

ZLW

Zeitschrift für Luft- und Weltraumrecht
German Journal of Air and Space Law
Revue Allemande de Droit Aérien et Spatial

Sonderdruck

Carl Heymanns Verlag

Dutch Drifting

Airport Coordination Netherlands and the Redefinition of 'a Time Significantly Different from the Allocated Slot'

by Jochem Croon *

Abstract

An enforcement tolerance should draw the same line for every slot-coordinated airport it governs; otherwise, it breaches the principle of equal treatment¹. However, on 27 March 2025, two days before the start of the summer season, Airport Coordination Netherlands ('ACNL') issued a Working Procedure that, for Eindhoven Airport and Rotterdam-The Hague Airport only, set the enforcement tolerance as regards 'a time significantly different from the allocated slot' under Article 14(4) of the EU Slot Regulation at 15 minutes, in deviation from the 60 minutes that is applicable pursuant to the Policy Rule Enforcement of the Misuse of Slots at Coordinated Dutch Airport. This action by ACNL conflicts with ACNL's statutory mandate as a Dutch independent administrative body, appointed as the coordinator under the EU Slot Regulation, and with the principles of legal certainty and legitimate expectations; it also runs contrary to the purpose and intent of the EU Slot Regulation and to fundamental principles of EU law.

A. Introduction

The foundation of every airline operation rests on two pillars: safety and punctuality². Without safe, on-time operations, the entire operation comes to a standstill. A delay is rarely an isolated event: it immediately creates knock-on problems for crew rosters, the operation of other flights, and aircraft availability later in the day. Punctuality is not merely a matter of customer service, since an aircraft on the ground generates

* Jochem Croon is an aviation lawyer and partner at Croon Aviation Lawyers, in the Netherlands (info@croonco.com). This article is written in his own name, and therefore the views expressed in this article do not necessarily reflect the views of any of his clients.

1 See EUCJ, Case C-127/07 Arcelor Atlantique and Lorraine and Others, paragraphs 25 and 26.

2 Croon/Callaghan, 'Punctuality or a Safe Flight: Which Should Have Priority?', Air & Space Law, Volume 43, Issue 1, p. 53.

no revenue; in an environment of scarce slot capacity and tight turnaround times, airlines have every incentive to avoid flying ‘off-schedule’³.

Every flight is, accordingly, allocated a specific airport slot, a fixed time at which it may depart or land. Slots exist to regulate the scarce capacity at airports and in the airspace; an aircraft that operates outside its allocated slot may find facilities unavailable, place additional pressure on air traffic control, and delay other flights. Yet aviation remains an exceptionally complex operation, dependent on numerous factors and actors largely outside an airline’s control: weather, airspace congestion leading to ATC intervention, technical malfunctions, crew illness, constraints at the airport itself. Both the Dutch legislature and international aviation practice recognise that the nature of airline operations may mean that a slot is used otherwise than planned, through no fault of the carrier⁴. Where a carrier intends to use its slot as planned but cannot do so for that reason, there can, by definition, be no misuse of the slot.

B. EU Slot Regulation

The allocation of scarce airport capacity is governed, uniformly across the EU, by Regulation (EEC) No 95/93⁵ (the ‘EU Slot Regulation’), whose objective is to allocate capacity at congested airports on neutral, transparent, and non-discriminatory terms.

In the Netherlands, Schiphol Amsterdam, Eindhoven Airport and Rotterdam-The Hague Airport are all ‘coordinated airports’ within the meaning of Article 2(b) of the EU Slot Regulation. At a coordinated airport, an air carrier may land or take off if it holds a slot, meaning permission to use the full range of airport infrastructure necessary to operate a service at a specific time on a specific date⁶, allocated by a coordinator.

3 Flying off-schedule refers to the execution of a flight that deviates from the planned schedule.

4 See under: (in Dutch) Article-by-Article Commentary, Article I, part E (Article 7), of the Explanatory Notes to the Decree Amending the Slot Allocation Decree with a View to the Setting of Coordination Parameters and the Use of Slots, Staatsblad 2019, 305.

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

6 *Truxal*, ‘Slots’, in: *Garben/Gormley* (eds.), *The Oxford Encyclopedia of EU Law: Transport* (Oxford University Press, 2022).

