. Examples of this include situations such as a persistent ash cloud or terrorist attacks, causing both global air traffic and traffic to and from Schiphol to be significantly reduced for an extended period of time.

The burden of proof with regard to the exceptional and unforeseen nature of circumstances is on the airport operator.

Administrative and criminal-law penalties and payments made pursuant to a penalty for non-compliance will under no circumstances be considered (offsettable) costs, nor be considered 'exceptional and unforeseen'.

Nor do exceptional and unforeseen circumstances include a situation in which the airport operator assessed a certain risk in advance (such as the need for expansion of an initially small-scale facility) and consulted the users and the representative organisations on the matter but has, for the moment, decided against the expansion in view of the charges-related consequences, in consultation with the users and representative organisations.

Articles 24 and 25

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In implementation of the Airport Charges Directive, Section 8.25dj of the Act stipulates that the Minister of Infrastructure and the Environment may designate a group of airports with the same operator as an airport network and may grant them permission to use a joint charges system. Such permission may also be granted to airports that provide the air connections for the same city or conurbation. For a further explanation, reference is made to the explanatory notes to the above-mentioned explanatory memorandum to the Act of 27 January 2011.

For the determination of charges and conditions for the purpose of such a system, the present decree applies in full for Schiphol, while certain articles of this decree apply for the operator of the participating other civil airports. This was previously provided for in Article 14a of the Amsterdam Airport Schiphol Operation Decree, and the relevant provisions have been copied to Article 24 of the present decree, with amendment of references to the various articles. The provisions of Article 14a of the Amsterdam Airport Schiphol Operation Decree on the information to be contained in the proposal for charges have been copied to Article 25 as well, without amendment. For Schiphol, this information is in addition to the information that must be included in the proposal pursuant to Article 11 of the present decree. At this time, there is no joint transparent system of charges.

In addition, Article 14(a) of the Amsterdam Airport Schiphol Operation Decree declared a number of provisions of this decree to be applicable by analogy to other civil airports that exceed the threshold of five million passengers. This implements the Airport Charges Directive, which applies to airports that exceed this threshold value. The relevant provisions will continue to apply to the other civil airports mentioned, as provided for in the transitional law laid down in Article 35. Reference is made to the explanatory notes to this Article 35. It must be noted that, at this time, no other civil airport has exceeded the threshold value of five million passenger movements.

Article 26

The contents of Article 5 of the old Amsterdam Airport Schiphol Operation Decree were copied to the new Article 26 virtually unchanged. The reference to the articles that are derogated from in the event of determination of new charges in connection with the costs arising from a structural security measure has been amended. The provision as contained in Article 5(4)(a) of the Amsterdam Airport Schiphol Operation Decree was not copied to Article 26 of the present decree, as the possible dates of implementation of the new charges have already been included in Section 8.25db(1) of the Act, as amended pursuant to the amendment act. For a further explanation of Article 26, reference is made to the explanatory notes to Article 5 of the Amsterdam Airport Schiphol Operation Decree (Bulletin of Acts and Decrees 2006, No. 333) that was revoked through this decree. .

Article 27

The contents of Article 6 of the old Amsterdam Airport Schiphol Operation Decree were copied to the new Article 27. Paragraphs a., b. and c. of the aforementioned Article 6 were not copied to Article 27 of the present decree, as the Dutch General Administrative Law Act (*Algemene wet bestuursrecht*) already contains provisions for the relevant subjects.

The second paragraph pertains to the request for an ACM assessment of compliance with the procedure as referred to in Section 8.25e(7) of the Act for the announcement of a proposal for an estimate of an investment project. A participant in the project group set up for the relevant investment project may submit such a request if, in its opinion, the airport operator did not follow the procedure on time, did not follow it completely or did not follow it correctly.

The requirements set for this request are in line with the requirements that apply for a request for an assessment of the charges and conditions, the adjusted charges, the adjusted operating conditions or the new charges and conditions.

