

Policy Rule

Slot Mobility

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Airport Coordination Netherlands (ACNL) is an independent governing body by public law. In the Dutch “Wet Luchtvaart” (Law on Aviation) designated as the independent coordinator for slot coordinated airports in the Netherlands. ACNL is responsible for slot allocation and slot monitoring at Amsterdam Airport Schiphol (AMS), Rotterdam The Hague Airport (RTM) and Eindhoven Airport (EIN). In order to make optimal use of the airport capacity our mission is to deliver slot coordination and monitoring services in a neutral, non-discriminatory and transparent way.

ACNL is publishing following policy rule according to article 1:3 (4) in conjunction with article 4:81 of the Dutch “Algemene wet bestuursrecht” (General Administrative Law Act). The abbreviation in Dutch is ‘Awb’.

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Introduction

1. By means of this document, Airport Coordination Netherlands (ACNL) establishes policy rules, in accordance with Article 4:81 of the Dutch “General Administrative Law Act” (Awb), regarding the decision-making by ACNL in response to an application addressed to ACNL for confirmation of a slot transfer as referred to in Article 8a (2) of Council Regulation (EEC) No 95/93 (Slot Regulation) in the case of a total or partial takeover, whether or not in the case of bankruptcy or administration of an air carrier, as referred to in Article 8a (1) (b) (iii) of the Slot Regulation.
2. ACNL has identified a need for clarification regarding the criteria for a slot transfer in the case of a takeover of an air carrier. In particular in the case of a takeover in the case of bankruptcy or administration.
3. In order to be able to transfer slots, one must be a slot holder. Only an air carrier can be a slot holder. For this reason, section ‘Relevant legislation’ describes the requirements set out in the Slot Regulation and Regulation (EC) No. 1008/2008 regarding the definition of the term air carrier.
4. Section ‘Policy with respect to Slot Mobility’ describes the transfer of slots in the case of a total or partial takeover.
5. Section ‘Process’ describes process requirements in the case of bankruptcy/administration and regarding an application for the transfer of slots.
6. Finally, a flow chart is included.

Relevant legislation

7. Article 8a (1) (b) (iii) states that:

Slots may be:

(...)

b) transferred

(...)

(iii) in the case of a total or partial takeover, when the slots are directly related to the air carrier taken over.

8. Since slots must be related to the air carrier taken over, it is first of all important to consider the definition of the term air carrier contained in the Slot Regulation. For a proper understanding of that definition, it is also necessary to look at the definition of the term air carrier in Regulation (EC) No. 1008/2008.
9. If an undertaking does not meet the definition of an air carrier, an application to transfer slots will be rejected. Both the transferring and the receiving undertaking must meet the definition of an air carrier, as only an air carrier can be a slot holder under the Slot Regulation. However, there may also be an air carrier in the process of establishing itself as a receiving company, as described in Article 14 of the Slot Regulation. The requirements of an air carrier in the process of establishing itself will also be described. In fact, the acquiring company can be:

- An existing air carrier; or
- An air carrier in the process of establishing itself.

Air carrier

10. In Article 2 (f) (i) of the Slot Regulation an air carrier is defined as:

“An air transport undertaking holding a valid operating licence or equivalent at the latest on 31 January for the following summer season or on 31 August for the following winter season. For the purpose of Articles 4, 8, 8a and 10, the definition of air carrier shall also include business aviation operators, when they operate according to a schedule; for the purposes of Articles 7 and 14; the definition of air carrier shall also include all civil aircraft operators”.

11. Based on aforementioned definition, the following requirements have therefore been set that an air carrier must meet:

- It has to be an air transport undertaking; and
- This company must have a valid operating licence or equivalent; and
- The company must be in possession of the operating licence or equivalent no later than the Historic Baseline Date (HBD):
 - 31 January for next summer season;
 - 31 August for next winter season.

