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⁽¹⁾ Text with EEA relevance.

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2019/1582

of 25 September 2019

amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for imazalil in or on certain products**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC ⁽¹⁾, and in particular Article 14(1)(a) and Article 49(2) thereof,

Whereas:

- (1) Maximum residue levels (MRLs) for imazalil were set in Annex II and Part B of Annex III to Regulation (EC) No 396/2005.
- (2) The European Food Safety Authority ('the Authority') submitted a reasoned opinion on the existing MRLs for imazalil in accordance with Article 12(1) of Regulation (EC) No 396/2005 ⁽²⁾. It recommended lowering the MRLs for potatoes, tomatoes, barley grains, oat grains, rye grains and wheat grains. For certain other products it recommended raising the existing MRLs.
- (3) The Authority concluded that concerning certain MRLs, some information was not available and that further consideration by risk managers was required. From a risk management perspective, it is appropriate to set MRLs in Annex II to Regulation (EC) No 396/2005 at the existing level or the level identified by the Authority for citrus fruits, strawberries, blackberries, raspberries, courgettes, melons, and muscle, fat tissue, liver and kidney of swine, bovine and equine, as well as cattle milk and horse milk, as for those products limited information was available and the Authority derived MRLs that do not raise concerns of consumer protection. Those MRLs will be reviewed; the review will take into account the information available within two years from the publication of this Regulation. From a risk management perspective, it is appropriate to set MRLs in Annex II to Regulation (EC) No 396/2005 at the specific limit of determination or at the default MRL as set out in Article 18(1)(b) of Regulation (EC) No 396/2005 for pome fruits, persimmon, bananas and sweet peppers/bell peppers, as for those products no information was available from which the Authority could derive MRLs that do not raise concerns of consumer protection.
- (4) The Authority indicated that the derived MRLs for imazalil in grapefruits, oranges, apples, pears, bananas, potatoes and bovine liver, as well as the Codex maximum residue limit (CXL) underlying the EU-MRL for medlar, may raise concerns of consumer protection. Taking into account additional information available for grapefruits, oranges and potatoes, it derived alternative MRLs for grapefruits, oranges, potatoes and bovine liver that do not raise such concerns. As regards the MRLs for apples, pears, medlar and bananas, the Authority indicated that risk managers may consider setting them at the specific limit of determination or at the default MRL as set out in Article 18(1)(b) of Regulation (EC) No 396/2005.

⁽¹⁾ OJ L 70, 16.3.2005, p. 1.

⁽²⁾ European Food Safety Authority; Review of the existing maximum residue levels for imazalil according to Article 12 of Regulation (EC) No 396/2005. EFSA Journal 2017;15(9):4977.

- (5) The Authority proposed revised residue definitions. It is appropriate to change the residue definitions accordingly.
- (6) Independently from the MRL review performed in accordance with Article 12(1) of Regulation (EC) No 396/2005, an application was submitted in accordance with Article 6 of that Regulation to modify the existing MRLs for imazalil in citrus fruits, apples, pears, bananas and potatoes and in products of animal origin.
- (7) In accordance with Article 8 of Regulation (EC) No 396/2005, this application was evaluated by the Member State concerned and the evaluation report was forwarded to the Commission.
- (8) In accordance with Article 10 of Regulation (EC) No 396/2005, the Authority assessed the application and the evaluation report, examining in particular the risks to the consumer and, where relevant, to animals and gave its reasoned opinion ⁽³⁾ on the proposed MRLs. It forwarded that opinion to the applicants, the Commission and the Member States and made it available to the public.
- (9) The Authority concluded in its reasoned opinion in accordance with Article 10 of Regulation (EC) No 396/2005 that the MRLs for the intended uses could not be amended until the risk assessment for the plant metabolites R014821, FK-772 and FK-284 was completed with regard to genotoxicity and general toxicity. It further concluded that certain information identified as not available in the MRL review performed in accordance with Article 12(1) of that Regulation was submitted with the application in accordance with Article 6 of that Regulation.
- (10) Due to the adoption of the reasoned opinion under Article 10 of Regulation (EC) No 396/2005 after the adoption of the reasoned opinion under Article 12(1) of that Regulation and the horizontal nature of the toxicity concerns identified for the imazalil metabolites R014821, FK-772 and FK-284, the Commission requested the Authority to update its reasoned opinion on the existing MRLs for imazalil in accordance with Article 43 of Regulation (EC) No 396/2005.
- (11) The Authority submitted a reasoned opinion ⁽⁴⁾ updating the review of the existing MRLs for imazalil based on the new toxicological information.
- (12) In that reasoned opinion, the Authority derived the same MRLs as in its reasoned opinion in accordance with Article 12 of Regulation (EC) No 396/2005, except for citrus fruits, melons and commodities of animal origin. For these commodities, it did not propose MRLs, because it could not finalise the assessment of the toxicological properties of metabolite R014821.
- (13) Commission Implementing Regulation (EU) No 705/2011 ⁽⁵⁾ renewed the approval of imazalil in accordance with Article 13(2) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council ⁽⁶⁾. While in the risk assessment preceding the adoption of that Regulation the Authority had identified uncertainties regarding the toxicological properties of metabolite R014821 ⁽⁷⁾, the approval conditions were not restricted in this regard at the risk management stage. Additional information on the toxicological properties of metabolite R014821 submitted with the application in accordance with Article 6 of Regulation (EC) No 396/2005 did not entirely address those uncertainties but did not lead to an increased level of concern, either. From a risk management perspective, it is consistent and appropriate to set MRLs for those products for which the Authority in its reasoned opinion in accordance with Article 12 of Regulation (EC) No 396/2005 derived MRLs that do not raise concerns of consumer protection in Annex II to Regulation (EC) No 396/2005 at the existing level or the level identified by the Authority.
- (14) Existing CXLs were taken into account in the reasoned opinions of the Authority. CXLs which are safe for consumers in the Union were considered for MRL setting.
- (15) As regards products on which the use of the plant protection product concerned is not authorised, and for which no import tolerances or CXLs exist, MRLs should be set at the specific limit of determination or the default MRL should apply, as provided for in Article 18(1)(b) of Regulation (EC) No 396/2005.

⁽³⁾ European Food Safety Authority; Modification of the existing maximum residue levels for imazalil in various commodities. EFSA Journal 2018;16(6):5329.

⁽⁴⁾ European Food Safety Authority; Reasoned Opinion on the updated review of the existing maximum residue levels for imazalil according to Article 12 of Regulation (EC) No 396/2005 following new toxicological information. EFSA Journal 2018;16(10):5453.

⁽⁵⁾ Commission Implementing Regulation (EU) No 705/2011 of 20 July 2011 approving the active substance imazalil, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ L 190, 21.7.2011, p. 43).

⁽⁶⁾ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

⁽⁷⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance imazalil. EFSA Journal 2010, 8(3):1526.

- (16) The Commission consulted the European Union reference laboratories for residues of pesticides as regards the need to adapt certain limits of determination. Those laboratories concluded that for certain commodities technical development requires the setting of specific limits of determination.
- (17) Based on the reasoned opinions of the Authority and taking into account the factors relevant to the matter under consideration, the appropriate modifications to the MRLs fulfil the requirements of Article 14(2) of Regulation (EC) No 396/2005.
- (18) Through the World Trade Organisation, the trading partners of the Union were consulted on the new MRLs and their comments have been taken into account.
- (19) Regulation (EC) No 396/2005 should therefore be amended accordingly.
- (20) In order to allow for the normal marketing, processing and consumption of products, this Regulation should provide for a transitional arrangement for products which have been produced before the modification of the MRLs and for which information shows that a high level of consumer protection is maintained.
- (21) A reasonable period should be allowed to elapse before the modified MRLs become applicable in order to permit Member States, third countries and food business operators to prepare themselves to meet the new requirements which will result from the modification of the MRLs.
- (22) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes II and III to Regulation (EC) No 396/2005 are amended in accordance with the Annex to this Regulation.

Article 2

Regulation (EC) No 396/2005 as it stood before being amended by this Regulation shall continue to apply to products which were produced in the Union or imported into the Union before 16 April 2020, except for grapefruit, oranges, apples, pears, medlar, bananas, potatoes and bovine liver.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 16 April 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 September 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Annexes II and III to Regulation (EC) No 396/2005 are amended as follows:

(1) In Annex II, the column for imazalil is replaced by the following:

Pesticide residues and maximum residue levels (mg/kg)

Code number	Groups and examples of individual products to which the MRLs apply ^(a)	Imazalil (any ratio of constituent isomers) (R)
(1)	(2)	(3)
0100000	FRUITS, FRESH or FROZEN; TREE NUTS	
0110000	Citrus fruits	
0110010	Grapefruits	4 (+)
0110020	Oranges	4 (+)
0110030	Lemons	5 (+)
0110040	Limes	5 (+)
0110050	Mandarins	5 (+)
0110990	Others (2)	0,01 (*)
0120000	Tree nuts	0,01 (*)
0120010	Almonds	
0120020	Brazil nuts	
0120030	Cashew nuts	
0120040	Chestnuts	
0120050	Coconuts	
0120060	Hazelnuts/cobnuts	
0120070	Macadamias	
0120080	Pecans	
0120090	Pine nut kernels	
0120100	Pistachios	
0120110	Walnuts	
0120990	Others (2)	
0130000	Pome fruits	0,01 (*)
0130010	Apples	
0130020	Pears	
0130030	Quinces	
0130040	Medlars	
0130050	Loquats/Japanese medlars	
0130990	Others (2)	
0140000	Stone fruits	0,01 (*)
0140010	Apricots	
0140020	Cherries (sweet)	
0140030	Peaches	

(1)	(2)	(3)
0140040	Plums	
0140990	Others (2)	
0150000	Berries and small fruits	
0151000	(a) <i>grapes</i>	0,01 (*)
0151010	Table grapes	
0151020	Wine grapes	
0152000	(b) <i>strawberries</i>	2
0153000	(c) <i>cane fruits</i>	
0153010	Blackberries	2
0153020	Dewberries	0,01 (*)
0153030	Raspberries (red and yellow)	2
0153990	Others (2)	0,01 (*)
0154000	(d) <i>other small fruits and berries</i>	0,01 (*)
0154010	Blueberries	
0154020	Cranberries	
0154030	Currants (black, red and white)	
0154040	Gooseberries (green, red and yellow)	
0154050	Rose hips	
0154060	Mulberries (black and white)	
0154070	Azaroles/Mediterranean medlars	
0154080	Elderberries	
0154990	Others (2)	
0160000	Miscellaneous fruits with	0,01 (*)
0161000	(a) <i>edible peel</i>	
0161010	Dates	
0161020	Figs	
0161030	Table olives	
0161040	Kumquats	
0161050	Carambolas	
0161060	Kaki/Japanese persimmons	
0161070	Jambuls/jambolans	
0161990	Others (2)	
0162000	(b) <i>inedible peel, small</i>	
0162010	Kiwi fruits (green, red, yellow)	
0162020	Litchis/lychees	
0162030	Passionfruits/maracujas	
0162040	Prickly pears/cactus fruits	
0162050	Star apples/cainitos	
0162060	American persimmons/Virginia kaki	
0162990	Others (2)	
0163000	(c) <i>inedible peel, large</i>	
0163010	Avocados	
0163020	Bananas	

