

# Slot Enforcement Code

Misuse of Slots in the Netherlands



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## Colophon

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## CHAPTER 1 - INTRODUCTION

### *Objectives*

This Slot Enforcement Code ('SEC') is drafted by ACNL and the ILT to:

- Harmonize, combine and define the roles of the different relevant parties involved in the slot monitoring.
- Define the different forms of slot misuse and to give a transparent overview of the uniform intervention and sanction scheme for the different types of misuse in the Netherlands.
- Reduce the administrative burdens for all stakeholders.
- Further optimize the monitoring and enforcement strategy to benefit the optimal use of the coordinated airport capacity.

The Slot Enforcement Code does not establish new (legal) competences, sanctions or forms of slot misuse, but clarifies and coordinates the already existing legal competences of the monitoring and enforcement bodies. The Slot Enforcement Code is not meant to repeat already existing working papers, Guidelines (such as the WASG) or legislation. The Slot Enforcement Code furthermore takes in account the relevant Dutch law and legislation in the possible application of enforcement measures in the Netherlands.

### *Importance of slot compliance*

In previous years, airport slots and capacity have received extra attention because the capacity limits were reached on the coordinated airports in the Netherlands. This increased public interest for aviation has led to increased focus on environmental constraints (such as noise restrictions in the night and emissions) as well as increased focus on overall safety and capacity usage at the coordinated airports. To improve the overall slot compliance, several studies were conducted to review the complete process of slot allocation, monitoring and enforcement in the Netherlands, such as the PA report of 14 August 2019: 'Improving slot compliance'. The studies showed that improvement is needed with respect to slot compliance in several areas, which will be of benefit to all stakeholders in the aviation industry. This also requires all stakeholders cooperation in introducing an effective slot monitoring process in the Netherlands.

As a result, ACNL and ILT issued the 1<sup>st</sup> edition of this Slot Enforcement Code in 2021. Types of misuse included in the Slot Enforcement Code will be monitored and enforced. In case an additional type of misuse is introduced, this will not take place without consultation of the Slot Performance Committee ('SPC') or Coordination Committee (CCN) and not before a new version of the SEC is published.

### *Introduction of administrative fines*

To ensure effective, proportionate and dissuasive sanctions for slot misuse, administrative fines ~~are~~ have been introduced in the Act on Aviation ('Wet luchtvaart') per the 1<sup>st</sup> of July 2021 against infringement(s) of the slot regulation. An administrative fine is aimed at sanctioning (punitive fines), as previously enforcement by ILT was solely aimed at preventing or repairing further misuse (reparatory sanctions). An overview of the enforcement mechanisms can be found in Chapter 4 of this Slot Enforcement Code.

### *Level 3 airports in the Netherlands*

Airport Coordination Netherlands (ACNL) is appointed in the Act on Aviation ('Wet luchtvaart') as 'schedules facilitator and 'airport coordinator'. The Netherlands has the following 'coordinated airports' (level 3):

Amsterdam Airport Schiphol	AMS / EHAM
Eindhoven Airport	EIN / EHEH
Rotterdam The Hague Airport	RTM / EHRD

There are no "schedules facilitated airports" (level 2).

This SEC applies to both commercial aviation and General Aviation ('GA').

## CHAPTER 2 - SLOT MISUSE

This chapter describes the legal framework, the types of misuse and the enforcement policy.

### 2.1 Legal framework

The legal framework consists of:

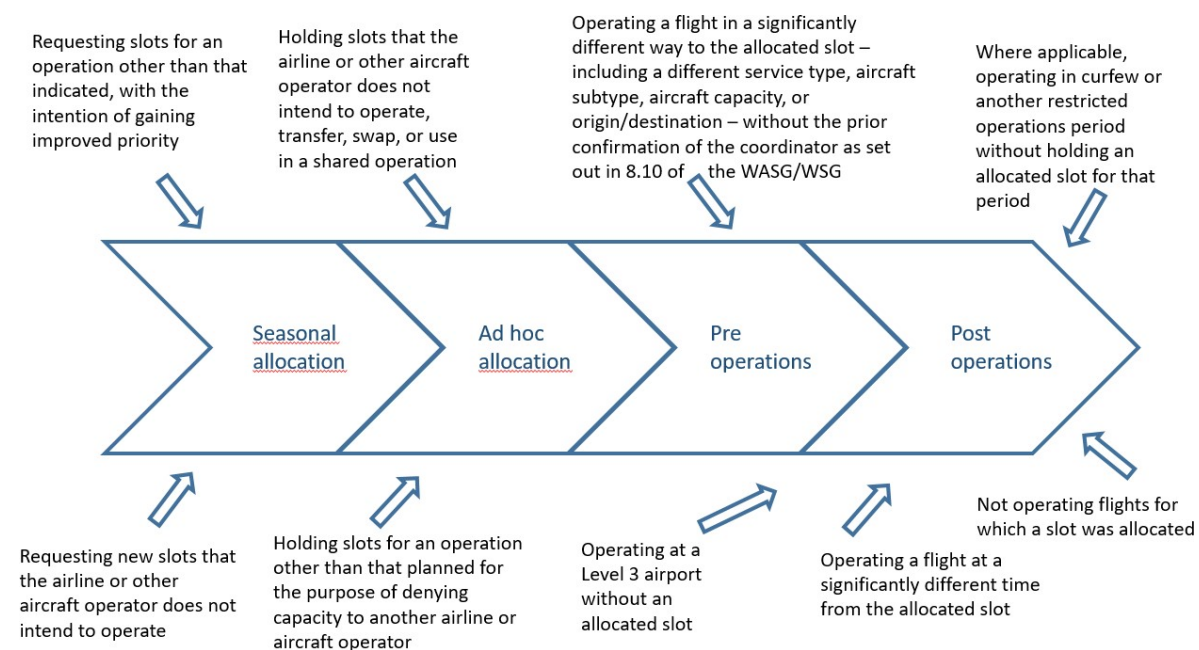
- The European Slot Regulation (EEG) No 95/93 and further amendments, Article 14 regarding enforcement, the types of misuse defined by the coordinator and obliges the Member States to ensure that effective, proportionate and dissuasive sanctions or equivalent measures are available to deal with misuse of slots.
- The coordinator shall also take into account additional rules and guidelines established by the air transport industry world-wide or Community-wide, such as the Worldwide (Airport) Slot Guidelines (WASG), Chapter 9. This chapter describes the process of monitoring and enforcement, the roles and defines types of misuse of slots.
- The Act on Aviation (Wet luchtvaart, Dutch only), Articles 8.17, 11.1, 11.15, 11.16 and 8a.52 that establish the legal authority for enforcement and sanctioning (the ILT). Article 8a.64 appoints ACNL as schedules facilitator or airport coordinator.
- Slot allocation Decree (Besluit slotallocatie, Dutch only), Article 7 prohibits specific types of misuse, which is enforced by the ILT.
- General Administrative Law Act (Algemene wet bestuursrecht, Dutch only) contains general rules on procedures for administrative authorities.

Relevant articles are included in Annex I of this document.

In this Slot Enforcement Code, the rules from different parts of the legal framework are presented in an integral overview of different types of misuse, showing the enforcement policy, sanctioning and the roles of each of the parties involved.

### 2.2 Types of misuse

The figure below shows the types of misuse<sup>1</sup> for the various phases of the airport slot process.



<sup>1</sup> In accordance with WASG 9.2.2.

The schedule below indicates for every type of misuse: the (legal) basis, the sanctioning conditions and the enforcement options for every type of misuse as mentioned in the Decree slot allocation or WASG. In later paragraphs and chapters an explanation follows regarding the definitions 'repetition and intentionality' (paragraph 2.3.1. and 2.3.2) and the options of enforcement (Chapter 4).

Other types of misuse also exist (but are less common). Additional types of misuse in the Slot Enforcement Code will not be implemented before consultation of the SPC.

<i>Type of misuse</i>	<i>Name</i>	<i>(Legal) basis</i>	<i>Conditions for sanctioning</i>	<i>Options for enforcement</i>	<i>Enforcement by</i>
Requesting slots for an operation other than that indicated, with the intention of obtaining improved priority	Jumping the queue	WASG	Repetition and intentionality are considered	lower priority, loss of historic rights, withdrawal of slots	ACNL
Requesting new slots without the intention to operate those slots, either by the airline itself or in a shared operation	Capacity blocking	WASG	Repetition and intentionality are considered	lower priority, loss of historic rights, withdrawal of slots	ACNL
Holding slots that the airline or other aircraft operator does not intend to operate, transfer, swap, or use in a shared operation	Late handback	WASG	Repetition and intentionality are considered	lower priority, loss of historic rights, withdrawal of slots	ACNL
Holding slots for an operation other than that planned for the purpose of denying capacity to another airline or aircraft operator.	Late retiming	WASG	Repetition and intentionality are considered	lower priority, loss of historic rights, withdrawal of slots	ACNL
Operating a flight in a significantly different way to the slot allocated – including difference of service type, aircraft subtype, aircraft capacity, or origin/destination	Different way OPS	European Slot Regulation, WASG, Slot Allocation Decree	Repetition and intentional operations are considered	lower priority, loss of historic rights, withdrawal of slots, cease and desist order, administrative fine	ILT and ACNL
Operating at a Level 3 airport without an allocated slot	NO-REC	European Slot Regulation, WASG, Slot Allocation Decree	Repetition and intentionality are <b>not</b> considered	lower priority, loss of historic rights, withdrawal of slots, cease and desist order, administrative fine	ILT and ACNL
Operating in a curfew or another restricted operations period without holding an allocated slot for that period	Unplanned night movement	European Slot Regulation, WASG, Slot Allocation Decree	Repetition and intentionality operations are considered	lower priority, loss of historic rights, withdrawal of slots, cease and desist order, administrative fine	ILT and ACNL
Operating a flight at a significantly different time from the allocated slot	Different time OPS	European Slot Regulation, WASG, Slot Allocation Decree	Repetition and intentionality operations are considered	lower priority, loss of historic rights, withdrawal of slots, cease and desist order, administrative fine	ILT and ACNL
Not operating flights for which a slot was allocated	NO-OPS	WASG, Slot Allocation Decree	Repetition and intentionality operations are considered	lower priority, loss of historic rights, withdrawal of slots, cease and desist order, administrative fine	ILT and ACNL

## 2.3 Enforcement policy

### 2.3.1 Intervention strategy

The basis of the enforcement policy is derived from the national Dutch Enforcement Strategy ('Landelijke Handhavingsstrategie Omgevingsrecht (LHSO)'). The following types of interventions are distinguished:

- Prevention & Dialogue (informing and addressing)
- Correction (warning, heightened supervision, cease and desist order<sup>2</sup>, consultation with management)
- Sanctioning (administrative fine, withdrawal of slots)

<sup>2</sup> An administrative order backed with a financial penalty.

