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**Our reference**

IENW/BSK-2023/345691

Date 14 November 2023  
Re: Status of the Schiphol Outline Decree

Dear Ms Speaker of the House of Representatives,

On 24 June 2022, the Cabinet issued the Schiphol Outline Decree to set the goal of creating a new balance between the importance of an international airport for the Netherlands and the quality of the living environment, particularly for local residents.<sup>1</sup> The House was informed about the Schiphol Outline Decree, in the form of a three-track approach, in the periodic progress letters concerning the Schiphol Airport Programme and the letter of 1 September 2023.<sup>2</sup>

This letter informs the House that I have unfortunately had to decide to suspend track 1 of the Schiphol Outline Decree. Following positions taken by the European Commission, I have had to reconsider. The suspension means that anticipatory non-enforcement will not end on 31 March 2024, and the experimental regulation will not take effect from this date. However, I will continue to maintain and work unabated towards the goal of the Outline Decree, including via track 2 (balanced approach procedure). The following explains why the suspension is necessary.

*Ending the anticipatory non-enforcement, experimental regulation and the cassation appeal*

On 1 September 2023, the House was informed by letter about ending anticipatory non-enforcement. This announced that anticipatory non-enforcement would end on 31 March 2024, and the experimental regulation would enter into force to entrench strict preferential runway use. KLM c.s./IATA and others started litigation against the decision and filed a cassation appeal. The date on which the Supreme Court will give judgement is not yet known; the ruling is not expected before the second quarter of 2024. In addition, the letter of 1 September 2023 announced the start of the notification phase under the balanced approach

<sup>1</sup> Parliamentary Papers II 2021/22, 29665, No. 432

<sup>2</sup> Parliamentary Papers II 2022/23, 29665, No. 481

procedure. This is to achieve the final inclusion in the Schiphol Airport Traffic Decree (LVB) of a package of measures to reduce noise nuisance in the vicinity of Schiphol (track 2). Two new facts have since emerged:

**Ministry of Infrastructure  
and Water Management**

### *1. International reactions*

As reported earlier, Canada and the United States have raised concerns regarding capacity reduction at Schiphol.<sup>3</sup> We have also received signals of concern from other countries. On 2 November 2023, the US Department of Transportation issued an order. This stated, among other things, that they see the continuation of track 1, without following the balanced approach procedure, as a violation of EU rules and the 2007 US-EU Air Transport Agreement. In the eyes of the United States, the capacity reduction would be unjust, discriminatory and anti-competitive for airlines. This order, dated 2 November 2023, is the first step in the United States taking countermeasures and entails Dutch airlines having to share their flight schedules with the United States government in advance. More far-reaching countermeasures may be announced in a second phase. A Special Joint Committee (SJC) under the US-EU Air Transport Agreement took place on 13 November 2023. During the SJC, the United States reiterated and explained this determination.

### **Our reference**

IENW/BSK-2023/345691

### *2. European Commission letter*

In addition, a letter was received on 13 November 2023 from the European Commissioner for Transport, Ms Vălean, conveying serious concerns about not following the balanced approach procedure for the implementation of track 1, per 31 March 2024. The letter states that the European Commission expressly reserves the right to initiate an infringement procedure against the Netherlands in the next round of infringement decisions for what it sees as non-compliance with European regulations. It urges the Netherlands to take all possible steps to ensure compliance with European law.

### *Suspension of stopping anticipatory non-enforcement and experimental regulation*

The relationship to European law is also part of the cassation appeal. Following the European Commission's letter, the Cabinet again weighed up whether to wait for the cassation appeal before implementing track 1.

Moreover, the European Commission's position that continuing Track 1 without following the balanced approach procedure, which is not expected to align with European law<sup>4</sup>, isolates the Netherlands. Based on this position, the Cabinet has decided to suspend track 1, at least until the Supreme Court has ruled in the cassation proceedings. As previously indicated, this ruling is not expected before the second quarter of 2024.

### *The goal remains*

Despite the suspension of track 1, the urgency and goal of restoring the balance between Schiphol and its living environment remain. The Cabinet is therefore determined to continue the balanced approach procedure to reduce noise pollution and to establish this in regulations (track 2). With this, Schiphol's environmental limits will again be legally defined, and local residents will have legal certainty. In

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<sup>3</sup> Parliamentary Papers II 2022/23, 29665, No. 481

<sup>4</sup> EU regulation No. 598/2014 of the European Parliament and of the Council of 16 April 2014 on establishing rules and procedures about the introduction of noise-related operational restrictions at Union airports within the framework of a Balanced Approach and repealing Directive 2002/30/EC (OJEC 2014, L 173)

view of track 2, the European Commission is expected to issue an opinion on the submitted package of measures in early 2024.<sup>5</sup>

**Ministry of Infrastructure  
and Water Management**

However, even in the short term, steps must be taken to reduce Schiphol's environmental impact. Given the impact of the above on local residents, I have urged KLM, as Schiphol's largest user, to consider whether it is in a position, with effect from 31 March 2024 and in anticipation of the balanced approach procedure, to take measures to limit noise nuisance, giving priority to the night hours. KLM has subsequently indicated the following to me: with effect from 31 March 2024 (the start of the summer season 2024), KLM will use the quietest aircraft at night as much as possible, and aircraft that make more noise will be withdrawn at night. In addition, KLM - as part of KLM Group - aims not to schedule passenger flights between midnight and 6.00 am. These flights would then be moved to other times.

**Our reference**

IENW/BSK-2023/345691

#### *The result*

The entry into force of the experimental regulation will be suspended until further notice; an amending regulation will be published shortly for this purpose. The inspector general of the Human Environment and Transport Inspectorate (ILT) will also receive an instruction to continue anticipatory non-enforcement. This means that if the limit values in the noise enforcement points are exceeded, the ILT will continue its policy of not imposing a measure on the sector if this is the result of flying according to the strictly preferential runway use of the New Standards and Enforcement System (NNHS). This will maintain the pre-experiment situation. The actual operating capacity for the 2024 summer season must be redefined by Schiphol as part of the slot allocation process. Schiphol will have to establish an addendum to its capacity declaration for the 2024 summer season. To this end, Schiphol, together with LVNL, KMAR, Customs and the airlines, will have to identify what can be operationally justified. In any case, the (more limited) availability of air traffic controllers due to labour market shortages will be a significant factor in this. This situation is not unique to the Netherlands. It is then up to the slot coordinator ACNL to issue any additional slots from the addendum.

#### *In conclusion*

The Cabinet knows that suspending the stopping of anticipatory non-enforcement and the experimental regulation (track 1) is a bitter pill for the environment. This decision was taken after renewed consideration of the interplay between the ongoing cassation appeal and the potential infringement procedure. I emphasise that the Cabinet is committed to restoring the balance between Schiphol and its living environment. This remains an urgent task to which we are fully committed. In the coming period, work will continue unabated within track 2 (balanced approach procedure) to reduce the noise nuisance from Schiphol. The House will be informed about further developments in periodic progress letters concerning the Schiphol Airport Programme.

Yours sincerely,

THE MINISTER OF INFRASTRUCTURE AND WATER MANAGEMENT,

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<sup>5</sup> Measures: capacity reduction to 452,500 aircraft movements, of which 28,700 at night, quieter aircraft at night and less secondary runway use

Mark Harbers

**Ministry of Infrastructure  
and Water Management**

**Our reference**

IENW/BSK-2023/345691