(1)	(2)	(3)
0163030	Mangoes	
0163040	Papayas	
0163050	Granate apples/pomegranates	
0163060	Cherimoyas	
0163070	Guavas	
0163080	Pineapples	
0163090	Breadfruits	
0163100	Durians	
0163110	Soursops/guanabanas	
0163990	Others (2)	
0200000	VEGETABLES, FRESH or FROZEN	
0210000	Root and tuber vegetables	0,01 (*)
0211000	(a) <i>potatoes</i>	
0212000	(b) <i>tropical root and tuber vegetables</i>	
0212010	Cassava roots/manioc	
0212020	Sweet potatoes	
0212030	Yams	
0212040	Arrowroots	
0212990	Others (2)	
0213000	(c) <i>other root and tuber vegetables except sugar beets</i>	
0213010	Beetroots	
0213020	Carrots	
0213030	Celeriacs/turnip rooted celeries	
0213040	Horseradishes	
0213050	Jerusalem artichokes	
0213060	Parsnips	
0213070	Parsley roots/Hamburg roots parsley	
0213080	Radishes	
0213090	Salsifies	
0213100	Swedes/rutabagas	
0213110	Turnips	
0213990	Others (2)	
0220000	Bulb vegetables	0,01 (*)
0220010	Garlic	
0220020	Onions	
0220030	Shallots	
0220040	Spring onions/green onions and Welsh onions	
0220990	Others (2)	
0230000	Fruiting vegetables	
0231000	(a) <i>Solanaceae and Malvaceae</i>	
0231010	Tomatoes	0,3
0231020	Sweet peppers/bell peppers	0,01 (*)
0231030	Aubergines/eggplants	0,01 (*)
0231040	Okra/lady's fingers	0,01 (*)
0231990	Others (2)	0,01 (*)

(1)	(2)	(3)
0232000	(b) <i>cucurbits with edible peel</i>	
0232010	Cucumbers	0,5
0232020	Gherkins	0,5
0232030	Courgettes	0,1 (+)
0232990	Others (2)	0,01 (*)
0233000	(c) <i>cucurbits with inedible peel</i>	
0233010	Melons	2 (+)
0233020	Pumpkins	0,01 (*)
0233030	Watermelons	0,01 (*)
0233990	Others (2)	0,01 (*)
0234000	(d) <i>sweet corn</i>	0,01 (*)
0239000	(e) <i>other fruiting vegetables</i>	0,01 (*)
0240000	Brassica vegetables (excluding brassica roots and brassica baby leaf crops)	0,01 (*)
0241000	(a) <i>flowering brassica</i>	
0241010	Broccoli	
0241020	Cauliflowers	
0241990	Others (2)	
0242000	(b) <i>head brassica</i>	
0242010	Brussels sprouts	
0242020	Head cabbages	
0242990	Others (2)	
0243000	(c) <i>leafy brassica</i>	
0243010	Chinese cabbages/pe-tsai	
0243020	Kales	
0243990	Others (2)	
0244000	(d) <i>kohlrabies</i>	
0250000	Leaf vegetables, herbs and edible flowers	
0251000	(a) <i>lettuces and salad plants</i>	0,01 (*)
0251010	Lamb's lettuces/corn salads	
0251020	Lettuces	
0251030	Escaroles/broad-leaved endives	
0251040	Cresses and other sprouts and shoots	
0251050	Land cresses	
0251060	Roman rocket/rucola	
0251070	Red mustards	
0251080	Baby leaf crops (including brassica species)	
0251990	Others (2)	
0252000	(b) <i>spinaches and similar leaves</i>	0,01 (*)
0252010	Spinaches	
0252020	Purslanes	

(1)	(2)	(3)
0252030	Chards/beet leaves	
0252990	Others (2)	
0253000	(c) <i>grape leaves and similar species</i>	0,01 (*)
0254000	(d) <i>watercresses</i>	0,01 (*)
0255000	(e) <i>witloofs/Belgian endives</i>	0,01 (*)
0256000	(f) <i>herbs and edible flowers</i>	0,02 (*)
0256010	Chervil	
0256020	Chives	
0256030	Celery leaves	
0256040	Parsley	
0256050	Sage	
0256060	Rosemary	
0256070	Thyme	
0256080	Basil and edible flowers	
0256090	Laurel/bay leaves	
0256100	Tarragon	
0256990	Others (2)	
0260000	Legume vegetables	0,01 (*)
0260010	Beans (with pods)	
0260020	Beans (without pods)	
0260030	Peas (with pods)	
0260040	Peas (without pods)	
0260050	Lentils	
0260990	Others (2)	
0270000	Stem vegetables	0,01 (*)
0270010	Asparagus	
0270020	Cardoons	
0270030	Celeries	
0270040	Florence fennels	
0270050	Globe artichokes	
0270060	Leeks	
0270070	Rhubarbs	
0270080	Bamboo shoots	
0270090	Palm hearts	
0270990	Others (2)	
0280000	Fungi, mosses and lichens	0,01 (*)
0280010	Cultivated fungi	
0280020	Wild fungi	
0280990	Mosses and lichens	
0290000	Algae and prokaryotes organisms	0,01 (*)
0300000	PULSES	0,01 (*)
0300010	Beans	
0300020	Lentils	

(1)	(2)	(3)
0300030	Peas	
0300040	Lupins/lupini beans	
0300990	Others (2)	
0400000	OILSEEDS AND OIL FRUITS	0,01 (*)
0401000	Oilseeds	
0401010	Linseeds	
0401020	Peanuts/groundnuts	
0401030	Poppy seeds	
0401040	Sesame seeds	
0401050	Sunflower seeds	
0401060	Rapeseeds/canola seeds	
0401070	Soyabeans	
0401080	Mustard seeds	
0401090	Cotton seeds	
0401100	Pumpkin seeds	
0401110	Safflower seeds	
0401120	Borage seeds	
0401130	Gold of pleasure seeds	
0401140	Hemp seeds	
0401150	Castor beans	
0401990	Others (2)	
0402000	Oil fruits	
0402010	Olives for oil production	
0402020	Oil palms kernels	
0402030	Oil palms fruits	
0402040	Kapok	
0402990	Others (2)	
0500000	CEREALS	0,01 (*)
0500010	Barley	
0500020	Buckwheat and other pseudocereals	
0500030	Maize/corn	
0500040	Common millet/proso millet	
0500050	Oat	
0500060	Rice	
0500070	Rye	
0500080	Sorghum	
0500090	Wheat	
0500990	Others (2)	
0600000	TEAS, COFFEE, HERBAL INFUSIONS, COCOA AND CAROBS	0,05 (*)
0610000	Teas	
0620000	Coffee beans	
0630000	Herbal infusions from	
0631000	(a) <i>flowers</i>	
0631010	Chamomile	
0631020	Hibiscus/roselle	

(1)	(2)	(3)
0631030	Rose	
0631040	Jasmine	
0631050	Lime/linden	
0631990	Others (2)	
0632000	(b) <i>leaves and herbs</i>	
0632010	Strawberry	
0632020	Rooibos	
0632030	Mate/maté	
0632990	Others (2)	
0633000	(c) <i>roots</i>	
0633010	Valerian	
0633020	Ginseng	
0633990	Others (2)	
0639000	(d) <i>any other parts of the plant</i>	
0640000	Cocoa beans	
0650000	Carobs/Saint John's breads	
0700000	HOPS	0,05 (*)
0800000	SPICES	
0810000	Seed spices	0,05 (*)
0810010	Anise/aniseed	
0810020	Black caraway/black cumin	
0810030	Celery	
0810040	Coriander	
0810050	Cumin	
0810060	Dill	
0810070	Fennel	
0810080	Fenugreek	
0810090	Nutmeg	
0810990	Others (2)	
0820000	Fruit spices	0,05 (*)
0820010	Allspice/pimento	
0820020	Sichuan pepper	
0820030	Caraway	
0820040	Cardamom	
0820050	Juniper berry	
0820060	Peppercorn (black, green and white)	
0820070	Vanilla	
0820080	Tamarind	
0820990	Others (2)	
0830000	Bark spices	0,05 (*)
0830010	Cinnamon	
0830990	Others (2)	

(1)	(2)	(3)
0840000	Root and rhizome spices	
0840010	Liquorice	0,05 (*)
0840020	Ginger (10)	0,05 (*)
0840030	Turmeric/curcuma	0,05 (*)
0840040	Horseradish (11)	
0840990	Others (2)	0,05 (*)
0850000	Bud spices	0,05 (*)
0850010	Cloves	
0850020	Capers	
0850990	Others (2)	
0860000	Flower pistil spices	0,05 (*)
0860010	Saffron	
0860990	Others (2)	
0870000	Aril spices	0,05 (*)
0870010	Mace	
0870990	Others (2)	
0900000	SUGAR PLANTS	0,01 (*)
0900010	Sugar beet roots	
0900020	Sugar canes	
0900030	Chicory roots	
0900990	Others (2)	
1000000	PRODUCTS OF ANIMAL ORIGIN -TERRESTRIAL ANIMALS	
1010000	Commodities from	
1011000	(a) <i>swine</i>	0,02 (*)
1011010	Muscle	(+)
1011020	Fat	(+)
1011030	Liver	(+)
1011040	Kidney	(+)
1011050	Edible offals (other than liver and kidney)	
1011990	Others (2)	
1012000	(b) <i>bovine</i>	
1012010	Muscle	0,02 (*) (+)
1012020	Fat	0,02 (*) (+)
1012030	Liver	0,03 (+)
1012040	Kidney	0,02 (*) (+)
1012050	Edible offals (other than liver and kidney)	0,02 (*)
1012990	Others (2)	0,02 (*)
1013000	(c) <i>sheep</i>	0,01 (*)
1013010	Muscle	
1013020	Fat	
1013030	Liver	

(1)	(2)	(3)
1013040	Kidney	
1013050	Edible offals (other than liver and kidney)	
1013990	Others (2)	
1014000	(d) <i>goat</i>	0,01 (*)
1014010	Muscle	
1014020	Fat	
1014030	Liver	
1014040	Kidney	
1014050	Edible offals (other than liver and kidney)	
1014990	Others (2)	
1015000	(e) <i>equine</i>	
1015010	Muscle	0,02 (*) (+)
1015020	Fat	0,02 (*) (+)
1015030	Liver	0,03 (+)
1015040	Kidney	0,02 (*) (+)
1015050	Edible offals (other than liver and kidney)	0,02 (*)
1015990	Others (2)	0,02 (*)
1016000	(f) <i>poultry</i>	0,01 (*)
1016010	Muscle	
1016020	Fat	
1016030	Liver	
1016040	Kidney	
1016050	Edible offals (other than liver and kidney)	
1016990	Others (2)	
1017000	(g) <i>other farmed terrestrial animals</i>	0,01 (*)
1017010	Muscle	
1017020	Fat	
1017030	Liver	
1017040	Kidney	
1017050	Edible offals (other than liver and kidney)	
1017990	Others (2)	
1020000	Milk	
1020010	Cattle	0,02 (*) (+)
1020020	Sheep	0,01 (*)
1020030	Goat	0,01 (*)
1020040	Horse	0,02 (*) (+)
1020990	Others (2)	0,01 (*)
1030000	Birds eggs	0,01 (*)
1030010	Chicken	
1030020	Duck	
1030030	Geese	
1030040	Quail	
1030990	Others (2)	

(1)	(2)	(3)
1040000	Honey and other apiculture products (7)	0,05 (*)
1050000	Amphibians and Reptiles	0,01 (*)
1060000	Terrestrial invertebrate animals	0,01 (*)
1070000	Wild terrestrial vertebrate animals	0,01 (*)
1100000	PRODUCTS OF ANIMAL ORIGIN - FISH, FISHPRODUCTS AND ANY OTHER MARINE AND FRESHWATER FOOD PRODUCTS (8)	
1200000	PRODUCTS OR PART OF PRODUCTS EXCLUSIVELY USED FOR ANIMAL FEED PRODUCTION (8)	
1300000	PROCESSED FOOD PRODUCTS (9)	

(*) Limit of analytical determination

(**) Pesticide-code combination for which the MRL as set in Annex III Part B applies.