### *Prevention & Dialogue*

Where appropriate in the intervention, prevention is applied first. ACNL and ILT attach importance to initiating dialogue with the airline or other aircraft operator.

Prevention regarding individual airlines or other aircraft operators can consist of a dialogue about potential misuse between the slot holder and ACNL and/or ILT. The focus on prevention is to discuss and explain the potential misuse, measures that could be taken by the airline or other aircraft operators and documenting the agreements on this, if any, including a timeframe. Other preventative measures include the publication of this Slot Enforcement Code itself and the publication of a list of administrative fines.

Preventative measures can also be based on an evaluation of the slot performance after the ending of a specific season, which allows corrective measures to be prepared timely. Prevention does not take away the responsibility of the slot holder regarding slot misuse. The publication of a list of administrative fines is also done to prevent potential misuse.

### *Correction*

In case preventative measures by the airline or other aircraft operator have not led to compliance, any of the following steps can be taken: issuing an official warning, consultation with management (ILT/ACNL), cease and desist order (ILT) or heightened supervision (ILT).

### *Sanctioning*

Both ACNL and ILT have instruments for this. For ACNL this entails in lowering the priority of slot requests, loss of historic precedence, mandatory retiming of slots and withdrawal of slots. For ILT this entails imposing an administrative fine. The sanction measures can differ depending on the nature, the timeframe, absolute scale and damage caused by the misuse and the degree of cooperation.

## **2.3.2 Sanctioning conditions**

For several types of misuse sanctioning only applies when the misuse is considered to be 'intentional' and 'repeated'. This is defined per type of misuse and described in paragraphs 4.1-4.9. Another condition is prejudice to the airport or air traffic operations for certain types of misuse. These conditions are defined as follows:

### *Prejudice to the airport or air traffic operations<sup>3</sup>*

- Repeatedly and directly operating air services at *times significantly different* from the allocated slot may lead to sanctions or measures, whether there is prejudice to the airport or air traffic operations or not.
- Use of slots in a *significantly different way*, can only lead to sanctions or measure if this misuse caused prejudice to the airport or air traffic operations.

All other types of slot misuse, such as NO OPS and NO REC as listed in article 7 of the Slot Allocation Decree, are by default considered to be causing prejudice towards the airport or air traffic operations, as mentioned in the consideration of the "Besluit slotallocatie" (see Annex I).

## **2.3.3 Justification/Force Majeure**

There can be reasons outside the influence of a slot holder and/or operator of the flight, which results in apparent slot misuse (Force Majeure). In Annex II a non-limitative overview of possible justification/force majeure reasons is included. This overview does *not apply* to time changes of series or cancellations having effect on the 'use it or lose it'- calculation.

### *Discrepancies can lead to a violation*

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<sup>3</sup> Based on the legal history of the memorandum of Article 14 of EU-regulation 95/93.



If a discrepancy with the slot time exists, an evaluation can be done to assess if the discrepancy has to be seen as a violation. All violations shall lead to an intervention by ILT and/or ACNL.

For the assessment of a discrepancy of a presumed violation, the airline or other aircraft operator can be given the opportunity to prove if force majeure is applicable and the discrepancy can be justified so no sanction will follow.

#### *Repetition of discrepancies of slot times*

When assessing whether airlines can rightfully apply justification/force majeure for a flight, the overall picture of the airline or other aircraft operator is taken into account. For example, if airlines or other aircraft operators perform with repeated discrepancies for similar flights, force majeure shall not be applicable and airlines or other aircraft operators have to take action to improve their schedule accordingly to achieve the required slot compliance.

#### *Use it or lose it rule*

This Slot Enforcement Code does not apply to the 'use it or lose it'- calculation. For this ACNL's 'Policy Rule Force Majeure for Use it or lose it Rule' applies. This means that for the same flight force majeure can be determined to calculate the historic rights, but might *not* be determined a justification ground when establishing possible misuse of slots. Nevertheless, in general a sanction of withdrawal of historic rights is possible.

## CHAPTER 3 – ROLES & TASKS

### 3.1 Roles of each stakeholder

The basis for the role descriptions below are the EU Regulation 95/93 and the Worldwide Airport Slot Guidelines (WASG) version 3, paragraph 9.1, complemented with some specific roles for The Netherlands as published in the Slot Allocation Decree 'Besluit slotallocatie', article 7.

In this chapter, the following definitions apply:

- Slotholder: airline or other aircraft operator that originally got allocated the respective slot from the coordinator
- Operating airline: airline or other aircraft operator that operates the respective aircraft to use the respective slot

In terms of enforcement, the difference between ACNL as coordinator and ILT as inspectorate is that enforcement measures of ACNL impact the slot portfolio of a slotholder, while the ILT is authorised to either impose a financial sanction or a cease and desist order. For this reason, a separate dialogue between the airline or other aircraft operator and the ILT might arise in light of possible sanctioning measures.

#### **a) Role of the Airline (slotholder and/or operating) or Other Aircraft Operator**

- Ensure operations are in strict accordance with the slots allocated conform EU Regulation 95/93 and Slot Allocation Decree 'Besluit slotallocatie' article 7
- Ensure that necessary slot adjustments are done in a timely manner
- Review their own performance and identify corrective actions where necessary, prior to interventions from the coordinator or ILT (for airline: slotholder)
- Respond in a timely manner to (pre and post-ops) notifications of the coordinator (for airline: slotholder) and, if appropriate, take corrective action as soon as is practicable
- Respond in a timely manner to compulsory information requests from the Human Environment and Transport Inspectorate (ILT) (for airline: operating) and the coordinator (for airline: slotholder)
- Upon request, engage in a dialogue with the coordinator (for airline: slotholder) and/or the Human Environment and Transport Inspectorate (ILT) (for airline: operating) about (seasonal) slot performance and possible slot misuse
- Upon request, deliver slot performance improvement plans to the coordinator (for airline: slotholder) and/or the Human Environment and Transport Inspectorate (ILT) (for airline: operating)

#### **b) Role of the Airport Managing Body**

- Provide, in a timely manner, all the information and data necessary for the coordinator to perform required slot monitoring duties
- Monitor the overall performance of the airport and highlight any potential misuse of slots to the coordinator

#### **c) Role of the Coordinator (Airport Coordination Netherlands - ACNL):**

- Perform slot monitoring
- Communicate apparent misuse of slots to airlines (slotholder) and other aircraft operators
- Record misuse of slots
- Share relevant information with the airport managing body, as well as with all other stakeholders (ideally through the Slot Performance Committee)
- Engage in a dialogue with the airlines (slotholder) or other aircraft operators about (seasonal) slot performance results and potential slot misuse
- Assess slot performance improvement plans of the airlines (slotholder) and other aircraft operators
- Perform enforcement actions
- Assess Force Majeure requests for the 'use it or lose it' rule

**d) Role of the Coordination Committee:**

- To make proposals concerning or advise the coordinator (ideally through the Slot Performance Committee) on matters related to the monitoring and misuse of slots;
- Mediate in case of complaints from airlines or other aircraft operators related to slot allocation or slot monitoring which cannot be resolved between the airline or other aircraft operator and the coordinator
- Oversee the activities of the sub-groups of the Coordination Committee, such as a Slot Performance Committee, where these exist;

**e) Role of the Slot Performance Committee:**

- The Slot Performance Committee's objective is to advise the coordinator on any slot monitoring issues, with the objective of improving punctuality and reducing slot misuse. The Slot Performance Committee shall also guarantee a fair judgment of potential slot misuse
- The principal tasks of the Slot Performance Committee are to:

a) Determine trends that could lead to potential slot misuse at the airport, and where appropriate recommend corrective actions;

b) Identify and set goals within the Slot Performance Committee to address these trends, in order to enhance the performance and effective utilization of available airport capacity;

c) Provide guidance and advice to the coordinator on any matters related to slot misuse;

d) Establish, if required, a working group or other dispute resolution mechanism to mediate between the coordinator and an airline or aircraft operator where differences of interpretation on slot misuse exist; and

e) Subject to applicable law, to make available upon request any information disclosed within the Slot Performance Committee to all airlines and other aircraft operators using the airport

**f) Role of the Human Environment and Transport Inspectorate (ILT)**

- Supervise and sanction violations of slot misuse<sup>4</sup> by operating airlines or other aircraft operators
- Send reports of the investigations ~~investigated situations~~ to the operating airlines or other aircraft operators
- Engage in a dialogue with the operating airlines or other aircraft operators about (seasonal) slot results and possible slot misuse
- Assess slot performance improvement plans of the operating airlines and other aircraft operators
- Conduct hearings and administrative interviews.
- Perform enforcement actions
- Assess justification/Force Majeure requests for slot misuse violations

**3.2 Exchange of information and cooperation between ACNL and ILT**

For the purpose of effective monitoring and enforcement, it is necessary to exchange information and/or data between ACNL and the ILT and further relevant parties such as, but not limited to, the coordinated airport and Air Traffic Control.