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Article 28

This article provides for the manner in which peer groups, the model and the quality indicators list that are required for setting the benchmarks are established. The peer group, the model and the list are established by the airport operator, in consultation with the users and the representative organisations. The users and representative organisations are consulted on the final proposal for the peer groups, the model and the quality indicators list, after which the operator establishes them. This process is similar to that for the regulation system, which is based on consultations between the market parties. The same procedure must be followed for changes to the peer groups, the model and the quality indicators list.

Section 8.25e of the Act stipulates that the airport operator must include three benchmarks in the explanatory notes to the proposal for the charges and conditions.

The quality indicators benchmark provides users and representative organisations an insight into the quality level of the services provided by the operator at the airport. In that connection, the quality of the services is also compared to the historic development of the quality of the services at a number of airports that are comparable to the airport.

The airport operator must determine the quality indicators benchmark on the basis of the joint list of quality indicators and the methods behind the level of the quality indicators. The quality indicators should generate a permanent stimulus to improve, with due observance of the price/quality ratio users require.

The charges benchmark provides an insight into the development of charges at a number of other airports that are comparable to Schiphol. In this connection, it is noted that this benchmark can only be determined for comparable charges for similar airport activities at the airports in the peer group.

A benchmark established in accordance with a set model will enable the airport operator to provide an insight into the development of the costs of aviation activities and, in doing so, guarantees that the costs are calculated in a uniform manner. This makes the various years mutually comparable. It is up to the airport operator to expand the model after consultation of the users and representative organisations. In that context, it is desirable for the cost benchmark to provide an insight into the statement of changes in the Regulatory Asset Base. This will enable the airport operator to also provide an insight into the new investments that have been put into operation and the associated increase in depreciations (and decommissioning of assets and the associated decrease in depreciation charges). The cost benchmark can furthermore be used to address the development of the total costs of aviation activities and civil aviation security, and the development of individual types of cost, or of the costs per passenger or air transport movement. In addition, the development of the nominal and real costs and inclusion of achieved efficiency gains are desirable as well. Finally, it is recommended that the development of the costs and efficiency gains be substantiated.

The airport operator can limit the costs in connection with the benchmarks by establishing the list, the peer groups and the model on the basis of information that is already available, where possible.

Article 29

The contents of Article 8 of the old Amsterdam Airport Schiphol Operation Decree were copied to the new Article 29 virtually unchanged. The amendment concerns the period after which the airport operator must redetermine the amount of the depreciations and the capital costs on the basis of the '*unuiteiten*' method. This period has been extended by a year (from five years to six years). In

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In addition, it has been stipulated that, in addition to the costs of operating assets, the operating costs must be determined and allocated in accordance with acceptable business principles. Finally, the twelfth paragraph mentions 'integrality' as a guiding principle for the allocation of costs to aviation activities. This already follows from Section 8.25g(1) of the Dutch Aviation Act, but was erroneously not included in Article 8 of the old Schiphol Airport Operation Decree. For an explanation of Article 26, reference is made to the explanation of Article 8 of the old Schiphol Airport Operation Decree. The provision of Article 9 of the old Amsterdam Airport Schiphol Operation Decree which, in respect of the allocation of costs to aviation activities, declared Article 8 to apply by analogy to the costs of the implementation of passenger and baggage security measures, as well as cargo security, has not been included in the present decree. This is not required as, pursuant to Article 2(2) of this decree, the implementation of passenger and baggage security, as well as cargo security, is an aviation activity and, as such, the costs of this aviation activity already come within the scope of application of Article 29. The above is without prejudice to the fact that, pursuant to Section 8.25g(2) of the Act, the airport operator must keep separate records within the general accounts for the activities with regard to the use of the airport, in which the costs of and revenues from the implementation of civil aviation security are recorded separately.

Article 30

The contents of Article 10 of the Amsterdam Airport Schiphol Operation Decree regarding the explanation of the financial accounts have been copied to Article 30 of the present decree, with amendments. One amendment concerns the settlements to be included in the explanation (under d.). This amendment is required as, in the amendment act, the number of amounts to be settled in the charges has been expanded. Another amendment concerns the difference, to be included in the explanatory notes, in depreciation charges, capital costs and operating costs arising from the difference between the actual investment expenditure of investment projects and the investment budget. This amendment is related to the introduction of the efficiency incentive that, as explained for Article 21, will come to apply if the difference between the actual investment expenditure and the budgeted investment expenditure is 5% or more.