(a) For the complete list of products of plant and animal origin to which MRLs apply, reference should be made to Annex I.

Imazalil (any ratio of constituent isomers) (R)

(R) = The residue definition differs for the following combinations pesticide-code number: imazalil - code 1000000 except 1040000: sum of imazalil and metabolite FK-772 (any ratio of constituent isomers), expressed as imazalil

(+) The European Food Safety Authority identified some information on the toxicity of metabolites as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 26 September 2021, or, if that information is not submitted by that date, the lack of it.

0110010 Grapefruits

0110020 Oranges

0110030 Lemons

0110040 Limes

0110050 Mandarins

(+) The European Food Safety Authority identified some information on residue trials as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 26 September 2021, or, if that information is not submitted by that date, the lack of it.

0232030 Courgettes

(+) The European Food Safety Authority identified some information on the toxicity of metabolites as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 26 September 2021, or, if that information is not submitted by that date, the lack of it.

0233010 Melons

(+) The European Food Safety Authority identified some information on the toxicity of metabolites and storage stability as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 26 September 2021, or, if that information is not submitted by that date, the lack of it.

1011010 Muscle

1011020 Fat

1011030 Liver

1011040 Kidney

1012010 Muscle

1012020 Fat

1012030 Liver

1012040 Kidney

1015010 Muscle

1015020	Fat
1015030	Liver
1015040	Kidney
1020010	Cattle
1020040	Horse'

(2) In part B of Annex III, the column for imazalil is deleted.

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1583**of 25 September 2019****amending Implementing Regulation (EU) 2015/1998 laying down detailed measures for the implementation of the common basic standards on aviation security, as regards cybersecurity measures****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 ⁽¹⁾, and in particular Articles 1 and 4(3) thereof,

Whereas:

- (1) One of the main objectives of Regulation (EC) No 300/2008 is to provide the basis for a common interpretation of Annex 17 (Security Annex) of the Convention on International Civil Aviation ⁽²⁾ of 7 December 1944, 10th edition, 2017 to which all the EU Member States are signatories.
- (2) The means of achieving the objectives are (a) the setting of common rules and common basic standards on aviation security and (b) mechanisms for monitoring compliance.
- (3) The purpose for amending the implementing legislation is to support Member States in ensuring full compliance with the most recent amendment (Amendment 16) to Annex 17 of the Convention on International Civil Aviation, which introduced new standards under chapters 3.1.4 related to national organisation and appropriate authority and 4.9.1 related to preventive cybersecurity measures.
- (4) By transposing these standards into the implementing EU wide aviation security legislation, it will be ensured that appropriate authorities establish and implement procedures to share, as appropriate and in a practical and timely manner, relevant information to assist other national authorities and agencies, airport operators, air carriers and other entities concerned, to conduct effective security risk assessments relating to their operations and in that way support these entities in conducting effective security risk assessments related to, among other areas, cybersecurity and implement measures addressing cyber threats.
- (5) Directive (EU) 2016/1148 of the European Parliament and of the Council concerning measures for a high common level of security of network and information systems across the Union (NIS Directive) lays down measures with a view to achieving a high common level of security of network and information systems within the Union ⁽³⁾ so as to improve the functioning of the internal market. Measures stemming from the NIS Directive and this Regulation should be coordinated at national levels to avoid gaps and duplications of obligations.
- (6) Commission Implementing Regulation (EU) 2015/1998 ⁽⁴⁾ should therefore be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Civil Aviation Security set up pursuant to Article 19(1) of Regulation (EC) No 300/2008,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Implementing Regulation (EU) 2015/1998 is amended in accordance with the Annex to this Regulation.

⁽¹⁾ OJ L 97, 9.4.2008, p. 72.⁽²⁾ <https://icao.int/publications/pages/doc7300.aspx>⁽³⁾ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).⁽⁴⁾ Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security (OJ L 299, 14.11.2015, p. 1).

Article 2

This Regulation shall enter into force on 31 December 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 September 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

The Annex to Implementing Regulation (EU) 2015/1998 is amended as follows:

(1) The following point 1.0.6 is added:

- ‘1.0.6. The appropriate authority shall establish and implement procedures to share, as appropriate and in a practical and timely manner, relevant information to assist other national authorities and agencies, airport operators, air carriers and other entities concerned, to conduct effective security risk assessments relating to their operations.’;

(2) The following point 1.7 is added:

‘1.7 IDENTIFICATION AND PROTECTION OF CIVIL AVIATION CRITICAL INFORMATION AND COMMUNICATION TECHNOLOGY SYSTEMS AND DATA FROM CYBER THREATS

- 1.7.1. The appropriate authority shall ensure that airport operators, air carriers and entities as defined in the national civil aviation security programme identify and protect their critical information and communications technology systems and data from cyber-attacks which could affect the security of civil aviation.

- 1.7.2. Airport operators, air carriers and entities shall identify in their security programme, or any relevant document cross-referenced in the security programme, the critical information and communications technology systems and data described in 1.7.1.

The security programme, or any relevant document cross-referenced in the security programme shall detail the measures to ensure the protection from, detection of, response to and recovery from cyber-attacks, as described in 1.7.1.

- 1.7.3. The detailed measures to protect such systems and data from unlawful interference shall be identified, developed and implemented in accordance with a risk assessment carried out by the airport operator, air carrier or entity as appropriate.

- 1.7.4. Where a specific authority or agency is competent for measures related to cyber threats within a single Member State, this authority or agency may be designated as competent for the coordination and/or monitoring of the cyber-related provisions in this Regulation.

- 1.7.5. Where airport operators, air carriers and entities as defined in the national civil aviation security programme are subjected to separate cybersecurity requirements arising from other EU or national legislation, the appropriate authority may replace compliance with the requirements of this regulation by compliance with the elements contained in the other EU or national legislation. The appropriate authority shall coordinate with any other relevant competent authorities to ensure coordinated or compatible oversight regimes.’;

(3) Point 11.1.2 is replaced by the following:

‘11.1.2. The following personnel shall have successfully completed an enhanced or a standard background check:

- a) Persons being recruited to implement, or to be responsible for the implementation of, screening, access control or other security controls elsewhere than a security restricted area;
- b) Persons having unescorted access to air cargo and mail, air carrier mail and air carrier material, in-flight supplies and airport supplies to which the required security controls have been applied;
- c) Persons having administrator rights or unsupervised and unlimited access to critical information and communications technology systems and data used for civil aviation security purposes as described in 1.7.1 in accordance with the national aviation security programme, or having been otherwise identified in the risk assessment in accordance with 1.7.3.

Unless otherwise specified in this Regulation, whether an enhanced or a standard background check has to be completed shall be determined by the appropriate authority in accordance with applicable national rules.’;

(4) The following point 11.2.8 is added:

‘11.2.8. Training of persons with roles and responsibility related to cyber threats

11.2.8.1. Persons implementing the measures as laid down in point 1.7.2 shall have the skills and aptitudes required to carry out their designated tasks effectively. They shall be made aware of relevant cyber risks on a need-to-know basis.

11.2.8.2. Persons having access to data or systems shall receive appropriate and specific job related training commensurate with their role and responsibilities, including being made aware of relevant risks where their job function requires this. The appropriate authority, or the authority or agency as laid down in point 1.7.4 shall specify or approve the content of the course.’

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1584**of 25 September 2019**

initiating an investigation concerning possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 1343/2013 on imports of peroxosulphates (persulphates) originating in the People's Republic of China, and making such imports subject to registration

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation') and in particular Articles 13(3) and 14(5) thereof,

After having informed the Member States,

Whereas:

A. EX-OFFICIO INVESTIGATION

- (1) The European Commission ('the Commission') has decided on its own initiative, pursuant to Articles 13(3) and 14(5) the basic Regulation, to investigate the possible circumvention of the anti-dumping measures imposed on imports of peroxosulphates (persulphates) originating in the People's Republic of China and to make such imports subject to registration.

B. PRODUCT

- (2) The product concerned by the possible circumvention is peroxosulphates (persulphates), including potassium peroxymonosulphate sulphate, currently falling under CN codes 2833 40 00 and ex 2842 90 80 (TARIC 2842 90 80 20), and originating in the People's Republic of China ('the product concerned').
- (3) The product under investigation for possible circumvention is the same as that defined in the previous recital, currently falling under the same codes as the product concerned, imported under the TARIC additional code A820 ('the product under investigation').

C. EXISTING MEASURES

- (4) The measures currently in force and possibly being circumvented are anti-dumping measures imposed by Council Implementing Regulation (EU) No 1343/2013 ⁽²⁾. An expiry review concerning these measures was initiated on 17 December 2018 and remains pending ⁽³⁾.

D. GROUNDS

- (5) The present investigation of possible circumvention of existing measures is based on sufficient evidence that the anti-dumping measures in force are being circumvented by a reorganisation of patterns and channels of sales of the product concerned.
- (6) The measures in force range from 24,5 % to 71,8 %. One of the exporting producers, ABC Chemicals Co. Ltd Shanghai ('ABC'), is subject to a 0 % duty. Import statistics show a change in the pattern of trade following the imposition of the definitive anti-dumping duty on the product concerned. Those statistics also show that Chinese imports are now mainly entering the Union via ABC. However, evidence in possession of the Commission shows that ABC is no longer producing the product concerned. In addition, it appears that the production license of ABC was withdrawn in July 2017, that no new license was issued, and that the company is categorised as a distribution enterprise, not as a manufacturer.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 1343/2013 of 12 December 2013 imposing a definitive anti-dumping duty on imports of peroxosulphates (persulphates) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 338, 17.12.2013, p. 11).