I. Airport Coordination Netherlands

For the Netherlands, that coordinator is Airport Coordination Netherlands ('ACNL'), appointed under Article 4(1) of the EU Slot Regulation⁷ and responsible for slot allocation at every Dutch coordinated airport. The coordinator's independence and autonomy are not a matter of courtesy; they are a precondition for neutral, transparent, and non-discriminatory slot allocation⁸.

ACNL is a "publiekrechtelijk zelfstandig bestuursorgaan", a public-law independent administrative body. In 2018, the Aviation Act (Wet luchtvaart) was amended to convert ACNL from a private foundation (stichting) into precisely such a body. The explanatory memorandum to that amendment is explicit on three points that, together, define and confine what ACNL may do.

First, ACNL performs its statutory task exclusively. The memorandum states:

'ACNL shall perform exclusively those public-law tasks anchored in laws and regulations, as well as the activities arising therefrom. ACNL becomes responsible for allocating slots to airlines at Dutch airports. This slot allocation takes place on the basis of the system laid down in Regulation (EEC) No 95/93 (the Slot Regulation) (...)'⁹

Second, ACNL's autonomy is bounded by a closed system of competences. As a public-law independent administrative body under Dutch Law, ACNL is subject to the Framework Act on Independent Administrative Bodies (Kaderwet zelfstandige bestuursorganen), which applies because ACNL meets the statutory definition of an 'independent administrative body': an administrative body of central government vested with public authority by or under an act of parliament, a general administrative order, or a ministerial regulation, and not hierarchically subordinate to the Minister. Unlike the state, the provinces, and the municipalities, which operate under an 'open' system of competences, a body such as ACNL has only those tasks, and correspondingly those powers, that have been expressly assigned to it by or under the law, and it cannot itself expand, limit or delegate them:

7 Article 4(1) of the EU Slot Regulation.

8 Article 4(2)(b) and (c) of the EU Slot Regulation.

9 Kamerstukken II 2018/19, 35 060, nr. 3 (Memorie van Toelichting), under 'Achtergrond en hoofdlijnen'.

‘Of importance for a proper understanding of independent administrative bodies is that, unlike the three existing forms of general government (the state, the provinces, and the municipalities) in respect of which there is an open system of competences as regards regulation and governance, independent administrative bodies, as a form of supplementary governance, are subject to a closed system of competences. This means that an independent administrative body has only those tasks and, related thereto, powers that have been expressly assigned to it by or pursuant to law. An independent administrative body cannot, therefore, independently expand, limit, or delegate its own tasks and powers.’¹⁰

Third, ACNL must exercise independent judgment. Since its establishment in 1998, ACNL’s founding rationale has been ‘independent judgment based on specific expertise’¹¹, a rationale that follows directly from the EU Slot Regulation’s own requirement, in Article 4(2)(b) and (c), that slots be allocated, and their use monitored¹², in an impartial, non-discriminatory and transparent manner, within one liberalised EU market. ACNL’s own mission statement puts it plainly enough: ‘In order to make optimal use of the airport capacity our mission is to deliver slot coordination and monitoring services in a neutral, non-discriminatory and transparent way.’ Pursuant to this legislative basis and ACNL’s own mission statement, ACNL’s statutory task is thus limited to (i) allocating slots and (ii) monitoring their use.

II. Process for Determining the Available Slot Capacity

How, then, is the available slot capacity, which ‘use’ ACNL must monitor actually determined? Article 6(1) of the EU Slot Regulation requires the Member State responsible for a coordinated airport to ensure that the parameters for slot allocation (the ‘coordination parameters’) are determined twice yearly, for the IATA summer and winter seasons, taking account of all relevant technical, operational, and environmental constraints and any changes to them.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Supra* note 6.

For the Netherlands, this obligation is further elaborated in Article 5a of the Slot Allocation Decree (Besluit Slotallocatie)¹³. Responsibility for determining available slot capacity rests with the airport managing body, which, after consulting the coordination committee¹⁴, issues a ‘capacity declaration’ (one for each IATA season, issued six months before the season begins) stating the total slot capacity available¹⁵. It is therefore the airport operator, and not ACNL, who must ensure that the slot capacity it declares fits within the applicable technical, operational, and environmental constraints. Noise is one such environmental factor: in the Netherlands, the maximum permitted noise production for each airport is fixed in the relevant Luchthavenbesluit (Airport Decree)¹⁶.