Air transport undertaking

12. The term air transport undertaking is not defined in the Slot Regulation. That is why ACNL is seeking support in Regulation (EC) No. 1008/2008.

13. In Article 2 (10) of Regulation (EC) No. 1008/2008, the term air carrier is defined as:

“An undertaking with a valid operating licence or equivalent”.

14. In Article 2 (3) of Regulation (EC) No. 1008/2008, the term undertaking is defined as:

“Any natural or legal person, whether profit-making or not, or any official body whether having its own legal personality or not”.

15. ACNL deduces from aforementioned definitions that the determining factor for an air carrier is whether an air transport undertaking in question has a valid operating licence or equivalent.

16. ACNL finds support for this explanation in the predecessor of Regulation (EC) No. 1008/2008, Regulation (EEC) No. 2407/92. In it, the term "air carrier" was defined as:

"An air transport undertaking with a valid operating licence".

17. In Regulation (EC) No. 1008/2008, the term 'air transport undertaking' has been replaced by the shorter term 'undertaking'. There is nothing to indicate that, with this change in terminology, the European legislator intended to make a distinction between the old term 'air transport

undertaking' and the new term 'undertaking'. Therefore, ACNL sees no reason to interpret the term 'air transport undertaking' in the Slot Regulation differently from the term 'air transport undertaking' in Regulation (EEC) No. 2407/92 (old) and the term 'undertaking' in Regulation (EC) No. 1008/2008.

18. It follows from the foregoing that the term 'air transport undertaking' is a low-threshold term. In practice, the question whether an undertaking has a valid operating licence or equivalent will therefore determine whether the undertaking in question qualifies as an air carrier.

Operating licence

19. The term operating licence is not defined in the Slot Regulation, but this term unmistakably refers to the operating licence as referred to in Regulation (EC) No. 1008/2008. Article 2 (1) of Regulation (EC) No. 1008/2008 describes the definition of an operating licence as:

“An authorisation granted by the competent licensing authority to an undertaking, permitting it to provide air services as stated in the operating licence”.

20. Pursuant to Article 3 (1) of Regulation (EC) No. 1008/2008, an undertaking meeting the requirements of Chapter II of Regulation (EC) No. 1008/2008 shall be entitled to receive an operating licence.
21. Pursuant to Article 8 (1) of Regulation (EC) No. 1008/2008, an operating licence shall be valid as long as the Community air carrier complies with the requirements of Chapter II of Regulation (EC) No. 1008/2008.

Competent Licensing Authority

22. The competent licensing authority is defined in Article 2 (2) of Regulation (EC) No. 1008/2008 as:

“An authority of a Member State entitled to grant, refuse, revoke or suspend an operating licence in accordance with Chapter II”

23. The competent licensing authority will generally be the Civil Aviation Authority (CAA). In the Netherlands, for example, this is the Human Environment and Transport Inspectorate (ILT) as part of the Ministry of Infrastructure and Water Management. For non-EU Member States the applicable licensing authority will be regarded as the competent licensing authority.

HBD

24. The Slot Regulation, unlike Regulation (EC) No. 1008/2008, made another relation to the Historic Baseline Date (HBD). No later than 31 January for the following summer season or 31 August for the following winter season, an air carrier must hold a valid operating licence or equivalent. This is known as the HBD of the “Calendar of Coordination Activities” of Airports Council International, the International Air Transport Association and the Worldwide Airport Coordinators Group.

25. In the opinion of ACNL, this reference to the HBD should be read in such a way that an undertaking is only eligible for slots for the relevant season if it has a valid operating licence or equivalent by the HBD at the latest. In fact, an undertaking must therefore qualify each season as an air carrier, with the reference date being 31 January for the following summer season and 31 August for the following winter season.
26. A total or partial takeover is possible at any time (so also during the season) if all the criteria of this Policy Rule are met. In particular the criteria as described in the chapter 'Policy with respect to Slot Mobility'.