⁽³⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of peroxosulphates (persulphates) originating in the People's Republic of China (2018/C 454/06) (OJ C 454, 17.12.2018, p. 7).

- (7) There seems to be no due cause or economic justification for this channelling of exports other than the existing 0 % duty for ABC.
- (8) Furthermore, the Commission is in possession of sufficient evidence that the remedial effects of the existing anti-dumping measures on the product concerned are being undermined both in terms of quantity and price. Significant volumes of imports of the product under investigation appear to have replaced imports of the product concerned. In addition, the Commission is in possession of sufficient evidence that imports of the product under investigation are made at prices below the non-injurious price established in the investigation that led to the existing measures.
- (9) Finally, the Commission has obtained sufficient evidence that the prices of the product under investigation are dumped in relation to the normal value previously established.
- (10) Should circumvention practices covered by Article 13 of the basic Regulation, other than the one mentioned above, be identified in the course of the investigation, the investigation may also cover these practices.

E. PROCEDURE

- (11) In light of the above, the Commission has concluded that sufficient evidence exists to justify the initiation of an investigation pursuant to Article 13(3) of the basic Regulation and to make imports of the products under investigation subject to registration, in accordance with Article 14(5) of the basic Regulation.
- (12) The authorities of the People's Republic of China will be notified of the initiation of the investigation.

(a) Time-limits

- (13) In the interest of sound administration, time-limits should be stated within which:
 - parties may make themselves known to the Commission, present their views in writing and submit questionnaire replies or any other information to be taken into account during the investigation,
 - parties may make a written request to be heard by the Commission.
- (14) Attention is drawn to the fact that the exercise of procedural rights set out in the basic Regulation depends on parties making themselves known within the time-limits laid down in Article 3 of this Regulation.

(b) Questionnaires

- (15) In order to obtain information it deems necessary for its investigation, the Commission will send a questionnaire to ABC, which is invited to respond to that questionnaire within the time-limit set in Article 3(2) of this Regulation.

(c) Collection of information and holding of hearings

- (16) Interested parties must make themselves known by contacting the Commission within the time-limit set in Article 3(1) of this Regulation.
- (17) All parties, including the Union industry, importers, and any relevant association are invited to make their views known in writing and to provide supporting evidence provided that such submissions are made within the deadline provided for in Article 3(2). Furthermore, the Commission may hear parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

F. REGISTRATION

- (18) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation shall be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied from the date on which registration of such imports was imposed.

- (19) Future liability may emanate from the findings of this investigation. With the information available at this stage, in particular the indication that certain companies currently subject to the residual duty of 71,8 % (TARIC additional code A999) or companies subject to an individual duty rate are selling their products through ABC (which is subject to a 0 % duty), the amount of possible future liability is set at the level of the residual duty, namely 71,8 % *ad valorem* on the CIF import value of the product under investigation, imported under the TARIC additional code A820.

G. NON-COOPERATION

- (20) If any interested party refuses access to or does not provide the necessary information within the time-limits, or significantly impedes the investigation, findings, affirmative or negative, may be made on the basis of facts available in accordance with Article 18 of the basic Regulation.
- (21) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available in accordance with Article 18 of the basic Regulation.
- (22) If an interested party does not cooperate or cooperates only partially and findings are therefore based on the facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

H. SCHEDULE OF THE INVESTIGATION

- (23) The investigation will be concluded, pursuant to Article 13(3) of the basic Regulation, within nine months of the date of entry into force of this Regulation.

I. PROCESSING OF PERSONAL DATA

- (24) It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council (*) on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.
- (25) A data protection notice that informs all individuals of the processing of personal data in the framework of Commission's trade defence activities is available on DG Trade's website: <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/>

J. HEARING OFFICER

- (26) Parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and any other request concerning the rights of defence of parties and third parties as may arise during the proceeding.
- (27) The Hearing Officer may organise hearings and mediate between the party/-ies and Commission's services to ensure that the parties' rights of defence are being fully exercised.
- (28) A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. The Hearing Officer will examine the reasons for the requests. These hearings should only take place if the issues have not been settled with the Commission services in the due course.
- (29) Any request must be submitted in good time and expeditiously so as not to jeopardise the orderly conduct of proceedings. To that effect, parties should request the intervention of the Hearing Officer at the earliest possible time following the occurrence of the event justifying such intervention. In principle, the timeframes set out in Article 3 of this Regulation to request hearings with the Commission services apply *mutatis mutandis* to requests for hearings with the Hearing Officer. Where hearing requests are submitted outside the relevant timeframes, the Hearing Officer will also examine the reasons for such late requests, the nature of the issues raised and the impact of those issues on the rights of defence, having due regard to the interests of good administration and the timely completion of the investigation.

(*) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (30) For further information and contact details parties may consult the Hearing Officer's web pages on the Directorate-General for Trade's website: <http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>,

HAS ADOPTED THIS REGULATION:

Article 1

An investigation is hereby initiated pursuant to Article 13(3), in order to determine if imports into the Union of peroxy-sulphates (persulphates), including potassium peroxymonosulphate sulphate, currently falling under CN codes 2833 40 00 and ex 2842 90 80 (TARIC code 2842 90 80 20), and originating in the People's Republic of China, imported under the TARIC additional code A820, are circumventing the measures imposed by Implementing Regulation (EU) No 1343/2013.

Article 2

- (1) The customs authorities of the Member States shall, pursuant to Article 13(3) and Article 14(5) of the basic Regulation, take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation.
- (2) Registration shall expire nine months following the date of entry into force of this Regulation.

Article 3

- (1) Parties must make themselves known by contacting the Commission within 15 days from the date of entry into force of this Regulation.
- (2) If their comments are to be taken into account during the investigation, parties must present their views in writing and submit any other information within 37 days from the date of publication of this Regulation in the *Official Journal of the European Union*, unless otherwise specified.
- (3) Parties may also apply to be heard by the Commission within the same 37-day time-limit.
- (4) Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Before submitting to the Commission information and/or data which is subject to third party copyrights, parties must request specific permission to the copyright holder explicitly allowing a) the Commission to use the information and data for the purpose of this trade defence proceeding and b) to provide the information and/or data to parties to this investigation in a form that allows them to exercise their right of defence.
- (5) All written submissions, including the information requested in this Regulation, completed questionnaires and correspondence provided by parties for which confidential treatment is requested shall be labelled '*Limited*' ^(*). Parties submitting information in the course of this investigation are invited to reason their request for confidential treatment.
- (6) Parties providing '*Limited*' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. Those summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence.
- (7) If a party providing confidential information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.
- (8) Interested parties are invited to make all submissions and requests via TRON.tdi (<https://tron.trade.ec.europa.eu/tron/TDI>), including scanned powers of attorney and certification sheets, with the exception of large replies, which shall be submitted on a CD-R or DVD by hand or by registered mail.

In order to have access to TRON.tdi, interested parties need an EU Login account. Full instructions on how to register and use TRON.tdi are available on <https://webgate.ec.europa.eu/tron/resources/documents/gettingStarted.pdf>.

^(*) A '*Limited*' document is a document which is considered confidential pursuant to Article 19 of Regulation (EU) 2016/1036 of the European Parliament and the Council (OJ L 176, 30.6.2016, p. 21) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

By using TRON.tdi or email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf. The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission

Directorate-General for Trade

Directorate H

Office: CHAR 04/039

1049 Brussels

BELGIUM

TRON.tdi: <https://tron.trade.ec.europa.eu/tron/TDI>

Email: TRADE-R707@ec.europa.eu

Article 4

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 September 2019.

For the Commission

The President

Jean-Claude JUNCKER

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2019/1585

of 24 September 2019

on the establishment of traffic distribution rules pursuant to Article 19 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council for the airports Amsterdam Schiphol and Amsterdam Lelystad

(notified under document C(2019) 6816)

(Only the Dutch text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air service in the Community ⁽¹⁾, and in particular Article 19(3) thereof,

After consulting the Committee referred to in Article 25(1) of Regulation (EC) No 1008/2008,

Whereas:

1. PROCEDURE

- (1) Following a previous notification, subsequently withdrawn ⁽²⁾, the Netherlands authorities informed the Commission by email of 25 March 2019 ⁽³⁾, pursuant to Article 19(3) of Regulation (EC) No 1008/2008, of their intention to establish certain traffic distribution rules for the Amsterdam Schiphol and Amsterdam Lelystad airports in the Netherlands (referred hereafter as Schiphol Airport or Schiphol, or Lelystad Airport or Lelystad, respectively) by adopting the Draft Ministerial Decree and the Draft Order of the Minister for Infrastructure and Water. By email of 29 March 2019 ⁽⁴⁾, the Netherlands authorities submitted an amended version of the Draft Ministerial Decree and the Draft Order of the Minister for Infrastructure and Water ⁽⁵⁾, together with the other elements already contained in the notification of 25 March 2019.
- (2) The information thus submitted by the Netherlands authorities included as annexes four studies: (1) Capacity demand at Schiphol in 2023; (2) Capacity demand at Schiphol in 2030; (3) Secondary trading at Schiphol ⁽⁶⁾ and (4) Airline split operations.
- (3) The Commission published a summary of the intended traffic distribution rules in the *Official Journal of the European Union* on 12 April 2019 ⁽⁷⁾ and invited interested parties to submit comments.
- (4) By letters of 3 July 2019 ⁽⁸⁾ and 11 July 2019 ⁽⁹⁾, the Netherlands authorities submitted an amendment to the notification, intended to take account of concerns raised by the Commission services. By the same letter dated 11 July 2019 as well as by email dated 16 July 2019 ⁽¹⁰⁾, the Netherlands authorities notified further factual elements relevant to the notification, regarding the accessibility of the airports, as well as those authorities' intentions regarding the timeframe within which Lelystad airport would open to commercial operations.

⁽¹⁾ OJ L 293, 31.10.2008, p. 3.

⁽²⁾ On 12 July 2018, the Netherlands authorities notified the Commission a first set of traffic distribution rules for the Schiphol and Lelystad airports. That notification has been withdrawn by the Netherlands authorities on 4 December 2018.

⁽³⁾ Registered under Ares (2019)2057632

⁽⁴⁾ Registered under Ares (2019)2256246.

⁽⁵⁾ Aanmelding verkeersverdelingsregel voor de Nederlandse luchthavens Lelystad Airport en Schiphol.

⁽⁶⁾ The three studies have been conducted by the consultant Seo Amsterdam Economics.

⁽⁷⁾ OJ C 136, 12.4.2019, p. 26.

⁽⁸⁾ Registered under Ares (2019)4236859

⁽⁹⁾ Registered under Ares (2019)4595066.

⁽¹⁰⁾ Registered under Ares (2019) 4595552.