ACNL then allocates a series of slots among air carriers under the strict rules of the EU Slot Regulation and according to the maximum capacity available, as reflected in the capacity declaration. Once that allocation has been made, a user of an allocated (series of slots) slot may proceed on the basis that, provided it remains within the parameters of Article 14(4) of the EU Slot Regulation (discussed below), its use of that slot falls within the operational, technical, and environmental constraints applicable to the airport. That certainty matters: once slots have been allocated for a season at a capacity-constrained airport, there is almost no scope to adjust a schedule with alternative (series of) slots. At the Dutch coordinated airports, all capacity is allocated on the basis of ‘historic rights’¹⁷. There is no spare series of slots available. Schedules are, in effect, fixed for the season.

13 Besluit slotallocatie, <https://wetten.overheid.nl/BWBR0009035/2020-04-01> (last accessed at 24 September 2026).

14 Article 5 EU Slot Regulation. A coordination committee includes the airport, airlines, ground handlers and other stakeholders of the airport concerned.

15 Kamerstukken II 2019/20, 35 469, nr. 3, p. 3.

16 The Eindhoven Airport Decree (Luchthavenbesluit Eindhoven) and the Civil Co-Use Permit (Vergunning Burgermedegebruik); and for Rotterdam-The Hague Airport: the Rotterdam The Hague Airport Decree (Luchthavenbesluit Rotterdam – The Hague).

17 ‘Historic rights’ relates to the situation in which a series of slots has been used by an air carrier for the operation of scheduled and planned non-scheduled air services, and that carrier can demonstrate, to the satisfaction of the coordinator, that it has operated the series of slots in question as cleared by the coordinator for at least 80% of the time during the scheduling period for which it was allocated. In that case, the series of slots entitles the air carrier concerned to the same series of slots in the next equivalent scheduling period, provided that a timely request is made by that air carrier.

III. Environmental Constraints (e.g. Noise)

There is expressly no general power for Member States *c.q.* the slot coordinator to weigh environmental considerations in every aspect of slot allocation and monitoring. Any such power must follow explicitly from the EU Slot Regulation itself; that is what the principles of legality and legal certainty require. Beyond Article 6 (the establishing of the coordination parameters, resulting in a capacity declaration, discussed above), the EU Slot Regulation contains exactly one further mechanism for taking environmental considerations into account: the adoption of a local guideline on environmental standards (a ‘local rule’) under Article 8(5), following consultation of the coordination committee and approval by the responsible Member State. The EU Commission explicitly wanted to ensure the necessary flexibility at the local level; the EU Slot Regulation would allow for such refinement of the allocation rules mainly due to environmental concerns, without affecting the coordinator’s independence¹⁸. A local rule, for instance, may allow the coordinator to prioritise, when allocating slots, flights operated by environmentally efficient aircraft.

IV. Enforcement

The tolerance of the use of (series of) slots is set by Article 14(4) of the EU Slot Regulation, which exists to prevent prejudice to the airport or to airport operations, and reads:

‘Air carriers that repeatedly and intentionally operate air services at a time significantly different from the allocated slot as part of a series of slots or uses slots in a significantly different way from that indicated at the time of allocation and thereby cause prejudice to airport or air traffic operations shall lose their status as referred to in Article 8(2). The coordinator may decide to withdraw from that air carrier the series of slots in question for the remainder of the scheduling period and place them in the pool after having heard the air carrier concerned and after issuing a single warning.’¹⁹

The EU legislature has not defined how great a lapse of time must be before a point in time ‘differs significantly’. Given the punitive character of the provision, that concept is generally construed autonomously, restrictively and narrowly, in light of the EU Slot Regulation’s purpose; and the EU Slot Regulation does not itself provide for dif-

18 Commissions communication COM(2001)335 final, page 16.

19 Article 14(4) of the EU Slot Regulation (emphasis added).

ferent local variations of ‘significantly different’; it proceeds, however, from a single, overarching standard.