The financial accounts concern the aviation activities. These regulations on the transparency of the financial accounts of the aviation activities have been specifically geared to those activities. The obligation to provide information to the ACM as laid down in the second paragraph (financial accounts and explanatory notes) provides this institution with the data it needs to assess whether the financial accounts were drawn up in accordance with the requirements (such as the settlement items), and whether the allocation formulas were applied correctly. The financial accounts are to be accompanied by a statement from an independent auditor.

Article 31

This airport operator will benefit from greater legal certainty if the allocation system is approved for an extended period of time. In line with the system of three-year charges periods, the approval by the ACM of the allocation system for the costs of and revenues from the aviation activities pursuant to Section 8.25g, of the Act has currently been set at a maximum of six years. The term of validity of an allocation system will in any case coincide with one three-year charges period.

Article 32

The provision on the calculation of the projected return, previously included in Article 13 of the Amsterdam Airport Schiphol Operation Decree, has been copied to Article 32 of the present decree, with amendments. The amendments are required in connection with the transition from determination of annual charges to determination of multi-annual charges. This article provides

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specific standards for the calculation of the capital costs within the framework of testing the whole of the charges for aviation activities against the cost-orientation standard: the return on the Regulatory Asset Base as referred to in Article 29(11) will be no higher than the weighted average capital costs. The calculation of the return on the Regulatory Asset Base is included in the appendix. The settlements as referred to in Section 8.25dg of the Act will not be taken into account in the calculations of the projected return.

The formula for the permitted rate of return, i.e. the weighted average capital costs (WACC), has been included in Part C of the appendix to this decree. The weighted average capital costs as determined with the WACC formula will be used to determine the permitted projected return on aviation activities. In principle, it is important that the return on aviation activities should be in line with the market expectations (of both shareholders and providers of borrowed capital) to offer the airport operator sufficient incentives to make investments.

Articles 33 and 34

Section 8.29a(1) of the Act stipulates which elements must at least be included in the operating report of Amsterdam Airport Schiphol. It concerns – among other things – a description of the arrangements made in implementation of Section 8.25a of the Act which are required for the proper handling of airport air traffic and the associated transport of people and goods at the airport, an overview of all the information that is relevant in that connection, a description of the efficiency and effectiveness of those arrangements and a description of the development of network quality. In accordance with Section 8.29a(1) of the Act, this description must also contain a comparison to the benchmarks as referred to in Section 8.25da(2) and Section 8.25e(1) of the Act.

The report pertains to the developments of the airport operator in the preceding charges period and/or current charges period in terms of quality, investments, capacity and network quality. These aspects are essential in safeguarding the public interests of 'continuity, quality and network development of the airport'.

For the operating report to be drawn up the airport operator may use information that is already available, provided within the framework of the regulation of charges, such as the outcomes of the quality indicators benchmark, the capacity development plan and the investment programme, which include the provisions required for aviation.

In the operating report, the airport operator must provide an insight into the degree of support and the interrelationships between quality, investments and capacity and the development of the network quality. The second paragraph identifies the specific information on those aspects that the airport operator must include in its operating report.

The information provided by the airport operator on the development of network quality will enable the Minister of Infrastructure and the Environment to assess how network quality is developing and what role the airport operator performs in that context. This assessment by the Minister of Infrastructure and the Environment is without prejudice to the statutory provisions with regard to the determination of the charges and conditions and the powers of the ACM.

In addition, the shareholdership of the State with regard to Schiphol can be used as an additional guarantee. The ministers involved will collaborate closely, each from within their own sphere of responsibility. The powers of the shareholders are without prejudice to the statutory provisions with regard to the determination of the charges and conditions and the powers of the ACM.