2. DESCRIPTION OF THE MEASURE AND OBJECTIVE SET OUT BY THE NETHERLANDS AUTHORITIES

2.1. Description of the measure

- (5) The draft TDR for distributing traffic between Schiphol and Lelystad airports consists of the following elements:
- (a) Lelystad Airport, which the Netherlands government plans to open to commercial operations before end 2020, will be designated as a coordinated airport within the meaning of the Council Regulation (EEC) No 95/93 ⁽¹⁾ (hereinafter the 'Slot Regulation') as from the entry into force of the Ministerial Decree. Lelystad Airport.
 - (b) Without prejudice to the Slot Regulation, an air carrier obtains priority to require slots at Lelystad Airport to take off or land in so far as that air carrier:
 - Has transferred historical slots at Schiphol Airport to another air carrier or returned it to the slot coordinator; or
 - Commits to henceforth use historical slots at Schiphol Airport to operate transfer flights.
 - (c) The rule described in point (b) above applies only to slots at Schiphol Airport that were used in the previous corresponding scheduling period or in at least three of the four previous corresponding scheduling periods to conduct for point-to-point flights.
- (6) 'Transfer flights' and 'point-to-point flights' are to be defined by an Order of the Minister for Infrastructure and Water. In addition, rules should be laid down concerning the criteria to be met by these flights. The flights should be classified every two years according to those criteria, and any new classification should be announced at least one year prior to its entry into force. A draft Order based on this empowerment forms part of the notified measure [cf. recitals 13 to 21 below].
- (7) The draft TDR does not require that the days and times of the capacity used at Lelystad Airport, on the one hand, and of the relevant slots at Schiphol Airport, on the other hand, transferred, returned or put to a different use according to the rule described in recital 5(b) above need to correspond.
- (8) An air carrier that relies on Article 2(2) of the draft Decree [i.e. the rule described in recital 5(b) above] must inform the Minister, the slot coordinator and, where applicable, the recipient air carrier thereof, stating which slots at Schiphol Airport are concerned. When informing the Minister, the air carrier must demonstrate that the requirements described in Article 2(5) of the draft Decree [recital 5(c) above] are met.
- (9) Under Article 3(1) of the draft Decree historical slots covered by its Article 2(2) [described in recital 5(b) above] are to be used exclusively for transfer flights.
- (10) Paragraphs 2, 3 and 4 of Article 3 of the draft Ministerial Decree add the following provisions:
- '(2) During the period of application of this decree, an air carrier holding historical slots referred to in paragraph 1 must serve at least the same number of transfer flights as in the corresponding scheduling period before having obtained those slots, following their transfer under Article 2(2)(a), or before the application of Article 2(2)(b) to those slots, as the case may be, increased by a number equal to the number of those slots.
- By derogation from the first subparagraph, and under the conditions set out in paragraph 3, such carrier may decrease the number of transfer flights in case the overall number of slots it holds decreases.
- (3) An air carrier holding historical slots referred to in paragraph 1, and without prejudice to that paragraph, may at no time decrease the proportion of transfer flights among all flights operated thanks to other slots at Schiphol Airport, vis-à-vis the proportion that existed before the carrier had obtained the historical slots in question, following their transfer under Article 2(2)(a), or before the application of Article 2(2)(b) to those slots, as the case may be.

⁽¹⁾ Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993, p. 1).

- (4) Where slots at Schiphol Airport are held by more than one company within a given set consisting of
- a parent company and all its subsidiary companies or, otherwise,
 - all subsidiaries of the same parent company,
- each such set of companies shall be considered as a single air carrier for the purposes of paragraphs 2 and 3.'
- (11) According to Article 2(3) and (4) of the draft Ministerial Decree the priority referred to in Article 2(2) thereof [recital 5(b) above] applies to two tranches of slots at Lelystad airport, namely up to and including 10 000 slots and from 10 001 to 25 000 slots.
- (12) According to its Article 7, the Decree enters into force on a date to be stipulated by Royal decision, with the exception of Article 2(4), which enters into force with effect from the day on which the European Commission approves this particular paragraph pursuant to a separate submission pursuant to Article 19, paragraph 3, of Regulation (EC) No 1008/2008 and has published its decision in the *Official Journal of the European Union*.
- (13) The draft Order of the Minister defines 'transfer flights' by reference to each flight's destination. The criteria are the following:
- an average transfer percentage of all flights from Schiphol Airport of at least 10 %, measured over the five calendar years prior to the publication of the classification and more than ten flights per year in the three years prior to the publication of the classification, or,
 - destinations in areas defined in Article 1, paragraph 1 of the 'Aanwijzingsregeling risicovluchten', which designates the so called 'risk flights' that require customs control.
- (14) Annex 1 to the draft Order lists the destinations corresponding to those criteria.
- (15) In accordance with Article 1(3) of the draft Order, a destination not included in Annex 1 will be regarded as a 'transfer destination' for a requested period, up to a maximum of 5 years, if an airline can substantiate to the Minister *ex ante* that the destination will be served by its flights with an average transfer percentage of at least 10 % for the requested number of seasons.
- (16) Under Article 1(4) of the draft Order, an airline can, in any case, meet the requirement set in paragraph 3 by demonstrating that a destination is being served by flights with an average transfer percentage of at least 10 % measured over the five calendar years preceding the request referred to in paragraph 3, at an airport within the European Union.
- (17) Destinations which will be regarded as a transfer destination pursuant to paragraph 3, will be published in the Government Gazette.
- (18) The draft Order of the Minister lists as well, in Annex 2, the destinations designated as 'point-to-point flights' on the basis of the following criteria:
- an average transfer percentage of all flights from Schiphol Airport of less than 10 %, measured over the five calendar years prior to the publication of the classification;
 - more than ten flights per year in the three years prior to the publication of the classification.
- (19) Article 3 of the draft Order concerns rules regarding the assessment of evidence of the transfer percentage relevant to the application of the Order.
- (20) According to Article 3(1), any verifiable data pertaining to the transfer percentage of flights and destinations can be submitted to the Minister and will be taken into account when designating flights as either transfer or point-to-point flights.
- (21) Article 3(2) stipulates that, in any case, with regard to the data referred to in paragraph 1, passengers arriving at Schiphol Airport and departing, within 24 hours after arrival, to another destination than where the previous flight originated, will be regarded as transfer passengers.

2.2. Objective of the measure set out by the Netherlands authorities

- (22) According to the Netherlands authorities, the objective of the draft TDR is to privilege transfer flights when it comes to the allocation of capacity at Schiphol Airport. The extensive network of intercontinental destinations could not be served if Schiphol were not a continental and intercontinental hub. The two functions, serving intercontinental destinations and operating in a European network for transfer passengers, are inseparable and together form Schiphol's continental and intercontinental hub function.
- (23) Background to this objective is the limit of 500 000 movements per year at Schiphol airport until end of 2020, established in the 'Alders Agreement'. That agreement was reached in 2008 between the parties concerned (i.e. aviation industry, public authorities and residents). It seeks to reach a balance between the growth of the aviation sector and viability and environmental safety and sustainability.
- (24) The limit of 500 000 movements per year at Schiphol Airport was already reached in 2018. As a consequence, the Netherlands authorities take the view that capacity available to transfer traffic at Schiphol airport can only be increased by a distributing traffic between that airport and Lelystad airport, the latter being capable of accommodating traffic that does not need conditions and facilities such as those available at Schiphol Airport.
- (25) To this effect, Lelystad Airport would accommodate point-to-point traffic coming from Schiphol Airport, thus enhancing the transfer function of the latter airport.
- (26) The draft TDR does not force air carriers to relocate their flights from Schiphol, but rather relies on incentives for relocation of point to point traffic.
- (27) According to the Netherlands authorities, the notified measure has to be seen against the high economic and strategic importance of maintaining major hubs in the Union. According to the Netherlands authorities, Schiphol Airport is one of the largest hubs in the North-western part of the Union, and a major pillar for the economy and connectivity of the Netherlands. In 2017, 48,6 million passengers from European cities travelled from/to Schiphol Airport, and 31 % of them transferred to another flight at Schiphol. In addition, 19,7 million non-European passengers travelled from/to Schiphol. Of those passengers, approximately 60 % were transfer passengers. The Netherlands authorities refer to the importance recognised by the European Commission to the existence of major hubs on EU territory in its external aviation policy ⁽¹²⁾.
- (28) The Netherlands authorities consider that a European route network from Schiphol serving continental and intercontinental destinations is essential to retain and develop this strong EU hub. They believe that Schiphol's hub function is a vital public interest that must be maintained and strengthened ⁽¹³⁾. Doing so is important given the hub's vulnerability to a decline in the continental and intercontinental route network.
- (29) According to the Netherlands authorities, this vulnerability is due more specifically to the fact that the domestic market, in terms of passengers residing in the Netherlands, for intercontinental and transfer traffic is small. Secondly, a specialised infrastructure is needed for carriers carrying out intercontinental and transfer traffic, for which in certain situations, such as risk flights, no other reasonable alternative exists in another airport situated in the Netherlands. Thirdly, the Netherlands authorities argue that if the airport were to lose its hub function, seat capacity and frequencies would suffer for years.
- (30) The Netherlands authorities also refer to the comprehensive package of measures that has been adopted to implement the so-called 'balanced approach' established by Regulation (EU) No 598/2014 of the European Parliament and of the Council ⁽¹⁴⁾. Those measures, the Netherlands authorities explain, are reflected in the 2008 'Alders Agreement', referred to above, and were reaffirmed in the White Paper on Dutch Aviation (2009), in the Schiphol Action Agenda (2016) and in the Coalition Agreement (2017).
- (31) As mentioned above, the threshold of 500 000 aircraft movements at Schiphol has already been met in 2018. Moreover, according to the Netherlands authority, capacity available at Eindhoven Airport has been quickly absorbed by additional traffic not transferred from Schiphol Airport. There have been insufficient incentives for air carriers moving to Eindhoven to return on their own initiative their Schiphol slots to the slot coordinator.

⁽¹²⁾ The EU's External Aviation Policy — Addressing Future Challenges, COM(2012) 556 final of 27 September 2012.

⁽¹³⁾ Schiphol Action Agenda (2016).

⁽¹⁴⁾ Regulation (EU) No 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC (OJ L 173, 12.6.2014, p. 65).

- (32) Against this background, the Netherlands authorities consider necessary to further develop and implement the package of measures. This implementation is structured around a number of elements, namely: (a) long-term vision of air transport; (b) safety measure; (c) air space measures; (d) operational measures; (e) nuisance abatement measures; (f) sustainability measures and (g) selectivity measures.
- (33) The TDR forms part of a wider plan of developing Lelystad Airport with a maximum capacity of 45 000 yearly aircraft movements. This capacity will be reached in two stages: the first stage will be at 25 000 yearly movements, to be reached around 2033. At the opening of Lelystad Airport in 2020, the airport will accommodate a yearly maximum of 4 000 take-offs and landings. This number is expected to rise to a maximum of 7 000 in 2021 and to 10 000 in 2022. The second stage will allow for growth up to 45 000 yearly movements to be reached until 2043.