*Legal obligation*

The EU Slot Regulation requires Member States to ensure that effective, proportionate and dissuasive sanctions or equivalent measures are available to deal with repeated and intentional slot misuse. In the

<sup>4</sup> For those types of misuse mentioned in Article 7 of Besluit slotallocatie: <https://english.ilent.nl/themes/s/slot-enforcement/process-of-night-slot-supervision>

Netherlands, different parties are involved in the different stages of the slot monitoring and enforcement process.

In accordance with the General Administrative Law Act (Algemene wet bestuursrecht, Dutch only) an inspector of the ILT is authorized by law to monitor compliance with the law and is also empowered to demand information and to inspect business information and documents. Furthermore, it is prescribed that any person shall give an inspector all such assistance as he may reasonably demand in the exercise of his powers. Non-cooperation can be sanctioned by law. Any party (such as ACNL, the coordinated airport) is therefore obligated by law to provide information regarding the possible misuse of slots and provide information and documents to the ILT.

#### *Slot monitoring by ACNL*

Slot monitoring is the role of the independent coordinator and should be performed in a non-discriminatory and fair manner, in consultation with all stakeholders. ACNL complies with Dutch National legislation and the European Council Regulation 95/93 as amended to monitor the use and adherence of allocated airport slots at all Dutch slot coordinated airports.

#### *What information and when*

- The structural information exchanged between ACNL and ILT pertains data about the allocated slots and the use of the operated allocated slots at the coordinated airport.
- Dossiers are integrally and structurally shared between ACNL and ILT. This can be on request or on own initiative.
- In some cases, airlines or other aircraft operators might be contacted by both organizations for legal reasons.
- All other necessary information can be exchanged if needed and by other parties e.g. flight plans.

## CHAPTER 4 - ENFORCEMENT

This chapter elaborates possible interventions for each type of abuse.

	<i>Type of misuse</i>	<i>Name</i>
4.1	Requesting slots for an operation other than that indicated, with the intention of gaining improved priority	Jumping the queue
4.2	Requesting new slots that the airline or other aircraft operator does not intend to operate	Capacity blocking
4.3	Holding slots that the airline or other aircraft operator does not intend to operate, transfer, swap, or use in a shared operation	Late handback
4.4	Holding slots for an operation other than that planned for the purpose of denying capacity to another airline or aircraft operator.	Late retiming
4.5	Operating a flight in a significantly different way to the allocated slot – including a different service type, aircraft subtype, aircraft capacity, or origin/destination	Different way OPS
4.6	Operating at a Level 3 airport without an allocated slot	NO-REC
4.7	Operating in curfew or another restricted operations period without holding an allocated slot for that period	Unplanned night movement
4.8	Operating a flight at a significantly different time from the allocated slot	Different time OPS
4.9	Not operating flights for which a slot was allocated	NO-OPS

<b>4.1</b>	<b>Jumping the queue</b>	<i>Definition</i> Requesting slots for an operation other than indicated, with the intention of gaining improved priority	<i>Legal base</i> WASG 3, 9.2.2. G,	<i>Conditions for sanctioning</i> Repetition and intentional are considered.
Planning implementation: <ul style="list-style-type: none"> <li>Excesses in misuse are monitored and enforced.</li> </ul>				
<i>Repetition</i> More than once during six consecutive IATA-seasons. <i>Intentional</i> When the airline or other aircraft operator has already been notified of possible slot misuse by ACNL.				
<i>Explanation misuse</i> Example: <ul style="list-style-type: none"> <li>Requesting a slot using a certain priority while conditions are not present</li> </ul>				
<i>Prevention (ACNL)</i> ACNL carries out a preliminary assessment regarding new entrant status and provide feedback to the airline or other aircraft operator. ACNL can withdraw the application or assign lower priority. If during the season a deviation of the conditions is observed ACNL starts a dialogue with the airline or other aircraft operator involved.			<i>Correction (ACNL)</i> An official warning or extra supervision.	
<i>Sanctioning (ACNL)</i> Possible sanctions are the withdrawal of the slots involved or granting lower priority in succeeding seasons.			<i>Additional remarks</i> Case by case approach.	

<b>4.2</b>	<b>Capacity blocking</b> (waitlist management, i.e. only slot requests that have not been granted)	<i>Definition</i> Requesting new slots that the airline or other aircraft operator does not intend to operate	<i>Legal base</i> WASG 3, 9.2.2. F	<i>Conditions for sanctioning</i> Repetition and intentional are considered.
Planning implementation: <ul style="list-style-type: none"> <li>Excesses in misuse are monitored and enforced. Full implementation in near future.</li> </ul>				
<i>Repetition</i> More than once during six consecutive IATA-seasons. <i>Intentional</i> When the airline or other aircraft operator has already been notified of possible slot misuse by ACNL.				
<i>Explanation misuse</i> Examples are: <ul style="list-style-type: none"> <li>Inaccuracies in the airline's or other aircraft operators' updating of the slot portfolio.</li> <li>Failure to keep the waiting list up to date, as a result of which the available capacity (both quota, time and type) cannot be optimally used for reallocation.</li> <li>Requesting slots at Initial Submission Deadline and repeatedly returning them before Series Return Deadline or Historic Baseline Date.</li> <li>Rescheduling slots to a later date in the season without direct intention to use the slots.</li> </ul>				
<i>Prevention (ACNL)</i> ACNL can start a dialogue with the airline aimed at improvements. The airline or other aircraft operator is asked for explanation and –if the case – corrective measures.			<i>Correction (ACNL)</i> An official warning to the airline or other aircraft operator or extra supervision.	
<i>Sanctioning (ACNL)</i> Sanctions can consist of withdrawal of slots for the remainder of the season, lower priority in succeeding seasons or withdrawal of historic rights.			<i>Additional remarks</i> Focus on SRD and HBD guidelines for returning slot.	

<b>4.3</b>	<b>Late handback</b> (slot portfolio management, i.e. only slots that have been granted)	<i>Definition</i> Holding slots that the airline or other aircraft operator does not intend to operate, transfer, swap, or use in a shared operation	<i>Legal base</i> WASG 3, 9.2.2. D,	<i>Conditions for sanctioning</i> Repetition and intentional are considered.
Planning implementation: <ul style="list-style-type: none"> <li>Excesses in misuse are monitored and enforced. Full implementation in near future.</li> </ul>				
<i>Repetition</i> More than once during six consecutive IATA-seasons. <i>Intentional</i> When the airline or other aircraft operator has already been notified of possible slot misuse by ACNL.				
<i>Explanation misuse</i> Examples are: <ul style="list-style-type: none"> <li>Inaccuracies in the airline's or other aircraft operators' updating of the slot portfolio.</li> <li>Repeatedly returning slots just before Historic Baseline Date or day of operation without intention to use.</li> </ul>				
<i>Prevention (ACNL)</i> ACNL can provide feedback to the airline or other aircraft operator on the handback period and ask for explanation and improvement measures.			<i>Correction (ACNL)</i> If improvements are not made, an official warning to the airline or other aircraft operator or referral to CCN can be applied by ACNL.	
<i>Sanctioning (ACNL)</i> Sanctions can consist of withdrawal of slots for the remainder of the season or lower priority in succeeding seasons or withdrawal of historic rights.			<i>Additional remarks</i> Monitoring by ACNL of accurate slot portfolio management in place. Case by case approach.	

<b>4.4</b>	<b>Late retiming</b> (or adjusting slots which affects the coordination parameters)	<i>Definition</i> Holding slots for an operation other than that planned for the purpose of denying capacity to another airline or aircraft operator.	<i>Legal base</i> WASG 3, 9.2.2. E,	<i>Conditions for sanctioning</i> Repetition and intentional are considered.
Planning implementation: <ul style="list-style-type: none"> <li>Excesses in misuse are monitored and enforced. Full implementation in near future.</li> </ul>				
<i>Repetition</i> More than once during six consecutive IATA-seasons. <i>Intentional</i> When the airline or other aircraft operator has already been notified of possible slot misuse by ACNL.				
<i>Prevention (ACNL)</i> ACNL can provide feedback to the airline or other aircraft operator on the retime period, also in relation to other airlines and ask for explanation and improvement measures.			<i>Correction (ACNL)</i> If improvements are not made after feedback an official warning to the airline or other aircraft operator or referral to CCN can be applied by ACNL.	
<i>Sanctioning (ACNL)</i> Sanctions can consist of withdrawal of slots for the remainder of the season or lower priority in succeeding seasons or withdrawal of historic rights.			<i>Additional remarks</i> Monitoring by ACNL of accurate slot portfolio management is in place.	