Article 35

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Pursuant to Section 12.6a of the Act, the announcement of the proposal for charges and conditions will only be made after expiry of a period of one year after the amendment act enters into effect. The announcement of a proposal that serves to determine charges and conditions that will apply until the first-time implementation of multi-year charges and conditions will be in accordance with the old law. In addition, the old law will continue to apply to the process of determining the charges and conditions that follows this announcement. Supplementary to that, the transitional law as laid down in Article 35 of the present decree stipulates that the old Amsterdam Airport Schiphol Operation Decree will also continue to apply to the announcement of a proposal for charges and conditions (the manner and timing of the announcement) and the entire process of determining the charges and conditions that follows (under a.). The process of determining charges and conditions starts with the proposal to that effect. This includes the quality indicators as included in Article 7 of the old Amsterdam Airport Schiphol Operation Decree, on the basis of which the proposal must describe the quality level of the services offered. Secondly, it concerns the determination of the charges and conditions that follows the proposal. This refers to all the rules set with regard to the determination. These are determination rules as referred to in Section 8.25d(1) of the Act, as it read immediately before the entry into effect of the amendment act, and the rules with regard to determination as referred to in Section 8.25f(4) of the Act, as it read immediately before the entry into effect of the amendment act. Thirdly, it concerns the complaints procedure with regard to the charges and conditions with the ACM (under h.). For a further explanation of the transitional law, reference is made to the memorandum of amendment (Parliamentary Papers II, 2015/16, 34 197, No. 7).

In implementation of the Airport Charges Directive, Section 8.25da(5) of the Act, as it read before the entry into effect of the amendment act, and Article 14(a) of the old Amsterdam Airport Schiphol Operation Decree declared the provisions with regard to the proposal for annual charges and the determination thereof to apply by analogy to other civil airports that exceed the threshold of five million passenger movements. The amendment act and, consequently, the present decree, do not serve to amend the rules for these airports. For that reason, the old law will continue to apply to these airports (under b.).

The old law will also continue to apply to the information that the users must provide the airport operator prior to the announcement pursuant to the old law (under c.).

The transitional law as laid down in Article 35(a) means that, after the present decree enters into effect, annual charges will continue to apply for a limited period of time. Hence, the old law must also continue to apply to the allocation of costs to airlines and the approval of the allocation system that take place in view of a proposal for these charges and conditions and their subsequent determination (under d.). The old law will also continue to apply to the financial accounts for the financial years for which only these annual charges apply (under e.). This article stipulates that the explanatory memorandum to the financial accounts for a financial year for which annual charges apply until 1 April and multi-year charges apply after 1 April must contain the breakdown of the difference between the estimated and the actual revenues from the charges as provided for in the old law for the financial year preceding the determination of the charges (under f.).

The explanatory notes to Article 26 state that Article 5 of the old Amsterdam Airport Schiphol Operation Decree was copied to the new Article 26. Three minor adjustments were made that are related to the replacement of the system of annual charges by the system of multi-year charges. In view of these adjustments, the transitional law stipulates that the old law will continue to apply with regard to structural measures in implementation of a special direction and the adjustment of the charges in connection with the costs of this measure, provided that these costs can be settled with the annual charges (under g.).

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The information to be included in the operating report pursuant to the present decree differs from the information that must be included in the report pursuant to the old Amsterdam Airport Schiphol Operation Decree.

The old law will continue to apply to the report concerning the financial years in which annual charges applied (under i.).

Article 35(2) provides for the timing and manner of the settlements as included in the financial accounts with regard to a financial year for which charges that were determined in accordance with the old law applied. As indicated in the above-mentioned explanatory notes to the memorandum of amendment, these settlements must be effected in accordance with the new rules. Section 12.6a(3) of the Act provides the basis on which this is determined.

3. Explanatory notes to the appendix

Part A. The calculation of the projected return

Revenues allocable to aviation activities (AR)

In determining the return, the revenues allocated to aviation activities are important. This does not just concern the revenues generated through aviation activities and other activities that are directly associated with aviation activities, but also includes the mandatory financial contribution from non-aviation activities. The latter contribution will be considered revenue as well.