2.3. Observations of the Netherlands authorities on the compatibility of the draft TDR with Article 19 of Regulation (EC) No 1008/2008 and with the Slot Regulation

- (34) The Netherlands authorities consider that the requirements set out in Article 19 of Regulation (EC) No 1008/2008 are met.
- (35) The Netherlands authorities carried out an internet based consultation on the draft TDR from 16 January to 6 February 2019. The explanatory memorandum and relevant studies were also made public for the benefit of the stakeholders. The main concerns regarding the draft TDR resulting from the consultation were: (a) their proportionality in relation to the limited capacity at Lelystad Airport restricting the air carriers' business opportunities, (b) their possible discriminatory impact regarding the type of traffic and the identity of air carriers, and (c) the distribution of market forces.
- (36) The Netherlands authorities stress that, further to the stakeholder consultation they revised the draft TDR in a number of areas: (a) the introduction of an 'anti-misuse provision', to ensure that the objective of increasing international connectivity is met; (b) the specific treatment of 'risk flights', i.e. flights from certain destinations requiring a full customs control upon arrival in the Netherlands and which must consequently be accommodated at Schiphol Airport; and (c) clarifications regarding the information needed to substantiate the transfer share of a new destination.
- (37) As regards accessibility and infrastructure, the Netherlands authorities consider that both airports serve Amsterdam and the Randstad conurbation, and that the distance between the two airports is 57 km by A6 motorway and can be covered within 90 minutes. The two airports are also linked by public transport. The journey time by train between Lelystad Central Station and Amsterdam Central Station is 38 minutes, and that between Lelystad Central Station and Schiphol is 42 minutes. The journey from Lelystad Central Station to Lelystad Airport takes 15 minutes by bus. A shuttle bus service between Lelystad Central Station and Lelystad Airport with a journey time of 10 minutes will be introduced when Lelystad Airport is opened. Depending on the airport's flight schedules, the shuttle bus will depart at intervals of 30 minutes. Furthermore, it has already been decided to widen the A6 motorway to Lelystad Airport from two to three lanes and build an exit to the airport as from 2021.
- (38) The Netherlands authorities indicate that Lelystad Airport offers the necessary services and is suitable for handling ICAO/EASA CAT C traffic ⁽¹⁵⁾. In addition, four parking positions are available. Air traffic control will be ensured by LVNL. The airport will provide ground handling and passenger handling services. The airport will not be open for night flights, and no facilities have been planned for cargo flight operations and intercontinental flights with 'wide-body' aircraft.
- (39) The Netherlands authorities consider that the draft TDR does not unduly prejudice commercial opportunities, since, in particular, air carriers are under no obligation to relocate their operation from Schiphol to Lelystad. Moreover, all destinations may be served from Lelystad Airport, and the 6.00 to 23.00 timetable (local time) allows flexibility to use the entire period.

⁽¹⁵⁾ As the runway will be 45 metres wide, the airport will be suitable for special aircraft such as the Boeing 737 and Airbus A320 and A321.

- (40) According to the Netherlands authorities, the draft TDR provides for the possibility for air carriers to develop new routes. When an air carrier can substantiate that it will serve a new destination from Schiphol Airport with flights with a share of at least 10 % of transfer passenger, such a destination will be deemed part of the list of transfer destination.
- (41) The Netherlands authorities submit the study conducted Seo Amsterdam Economics, a consultant. The study is intended to assist the Netherlands authorities in establishing the most appropriate threshold for defining a flight as a transfer flight, so as to achieve a balance between the objective of minimising the impact on the market and maximising the effectiveness of the rule. The analysis includes the total number of destinations and aircraft movements, aircrafts movements and routes affected in respect of each airline currently operating from Schiphol airport. The study examines the effects of different thresholds on the achievement of the objective of the measure and possibility for the various air carriers to make use of it for the purposes of obtaining priority at Lelystad Airport.
- (42) With regard to new entrants, the criteria of the Slot Regulation will apply from the opening of Lelystad Airport for commercial traffic, it being understood that Lelystad Airport will be a coordinated airport as from that moment. Without prejudice to the application of those criteria, the draft TDR establishes a priority in the allocation of slots at Lelystad Airport for carriers having made use of Article 2(2) of the Decree.
- (43) The draft TDR do not entail any direct or indirect discrimination between air carriers on grounds of nationality and identity or between destinations. The draft TDR are based on objective criteria, and all air carriers serving a specific destination are treated equally, without discrimination. The draft TDR do not oblige air carriers to move flights from Schiphol Airport to Lelystad Airport.
- (44) The Netherlands authorities indicate that the difference between destinations does not per se entail any discrimination. The difference can be objectively justified, on the basis of the legitimate aims of the network quality and promotion of Schiphol's hub functions.
- (45) The Netherlands authorities consider that the draft TDR is proportionate. Lelystad Airport will be a coordinated airport as from its opening to commercial operations and The priority set out in the TDR will be applied after application of the priority criteria of the Slot Regulation. Once Lelystad airport will have reached a level of 10 000 flight movements per year, an evaluation of the TDR will be conducted to assess its impacts. The priority rule would be extended to a further tranche of 15 000 flight movements (and hence to a total of 25 000 flight movements per year) only if such extension is approved by the Commission.
- (46) The Netherlands authorities consider that the notified rules contain safeguards that ensure that the TDR achieves its objectives in future.
- (47) According to the Netherlands authorities, the measure does not go beyond what is necessary to achieve the objective set, since the rule only applies to Schiphol's capacity obtained through this measure, and not to any other newly/recently available capacity at Schiphol Airport.
- (48) According to the Netherlands authorities, transparency of the draft TDR is ensured by the legal form chosen, that is a Ministerial Decree and an Order of the Minister for Infrastructure and Water.
- (49) Finally, the Netherlands authorities conclude that the draft TDR is not incompatible with Regulations (EEC) No 95/93 and (EC) No 1008/2008. The Slot Regulation would be respected in full. The fact that a TDR can intervene in the way in which slots are used is apparent from previous Commission decisions.

3. OBSERVATIONS SUBMITTED TO THE COMMISSION BY INTERESTED PARTIES

- (50) In response to the publication of a summary of the intended amendments in the *Official Journal of the European Union*, the Commission received comments from 10 citizens and 5 air carriers and 1 airport as interested parties, most of which wished to remain anonymous.

- (51) Most of the interested parties claimed that the measure is discriminatory: the draft TDR is based on a fundamental distinction between 'transfer flights' and 'point-to-point flights'. The threshold of 10 % of transfer passengers is not based on objective criteria, and it only takes into account information on transfer passengers provided by the airport. The interested parties raised the difficulty to provide data to justify the percentage of transfer passengers and the lack of criteria provided by the Netherlands authorities on how to demonstrate that percentage, which renders the measure inapplicable.
- (52) Moreover, interested parties claim that the draft TDR has discriminatory effects in relation to air carriers, as it is only KLM Group ⁽¹⁶⁾, its SkyTeam Airline's alliance ⁽¹⁷⁾ and codeshare partners that will benefit from the draft TDR due to the distinction between destinations. The definition of 'transfer flight' corresponds to almost 86 % of the KLM Group destinations. By fixing these rules certain business models, like low cost and holidays model, are limited in their possibilities of business growth. Interested parties therefore consider that the draft TDR is not objective and proportionate, and goes beyond what is required to attain a potentially legitimate objective.
- (53) Interested parties also claim that the draft TDR has discriminatory effects in relation to destinations, since it is *de facto* benefiting KLM group destinations, which will be able to grow from Schiphol Airport and from Lelystad Airport. However, as almost 86 % ⁽¹⁸⁾ of KLM Group destinations are designated as 'transfer flights', they will be able to grow further on these routes, and open new routes. Further, the draft TDR results in practice in a situation in which air carriers will need to compete with KLM Group/Sky Team on those destinations where the position of KLM Group/SkyTeam is the strongest because of feeder traffic at Schiphol Airport.
- (54) Interested parties also consider that the conditions of Article 19 of Regulation (EC) No 1008/2008 have not been fulfilled. The airports regulated by the draft TDR do not serve the same conurbation, as according to interested parties: '(i) there are large open agricultural and nature areas (Natura 2000) between Amsterdam and Lelystad, and it is therefore, not a continuous built-up area; (ii) with almost 80 000 inhabitants, Lelystad is too big to form part of an agglomeration'. At administrative level, both cities are only covered by the same government at national level.
- (55) In addition, it is argued that Lelystad Airport does not currently satisfy the requirements in relation to an adequate transport infrastructure and public transport services, specifically at certain time periods of the day (6.00 and 23.00) where no sufficient public transport connections exist. Moreover, at peak hours, the transfer between the two airports requires more than 90 minutes. The limitation of the number of movements at Lelystad Airport (4 000 in 2020) and the fact that the airport is not open to air carriers specialised in point-to-point traffic that currently are not holding slots at Schiphol Airport, prejudices their commercial opportunities.
- (56) Some interested parties argue that the draft TDR is contrary to the Slot Regulation since this regulation allows only to grant priorities in the allocation of slots through local rules, and TDR cannot create priorities. Moreover, the Slot Regulation does not allow slots to be linked to destinations.
- (57) Most interested parties refer to the noise impact that the further development of Lelystad Airport will have, as the air space of the Netherlands is full and because of the need to avoid that air traffic from one airport interfere with traffic from the other. Interested parties impute this situation to the delay taken by the Netherlands authorities to reclassify the airspace. There is therefore a constraint for flights to Lelystad Airport that must be underflown, consequently increasing the noise levels. Besides, the economic importance of the hub function of Schiphol Airport is questioned, by reference to the Environmental and Infrastructure Councils' report.
- (58) Moreover, interested parties refer to the impact of large aircrafts on protected sites (wild species, in particular birds), and the responsibility of the Netherlands authorities to avoid measures that deteriorate the conditions in natural habitats.

⁽¹⁶⁾ The KLM Group includes the wholly owned subsidiaries Transavia and Martinair. In 2004 KLM merged with Air France.

⁽¹⁷⁾ SkyTeam is an air carriers alliance that currently has 20 Members gives access to 1 074 destinations worldwide.

⁽¹⁸⁾ The KLM Group has more than 55 % of the total yearly slots at Schiphol. Figures available from Airport Coordination Netherlands (Slot Coordinator).

- (59) Most of the interested parties consider that the draft TDR has a significant impact in the field of environmental sustainability. On the basis of an Environmental Impact Assessment (EIA) conducted in 2014, the Netherlands authorities granted a permit for constructing and then operating Lelystad Airport. However, certain data necessary for the calculation of the possible impacts were wrong (such as aircraft type and associated noise levels).
- (60) The Commission has not received any comment from interested parties expressing their support to the draft TDR.