<b>4.5</b>	<b>Different way ops</b>	<i>Definition</i> Operating a flight in a significantly different way to the allocated slot – including a different service type, aircraft subtype, aircraft capacity or origin/ destination	<i>Legal base</i> WASG 3, 9.2.2. C	<i>Conditions for sanctioning</i> Repetition and intentional are considered.
Planning implementation: <ul style="list-style-type: none"> <li>Implemented as per Winter season 2022 for AMS and per Summer season 2024 for EIN and RTM</li> </ul>				
<i>Repetition</i> More than once during one IATA-seasons. <i>Intentional</i> Operating the flight with the knowledge that it differs from the allocated slot				
<i>Prevention (ACNL and ILT)</i> ACNL monitors if an airline or other aircraft operator performs a flight at a significantly different way to the allocated slot. a: After ACNL noticed the occurrence, ACNL will address their observation to the airline and require validation b: ACNL will get into dialogue with airline or other aircraft operator. ACNL will request an improvement plan to be delivered by the airline or other aircraft operator within 2 weeks. c: ACNL/ ILT decision on heightened supervision in monitoring.			<i>Correction (ACNL)</i> a: Meeting in which airline or other aircraft operator presents improvement plan to ACNL/ILT b: ACNL/ ILT informs airline or other aircraft operator on outcome monitoring c: Official warning by ACNL/ILT, sending decision on intended sanction (warning, heightened supervision, cease and desist order, consultation with management)	
<i>Sanctioning (ACNL and ILT)</i> a: ACNL monitors the performance after the official warning b: ACNL/ ILT makes a decision on sanctioning c: ACNL/ ILT performs the sanction			<i>Additional remarks</i> ACNL has a 24-hour allocation service. For airlines or other aircraft operators it is possible to handback or retime their slots before the initial slot time and if necessary to request a new slot in case of >24h delay. Retrospective requests, handbacks or retiming are not possible. Please consult the 'Day of ops policy' of ACNL for instructions when slots must be updated.	

<b>4.6</b>	<b>NO-REC</b>	<i>Definition</i> Operating a flight that required a slot, for which no slot was allocated.	<i>Legal base</i> Slot Allocation Decree, WASG 3, 9.2.2. A	<i>Conditions for sanctioning</i> Repetition and intentional are <b>not</b> considered.
Planning implementation: <ul style="list-style-type: none"> <li>• Prevention and correction is currently in place.</li> <li>• Sanctioning is in place and finalized in 2021.</li> </ul>				
		<i>Prevention</i> A NO-REC is reported to the airline or other aircraft operator as soon as possible to prevent further infringements. Airlines or other aircraft operators are usually first heard before sanctioned, unless urgency does not offers this opportunity.  For NO-RECs there is a zero-tolerance approach, for which every infringement is one too many. This type of misuse is prioritized in the monitoring and enforcement.	<i>Correction (ILT)</i> Every NO-REC is in principle sanctioned. Taken into account is if the NO-REC is intentionally or not, which can lead to an official warning or an administrative fine. Also the likeliness of repetition is taken into account when choosing the sanction.  In case of structural infringements the airline or other aircraft operator must submit an improvement plan and a cease and desist order or an administrative fine can be imposed by ILT.	
		<i>Sanctioning (ILT)</i> The first choice of sanction is an administrative fine, which can be deviated from if there are substantiated reasons to do so.  In addition to the sanctions by the ILT, violators who violate repeatedly can also be affected by ACNL in their slot portfolio.	<i>Additional remarks</i> ACNL has a 24-hour allocation service in place. For airlines or other aircraft operators it is possible to request a new slot before the initial slot time and if necessary to request a new slot in case of >24h delay. Retrospective requests, handbacks or retiming are not allowed.	



<b>4.7.</b>	<b>Unplanned night movement</b>	<i>Definition</i> Operating in curfew or another restricted operations period without holding an allocated slot for that period	<i>Legal base</i> Slot Allocation Decree, WASG 3, 9.2.2. H	<i>Conditions for sanctioning</i> Repetition and intentional are considered.
Planning implementation: <ul style="list-style-type: none"> <li>• Prevention and correction is currently in place.</li> <li>• Sanctioning is in place by ILT and completed in 2021.</li> <li>• Administrative fine by ILT and enforcement instruments of ACNL operational in 2021.</li> </ul>				
<i>Repetition</i> More than once during one IATA-season <i>Intentional</i> Operating the flight with the knowledge that it differs from the allocated slot.				
<i>Explanation misuse</i> Please consult the latest capacity declaration of the respective coordinated airport for opening hours and night regimes.  Some examples and causes of an unplanned night movement with no justification ground: <ul style="list-style-type: none"> <li>• Intentionally landing with a day slot during the night regime, because the slot is allocated close to the night regime and in the flight schedule, operational variabilities are insufficiently taken in account.</li> <li>• Changing the execution of a flight and overlooking the fact that the slot planning also has to be changed.</li> </ul>				
<i>Prevention (ILT and ACNL)</i> ACNL monitors if an airline or other aircraft operator performs a night movement without a night slot and informs ILT on a weekly basis. ILT notifies airlines as soon as possible of unplanned night movements, so airlines can prevent further violations.  Airlines or other aircraft operators are usually first heard by ILT before sanctioned, unless urgency does not offers this opportunity.  For unplanned night movements there is a zero-tolerance approach, for which every repeated infringement is one too many. This type of misuse is prioritized in the monitoring and enforcement.			<i>Correction (ILT)</i> Every repeated violation is taken in account for sanctioning. The nature of the violation determines the choice between an administrative fine or a cease and desist order.  In case of structural violations, the airline or other aircraft operator must provide an improvement plan and a cease and desist order can be issued.	
<i>Sanctioning (ILT and ACNL)</i> Depending on the nature, the extent of the violation as well as the chance of repeated offence an administrative fine or a cease and desist order is imposed, which can be deviated from if there are substantiated reasons to do so.  In addition to the sanctions by the ILT, violators who violate repeatedly can also be affected by ACNL in their slot portfolio.			<i>Additional remarks</i> ACNL has introduced a 24-hour allocation service. For airlines or other aircraft operators it is possible to handback or retime their slots before the initial slot time and if necessary to request a new slot in case of >24h delay. Retrospective requests, handbacks or retiming are not possible. Please consult the 'Day of ops policy' of ACNL for instructions when slots must be updated.	

<b>4.8</b>	<b>Different time ops</b>	<i>Definition</i> Operating a flight at a significantly different time from the allocated slot	<i>Legal base</i> WASG 3, 9.2.2. H	<i>Conditions for sanctioning</i> Repetition and intentional are considered.
Planning implementation: <ul style="list-style-type: none"> <li>AMS: currently 60 minutes is applied. Can be further narrowed in near future.</li> <li>EIN and RTM: 15 minutes is applied</li> </ul>				
<i>Repetition</i> More than once during one IATA-seasons. <i>Intentional</i> Operating the flight with the knowledge that it differs from the allocated slot				
<i>Prevention (ACNL and ILT)</i> ACNL monitors if an airline or other aircraft operator performs a flight at a significantly different way to the allocated slot. a: After ACNL noticed the occurrence, ACNL will address their observation to the airline and require validation b: ACNL will get into dialogue with airline or other aircraft operator. ACNL will request an improvement plan to be delivered by the airline or other aircraft operator within 2 weeks. c: ACNL/ ILT decision on heightened supervision in monitoring.			<i>Correction (ACNL)</i> a: Meeting in which airline or other aircraft operator presents improvement plan to ACNL/ILT b: ACNL/ ILT informs airline or other aircraft operator on outcome monitoring c: Official warning by ACNL/ILT, sending decision on intended sanction (warning, heightened supervision, cease and desist order, consultation with management)	
<i>Sanctioning (ACNL and ILT)</i> a: ACNL monitors the performance after the official warning b: ACNL/ ILT makes a decision on sanctioning c: ACNL/ ILT performs the sanction			<i>Additional remarks</i> ACNL has a 24-hour allocation service. For airlines or other aircraft operators it is possible to handback or retime their slots before the initial slot time and if necessary to request a new slot in case of >24h delay. Retrospective requests, handbacks or retiming are not possible. Please consult the 'Day of ops policy' of ACNL for instructions when slots must be updated.	

4.9	NO-OPS	<i>Definition</i> Not operating a flight on the same day for which a slot was allocated	<i>Legal base</i> Slot Allocation Decree	<i>Conditions for sanctioning</i> Repetition and intentional are considered.
Planning implementation: <ul style="list-style-type: none"><li>• Prevention and correction is currently in place.</li><li>• Sanctioning is in place and finalized in 2021.</li><li>• Administrative fine by ILT and enforcement instruments of ACNL operational in 2021.</li></ul>				
<i>Repetition</i> More than once during one IATA-season <i>Intentional</i> When the airline or other airline aircraft operator has previously been notified of possible slot misuse (NO-OPS) by ACNL or ILT.				
<i>Explanation misuse</i> Example: <ul style="list-style-type: none"><li>• Inaccuracies in keeping the slot portfolio up to date by the airline or other aircraft operator</li></ul> In principle, an airline or other aircraft operator that has one NO-OPS per IATA-season will not be penalized.				
<i>Prevention</i> The NO-OPS that occurred are reported to the airlines on a regular basis so that they have the opportunity to avoid repetition. They are requested to explain the reasons for the NO-OPS. This will be discussed with the airlines concerned and an improvement plan shall be required, including reporting on progress. During the next season the results will be monitored for improvement.			<i>Correction</i> If insufficient follow-up is given to the improvement plan this is considered intentional. The airline or other aircraft operator is again required to improve. Depending on the effort and scope, an official warning may be issued, stricter/enhanced supervision may be imposed or a cease and desist order may be imposed.	
<i>Sanctioning</i> The sanction for showing insufficient improvement consists of an administrative fine by ILT. The amount depends on the actions taken and the extent of the NO-OPS problem (measured in numbers and number of days). Slots can also be withdrawn by ACNL.			<i>Additional remarks</i> ACNL has a 24-hour allocation service in place. For airlines it is always possible to handback or retime the slot before the initial slot time and if necessary to request a new slot in case of >24h delay. Retrospective handbacks are not possible.	