Air carrier in the process of establishing itself

27. Pursuant to Article 14 (2) of the Slot Regulation, an air carrier in the process of establishing itself must have a valid operating licence or equivalent by 31 January for the following summer season or 31 August for the following winter season, or the competent licensing authority must state by the HBD at the latest that an operating licence or equivalent is likely to be issued before the relevant scheduling period commences.
28. If, in the context of a takeover as referred to in Article 8a (1) (b) (iii) of the Slot Regulation, the acquiring undertaking is an air carrier in the process of establishing itself, ACNL requires that this undertaking in the context of its application for confirmation as referred to in Article 8a (2) of the Slot Regulation, provides ACNL with a statement from the relevant competent licensing authority that an operating licence or equivalent is likely to be issued before the relevant scheduling period commences. ACNL is free to contact the relevant competent licensing authority regarding its statement.

Policy with respect to Slot Mobility

29. This section describes when there is a full or partial takeover and when slots are directly related to the air carrier taken over, as referred to in Article 8a (1) (b) (iii) of the Slot Regulation.

The purpose of the Slot Regulation

30. In view of the considerations, the Slot Regulation was created because there is an increasing imbalance between the expanding air traffic in Europe and the availability of adequate airport infrastructure to meet this demand. To this end, airports may be designated as coordinated airports, in which case the Member State shall appoint an independent coordinator to allocate slots. The current system provides for the possibility of retaining historic rights to slots, but, in view of the considerations of the Slot Regulation, also intends to ensure that new entrants can gain access to the market. Situations should be avoided, according to the considerations of the Slot Regulation, in which due to a lack of available slots the benefits of liberalization are unevenly distributed and competition is harmed.

31. Furthermore, it follows from the considerations to the Slot Regulation that transparency of information is an essential condition for an objective procedure for the allocation of slots. In connection with this, Article 4 (2) (c) of the Slot Regulation stipulates that the coordinator performs his duties in accordance with the Slot Regulation in an impartial, non-discriminatory and transparent manner. This means that in the context of an application for a slot transfer, all information must be available and it must also be possible to include it in the motivation of the decision on application, so that it can be determined whether there is a (partial) takeover of an air carrier and that the number of slots transferred in this process is actually directly related to that part of the air carrier taken over. This will be further elaborated below.

The system of the Slot Regulation

32. Slots are not freely tradable and can only be subject to the objective priority rules from the Slot Regulation are granted by the coordinator or obtained under certain conditions from other air carriers. An air carrier can therefore only acquire slots in the ways provided for in Articles 8, 10 (objective rules of priority) and 8a (of other air carriers) of the Slot Regulation. If an air carrier no longer wants to or can no longer use certain slots, these slots will not be lost, but in principle fall back into the slot pool as referred to in Article 10 (1) of the Slot Regulation. They are then allocated to air carriers that have applied for this.

Slot mobility between air carriers

33. Article 8a of the Slot Regulation regulates alternative ways of obtaining slots. Pursuant to Article 8a (1) of the Slot Regulation, slots may be:

- (a) transferred by an air carrier from one route or type of service to another route or type of service operated by that same air carrier;
- (b) transferred:
 - (i) between parent and subsidiary companies, and between subsidiaries of the same parent company,
 - (ii) as part of the acquisition of control over the capital of an air carrier,

(iii) in the case of a total or partial take-over when the slots are directly related to the air carrier taken over;
(c) exchanged, one for one, between air carriers.

34. Only Article 8a (1) (b) (iii) of the Slot Regulation is relevant for the elaboration of this policy rule. Therefore, the other options are disregarded.