4. THE TERMS OF ARTICLE 19 OF THE REGULATION (EC) No 1008/2008

- (61) Article 19(1) of the Regulation (EC) No 1008/2008 provides that the exercise of traffic rights should be subject to published Union, national, regional and local rules relating to safety, security, the protection of the environment and the allocation of slots.
- (62) Article 19(2) provides that a Member State, after consultation with interested parties, may regulate, without discrimination among destinations inside the Union and on grounds of nationality or identity of air carriers, the distribution of air traffic between airports satisfying the following conditions:
 - (a) the airports serve the same city or conurbation;
 - (b) the airports are served by adequate transport infrastructure providing, to the extent possible, a direct connection making it possible to arrive at the airport within 90 minutes including, where necessary on a cross-border basis;
 - (c) the airports are linked to one another and to the city or conurbation they serve by frequent, reliable and efficient public transport services; and
 - (d) the airports offer necessary services to air carriers, and do not unduly prejudice their commercial opportunities.
- (63) The distribution of air traffic between the airports concerned shall respect the principles of proportionality and transparency, and shall be based on objective criteria.
- (64) Article 19(3) of the Regulation (EC) No 1008/2008 provides that a Member State concerned shall inform the Commission of its intention to regulate the distribution of air traffic or to change an existing traffic distribution rule. It also provides that the Commission shall examine the application of paragraphs 1 and 2 of Article and, within six months of receipt of the information from the Member State, and after having consulted asked the Committee referred to in Article 25 of the Regulation shall decide whether the Member State may apply the measures. According to the same provision, the Commission shall publish its decision in the *Official Journal of the European Union* and the measures shall not be applied before the publication of the Commission's approval.

5. COMMISSION ASSESSMENT

5.1. Procedural requirement: consultation of interested parties

- (65) In accordance with Article 19(2) of Regulation (EC) No 1008/2008, the adoption of a decision distributing air traffic between airports requires a prior 'consultation with interested parties'. The Netherlands authorities have published the draft TDR with the possibility for interested parties, including air carriers and airports concerned, to state their views between 16 January to 6 February 2019. Subsequent amendments to the draft text, made with a view to its notification to the Commission, are confined to taking into account certain concerns raised by stakeholders.
- (66) It follows that the Netherlands Authorities have fulfilled the requirement of a prior consultation with interested parties.

5.2. Substantive requirements

5.2.1. Eligibility of Schiphol and Lelystad Airports for traffic distribution under Article 19(2) of Regulation (EC) No 1008/2008

- (67) In its first subparagraph, Article 19(2) of Regulation (EC) No 1008/2008 establishes a number of requirements for a set of airports to be eligible for traffic distribution.

- (68) As regards point (a) of Article 19(2), first subparagraph, of Regulation (EC) No 1008/2008, the Netherlands authorities state that the airports serve the Randstad conurbation. According to Article 2(22) of that Regulation, 'conurbation' means an urban area comprising a number of cities or towns which, through population growth and expansion, have physically merged to form one continuous built up area. The Randstad conurbation is located in the central-western Netherlands and consists primarily of the four largest Dutch cities (Amsterdam, Rotterdam, The Hague and Utrecht) and their surrounding areas. It constitutes a conurbation within the meaning of the above mentioned definition and is served by the two airports. The fact that certain agriculture areas are located between the built-up area and Lelystad airport is irrelevant for the purposes of the requirement set out in point (a) of Article 19(2), first subparagraph of Regulation (EC) No 1008/2008.
- (69) As regards point (b) of Article 19(2), first subparagraph, of the Regulation, the Commission notes that the airports are served by adequate transport infrastructures providing, to the extent possible, a direct connection making it possible to arrive at the airport within 90 minutes including where necessary on a cross-border basis. Both Schiphol Airport and Lelystad Airport can be accessed from all four cities of the conurbation by road nearly entirely on motorways. According to the Netherlands authorities, the travelling time remains within 90 minutes from all four cities of the conurbation. Given the size of the conurbation, access to one airport rather than the other may be easier, depending on the initial location of the traveller. However, this fact does not exclude compliance with Article 19(2)(b) of Regulation (EC) No 1008/2008. Moreover, while under particular traffic conditions it may not be possible to reach one or the other airport within 90 minutes, uncertainties of the kind are inevitable in this context and do not prevent either the requirement of that provision, namely that such connection be provided 'to the extent possible', from being fulfilled ⁽¹⁹⁾.
- (70) Equally, Schiphol airport is served by a railway connection, as is Lelystad station, from which a bus shuttle will be established to Lelystad Airport in due time (cf. subsequent recital of this Decision). By way of example, the Netherlands authorities add that the travelling time by train between Lelystad Central Station on the one hand and Amsterdam Central Station and Schiphol Airport on the other is 42 and 38 minutes respectively, whereas the bus journey between Lelystad Central Station and Lelystad Airport will take 10 minutes.
- (71) In conclusion it can be retained that the requirements of point (b) of Article 19(2), first subparagraph, of Regulation (EC) No 1008/2008 are fulfilled.
- (72) Point (c) of Article 19(2), first subparagraph of Regulation (EC) No 1008/2008 requires the airports concerned to be linked to one another and to Amsterdam and its conurbation by frequent, reliable and efficient public transport. The existing railway connexions allow passengers to reach Schiphol airport and Lelystad Central Station through frequent and reliable train services. As regards Lelystad Airport, fulfilment of the above mentioned requirement therefore depends only on the establishment of an appropriate bus service between Lelystad Central Station and Lelystad Airport. According to the Netherlands authorities, this service will have been established at the time of the opening of Lelystad Airport for commercial operations, whereby busses will serve the airport with thirty minutes intervals. The requirement set out in Article 19(2)(c) must therefore be considered fulfilled.
- (73) In accordance with point (d) of Article 19(2), first subparagraph of Regulation (EC) No 1008/2008, the airports provide the necessary services to air carriers. In particular, Lelystad airport is suitable for handling ICAO/EASA CAT C traffic including aircrafts such as Boeing 737 and Airbus A320/321. It will be open to traffic between 6.00 to 23.00. The airport will provide for ground handling and passenger handling services, as usual for this kind of airport.

⁽¹⁹⁾ In addition, the Netherlands authorities have already decided to widen the A6 motorway to Lelystad Airport from two to three lanes and build an exit to the airport as from 2021, all of which will further facilitated the access to the airport.

- (74) Similarly, the draft TDR does not unduly prejudice the air carriers' commercial opportunities, in accordance with point (d) of Article 19(2), first subparagraph of Regulation (EC) No 1008/2008. In addition to the facts set out in recital 73 above, the Commission notes that any transfer to Lelystad Airport takes place on a voluntary basis, since the draft TDR does not provide for an obligation to this effect. The slots relinquished at Schiphol Airport may continue to be used by the same air carrier or group of air carriers for a flight to a transfer destination from that airport, or indeed by another carrier if returned to the slot pool. The fact that Lelystad Airport is reserved in priority for specific traffic transferred from Schiphol airport cannot be considered as unduly prejudicing the commercial opportunities of air carriers that intend to use Lelystad airport without such transfer. This restriction lies in the nature of the present draft TDR, intended to alleviate capacity constraints at Schiphol airport through voluntary transfer of traffic to Lelystad airport ⁽²⁰⁾. The question whether this situation is compatible, notably, with the principle of proportionality is assessed further below [cf. Section 5.2.2 of this decision].

5.2.2. Proportionality, transparency, objective criteria and non-discrimination

5.2.2.1. Preliminary remarks

- (75) The requirements set out in Article 19(2) of the Regulation (EC) No 1008/2008, pertaining to proportionality, transparency, the objective character of the criteria applied as well as to non-discrimination, imply that the traffic can only be distributed among airports on the basis of legitimate objectives, without however limiting the Member States' choice to any more specific objective.
- (76) Given the terms of Article 7 of the draft Decree, the present decision is confined to traffic distribution within the limits of 10 000 priority slots at Lelystad airport under Article 2(2) and (3) of the draft Decree.
- (77) The objective invoked by the Netherlands authorities in support of their draft measure consists in enhancing the role of Schiphol Airport as one of the main hubs in the Union, in circumstances in which that airport has reached the capacity limit of 500 000 flight movements per year, established through the Alders agreement [cf. recital 24 above]. It is among those objectives that can be legitimately pursued under Article 19 of Regulation (EC) No 1008/2008. In previous decisions based on Article 8(1) of Council Regulation (EEC) No 2408/92 ⁽²¹⁾, i.e. Commission Decisions 95/259/EC ⁽²²⁾, 98/710/EC ⁽²³⁾ and 2001/163/EC ⁽²⁴⁾ as well as in its Communication 'The EU's External Aviation Policy — Addressing Future Challenges' ⁽²⁵⁾, the Commission has recognised the legitimacy of an active airport planning policy, as long as it complies with the general principles of EU law. Such a planning policy may have regard to a large range of factors considered by the competent authorities to have priority. The concrete measures which must be taken for the implementation of the airport planning policy may also vary between different airports. A Member State may legitimately wish to promote the development of one airport in its territory at the expense of the other airports located therein. In such a case, the imposition of restrictions on access to those other airports alone may constitute a reasonable means of pursuing that objective. However, the principles of proportionality, transparency and non-discrimination set out in Article 19(2) of Regulation (EC) No 1008/2008 need to be complied with when it comes to the precise rules intended to further such legitimate objective.

⁽²⁰⁾ For a similar situation, cf. Commission Decision 95/259/EC of 14 March 1995 on a procedure relating to the application of Council Regulation (EEC) No 2408/92 (Case VII/AMA/9/94 — French traffic distribution rules for the airport system of Paris) (OJ L 162, 13.7.1995, p. 25), Section VI.

⁽²¹⁾ Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intraCommunity air routes (OJ L 240, 24.8.1992, p. 8).

⁽²²⁾ See footnote 20.

⁽²³⁾ Commission Decision 98/710/EC of 16 September 1998 on a procedure relating to the application of Council Regulation (EEC) No 2408/92 (Case VII/AMA/11/98 — Italian traffic distribution rules for the airport system of Milan) (OJ L 337, 12.12.1998, p. 42), recital 45.

⁽²⁴⁾ Commission Decision 2001/163/EC of 21 December 2000 on a procedure relating to the application of Council Regulation (EEC) No 2408/92 (Case TREN/AMA/12/00 — Italian traffic distribution rules for the airport system of Milan) (OJ L 58, 28.2.2001, p. 29), recital 45.

⁽²⁵⁾ The EU's External Aviation Policy — Addressing Future Challenges, COM(2012) 556 final of 27 September 2012.