## ANNEX I – RELEVANT LAW AND GUIDELINES

### COUNCIL REGULATION (EEC) No 95/93 [and further amendments]

Article 4 The schedules facilitator and the coordinator

6. The schedules facilitator shall monitor the conformity of air carriers' operations with the schedules recommended to them. The coordinator shall monitor the conformity of air carriers' operations with the slots allocated to them. These conformity checks shall be carried out in cooperation with the managing body of the airport and with the air traffic control authorities and shall take into account the time and other relevant parameters relating to the airport concerned. The coordinator shall submit on request to the Member States concerned and to the Commission an annual activity report, concerning, in particular, the application of Articles 8a and 14, as well as any complaints regarding the application of Articles 8 and 10 submitted to the coordination committee and the steps taken to resolve them

Article 14 Enforcement

1. An air carrier's flight plan may be rejected by the competent Air Traffic Management authorities if the air carrier intends to land or take off at a coordinated airport, during the periods for which it is coordinated, without having a slot allocated by the coordinator.
2. The coordinator shall withdraw the series of slots provisionally allocated to an air carrier in the process of establishing itself and place them in the pool on 31 January for the following summer season or on 31 August for the following winter season if the undertaking does not hold an operating licence or equivalent on that date or if it is not stated by the competent licensing authority that it is likely that an operating licence or equivalent will be issued before the relevant scheduling period commences.
3. The coordinator shall withdraw and place in the pool the series of slots of an air carrier, which it has received following an exchange pursuant to Article 8a(1)(c) if they have not been used as intended.
4. Air carriers that repeatedly and intentionally operate air services at a time significantly different from the allocated slot as part of a series of slots or uses slots in a significantly different way from that indicated at the time of allocation and thereby cause prejudice to airport or air traffic operations shall lose their status as referred to in Article 8(2). The coordinator 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 and after issuing a single warning.
5. Member States shall ensure that effective, proportionate and dissuasive sanctions or equivalent measures are available to deal with repeated and intentional operation of air services at times significantly different from the allocated slots or with the use of slots in a significantly different way from that indicated at the time of allocation, where this causes prejudice to airport or air traffic operations.
6.
  - (a) Without prejudice to Article 10(4), if the 80 % usage rate as defined in Article 8(2) cannot be achieved by an air carrier, the coordinator 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.
  - (b) Without prejudice to Article 10(4), 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, the coordinator 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.

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#### SLOT MONITORING

##### 9.1. WHAT IS SLOT MONITORING?

9.1.1. Slot monitoring is the continuous process of reconciling the operations of airlines and other aircraft operators to the slots allocated by the coordinator at a Level 3 airport. This is one of the methods available to ensure the most efficient use of airport infrastructure.

9.1.2. There are two phases of slot monitoring: pre-operation and post-operation analysis.

a) Pre-operation analysis is a recommended process that will help identify and prevent potential slot misuse prior to the day of operation.

b) Post-operation analysis will help determine whether misuse of slots has occurred and whether airlines achieve historic precedence for the following equivalent season.

9.1.3. Role of the Airline or Other Aircraft Operator: Airlines and other aircraft operators must ensure that their operations at a Level 3 airport are in accordance with the slots allocated to them, and that the necessary slot adjustments are requested in a timely manner. They should also review their own performance and identify corrective actions where necessary, prior to intervention from coordinators. When the coordinator notifies the airline or other aircraft operator of potential misuse, the airline or other aircraft operator must respond in a timely manner and, if appropriate, take corrective action as soon as is practicable.

9.1.4. Role of the Airport Managing Body: The airport managing body shall provide, in a timely manner, all of the information and data necessary for the coordinator to perform required slot monitoring duties. It should also monitor the overall performance of the airport and should highlight any potential misuse of slots to the coordinator.

9.1.5. Role of the Coordinator: Coordinators shall perform slot monitoring, warn of discrepancies and request corrective actions, and record misuse of slots. Only coordinators shall communicate apparent misuse of slots to airlines and other aircraft operators. Coordinators shall also share relevant information with the airport managing body, as well as with all other stakeholders (ideally through the Slot Performance Committee).

9.1.6. Role of the Coordination Committee: The Coordination Committee may advise the coordinator on matters relating to the monitoring and misuse of slots. A Slot Performance Committee, a possible sub-group of the Coordination Committee, may be established to perform this role. This is discussed in more detail below.

##### 9.2. KEY PRINCIPLES OF SLOT MONITORING

9.2.1. The key principles of slot monitoring are as follows:

- a) Slot monitoring is intended to:
  - i. Ensure that operations at a Level 3 airport are in accordance with the slots as allocated;
  - ii. Ensure that slots are used in line with the Use It or Lose It rule;
  - iii. Help ensure scarce capacity is not wasted;
  - iv. Help ensure the smooth operation of airports for all stakeholders; and
  - v. Prevent the misuse of slots.
- b) Slot monitoring involves both pre-operation and post-operation analysis.
- c) Slot monitoring is applicable to all types of operations that require slots at a Level 3 airport.

- d) Slot monitoring is a continuous process which allows sufficient advance notice for corrective action to take place.
- e) Slot monitoring requires accurate and reliable data provided – in a timely manner and in the agreed format – ideally by the airport managing body or by other relevant stakeholders as needed.
- f) Slot times are based on the coordinated on-block (arrival) and off-block (departure) times. Actual times of arrival and departure may vary due to operational factors.
- g) The investigation of potential misuse of slots should be based on data analysis.
- h) Coordinators should enter into dialogue with airlines and other aircraft operators about correcting apparent misuse of slots at the earliest possible opportunity.
- i) Continued slot misuse after dialogue with the coordinator may result in enforcement actions as described in this section.
- j) Coordinators may consult relevant stakeholders (such as the Coordination Committee, Slot Performance Committee, the airport managing body, or air traffic control) to review the findings of slot monitoring.
- k) The Slot Performance Committee may also provide advice to the relevant stakeholder regarding actions which may be taken to improve airport performance where sanctions or other enforcement measures are not applicable.
- l) Certain types of ad hoc flights may be subject to special local slot monitoring procedures.

9.2.2. Misuse of Slots: The following actions are deemed a misuse of slots:

- a) Operating at a Level 3 airport without an allocated slot;
- b) Operating a flight at a significantly different time from the allocated slot.
- c) Operating a flight in a significantly different way to the allocated slot – including a different service type, aircraft subtype, aircraft capacity, or origin/destination – without the prior confirmation of the coordinator as set out in 8.10;
- d) Holding slots that the airline or other aircraft operator does not intend to operate, transfer, swap, or use in a shared operation;
- e) Holding slots for an operation other than that planned for the purpose of denying capacity to another airline or aircraft operator;
- f) Requesting new slots that the airline or other aircraft operator does not intend to operate;
- g) Requesting slots for an operation other than that indicated, with the intention of gaining improved priority; or
- h) Where applicable, operating in curfew or another restricted operations period without holding an allocated slot for that period.

9.2.3. In some instances, operational disruption or legitimate changes of plans may appear to be slot misuse. Communication between the coordinator and the airline or other aircraft operator is vital to understand the reasons for potential misuse.

### 9.3. PRE-OPERATION ANALYSIS

9.3.1. Coordinators may seek to prevent slot misuse by undertaking pre-operation analysis, a recommended process involving conformity checks before the day of operation.

9.3.2. Pre-operation analysis is a continuous process that:

- a) Uses objective, transparent, and non-discriminatory criteria;
- b) Should be adapted to the specific needs of the airport and types of traffic involved;
- c) Should be timely and simple to calculate and administer; and
- d) Considers advice given by the Coordination Committee or Slot Performance Committee.

9.3.3. This process requires the coordinator to have the right data in the agreed format available in a timely manner in order to complete its analysis. Airport managing bodies, airlines, and other aircraft operators shall provide the data requested by the coordinator, in the format agreed between the parties, for this purpose.

9.3.4. Coordinators shall also check published data sources such as:

- a) airline or travel agency websites, global distribution systems, or tickets;
- b) airport or ground handling data from airports at each end of the route concerned; or
- c) peer comparison (i.e., the performance of other operators using similar equipment and on similar routings, giving adequate consideration for the limitations of comparisons where the equipment and routings are not identical).

9.3.5. When the coordinator identifies a discrepancy between the published data and the allocated slot, the coordinator should communicate this to the airline or other aircraft operator to allow it to take corrective actions to avoid possible slot misuse.

9.3.6. Despite the pre-operation analysis process, the responsibility to avoid slot misuse remains with the airline or other aircraft operator. The pre-operation analysis process is not a prerequisite for a coordinator to take action for potential slot misuse as part of the post-operation analysis, below.

### 9.4. POST-OPERATION ANALYSIS

#### 9.4.1. Data Comparison

9.4.1.1 The airport managing body shall provide to the coordinator a list of flown operations, in a timely manner and in the agreed format. The data supplied should include the scheduled time, the actual on/off block times, the flight number, destination, aircraft type, service type, number of seats, and any other necessary data requested by the coordinator.

9.4.1.2 Where actual on/off block time data is unavailable, landing and take-off times shall be provided by the airport managing body, with a recommended taxi time adjustment as an estimate for the on/off block times. Variations in taxi times may affect the accuracy of the matching process, and caution must be used when not using actual on/off block times.

9.4.1.3 The coordinator shall match the actual operations to the allocated slots, creating a matched data set. This process should be done on a regular basis throughout the season.

9.4.1.4 The coordinator may use similar additional data sources to identify potential slot misuse, such as ATC flight plans.

9.4.1.5 Flights operated in accordance with the allocated slots will be credited towards the granting of historic precedence.

9.4.1.6 Discrepancies detected in the matched data set will then be investigated as part of the slot performance process.