Takeover

35. Pursuant to Article 8a (1) (b) (iii) of the Slot Regulation, slots may be transferred by an air carrier in the case of a total or partial takeover, when the slots are directly related to the air carrier taken over. This article aims to enable the transfer of slots in order to facilitate the continuity of an ongoing operation. Therefore, there must be such a connection between the transfer of slots and the (partial) takeover of the air carrier that almost all the production resources of the air carrier concerned are taken over that are necessary to use the relevant slots. This means that there must be a takeover of aircraft, personnel and any form of organization necessary for the operation of the slots to be taken over. The takeover of some "assets" or the "business" cannot therefore qualify as the (partial) takeover of an air carrier. Below is a further explanation.

Total takeover

36. The definition of an air carrier, as described in section 'Relevant legislation' in accordance with Article 2 (f) (i) of the Slot Regulation, is easily applicable if an entire air carrier is taken over. So a takeover of all aircraft, all personnel and the entire organization.

Partial takeover

37. Assuming that in the case of a partial takeover of an air carrier, the licences are not necessarily transferred, which does not seem necessary if the purchasing undertaking already has licences, the question remains what exactly should be understood by the partial takeover of an air carrier. The purpose and system of the Slot Regulation indicate that there can only be a partial takeover of an air carrier if that part of the air carrier is taken over with the elements that enable that part to actually use the associated slots. This means that the part of the air carrier that has been taken over must be able to continue operating flights. In any case, this requires aircraft, personnel and some form of organization. There is no question of a partial takeover of an air carrier if the takeover only relates to a few 'assets' or the 'business', without also aircraft, personnel and some form of organization are taken over. The fact that the assets may be transferred to an undertaking that can use the slots with these and other assets and its own personnel, does not affect the fact that what is taken over as such must still qualify as a 'partial takeover of an air carrier', as referred to in Article 8a (1) (b) (iii) of the Slot Regulation. Otherwise improper use of the possibilities of Article 8a of the Slot Regulation would be facilitated. If it were not required that what is transferred should reasonably be able to actually use slots by operating flights, air carriers could proceed with a takeover of a limited number of assets, together with the takeover of the desired number of slots as a disguised means of obtaining slots without applying the priority rules of the Slot Regulation. This detracts from the restrictive system for obtaining slots provided in Articles 8, 8a and 10 of the Slot Regulation. When interpreting the Slot Regulation in which slots can be transferred to other air carriers relatively easily (and possibly

against payment), the relevant slots will not flow back to the slot pool. As a result, these slots cannot be allocated according to the priority rules of the Slot Regulation.

38. Moreover, it also follows from the requirement of direct coupling with the slots, to be discussed below, that the part of an air carrier to be acquired must as such be able to use the slots that are taken over.
39. In the event of bankruptcy, aircraft leases and employment contracts may have been terminated. If the acquiring air carrier leases the same aircraft again and offers the former staff an employment contract, ACNL equates this with an acquisition of assets. In ACNL's opinion, the acquisition of other aircraft or other personnel does not qualify as a takeover within the meaning of Article 8a of the Slot Regulation.

Directly related slots to the air carrier taken over

40. Secondly, there must not only be a total or partial takeover of an air carrier, but the slots to be transferred must also be directly related to it on the basis of Article 8a (1) (b) (iii) of the Slot Regulation. This means that, if there is already a partial takeover of an air carrier, only those slots that have a direct link with the relevant part of the acquired air carrier can be transferred. So there must be a clear relationship between the operation that is taken over (including numbers and types of aircraft, personnel and some form of organization) and the number of slots that are taken over. This concerns the number of slots that correspond to the capacity of the equipment, the personnel and the other organization that are taken over.

Use it or lose it

41. After it has been established that there is an air carrier and a total or partial takeover, the third step is addressed, namely whether the air carrier that applies to transfer slots can also transfer the associated historic rights. To this end, the minimum usage percentage in Articles 8 and 10 or 10a of the Slot Regulation, the so-called use it or lose it rule, of the allocated slots in the current and / or previous season must be complied with.
42. With a request for confirmation as referred to in Article 8a (2) of the Slot regulation, ACNL will always assess whether the transferring air carrier, in view of the use it or lose it rule in Articles 8 and 10 or 10a of the Slot Regulation, in the next equivalent scheduling period is entitled to the slots or series of slots it intends to transfer. If this is the case, the entitlement to the slots or series of slots is also transferred when the slots are transferred.

