

# Protocol implementing the Aviation Act efficiency incentive for investment projects<sup>1</sup>

## Legal basis

### Explanatory Memorandum

'In the government's letter of 5 June 2013 to the House of Representatives, the government announced that a system of efficiency incentives would be introduced for certain investment projects. This concerns investments dedicated entirely or partially to aviation activities. The budget overrun (actual capital expenditure versus the set investment project budget) is fully absorbed by the airport operator during a certain period whereas the cost savings are shared equally during a certain period between the airport operator and the user. This gives the airport operator an incentive to keep the actual costs of an investment project within budget. This is deemed desirable in the light of Schiphol's dominant position in aviation activities'.

'Before undertaking such a project, a project group will be established in which all users and representative organisations may participate'.

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

General Administrative Order: The total expenditure on an investment project, as defined in Section 8.1b(1) of the Aviation Act, amounts to at least 20 million euros.

## Definitions based on the Aviation Act/Explanatory Memorandum

Investment project: The totality of associated services, goods or works included as such in the investment programme defined in Section 8.25de, of which the expenditure on aviation activities exceeds an amount to be determined by general administrative order.

### Estimate/Notification of the proposal of the investment project

- The functional specifications of the investment project.
- The estimate of the project expenditure.
- A cost review, if it has been drawn up at the project group's request, which contains the findings of one or more independent third-party experts on the costs together with a substantiation, and the functional specifications, both individually and in conjunction with each other.
- The decision of the airport operator's investment committee regarding the project or project components (project assessment).

Functional specifications: The requirements imposed, with a view to future use, on an investment project or project components that will be realised, formulated in terms of quantitative performance, supplemented with quantitative and qualitative features, where possible.

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<sup>1</sup> This text is a translation of the original Dutch document. In the event of a difference of understanding, the Dutch text will prevail.

**Budget:** The budget is equivalent to the total price stated by the successful tenderer(s) in their tender, the expenditure on the works contracted for the investment project outside the tendering process, the expenditure on the organisation's own project office and the capitalised costs of the work in progress.

**User:** An airline, as well as a person or legal entity that operates flights, not being an airline.

**Representative organisation:** A legal entity designated by ministerial regulation that represents users' interests.

## Definitions (interpretation of the Aviation Act)

In order to implement the Aviation Act, a practical interpretation of the act is required. The definitions applied by Schiphol are set out below:

**Estimate:** An estimate of the project expenditure associated with the functional specifications.

**Cost review:** Cost-based substantiation of the estimate.

**Change Board:** The Schiphol Group decision-making body for investment projects.

**Aviation Act investment project group:** A project group composed of users and/or delegates from a representative organisation and the operator of Amsterdam Airport Schiphol. The objective of the Aviation Act investment project group (*Wet luchtvaart projectgroep investeringen*, abbreviated to WL project group) is to offer users an optimal price-quality ratio and to formulate a realistic budget for investment projects, of which the budget for aviation activities amounts to at least 20 million euros. The objective of the Aviation Act investment Project Group excludes making decisions on whether or not a project, a project component or a scope change should be implemented. The responsibility for decision-making lies with Schiphol Group (without prejudicing the consultations on the investment programme pursuant to Section 8.25de of the Aviation Act).

**Realisation:** A project has been realised if all products/constituent products have been delivered operationally and put into operation.

**Functional specifications** The functional specifications are the same as the System Requirements Specifications (SRS). 'A structured overview of the relevant system, the available space, a description of the required functionalities, the context of the system, the identified interfaces with other systems in the environment, the requirements set for the system, as well as a description of the design choices made' (international System Engineering definition).

**Scope change:** A change (addition to/increase) in the System Requirements Specifications (SRS) after the moment of the estimate and/or the budget. Such a change is not necessary in order to realise the original defined scope (functional specifications).

**Change:** Unforeseen or foreseen adjustment/change after the moment of setting of the estimate and/or the budget that is necessary in order to realise the original defined scope of the project (the functional specifications).