For a further explanation of Part A of the appendix to the present decree, reference is made to the explanation of Part A of the appendix to the old Amsterdam Airport Schiphol Operation Decree.

Part B. Calculation of the return on security activities

Part B contains provisions that – in addition to the provisions of Part A – must be observed in the calculation of the return on security activities.

Part C. The weighted average capital costs (WACC)

The formula applied for the weighted average capital costs, which is based on the so-called Capital Asset Pricing Model, is internationally accepted and widely used. Adjustment of a number of parameters in the formula is considered necessary within the framework of the evaluation. New definitions are included in Part C of the appendix and, where necessary, explained.

For a number of parameters of the formula as contained in the appendix, the value or the manner in which the value is determined has been indicated. The most important considerations in this regard are the following:

1. For the parameters that are, in principle, consistent over time and which do not need to be redetermined every rate period a fixed value has been determined. For the other parameters, a definition or formula has been included (along with its source), so that it can be consistently determined on a periodic basis. This reduces the insecurity for all the parties involved and prevents unnecessary procedures, in the interest of both the users, as they obtain a better insight into the expected permitted rate development, and the airport operator, as it provides an insight into the expected return opportunities for new investments.

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2. The parameters improve the options for enforcement by the ACM because interpretation differences are excluded as much as possible.
3. The parameters were chosen because they are as future-proof as possible, offering legal certainty in the long term.

Below is a further explanation of a few of the parameters.

The EMRP, the return investors require for the additional risk associated with investing in the market portfolio compared to investing in a risk-free investment, has been set at 5.0%. A number of ex ante and ex post sources and methods have been examined, and a comparison has been made with the EMRPs used by other supervisory authorities. Against these background it is decided to increase the EMRP from 4% to 5%.

As far as the capital ratio ('gearing') is concerned, the percentage of the value of the interest-bearing debts allocable to the financing of the Regulatory Asset Base has, in the past, been fixed at 40% . Research by Boer & Croon looked into both the gearing of the current peer group and that of listed airports with a credit status, and that of unlisted airports with a single A credit status of all the outstanding debts. In this research, the gearing was between 34 % and 41 %. A comparison of this range to other European supervisory authorities shows that it is within the range of the gearing levels used by other supervisory authorities. As the regulated aviation activities have a lower risk profile than the non-aviation activities, it was recommended that the gearing be set at the upper end of the range.

Based on this analysis, it has been decided to set the gearing parameter at 40%.

This is virtually equal to the actual debt percentage with which the current airport operator has financed all of its activities at the moment (year-end 2015: 42%). In setting the norm at 40%, it was assumed that the airport operator should be able to arrange its financing in such a manner that the continuity of the activity will not be at risk. The guideline in this is that the company must be able to maintain a solid credit rating (at least a single A rating) with Standard & Poors, Moody's or a comparable credit rating with another rating agency).

For the record, it is noted that the gearing standard of 40% is only relevant as a standard for calculating the permitted rate of return. The airport operator is not obliged to bring the actual capital ratio in line with the aforementioned percentage.

In line with the recommendations based on Boot & Ligterink's above-mentioned research into the WACC parameters, it has been decided to use a variable parameter on the basis of moving averages for both the risk-free yield and the credit surcharge. This variabilisation will be able to prevent major differences compared to market interests for single A bonds. The moving average method is used for determining the risk-free yield. The calculation is based on the average effective yield ('yield to maturity') on a Dutch government bond with a remaining maturity of 10 years in the 24 months preceding the time at which the WACC is determined.

The fixed credit surcharge (Kd-Rf) of 65 bp will be replaced by an interest surcharge that is equal to the average of the difference between the IBoxx Euro Non-Financials A Rated portfolio, which contains bonds with a remaining maturity of approximately 10 years on the one hand, and the 10-year interest on a government bond with the lowest interest percentage over the 24 months preceding the determination of the WACC, on the other. If the IBoxx Euro Non-Financials A Rated portfolio is no longer available, the airport operator will use a comparable portfolio of bonds with a

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remaining maturity of approximately 10 years. This new portfolio is part of the regular consultation process with users and representative organisations.