Article 14 (6) Slot Regulation

43. If an air carrier fails to achieve the usage percentage referred to in Articles 8 and 10 or 10a of the Slot Regulation and the non-utilisation cannot be justified on the basis of a justification, as referred to in Article 10 (4) of the Slot Regulation, ACNL may decide to withdraw from that air carrier the series of slots in question for the remainder of the scheduling period and place them in the pool after having heard the air carrier concerned.
44. If after an allotted time corresponding to 20 % of the period of the series validity no slots of that series of slots have been used and the non-utilisation cannot be justified on the basis of a

justification, as referred to in Article 10 (4) of the Slot Regulation , ACNL shall place the series of slots in question in the pool for the remainder of the scheduling period, after having heard the air carrier concerned.

45. During the period referred to Article 10a (3), when ACNL determines, on the basis of information at its disposal, that an air carrier has ceased its operations at an airport and is no longer able to operate the slots which it has been allocated, ACNL shall withdraw from that air carrier the series of slots in question for the remainder of the scheduling period and place them in the pool, after having heard the air carrier concerned.

Bankruptcy / administration

46. The Slot Regulation does not contain any specific regulation with regard to air carriers that are in a state of bankruptcy or administration. ACNL will therefore assess a proposed transfer of slots by an air carrier in bankruptcy or administration in the same way as any other proposed slot transfer, as referred to in Article 8a (1) (b) (iii) of the Slot Regulation.

Suspension of operating licence

47. In the event of suspension of the operating licence or equivalent, the usage percentage in Articles 8 and 10 or 10a of the Slot regulation will be taken into account. This means that the usage percentage in both the summer and winter season is considered.

Withdrawal of operating licence

48. If the operating licence is irrevocably withdrawn, there is no longer an air carrier within the meaning of Article 2 (f) (i) of the Slot Regulation, after which all allocated slots are withdrawn and included in the slot pool for the remainder of the scheduling period. In that case all slots allocated, including any historic rights, cannot be transferred to another air carrier.

Process

49. Articles 8.15.3 and 8.15.4 of the Worldwide Airport Slot Guidelines (WASG) do not apply and are therefore not applicable for the elaboration of this policy rule. After all, the reservation of slots is not intended to make more efficient use of airport capacity. In addition, there are limits to not using slots in, for example, Article 14 (6) of the Slot Regulation.
50. In all cases, the air carrier and / or its representative is responsible for the correct contact details and all its obligations under the Slot Regulation and the WASG. If a representative of an air carrier is unreachable and he / she cannot be heard - for example because contact cannot be made because the contact person cannot be reached (anymore) - ACNL may withdraw the relevant slots and include them in the slot pool.
51. For the sake of transparency, the following applies in the case of bankruptcy/administration:
- An air carrier must inform ACNL as soon as possible, but no later than 14 days after the application for bankruptcy / administration.
 - Upon the entry into force of bankruptcy / administration, the representative of the air carrier must enter into discussions with ACNL about the future intentions of the slots as soon as possible, but no later than 14 days, and the contact details of the administrator must be provided to ACNL.
 - The air carrier's representative or administrator must keep ACNL informed of the air carrier's status at all times.
 - ACNL may require an air carrier and / or its representatives to cooperate with (mandatory) contact and reporting moments for the benefit of the status and progress of bankruptcy / administration.
52. The original slot holder has to apply at ACNL for a confirmation of a slot transfer under Article 8a (1) (b) (iii) of the Slot Regulation. ACNL acts in conformity with the General Administrative Law Act.
53. This policy rule will be effective as of 15 June 2021.

Flow chart