**Budget:** The budget is equivalent to the total price stated by the successful tenderer(s) in their tender, the expenditure on works contracted for the investment project outside the

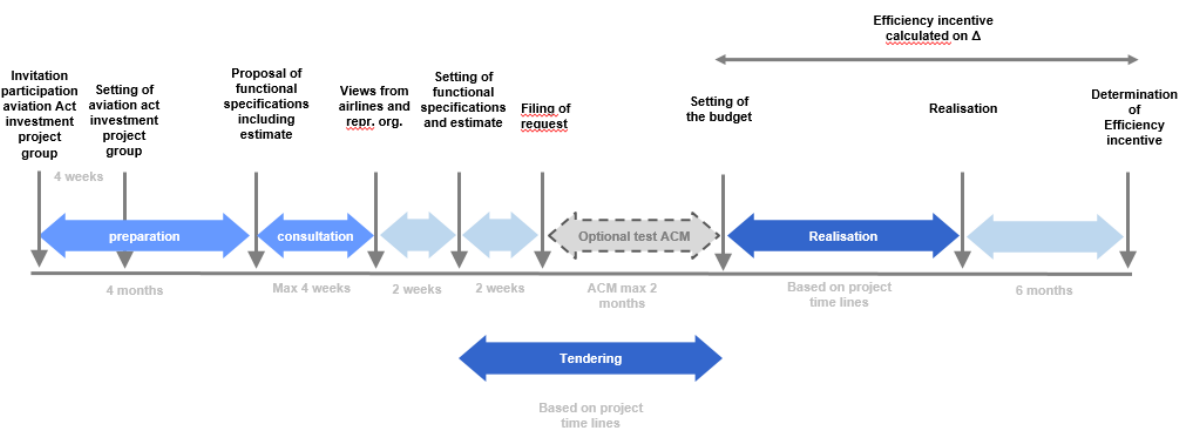
tendering process, such as a framework contract and changed-related activities, the expenditure of the Schiphol organisation, the capitalised costs of the work in progress and the risk provisions (These risk provisions will not be part of the efficiency incentive measure (see the section on determination of the efficiency incentive for the determination rules).

**Risk:** An uncertain event or series of events that, were they to occur, would have an impact on the achievement of the investment project objectives. A risk is measured based on the likelihood of an identified threat occurring combined with the extent of its impact on the objectives. A risk budget contains provisions for mitigating risks and/or absorbing the effects of the risks that have occurred.

**Determination of the efficiency incentive:** The variance between the actual capital expenditure (excluding the risk control expenditure) for the Aviation part and the budgeted expenditure (excluding the risk provisions) for the Aviation part will be determined six months after realisation of the investment project (see the section on determination of the efficiency incentive for the determination rules).

**Tender procedure:** Ensuring an ethical, transparent, objective, non-discriminatory and efficient procurement process in tendering for works, goods and services in accordance with European law and national laws and regulations.

## Process



NB: Consultation takes place before commencing the design phase. The estimate may change in the course of the design phase.

NB: 'Tendering' can also be interpreted as awarding a contract to a main contractor. Naturally, this procedure has a shorter duration than the tender process.

- Users and representatives organisations will receive an electronic invitation to participate in the Aviation Act investment project group at least four months in advance of the proposal of the estimate for an investment project. The invitation will also be made available for inspection at Schiphol Group's office. Participation in the Aviation Act investment project group is open to any user or representative organisation.
- No later than three months before the proposal of the estimate for an investment project is submitted to the Aviation Act investment project group for consultation purposes, Schiphol will establish the Aviation Act investment project group by publishing an announcement to that effect on the website and will subsequently

send an electronic invitation to the participants in the Aviation Act investment project group for the first meeting.