In this regard, when defining ‘significantly different’ account should be taken of the following:

- (a) the recognition that the nature of airlines’ operations may mean that a slot is used otherwise than as planned (as a rule, due to circumstances entirely beyond the airline’s control, in particular intervention by air traffic control);
- (b) the fact that, in the dynamic operation of aviation, with numerous interdependencies between different actors and factors beyond the airline’s control, a deviation of 15 minutes or more from the scheduled arrival or departure time occurs with (very) great regularity;
- (c) that, both on a literal and on a teleological interpretation, ‘significantly’ must be understood to mean ‘very large’, ‘important’, or ‘to a high degree’;
- (d) that it is a matter of common knowledge that flight operations cannot take place exactly on the minute as scheduled, meaning that ‘a time significantly different from the allocated slot’ cannot already be constituted by a difference of 15 minutes.

The enforcement of Article 14(4) is further elaborated, in Dutch law, in Article 7(1) of the Slot Allocation Decree, where the EU Slot Regulation’s ‘a time significantly different’ returns as ‘at times that differ substantially’: Article 7(1)(a) prohibits airlines at a coordinated airport from repeatedly and deliberately operating air services ‘at times that differ substantially from their allocated slot’. Enforcement of that prohibition is, in turn, governed by the Policy Rule on the Enforcement of Slot Misuse at Coordinated Dutch Airports (Beleidsregel handhaving slotmisbruik van slots op gecoördineerde luchthavens)²⁰, which fixes ‘substantially different’ at more than 60 minutes’ deviation, in block time, from the allocated slot: one threshold or tolerance, for every Dutch coordinated airport.

20 English version is available under <https://english.ilent.nl/documents/aviation/aviation-oversight/publications/policy-rule-enforcement-of-the-misuse-of-slots-at-coordinated-dutch-airports> (last accessed at 24 September 2026).

C. The Practice in the Netherlands: Drifting, with ‘a Time Significantly Different from the Allocated Slot’

However, clearly not for ACNL. Two days before the start of the S25 summer season, ACNL issued a ‘Working Procedure Slot Monitoring “Significant Different Time” S25’²¹. Its recitals record that the managing bodies of the Dutch coordinated airports had advised ACNL on ‘tolerances and priorities’. That advice led to the working procedure shown in Figure 1:

Working procedure

1. For S25, operations at a time significantly different from the allocated slot as part of a series of slots are being monitored at Amsterdam Airport Schiphol (AMS), Eindhoven Airport (EIN) and Rotterdam The Hague Airport (RTM).
The references are as follows:

- **Tolerance outside 60 minutes** early or late for **AMS**; **15 minutes** early or late for **EIN & RTM**.
- **Repeatedly: 3x consecutive in a series of slots** during the season or if at the end of a series more than 40% over the total number of operations of concerned series was exceeded.
 - **Exception:** repeatedly is considered as the **2nd time of a series of slots** in case of operating within
 - **curfews:**
EIN: 21:00 UTC – 04:54 UTC
RTM: 21:00 UTC – 04:59 UTC
 - when actual time of operation falls within a **higher noise penalty factor** compared to the allocated slot:
EIN: 05:00 UTC – 05:59 UTC (noise penalty factor 4)
16:00 UTC – 16:59 UTC (noise penalty factor 2)
17:00 UTC – 17:59 UTC (noise penalty factor 3)
18:00 UTC – 18:59 UTC (noise penalty factor 4)
19:00 UTC – 19:59 UTC (noise penalty factor 6)
20:00 UTC – 20:59 UTC (noise penalty factor 8)
RTM: 17:00 UTC - 20:59 UTC (noise penalty factor 3,16)

2. Reference taken for measuring is a slot series (the day of the week, designator code + flight number).

3. ACNL will monitor the operations for every flight however enforcement might be built up gradually from season to season and therefor during S25, in close consultation with the airports concerned the focus will be specifically on following timeframes:

EIN:	16:00 UTC - 06:00 UTC
RTM:	17:00 UTC – 04:59 UTC

Figure 1: ACNL, Working Procedure Slot Monitoring ‘Significant Different Time’ S25 (27 March 2025).