#### 9.4.2. Slot Performance Process

9.4.2.1 The coordinator should then analyse the discrepancies in the matched data set created under the data comparison process to identify potential slot misuse.

9.4.2.2 Coordinators should rely on data analysis to demonstrate potential slot misuse with the aim of targeting only the most obvious and impactful cases of potential slot misuse for further action. Best practice guidelines on the use of data analysis in the slot performance process may be found in Annex 11.8.

9.4.2.3 Where potential slot misuse is identified, the coordinator should then enter into coordinator-airline dialogue.

9.4.2.4 The coordinator should avoid seeking unnecessary explanations regarding minor operational deviations. In analysing whether the deviation represents potential misuse, the coordinator should consider, for example:

- a) whether the deviation is a result of an obvious operational disruption (for example, known events of extreme weather, or strikes);
- b) whether the deviation is within a reasonable tolerance, indicating normal operational variability rather than potential slot misuse; and
- c) whether the deviation is part of a pattern of repeated off-slot operations, departing from normal operational variability.

#### 9.4.3. Coordinator-Airline Dialogue

9.4.3.1 Having identified evidence of potential slot misuse, the coordinator should then contact the airline or other aircraft operator concerned, in writing. This message should request an explanation for the discrepancy and any proposed corrective action the airline or other aircraft operator plans to take. A reasonable deadline for response must be given, and all dialogue with the airline must conclude before the Agreed Historic Deadline for the subsequent equivalent season.

9.4.3.2 Coordinators should try to identify slot performance issues as soon as possible and contact the airline or other aircraft operator concerned in a timely manner, giving it the opportunity to take corrective action during the current season.

9.4.3.3 If an adequate explanation is provided or appropriate corrective action is taken by the airline or other aircraft operator, the coordinator should continue to monitor the situation. Where appropriate, the coordinator should also notify the airport managing body of the corrective action taken by the airline or other aircraft operator.

9.4.3.4 If the airline or other aircraft operator does not respond by the deadline provided or provides inadequate explanation, or if the proposed corrective action is insufficient, the coordinator may next consider appropriate enforcement action.

#### 9.4.4. Enforcement Action

9.4.4.1 If the airline-coordinator dialogue process is unsuccessful, enforcement action shall be considered for intentional or repeated slot misuse. When deciding whether to pursue any enforcement action, in accordance with these guidelines and applicable law, the coordinator should consider whether the slot misuse was:

- a) following a warning issued as part of the pre-operation analysis process;
- b) a first occurrence or part of a pattern of misuse;
- c) part of a series of slots or an ad hoc operation; or
- d) likely to impact the airport, ATC operations, or other airlines

9.4.4.2 Enforcement actions for intentional or repeated slot misuse may include:

- a) Referral of the matter to the airport's Coordination Committee or other competent body;
- b) Loss of historic precedence for the series of slots involved in the next equivalent season;
- c) A lower priority for that airline for new future slot requests in the next equivalent season;
- d) Withdrawal of the series of slots involved for the remaining portion of the current season; or
- e) Sanctions (including financial sanctions) under applicable law.

9.4.4.3 There are circumstances where slot misuse is initially not deemed intentional but may become intentional during the season if the airline or other aircraft operator concerned does not take effective corrective actions following correspondence with the coordinator.

9.4.4.4 Coordinators should communicate any actions taken by them against airlines or other aircraft operators to the airport managing body and other stakeholders (ideally through the Slot Performance Committee).

### 9.5. THE COORDINATION COMMITTEE AND SLOT MONITORING

#### 9.5.1. The Coordination Committee

9.5.1.1 The Coordination Committee is established at a Level 3 airport to advise the coordinator on matters relating to capacity, slot allocation, and monitoring the use of slots at the airport. Sub-groups of the Coordination Committee, such as a Slot Performance Committee, can be used to focus on specific functions of the Coordination Committee, or specific relevant topics.

9.5.1.2 Certain tasks of the Coordination Committee relate to slot monitoring. These are to:

- a) Mediate in case of complaints from airlines or other aircraft operators related to slot allocation or slot monitoring which cannot be resolved between the airline or other aircraft operator and the coordinator in a mutually agreeable way;
- b) Oversee the activities of the sub-groups of the Coordination Committee, such as a Slot Performance Committee, where these exist; and
- c) Advise the coordinator on methods of slot monitoring, where a Slot Performance Committee does not exist.

#### 9.5.2. The Slot Performance Committee

9.5.2.1 A Slot Performance Committee should be established as a possible sub-group of the Coordination Committee at Level 3 airports. The role of the Slot Performance Committee shall be performed by the Coordination Committee if a Slot Performance Committee is not established.

9.5.2.2 The Slot Performance Committee's objective is to advise the coordinator on any slot monitoring issues, with the objective of improving punctuality and reducing slot misuse. The Slot Performance Committee shall also guarantee a fair judgment of potential slot misuse.

9.5.2.3 The principal tasks of the Slot Performance Committee are to:

- a) Determine trends that could lead to potential slot misuse at the airport, and where appropriate recommend corrective actions;
- b) Identify and set goals within the Slot Performance Committee to address these trends, in order to enhance the performance and effective utilization of available airport capacity;
- c) Provide guidance and advice to the coordinator on any matters related to slot misuse;
- d) Establish, if required, a working group or other dispute resolution mechanism to mediate between the coordinator and an airline or aircraft operator where differences of interpretation on slot misuse exist; and
- e) Subject to applicable law, to make available upon request any information disclosed within the Slot Performance Committee to all airlines and other aircraft operators using the airport, and to permit their representatives as observers to Slot Performance Committee meetings. The Slot Performance Committee does not replace the function of slot monitoring activities performed by the coordinator.

9.5.2.4 Only matters related to slot performance may be discussed during Slot Performance Committee meetings, and due consideration should be given to applicable competition laws (following consultation with legal counsel, if necessary). Attendees should not divulge any competitively sensitive information at such meetings. By way of non-exhaustive example, attendees should not share information regarding pricing, costs, route schedules, route changes, aircraft capacity, use of a particular aircraft type or a particular aircraft on a route, or any information regarding an airline's commercial strategy. To the extent that an airline or other aircraft operator facing a hearing needs to convey such information to the coordinator, the other attendees should be warned at the beginning of the hearing so that arrangements can be made for any other attendees present to leave the meeting while such matters are discussed.

9.5.2.5 Membership of the Slot Performance Committee should include (but not necessarily be limited to):

- a) The airport managing body;
- b) Representatives with scheduling expertise from two or three airlines or other aircraft operators that best represent the traffic mix at the airport, to be selected by the airlines or other aircraft operators serving the airport;
- c) The coordinator, as an advisor; and
- d) An ATC representative.

9.5.2.6 The members of the Slot Performance Committee need not be members of the Coordination Committee. Members of the Slot Performance Committee shall have the necessary knowledge, expertise, and mandates to serve on the Slot Performance Committee and to actively contribute to its discussions.

- 9.5.2.7 The chairperson (and vice-chairperson, if any) and secretary of the Slot Performance Committee should be appointed by the airport managing body.
- 9.5.2.8 Meetings of the Slot Performance Committee shall be held as required, typically on a quarterly basis.
- 9.5.2.9 Descriptions of the problems discussed by the Slot Performance Committee should be published following its meetings.
- 9.5.2.10 Complaints regarding the functioning of or the advice issued by the Slot Performance Committee shall be directed in the first instance to the board of the Coordination Committee.

#### **Wet luchtvaart** (Act on Aviation, Dutch only)

##### **Artikel 8.17**

- 1 Het luchthavenverkeerbesluit bevat regels omtrent het luchthavenluchtverkeer voor zover die regels noodzakelijk zijn met het oog op de veiligheid, de geluidbelasting, de lokale luchtverontreiniging en de geurbelasting.
- 2 Het besluit bevat in ieder geval regels omtrent:
  - a. de gevallen waarin van een luchtverkeerweg gebruik gemaakt wordt;
  - b. een op beperking van belasting gerichte wijze van gebruik van het luchtruim in andere gevallen;
  - c. de beschikbaarheid van de luchthaven voor het luchthavenluchtverkeer.
- 3 Het besluit kan regels bevatten omtrent:
  - a. de wijze van gebruik van de luchtverkeerwegen;
  - b. de tijdstippen waarop, de frequentie waarmee en de categorieën van luchtvaartuigen waarmee van het luchtruim gebruik gemaakt wordt.
- 4 De regels bevorderen het realiseren van een beschermingsniveau, waarbij de in het besluit beschreven grenswaarden met betrekking tot de door het luchthavenluchtverkeer veroorzaakte belasting ten aanzien van veiligheid, geluid en lokale luchtverontreiniging niet worden overschreden.
- 5 Het besluit bevat in ieder geval:
  - a. de grenswaarden voor het externe-veiligheidsrisico;
  - b. de grenswaarden voor de geluidbelasting, waarbij in ieder geval punten in of aan de rand van woonbebouwing in de nabijheid van de luchthaven bepaald worden met de grenswaarden die op ieder van die punten van toepassing zijn;
  - c. de grenswaarden voor de emissie van de stoffen die lokale luchtverontreiniging veroorzaken.
- 6 Het besluit kan ten aanzien van de in het tweede en derde lid bedoelde onderwerpen, grenzen stellen aan de maatregelen die de inspecteur-generaal op grond van artikel 8.22 kan treffen.
- 7 Elk besluit, volgend op het eerste luchthavenverkeerbesluit, biedt een beschermingsniveau ten aanzien van externe veiligheid, geluidbelasting en lokale luchtverontreiniging, dat voor ieder van deze aspecten, gemiddeld op jaarbasis vastgesteld, per saldo gelijkwaardig is aan of beter is dan het niveau zoals dat geboden werd door het eerste besluit.
- 8 Bij de vaststelling van het luchthavenverkeerbesluit kan in ieder geval gebruik worden gemaakt van gegevens en onderzoeken die niet ouder zijn dan twee jaar.