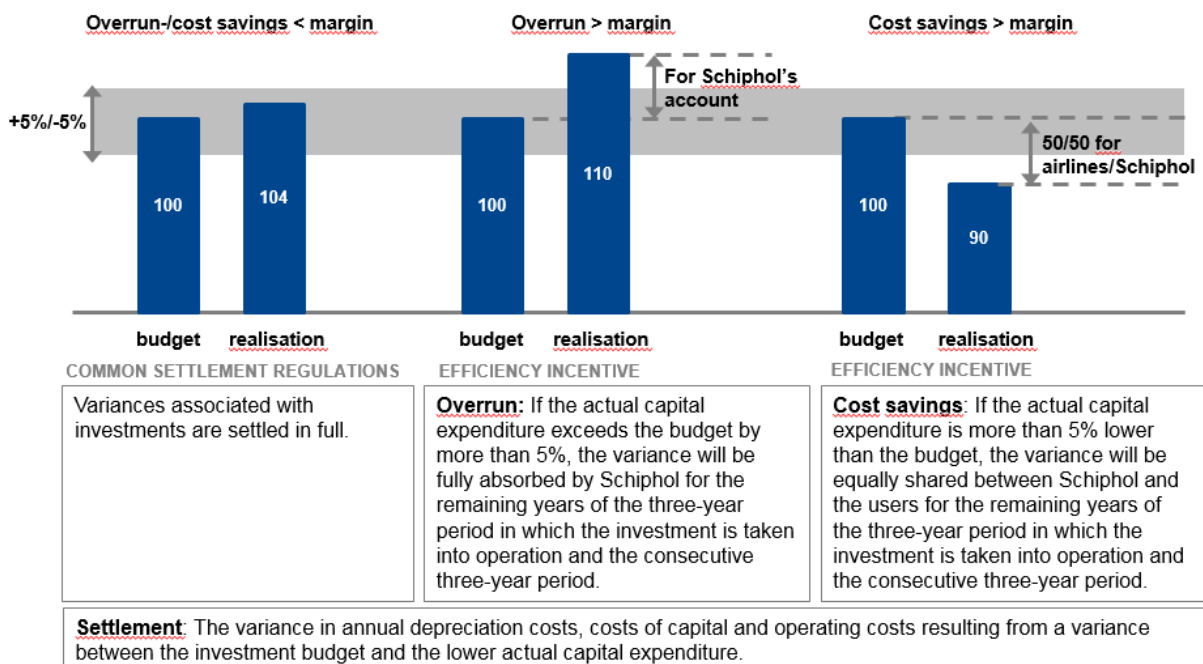
- Terms of Reference (ToR) as set out by Schiphol will be drawn up for each Aviation Act investment project group. The ToR sets out the objective of the Aviation Act investment project group, when the Aviation Act investment project group convenes, the content of the meetings and the applicable agreements. The ToR will be discussed during the first Aviation Act investment project group meeting, in which any supplementary agreements can be adopted by the Aviation Act project group (see the ToR).
- Information will be provided to the Aviation Act investment project group via the website (link) and can be accessed by the Aviation Act investment project group members during the consultation period until the moment of setting of the budget is announced on the website. Upon the setting of the budget, the information will be made available for inspection by the Aviation Act investment project group members at Schiphol Group's office until the date on which the effect of the efficiency incentive is determined.
- All the information provided must be treated as strictly confidential and may not be shared with anyone outside the Aviation Act investment project group. Each member of the Aviation Act investment project group must sign a confidentiality agreement in advance before gaining access to meetings and the documentation on the website.
- Users and the representative organisations that register for participation to the Aviation Act investment project group are expected to actively participate in the activities of the Aviation Act investment project group (see the Explanatory Memorandum).
- The part of the investment that is not earmarked for aviation activities (non-aviation), does form part of the functional specifications and the estimate. Schiphol will respond to views only if (i) the concerned costs are allocated to aviation activities, or (ii) the specification or implementation of the non-aviation part affects the timing/costs of the aviation part.
- Should an investment project need to be delivered urgently or ahead of schedule, a decision can be taken in association with the Aviation Act investment project group to derogate from the procedure agreed earlier by the Aviation act investment project group.
- If no parties respond to the invitation to participate in an Aviation Act investment project group for an investment project, a consultation process will not take place. However, the efficiency incentive will apply, if applicable.