5.2.2.2. Proportionality, transparency and objective criteria

- (78) The rules submitted by the Netherlands authorities are intended to create possibilities for replacing certain flights at Schiphol airport by other flights, better fitted to enhance Schiphol as a hub airport. To this effect, they distinguish between 'transfer flights' and 'point-to-point flights'. According to the draft TDR, a destination is listed as 'transfer flight' if, on average, at least 10 % of the passengers flying from Schiphol Airport to that destination have previously landed at Schiphol Airport, during the reference periods of five years referred to, on the condition that more than ten flights per year in the three years prior to the publication of the classification have been operated.
- (79) Conversely 'point-to-point flights' are characterised by an average transfer percentage of all flights from Schiphol Airport to the destination considered of less than 10 % during the five calendar years period referred to, on condition that more than ten flights per year in the three years prior to the publication of the classification have been operated.
- (80) Article 19(2) of Regulation (EC) No 1008/2008 does not exclude the setting of such thresholds to distribute the traffic among airports. The level of threshold chosen to determine whether a destination involves a critical number of passengers transferring at the airport, can in principle be capable of directing the relevant traffic to the respective airport and does not necessarily go beyond what it is required for that purpose.
- (81) However, in order to ensure that such thresholds lead to proportionate results, in accordance with the second subparagraph of Article 19(2) of the Regulation (EC) No 1008/2008, they need to be based on an objective assessment, as to whether and how they achieve the aim at stake, i.e. in the present case to preserve and develop Schiphol Airport as a hub. To this effect, Member States have a degree of discretion. As different thresholds can lead to different effects, the Member State concerned must carefully examine these effects before adopting a given threshold.
- (82) The study conducted by SEO Amsterdam Economics ⁽²⁶⁾ concludes that 'a low transfer thresholds leads to a limited market distortion, while larger thresholds leads to a more selective as well as more effective outcome'. The study takes a 10 % threshold as a starting point and compares the effects of alternative thresholds. Should the TDR refer to this threshold, KLM flights would constitute point-to-point flights to a substantial extent, namely up to almost [...] aircraft movements ([...] routes) annually. A very low threshold (4 % or lower) would not yield any major difference for KLM [...], while especially leisure carriers would be affected to a substantial extent. Compared to a threshold of 10 %, they would lose opportunities to obtain a priority at Lelystad airport for the purpose of moving traffic there. With a transfer threshold of 8 % or lower, KLM would be affected only moderately compared to the 10 % scenario, i.e. [...]. Would the threshold be set at 15 %, KLM would come under the TDR to a considerably greater extent (over [...] additional aircraft movements), i.e. in absolute terms beyond all airlines whose home-base is Schiphol Airport. At a 15 % threshold, about [...] % of Transavia's flights from Schiphol Airport would qualify as transfer flights, while at a very low threshold, i.e. 2 %, over [...] % of Transavia's flights from Schiphol Airport would qualify, implying that the airlines serves a relatively large number of destinations with only a few destinations giving rise to transfer flights. As regards other competitors, the study shows that almost [...] % of the traffic generated by Easyjet at Schiphol Airport reaches the 15 % threshold. With a threshold at this level, Tuifly and Corendon would have the least opportunities to obtain a priority at Lelystad airport for the purpose of moving traffic there, among all carriers resorting to Schiphol Airport as home-base.
- (83) In view of this analysis, the Netherlands authorities were entitled to conclude that a threshold of 10 % establishes an appropriate balance. For 2 % of the current movements at Schiphol airport, it offers a possibility to move 'point to point' flights to Lelystad airport, with an ensuing replacement at Schiphol Airport by 'transfer flights'. A number of air air carriers would be able to benefit from its terms with certainty ⁽²⁷⁾.
- (84) In this respect, the threshold can be considered capable of achieving the objective set, and it would not go beyond what is necessary for that purpose.

⁽²⁶⁾ Cf. recital 41 above.

⁽²⁷⁾ The findings of the study are based on known destinations and do not take into account the possibilities for carriers to substantiate that other destinations equally qualify as transfer destinations. Cf. recital 90 below.

- (85) As regards the other elements of the Draft TDR, it is recalled, first, that any transfer of flights from Schiphol Airport to Lelystad Airport is voluntary in nature. Second, the priority granted to the carriers concerned at Lelystad airport, intended to increase the possibility for such transfer to take place, is limited to 10 000 slots. A possible extension to 25 000 slots will be decided separately following an evaluation and will apply only upon a fresh approval from the Commission. Third, Article 3 of the Draft Decree ensures that the priority thus granted is available only to carriers contributing to the enhancement of Schiphol Airport as hub airport, ultimate objective of the draft TDR, namely thanks to the conversion of slots with a view to their exclusive use for transfer flights. Specifically, paragraphs 2 to 4 of Article 3 ensure that the TDR fulfil their objective independently from slot mobility (available under the Slot Regulation) and independently from changes in the overall number of slots held by the carrier or group of carriers concerned.
- (86) All the criteria established in the draft TDR are objective and transparent.

5.2.2.3. Non-discrimination

- (87) Article 19(2) of the Regulation (EC) No 1008/2008 requires that any traffic distribution rule be exempt from discrimination among destinations inside the Union and discrimination on grounds of nationality or identity of air carriers. These two prohibitions are expressions of the general principle of equal treatment. According to consistent jurisprudence of the European Court of Justice ⁽²⁸⁾, this principle requires that comparable situations not be treated differently and different situations not be treated alike unless such treatment is objectively justified.

— Absence of discrimination as between destinations inside the Union

- (88) The draft TDR distinguish between ‘point-to-point flights’ and ‘transfer flights’ only insofar as it concerns the faculty to transfer movements from Schiphol airport to Lelystad Airport while benefiting from a degree of priority at the latter airport. Apart from the ‘risk flights’ which for security reasons can only be handled at Schiphol Airport, this distinction is inseparably linked to the legitimate objective of consolidating Schiphol Airport as a hub airport. As explained above, the draft TDR are capable of contributing to this objective and do not go beyond what is necessary for those purposes, and the ensuing criteria are as such objective in nature. As a result, the distinction can be considered objectively justified and cannot be not *per se* considered discriminatory.
- (89) In this context, the Commission notes that the criteria established by the Netherlands authorities for the purposes of distinguishing between the two different types of destinations ensure that all destinations that have the same effect on Schiphol Airport as a hub are treated equally.
- (90) This also applies to destinations that are not included in Annex 1 of the Draft Order due to the fact that they do not reach the 10 % transfer passenger threshold on the basis of the information so far available to the Netherlands authorities. Carriers may indeed obtain the treatment of one or more of those destinations as transfer destinations on the basis of relevant data, including appropriate forecasts and including data pertaining to other European airports (cf. Article 1(3) and (4) and Article 3 of the draft order) ⁽²⁹⁾. The terms of those rules are such that they offer the widest possibilities for carriers to substantiate their claims in this respect, including for example through the use of data concerning self-connection ⁽³⁰⁾, or data collected by the airport.
- (91) As a result, it can be concluded that the draft TDR does not display discrimination among destinations inside the Union.

— Absence of discrimination on the grounds of nationality or identity of air carriers

- (92) The criteria defined to distinguish the destinations, which are objective in nature, having regard to the aim pursued by the measure, ensure that there is no discrimination on the grounds of nationality or identity of the air carrier. All air carriers are treated equally on the basis of the same criteria.

⁽²⁸⁾ E.g./ judgment of 30 September 2010, *Uzonyi*, C-133/09, ECLI:EU:C:2010:563, paragraph 31.

⁽²⁹⁾ Cf. recitals 15 and 16 above.

⁽³⁰⁾ Through such tools, a passenger can book two successive flights and benefit from an insurance where needed, i.e. for a substitute flight or a hotel if required by delays, cancellation or rescheduling of flights. ‘Dohop’ (<https://www.dohop.com/>) and, ‘Kiwi’ (<https://www.kiwi.com/en/pages/content/about/>) are generally known suppliers.

- (93) As explained in detail above, Article 3 of the draft Decree ensures that the priority granted at Lelystad Airport is available only to carriers contributing to the enhancement of Schiphol Airport as hub airport, ultimate objective of the draft TDR, namely thanks to the conversion of slots with a view to their exclusive use for transfer flights.

5.2.3. *Compliance with Union rules on the allocation of slots*

- (94) According to 19(1) of Regulation (EC) No 1008/2008, the exercise of traffic rights is subject to applicable Union rules, notably, relating the allocation of slots. This matter is currently addressed in the Slot Regulation.
- (95) According to the Netherlands authorities, the analysis conducted in accordance with Article 3 of the Slot Regulation shows that there will be a shortfall in the capacity at Lelystad from the moment commercial operations set in at that airport. Consequently, it will be designated as a coordinated airport in accordance with that provision.
- (96) The allocation of slots at coordinated airports must comply with the other provisions of that regulation, in particular Articles 8 to 10 thereof.
- (97) Article 2(2) of the draft Decree specifies that the priority provided for therein is 'without prejudice to the Slot Regulation'. As a result, as explained in the explanatory note to the Draft Decree, it will apply only in case of requests that remain conflicting following the application of the generally applicable criteria set out in that Regulation.
- (98) In this regard, reference is made to Article 10(6) of the Slot Regulation. According to that provision, the priority established therein in favour of new entrants at a coordinated airport is 'without prejudice to Article 8(1) of Regulation (EEC) No 2408/92'. Article 8(1) of Regulation (EEC) No 2408/92 has been replaced by Article 19(2) of Regulation (EC) No 1008/2008, which is the current legal basis for the establishment (and Commission assessment) of traffic distribution rules. As a result, priority may be adapted in the context of traffic distribution established under Article 19(2) of Regulation (EC) No 1008/2008, provided that such adaptation is confined to what is strictly necessary to achieve the objective of the traffic distribution rules in question.
- (99) In the present case, the priority rule set out in Article 2(2) of the draft Decree sets in only after the priority criteria of the Slot Regulation have been applied, and is limited to the slots so far covered by the rules, corresponding to 10 000 movements⁽³¹⁾. This adaptation of priority does not go beyond what is necessary to achieve the objective of the draft TDR and is hence compatible with the Slot Regulation.
- (100) Likewise, the rule set out in Article 3 of the draft Decree whereby slots that have been subject to Article 2(2) at Schiphol Airport can only be used for transfer flights is inherent in the traffic distribution and indeed a feature typical to any such distribution. It must therefore equally be considered compatible with the Slot Regulation.

5.2.4. *Compliance with other Union rules*

- (101) The Commission notes that the only object of the assessment to be undertaken under Article 19 of Regulation (EC) No 1008/2008 is the national rule that 'regulate[s] the distribution of air traffic' [first subparagraph of Article 19(3)]. As regards compliance with paragraph 1 of that Article, the fact that Lelystad Airport will open for commercial operations at a certain point in time, as well as the size of this opening in terms of possible operations, are necessary premises to that traffic distribution. These elements do not form part of the distribution itself. The terms of the traffic distribution itself can have no negative incidence on compliance with Union rules on 'safety', 'security' and 'the protection of the environment' as referred to in Article 19(1) Regulation (EC) No 1008/2008. As a result, no concerns of incompatibility with this provision arise in respect of those items.

6. CONCLUSION

- (102) In conclusion, based on an assessment of the facts and assumptions contained in the notification of the Netherlands authorities, the Commission considers that the intended traffic distribution rules are compatible with Article 19 the Regulation (EC) No 1008/2008,

⁽³¹⁾ As explained above (recitals 12 and 85), an extension of the number of slots concerned at Lelystad Airport will only take place after an evaluation of the regime and only following a separate Commission approval. The regime considered in this decision is confined to the above mentioned amount of 10 000 slots.

HAS ADOPTED THIS DECISION:

Sole Article

The measures provided for in the Draft Ministerial Decree and in the Draft Order of the Minister for Infrastructure and Water on the distribution of air traffic Lelystad Airport and Schiphol airport, as notified to the Commission on 29 March 2019, and amended by letters of 3 July 2019 and 11 July 2019, are hereby approved.

This Decision is addressed to the Kingdom of The Netherlands.

Done at Brussels, 24 September 2019.

For the Commission

Violeta BULC

Member of the Commission