##### **Artikel 8a.52**

Bij of krachtens algemene maatregel van bestuur kunnen nadere regels worden gesteld betreffende het gebruik van luchthavens.

##### **Artikel 8a.64**

1. Er is een organisatie, ACNL, belast met de taken die de slotcoördinator en de bemiddelaar inzake de dienstregelingen op grond van de slotverordening hebben.
2. ACNL is gevestigd te Haarlemmermeer en bezit rechtspersoonlijkheid.
3. De artikelen 21 en 22 van de Kaderwet zelfstandige bestuursorganen zijn op ACNL niet van toepassing.
4. Indien ACNL bij de uitvoering van de taken van de slotcoördinator, bedoeld in het eerste lid, schade toebrengt aan luchtvaartmaatschappijen of anderen, is ACNL daarvoor niet aansprakelijk, tenzij de schade een gevolg is van opzet of roekeloosheid.

##### **Artikel 11.1**

1. Met het toezicht op de naleving van het bij of krachtens deze wet, met uitzondering van de artikelen 8.25d tot en met 8.25h, bepaalde en het bij of krachtens de basisverordening bepaalde, zijn belast:
  - a. de in artikel 141 van het Wetboek van Strafvordering bedoelde ambtenaren, met dien verstande dat dit toezicht zich niet uitstrekt tot het bepaalde bij of krachtens titel 6.5 en de artikelen 10.7 en 10.8 van deze wet;
  - b. voor zover het betreft de burgerluchtvaart de hiertoe bij besluit van Onze Minister van Infrastructuur en Milieu aangewezen ambtenaren; de aanwijzing kan inhouden, dat de betrokken ambtenaar slechts belast is met het toezicht op de naleving van een of enkele in die aanwijzing genoemde hoofdstukken of artikelen gesteld bij of krachtens deze wet;
  - c. voor zover het betreft het vervoer van gevaarlijke stoffen als bedoeld in titel 6.5 en de artikelen 10.7 en 10.8 van deze wet, met luchtvaartuigen waarvan de krijgsmacht of de krijgsmacht van een andere mogendheid houder is, de hiertoe bij besluit van Onze Minister van Defensie aangewezen ambtenaren; de aanwijzing kan inhouden dat de betrokken ambtenaar slechts belast is met het toezicht op de naleving van een of enkele in die aanwijzing genoemde artikelen gesteld bij of krachtens deze wet;
  - d. voor zover het betreft titel 8A.6 de hiertoe bij besluit van Onze Minister van Infrastructuur en Milieu aangewezen ambtenaren.
2. Met het toezicht op de naleving van hetgeen bepaald is bij of krachtens de verordeningen als bedoeld in artikel 11.15, onderdeel b, onder 1° tot en met 8° en 10° tot en met 12°, zijn belast de hiertoe bij besluit van Onze Minister van Infrastructuur en Milieu aangewezen ambtenaren. De aanwijzing kan inhouden, dat de betrokken ambtenaar slechts belast is met het toezicht op de naleving van een of enkele in die aanwijzing genoemde hoofdstukken of artikelen gesteld bij of krachtens een van de genoemde verordeningen.
3. Onze Minister van Infrastructuur en Milieu kan met het oog op de coördinatie van het beleid ten aanzien van het toezicht algemene aanwijzingen geven aan de ambtenaren, bedoeld in het eerste lid, onderdeel a.
4. Van een besluit als bedoeld in het eerste lid, de onderdelen b tot en met d, of het tweede lid wordt mededeling gedaan door plaatsing in de Staatscourant.

##### **Artikel 11.15**

Onze Minister van Infrastructuur en Milieu is bevoegd tot oplegging van een last onder bestuursdwang ter handhaving van:

- a. de bij of krachtens deze wet gestelde verplichtingen, met uitzondering van verplichtingen als bedoeld in de artikelen 8.25d tot en met 8.25h;
- b. het bepaalde bij of krachtens de volgende EG verordeningen:

- 1°. Verordening (EG) nr. 261/2004 van het Europees Parlement en de Raad van de Europese Unie van 11 februari 2004 tot vaststelling van gemeenschappelijke regels inzake compensatie en bijstand aan luchtreizigers bij instapweigering en annulering of langdurige vertraging van vluchten en tot intrekking van Verordening (EEG) nr. 259/91 (PbEU L 46);
- 2°. de kaderverordening;
- 3°. de luchtvaarnavigatiedienstenverordening;
- 4°. de luchtvaartverordening;
- 5°. de interoperabiliteitsverordening;
- 6°. Hoofdstuk III van Verordening (EG) nr. 2111/2005 van het Europees Parlement en de Raad van de Europese Unie van 14 december 2005 betreffende de vaststelling van een communautaire lijst van luchtvaartmaatschappijen waaraan een exploitatieverbod binnen de Gemeenschap is opgelegd en het informeren van luchtreizigers over de identiteit van de exploiterende luchtvaartmaatschappij en tot intrekking van artikel 9 van richtlijn nr. 2004/36/EG (PbEU L344);
- 7°. Verordening (EG) nr. 1107/2006 van het Europees Parlement en de Raad van de Europese Unie van 5 juli 2006 inzake de rechten van gehandicapten en personen met beperkte mobiliteit die per luchtvervoer reizen (PbEU L 204);
- 8°. de vergoedingsverordening;
- 9°. de basisverordening;
- 10°. de prestatieverordening;
- 11°. artikel 21, tweede lid, van de onderzoeksverordening;
- 12°. de verordening voorvallen.

#### Artikel 11.16

1. Onze Minister van Infrastructuur en Milieu kan een bestuurlijke boete opleggen bij overtreding van:
  - a. artikel 5.14c of 5.14d, eerste lid;
  - b. artikel 4, zesde, achtste en negende lid, en artikel 13, vierde en vijfde lid, van de verordening voorvallen;
  - c. artikel 8.12, 8.19, 8.20, 8.21, 8.70, tweede lid, juncto de artikelen 8.12 en 8.19 tot en met 8.21, 8.77, tweede lid, juncto de artikelen 8.19 en 8.21, eerste en derde lid, of van een beperking of voorschrift als bedoeld in artikel 8.23, 8.70, tweede lid, juncto artikel 8.23 of 8.77, tweede lid, juncto artikel 8.23;
  - d. artikel 7.5 of van een maatregel als bedoeld in artikel 8.22, 8.70, tweede lid, juncto artikel 8.22 of 8.77, tweede lid, juncto artikel 8.2;
  - e. het bepaalde bij of krachtens:
    - 1°. Verordening (EG) nr. 261/2004 van het Europees Parlement en de Raad van de Europese Unie van 11 februari 2004 tot vaststelling van gemeenschappelijke regels inzake compensatie en bijstand aan luchtreizigers bij instapweigering en annulering of langdurige vertraging van vluchten en tot intrekking van Verordening (EEG) nr. 259/91 (PbEU L 46);
    - 2°. Hoofdstuk III van Verordening (EG) nr. 2111/2005 van het Europees Parlement en de Raad van de Europese Unie van 14 december 2005 betreffende de vaststelling van een communautaire lijst van luchtvaartmaatschappijen waaraan een exploitatieverbod binnen de Gemeenschap is opgelegd en het informeren van luchtreizigers over de identiteit van de exploiterende luchtvaartmaatschappij en tot intrekking van artikel 9 van richtlijn nr. 2004/36/EG (PbEU L 344);
    - 3°. Verordening (EG) nr. 1107/2006 van het Europees Parlement en de Raad van de Europese Unie van 5 juli 2006 inzake de rechten van gehandicapten en personen met beperkte mobiliteit die per luchtvervoer reizen (PbEU L 204) en
    - 4°. artikel 21, tweede lid, van de onderzoeksverordening.
    - 5°. artikel 8a.52, voor zover de nadere regels betrekking hebben op het gebruik van «slots» als bedoeld in artikel 2, onder a, van Verordening (EEG) nr. 95/93 van de Raad van de Europese Gemeenschappen van 18 januari 1993 betreffende gemeenschappelijke regels voor de toewijzing van «slots» op communautaire luchthavens (PbEG 1993, L 14).
2. Een bestuurlijke boete en een last onder dwangsom kunnen tezamen worden opgelegd.
3. De bestuurlijke boete bedraagt ten hoogste:
  - a. 500 000 euro bij een overtreding als bedoeld in het eerste lid, onderdeel a;
  - b. 1 000 000 euro bij een overtreding als bedoeld in het eerste lid, onderdeel b, voor zover het betreft de meldplicht, bedoeld in artikel 4, zesde lid, van de verordening voorvallen;
  - c. 100 000 euro bij een overtreding als bedoeld in het eerste lid, onderdeel c;
  - d. 1 000 000 euro bij een overtreding als bedoeld in het eerste lid, onderdeel d;
  - e. 74.000 euro bij een overtreding als bedoeld in het eerste lid, onderdeel e, met uitzondering van subonderdeel 5°;
  - f. 2.000 euro bij een overtreding als bedoeld in het eerste lid, onderdeel b, voor zover het betreft de meldplicht, bedoeld in artikel 4, achtste en negende lid, en de rapportageplicht bedoeld in artikel 13, vierde en vijfde lid, van de verordening voorvallen.
  - g. 670 000 euro bij een overtreding als bedoeld in het eerste lid, onderdeel e, subonderdeel 5°.