Contrary to the 60-minute threshold in the Policy Rule, for Eindhoven Airport and Rotterdam-The Hague Airport, the Working Procedure sets the threshold at 15 minutes, and confines active enforcement to specific windows: 16:00-06:00 UTC at Eindhoven, 17:00-04:59 UTC at Rotterdam-The Hague. The result is that one EU provision, Article 14(4) of the EU Slot Regulation, is now enforced in the Netherlands under two

21 See ACNL, <https://slotcoordination.nl/wp-content/uploads/2025/03/20250327-WP-Slot-Monitoring-Significant-different-time-S25-v1.0.pdf> (last accessed at 24 September 2026).

different thresholds, set out in a document that itself post-dates, and departs from, the threshold stated in the Policy Rule, which, at the time of writing, has not been amended. What, then, is left of a 'single, overarching standard' under Article 14(4) if a coordinator can, two days before a season and without amending its own Policy Rule, apply four times the tolerance at two of the Netherlands' three coordinated airports and none at the third?

The following facts are, on the basis of the foregoing, relevant to an assessment of the Working Procedure.

First, as set out above, ACNL's statutory task under the EU Slot Regulation is limited to allocating slots and monitoring their use, and, as an independent administrative body operating under a closed system of competences, it has no power to expand or vary that task itself. The Working Procedure was not adopted by way of amendment to the Policy Rule, nor pursuant to any provision of the EU Slot Regulation or the Slot Allocation Decree identified in its recitals. An instrument of this kind, lacking a basis within the meaning of Article 4:83 of the General Administrative Law Act (Awb), is generally regarded, under Dutch administrative law, as extra-statutory and non-binding²².

Second, ACNL allocated its S25 slots in the autumn of 2024, several months before the season. The Working Procedure was announced on 27 March 2025, two days before the start of that same season, after airlines' schedules, crew rosters, connections and ground-handling arrangements had already been finalised in the context of earlier and legally applicable threshold or tolerance of 60 minutes. That sequence of events sits in tension with the principles of legal certainty and legitimate expectations, which require that administrative bodies not depart, without adequate notice or legal basis, from a rule on which those subject to it were entitled to rely.

Third, the Working Procedure's own recitals record that it was adopted on the advice of the managing bodies of Eindhoven and Rotterdam-The Hague Airport, concerning 'tolerances and priorities'. Compliance with noise standards (noise limit values leading to total volume of noise *per annum*) at those two airports is, however, separately

22 The Working Procedure is to be considered extra-statutory and thus non-binding, as it lacks the statutory basis required within the meaning of Article 4:83 of the General Administrative Law Act (Algemene wet bestuursrecht, 'Awb').

and specifically regulated: at Eindhoven Airport, pursuant to the Eindhoven Airport Decree (Luchthavenbesluit Eindhoven) and the Civil Co-Use Permit (Vergunning Burgermedegebruik) with the Military Aviation Authority (Militaire Luchtvaart Autoriteit) as the competent authority; at Rotterdam-The Hague Airport, pursuant to The Hague Airport Decree (Luchthavenbesluit Rotterdam – The Hague) with the Ministry (i.e. the Human Environment and Transport Inspectorate (ILT)) as the competent authority²³.

Where a power conferred for one statutory purpose is exercised (in this case on the initiative of a third party) for a different purpose falling within a separate statutory regime, this is described in administrative law as a misuse of power (in French doctrine, *détournement de pouvoir*). Advocate General *Drijber* described the risk in comparable terms, in an Opinion concerning noise-related restrictions at Schiphol²⁴:

‘(...) Where a power is used for a purpose other than that for which it was granted, this in principle constitutes an abuse of power. This also applies where doubt and concern exist as to the propriety of the motives underlying the exercise of the power (...)’

Fourth, the EU Slot Regulation recognises only one type of coordinated airport, and does not itself provide for different enforcement thresholds at different airports for the same infringement of Article 14(4). The Working Procedure results in two thresholds applying, within a single Member State, to what is in EU law one and the same standard, a result that the principles of legal certainty, legitimate expectations, the principle of equal treatment and sincere cooperation (Unietrouw) under EU law²⁵ exist to prevent.

23 Noise limit values in such airport decrees, which contain a norm for the entire operational year (IATA summer and IATA winter), cannot be enforced during the operational year, because it can only be established after, the end of the operational year whether an exceedance has occurred. In case it is established during the operational year itself that threatened exceedance of a limit value is occurring, then the approach is that the airport operator should take the initiative and, in consultation with Air Traffic Control the Netherlands (LVNL) and the airlines concerned, draw up a management plan containing measures to prevent the threatened exceedance, whereby the competent authority may impose requirements on the content of such management plan.