## Determination of the efficiency incentive

### Basic principles

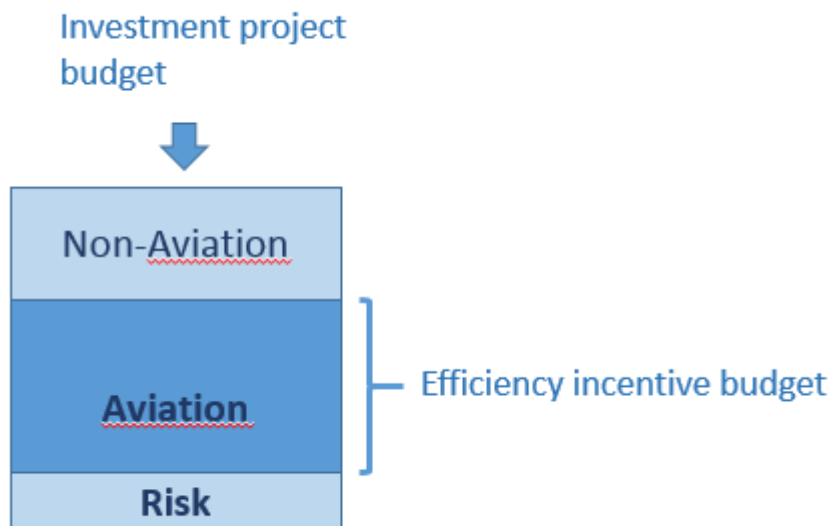
- The efficiency incentive system does not apply to the risk provisions included in the set budget.
- The efficiency incentive system applies solely to the part of the expenditure on aviation activities. The key for determining the share of aviation activities is determined on the basis of future use of the asset upon the setting of the budget. This also is the key that is used to determine the efficiency incentive.
- The efficiency incentive system is determined by comparing the set budget (excluding the risk provisions) for the aviation part of the investment project, against the actual expenditures (excluding the risk control expenditure) on the aviation part of the investment project.
- The efficiency incentive system does not apply if the projected aviation expenditure is below 20 million euros.
- The efficiency incentive system does not apply if the budget overrun (actual capital expenditure against budget) has been caused by exceptional and unforeseen circumstances (see section 8.25dg(10) of the Aviation Act).
- The efficiency incentive system does not apply to any cost variances arising if the investment project is put into operation earlier or later than scheduled (see section 8.25dg(6) of the Aviation Act).
- If a complaint causes the process to be discontinued and/or additional cost reviews are required for assessment by the Authority for Consumers & Markets (ACM), any additional project costs arising in this connection do not count in the assessment of the efficiency incentive.

## Settlement of the efficiency incentive



- If the actual capital expenditure (excluding the risk control expenditure) for the Aviation part equals or is less than 5% higher or lower than the budget (excluding the risk provisions) for the Aviation part, no efficiency incentive is deemed to exist.

- If the actual capital expenditure (excluding the risk control expenditure) for the Aviation part exceeds the budget (excluding the risk provisions) for the Aviation part by more than 5%, the variance in the annual depreciation costs, costs of capital and operating costs (project costs associated with the investment) will be fully absorbed by Schiphol for the remaining years of the three-year period in which the investment is taken into operation and the consecutive three-year period.
- If the actual capital expenditure (excluding the risk control expenditure) for the Aviation part is more than 5% lower than the budget (excluding the risk provisions), the cost advantage in the annual depreciation costs, costs of capital and operating costs will be equally shared between Schiphol and the users for the remaining years of the three-year period in which the investment is taken into operation and the consecutive three-year period.
- The variances between the actual capital expenditure and the set budget will be determined six months after realisation of the investment project. (The actual capital expenditure may still comprise estimates for receivable invoices at that time). If the variance is higher or lower than 5%, this is used as the basis for determining the amount of the efficiency incentive. The effect of the variance on the annual costs associated with the investment project (depreciation costs, costs of capital and costs associated with investments) will be determined retroactively on the basis of the remaining years of the three-year period in which the investment is put into operation and the consecutive three-year period. This effect will be included in the next settlement opportunity.



## **Transitional law (Memorandum of Amendment Section 12.6a)**

Explanation:

'The tender process or the realisation of a number of investment projects or individual components thereof may have already commenced upon the entry into force of this act. As part of transitional law, it is important to set out the possible applicability of the efficiency incentive system to these investment projects. The proposal, therefore, is to apply the new provisions only to investment projects, of which the tender process or realisation phase commences at least three months after the entry into force of the act.'

Application:

Pursuant to the transitional law, Section 8.25df applies to investment projects, the estimate and functional specifications of which will be set on or after 1 October 2017.

- If the Change Board has made a (favourable) decision on the estimate and the functional specifications of an investment project (or a component thereof) before 1 October and the tender/procurement process has also commenced, the new Section 8.25df of the Aviation Act and the associated efficiency incentive (in Section 8.25dg(9) and (10) do not apply.
- However, if the Change Board has not yet made a (favourable) decision on the estimate and the functional specifications before 1 October (for example, because changes still need to be made to the plans), the new regulations concerning investment projects and the associated efficiency incentive (in Section 8.25dg(9) and (10) apply.