#### Besluit slotallocatie (Slot Allocation Decree, Dutch only)

##### Artikel 7

1. Het is luchtvaartmaatschappijen verboden op een gecoördineerde luchthaven:
  - a. herhaaldelijk en opzettelijk luchtdiensten uit te voeren op tijden die wezenlijk verschillen van het toegewezen slot;
  - b. herhaaldelijk en opzettelijk een slot te gebruiken op een wezenlijk andere wijze dan was aangegeven ten tijde van de toewijzing van het betreffende slot;
  - c. herhaaldelijk en opzettelijk een toegewezen slot niet te gebruiken;
  - d. een luchtdienst uit te voeren zonder dat een slot voor die luchtdienst is toegewezen.
2. Het eerste lid is niet van toepassing op:
  - a. overheidsvluchten;
  - b. noodlandingen;
  - c. humanitaire vluchten.

#### NOTA VAN TOELICHTING (Besluit slotallocatie, Dutch only)

De verbodsbepaling met betrekking tot slots

Met het onderhavige besluit wordt ook het artikel dat betrekking heeft op de verboden en (bijbehorende) handhaving van de slotverordening gewijzigd. Gelet op de schaarste, is handhaving op het gebruik van slots van groter belang geworden. In het artikel wordt met deze wijziging expliciet benoemd dat het verboden is om gebruik te maken van de luchthaven zonder slot. In het artikel was als voorwaarde opgenomen dat er sprake was van een overtreding als de exploitatie van de luchthaven of het luchtverkeer werd geschaad. Dit is geschrapt omdat kan worden aangenomen dat verkeerd gebruik van slots of het vliegen zonder slot op zich al schadelijk zijn voor de exploitatie van de luchthaven. [...]



De wijziging van artikel 7 behelst een verduidelijking van deze verbodsbepaling. De belangrijkste wijziging in artikel 7 is dat expliciet is benoemd dat het vliegen zonder slot en het herhaaldelijk en opzettelijk niet gebruik maken van een toegewezen slot op een gecoördineerde luchthaven verboden is.

Uit het artikel is voorts verwijderd dat de exploitatie van de luchthaven of het luchtverkeer moet worden geschaad. De gedachte hierachter is dat het wezenlijk anders gebruiken van een slot of het gebruik maken van de luchthaven zonder slot op zich al schadelijk zijn en een verbod rechtvaardigen. Slots worden immers toegewezen omdat er sprake is van schaarse capaciteit en al het verkeer in goede banen moet worden geleid. Er is niet genoeg capaciteit om al het verkeer (gelijktijdig) te kunnen afhandelen. Indien luchtvaartmaatschappijen slots wezenlijk anders gebruiken, schaadt dit derhalve de exploitatie.

Van belang is dat voor het gebruiken van een slot op wezenlijk andere wijze of op een wezenlijk ander tijdstip is gehandhaafd dat dit herhaaldelijk en opzettelijk moet gebeuren. Reden hiervoor is dat de aard van de operatie van luchtvaartmaatschappijen met zich kan brengen dat het gebruik van een slot anders plaatsvindt dan gepland.

Van een andere aard is het gebruik maken van de luchthaveninfrastructuur zonder dat überhaupt een slot is toegekend. In dat geval geldt niet dat dit opzettelijk of herhaaldelijk moet zijn gebeurd. Wel geldt de uitzondering in het tweede lid: voor noodlandingen, humanitaire vluchten of overheidsvluchten geldt dit verbod niet. Dat volgt ook uit de slotverordening (artikel 2, onderdeel g).

Voor de verhouding met artikel 14 van de slotverordening is van belang dat dit artikel bepaalt dat de lidstaten voor bepaalde overtredingen moeten voorzien in een afschrikwekkende sanctie. Daarmee is uiteraard niet gezegd dat niet kan worden voorzien in sancties voor andersoortige overtredingen. De verordening bepaalt, met andere woorden, waarvoor minimaal moet worden voorzien in een afschrikwekkende sanctie en verhindert niet dat overige overtredingen, zoals het aankomen op een luchthaven zonder slot, eveneens gesanctioneerd kunnen worden.

## ANNEX II - JUSTIFICATION/FORCE MAJEURE

In accordance with Article 5:5 of the General Administrative Law Act, an administrative authority may not impose an administrative sanction if there was a justification for the violation. According to Dutch law, justification may consist of 'force majeure', self-defense, actions to execute a legal obligation or actions to execute an authorized official order.

### **Reasons of 'justification ('force majeure')' must meet the following criteria.**

1. The incident must be unpredictable for the air carrier.
2. The incident must be unavoidable for the air carrier.
3. The incident is not attributable to the air carrier.

With regard to unavoidable: it is expected from a professional operating air carrier that the operation is managed in such a way that measures are in place to prevent slot misuse and the invocation of justification is avoided where possible.

The air carrier must provide substantial and factual data if it is of the opinion that there was a justification for the violation. The airline must also prove that it could not obtain a slot for the flight in question. The ILT or ACNL are not obliged to investigate every violation for possible justification grounds, only if the air carrier requests to rely on such grounds.

### **Timeframe and situations for which justification can be applicable (snowballing)**

1. Justification may apply to the flight in question or one flight prior to the flight in question on the same rotation.
2. If a correct slot could have been obtained, the application of justification is not possible.
3. If a flight is leaving before the time scheduled leading to an infringement, no justification can be applied.
4. If during one scheduling period the airline accumulates noticeable systematic slot discrepancies (either by amount or type of violation) the ILT or ACNL can irrespective of the possible root causes, address the air carrier of these discrepancies and obligate to adjust its schedule or take other measures to minimize the amount of slot discrepancies.

### **Root causes which may be considered justification**

Root causes which can lead to justification (force majeure) such as, but not limited to:

5. Unexpected, unavoidable technical failures of the aircraft causing the slot violation.
6. Technical failures, damage or compulsory checks **only** due to external causes, causing the slot violation. External causes can include: bird strikes, lightning strikes, other damage due to severe weather, ash clouds, damage to the aircraft due to foreign object debris. Also damages caused by external third parties [not working on behalf of the airline operating the flight]. Although not undebatable external, compulsory checks and repairs after a hard landing can also lead to justification.
7. Strikes or industrial actions (internal or external) causing the slot violation, for which the slot violation could not have been avoided in another way.
8. Any Air Traffic Control (ATC) measures causing the slot violation.
9. Medical emergencies causing the slot violation.
10. Severe weather causing the slot violation.
11. Tailwinds and headwinds for which the schedule could not be adapted, and where the violation could not be prevented by adjusting the flight speeds or any other measure possible.
12. Political situations causing the slot violation.
13. War or conflicts causing the slot violation.
14. Security reasons causing the slot violation.
15. Offloading of unaccompanied hold baggage due to EC 300/2008, only if that baggage has been either separated due to factors beyond the passenger's control or subjected to appropriate security controls, in situations where the airline takes timely actions to secure on time departure.
16. Delays caused by late boarding of passengers with reduced mobility (PRM) by the airport authority in accordance with EC 1107/2006.

## ANNEX III – FREQUENTLY ASKED QUESTIONS

### **1. The operated flight varies in operating time due to seasonal weather changes in wind or periods with or without de-icing. Can I always rely on justification?**

No, only in case where you could not retime your series of slot(s) or obtain appropriate slot(s). Also, if structural measures can be taken to avoid the slot infringement, the airline is required to do so. If the flying time can be adjusted so the slot violation can be avoided, the airline is required to take appropriate measures. Slot violations, caused by leaving before schedule are seen as avoidable, so no justification is possible.

### **2. Can I get an administrative fine for my first slot misuse violation in the Netherlands or do I always get a warning first?**

ILT and ACNL stress the importance of dialogue. But when a violation is performed intentionally with the aim of economic benefit, it is possible that the airline is fined for a first and single violation. This might e.g. apply for charter flights for specific events (football matches or concerts) performed without holding a slot. Also in situations where a general or specific warning was already issued an administrative fine can be applied immediately.

### **3. Can one slot misuse violation already affect my slot portfolio?**

It may depend on factors such as, but not limited to, type of misuse, repetitiveness and combination with other types of misuse. In most cases, interventions will be based on trends. Chapter 4 of the slot enforcement code describes the interventions per type of misuse.

### **4. Are airlines heard for redress before an administrative fine is imposed?**

Yes, in cases where a justification is possible the inspector of the ILT shall actively point the airline to its right to apply for justification. If justification can be granted the violation is justified and no fine shall follow. If the violation is not allegeable for justification and the inspector reports a fine to the “fine agency” (Bureau Bestuurlijke Boete), the ILT shall give the airline the opportunity for redress before imposing the fine. The Fine report is sent to the airline to ask for redress before the actual fine is imposed.

### **5. Can enforcement by ACNL and ILT lead to double enforcement?**

This might happen in case a violation is related to more than one type of misuse. For each type of misuse the respective violation will be enforced.

It also can occur when a type of misuse which is enforced for every infringement (such as NO REC) by ILT is violated repeatedly, the violator can also be affected by ACNL in its slot portfolio.

### **6. How is the role and the task of ACNL different then ILT and vice versa?**

The roles of ACNL and ILT are extensively explained in paragraph 3.1 of this Slot Enforcement Code. In addition, in Chapter 4 is for each type of misuse explained which intervention is done by ACNL or ILT. Interventions of ACNL may affect the slot portfolio of the violator, while ILT can impose an administrative fine.

### **7. How is slot monitoring conducted?**

ACNL: all details can be found in the section Slot Monitoring at [www.slotcoordination.nl](http://www.slotcoordination.nl)

ILT: all details can be found in the section Aviation – Slot Misuse Enforcement at <https://english.ilent.nl>