24 See: ECLI:NL:PHR:2024:377, Conclusie Procureur Generaal bij de Hoge Raad der Nederlanden, B.J. Drijber, zaaknummer 23/03380, IATA c.s. tegen De Staat der Nederlanden, Stichting Recht op Bescherming tegen Vliegtuighinder, en Royal Schiphol Group N.V., 5 april 2024, paragraph 4.33.

25 Article 288 TEU.

D. Conclusion

ACNL's statutory task, on the basis of the EU Slot Regulation and its own founding legislative history, is confined to allocating slots and monitoring their use. Article 14(4) of the EU Slot Regulation sets a single, EU-wide tolerance for that monitoring function, elaborated in Dutch law regarding the element 'a Time Significantly Different from the Allocated Slot' at 60 minutes for every coordinated airport.

However, on 27 March 2025, two days before the start of the S25 season and on the advice of the airport operators concerned, ACNL applied a different, 15-minute tolerance to two of the three Dutch coordinated airports, for the stated purpose of helping those airports remain within their noise limits, a purpose that is separately regulated, for each of the two airports, enforced by a different authority.

In my view, these facts allow only one conclusion: ACNL's Working Procedure of 27 March 2025 was adopted contrary to the purpose and intent of the EU Slot Regulation and to fundamental principles of EU law. Introduced unilaterally (e.g. without consultation with the coordination committee / its SPC²⁶), and at the eleventh hour, two days before the start of the season, after the airlines concerned had already relied on the threshold it replaced, the Working Procedure is contrary to the principle of due care, the principle of legal certainty, and the principle of legitimate expectations. Lacking any identified statutory basis, and creating an airport-specific standard for which neither the EU Slot Regulation nor Dutch law provides, it is also contrary to the principle of legality. A tolerance four times stricter than the applicable standard, applied to two named airports only and confined to specific overnight and evening windows, without any apparent assessment of whether a less restrictive measure could achieve the same result²⁷, is, in my assessment, disproportionate and discriminatory on its face.

Finally, and most fundamentally, the Working Procedure was adopted, at the request of the two airport operators concerned, to help those operators remain within the

26 The Coordination Committee Netherlands includes a dedicated Slot Performance Committee or SPC. Article 7 of its constitution refers to the SPC: <https://slotcoordination.nl/wp-content/uploads/2021/09/CCN-Constitution-September-2021.pdf> (last accessed at 24 September 2026).

27 E.g. the execution of a 'balanced approach' pursuant to article 2, preamble and paragraph 3 and article 5 paragraph 2 of EU regulation 598/2014, jo article 8 and Annex V EU directive 2002/49/EG, which should lead to an action plan.

noise limits for the airport concerned set in their respective Airport Decrees, which are the statutory enforcement responsibility of other authorities²⁸ altogether pursuant to those Airport Decrees. A power granted for one statutory purpose, used (at a third party's request) to achieve a different, unrelated statutory purpose, is a misuse of power. That is what the Working Procedure amounts to on the facts set out above. ACNL's mandate under the EU Slot Regulation does not extend that far, and a coordinator whose entire legitimacy rests on neutrality, transparency and non-discrimination cannot be permitted to drift from it. A coordinator that lets itself be drawn this far into an airport's own agenda and legal responsibility is no longer coordinating; it is picking sides and providing spontaneous legal assistance.

What should have been done, and what is the proper legal way forward, is to (i) establish a local rule pursuant to Article 8(5) of the EU Slot Regulation. A due diligence procedure that includes all stakeholders at the concerned airport. Or, for the next equivalent season, (ii) establish the coordination parameters for noise constraints (Article 6 of the EU Slot Regulation), resulting in a capacity declaration which will ensure the airport remains within its maximum permitted noise production. Either path keeps ACNL exactly where the law puts it: coordinating slots for airport users and not unilaterally manipulating an enforcement tolerance at the instigation of the airport operator.

28 The Military Aviation Authority for Eindhoven Airport, and the Human Environment and Transport Inspectorate (ILT) for Rotterdam-The Hague Airport, with the Ministry of Infrastructure and Water Management as the competent authority.