The calculation of the Asset Beta depends on a large number of individual calculations which should in theory lead to a reduction of the Asset Beta. The Asset Beta is the measure for the market risk associated with the activities for which the airport operator's Regulatory Asset Base is used. It has been decided to assume a lower Asset Beta by selecting it from the system in a more generic manner, from the bottom of the range: first, the bandwidth of the two and five-year median Asset Beta of the airports in the entire peer group is determined; then the lower end of this bandwidth is selected.

If it can be proved that there are fewer than four listed airports in areas in which the Agreement on the European Economic Area applies and Switzerland that are representative in terms of comparability, comparable listed airports will be selected until the relevant number of four comparable listed airports is achieved. It goes without saying that it is important that these airports operate in comparable economic systems. Possible examples are countries such as the United States, Canada, Australia or New Zealand.

The Equity Beta concerns the 'levered Equity Beta', which is a measure of the sensitivity of the value of shareholders' equity to a change in the value of the market portfolio of shares, taking the financial structure of the airport activities into account (g).

The determination of the WACC is linked to the multi-year rate system and takes place every three years.

THE STATE SECRETARY FOR INFRASTRUCTURE AND THE ENVIRONMENT

Sharon A.M. Dijkma

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Appendix to the Explanatory Memorandum for the Amsterdam Airport Schiphol Operation Decree 2017

The comparative overview below clarifies which provisions of the Amsterdam Airport Schiphol Operation Decree, whether or not amended, have been included in the present decree and which provisions of the present decree are new compared to the Amsterdam Airport Schiphol Operation Decree. The amended or new provisions are included in the explanatory notes to individual articles.

Article of the Amsterdam Airport Schiphol Operation Decree	Subject	Article of the Amsterdam Airport Schiphol Operation Decree 2017	Subject
1	Definitions	1	Definitions
2	Description of aviation activities	2	Description of aviation activities
3	Time and method for announcement of the determination of annual charges and conditions	3 and 4	Time and method for announcement of the determination of multi-year charges and conditions, adjusted charges, adjusted operating conditions, new charges and conditions and investment programme
-	-	5	Combination of determination announcements
-	-	6	Contribution from non-aviation activities
-	-	7	Manner and timing of announcements regarding investment projects
-	-	8	Contents of the announcement of determination of an investment project estimate
4, paragraphs 1-3 and 7 and 8	Method for announcement of the proposal for annual charges and conditions and views on the proposal	9, paragraphs 1 and 2	Method for announcement of the proposal for multi-year charges, adjusted charges, adjusted operating conditions, new charges and investment programme and views on the proposal
-	-	10	Combination of announcements of a proposal
4, paragraphs 4, 5 and 6	Content of a proposal for annual charges, including the capacity development plan, investment	11 to 14	Contents of a proposal for charges and conditions, adjusted charges, adjusted operating conditions

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	programme and information on investments	16	and new charges and conditions Information about the proposal of the investment programme
4, paragraph 9	Consultation of users on the airport development plan and capacity development plan	8.25e(8), Aviation Act	Consultation of users on the investment programme
4a	Information preceding the announcement of a proposal for charges and conditions	15	Information preceding the announcement of a proposal for charges and conditions
-	-	17 to 19	Manner and timing of announcements regarding the proposal for investment project estimates and information on the estimate proposal
-	-	20	Time of and method for settlement
-	-	21	Difference between investment expenditure and investment budget (efficiency incentive)
-	-	22 and 23	Exceptional and unforeseen circumstances
5	Derogating rules in the event of a special direction	26	Derogating rules in the event of a special direction
6	Contents of request to the ACM	27	Contents of request to the ACM
7	Quality indicators	28	Determination of the charges benchmark, quality indicators benchmark and costs benchmark
8 to 14 and Appendix	Allocation system, financial accounts and projected return	29 to 32 and Appendix	Allocation system, financial accounts and projected return
14a	Joint, transparent system of charges	24 and 25	Joint, transparent system of charges
15	Operating report	33 and 34	Operating report
16 and 17	Final provisions	35 to 38	Transitional provisions and final provisions