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**Ministry of  
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**Our feature**  
IE NW/BSK-2023/345691

Datum 14 november 2023  
Re State of affairs Schiphol Outline Decree

Dear Chairman,

On June 24, 2022, the cabinet adopted the Schiphol Outline Decree to work on a new balance between the importance of an international airport for the Netherlands and the quality of the living environment, specifically for local residents.<sup>1</sup> About the implementation of the Schiphol Outline Decree, in the form of a three-track approach, the House was informed in the periodic progress letters on the Schiphol Airport Environment<sup>2</sup> and the letter of September 1, 2023.<sup>3</sup>

This letter informs the House that I have unfortunately had to decide to suspend track 1 of the Schiphol Main Lines Decree. Following the position of the European Commission, I have had to make a new assessment. The suspension means that anticipatory enforcement will not be terminated as of March 31, 2024 and the experimental scheme will not come into effect from this date. However, I will continue to hold firm and continue to work on the goal of the Outline Decree, including via track 2 (balanced approach procedure). Below it is explained why the suspension is necessary.

*Termination of anticipatory enforcement, experimental scheme and cassation appeal* On

September 1, 2023, the House was informed by letter about the termination of anticipatory enforcement. It was announced that anticipatory enforcement will end on March 31, 2024 and the experimental scheme will come into effect to anchor strict preferential runway use. KLM et al./IATA et al. initiated legal proceedings against the decision and filed an appeal in cassation. The date on which the Supreme Court will deliver its judgment is not yet known; the judgment is not expected before the second quarter of 2024. In addition, the start of the notification phase in the context of the balanced approach procedure was announced in the letter dated September 1, 2023. This is to ensure that a package of measures is definitively included in the Airport Traffic Decree (LVB).

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1 Parliamentary Papers II 2021/22, 29665, no. 432

2 Parliamentary Papers II 2022/23, 29665, nos. 426, 437, 450 and 471

3 Parliamentary Papers II 2022/23, 29665, no. 481

to reduce noise pollution in the Schiphol area (track 2). There are now two new facts:

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#### *1. International reactions*

As previously reported, Canada and the United States have expressed concerns about the capacity reduction at Schiphol. We have also received signals from other countries receiving care. On November 2, 2023, the U.S. Department of Transportation issued an order. This indicates, among other things, that they view continuing track 1, without following the balanced approach procedure, as a violation of EU rules and the US-EU Air Transport Agreement from 2007. In the eyes of the United States the capacity reduction would be unjust, discriminatory and anti-competitive for airlines. This order of November 2, 2023 is the first step in taking countermeasures by the United States and requires Dutch airlines to share their flight schedules with the American government in advance. In a second phase, more far-reaching countermeasures can be announced. On November 13, 2023, a Special Joint Committee (SJC) under the US-EU Air Transport Agreement took place. During the SJC, the United States reiterated and explained this observation.

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#### *2. Letter from the European Commission*

In addition, a letter was received on November 13, 2023 from the European Commissioner for Transport, Ms. Vilean, which conveys serious concerns about the failure to follow the balanced approach procedure for the implementation of track 1, as of March 31, 2024. This letter states that the European Commission expressly reserves the right to initiate infringement proceedings against the Netherlands in the next round of infringements, due to, in her view, non-compliance with European regulations. The Netherlands is urgently called upon to take all possible steps to ensure compliance with European law.

*Suspension, stop, anticipatory enforcement and experimental arrangement.* The relationship with European law is also part of the cassation appeal.

After the letter from the European Commission, the government has again considered whether the cassation appeal should be awaited before track 1 is implemented.

With the European Commission's position that continuing track 1, without following the balanced approach procedure, is not expected to be in line with European law<sup>5</sup>

The Netherlands will also be isolated. 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 indicated above, this ruling is not expected before the second quarter of 2024.

#### *Target remains standing*

Despite the suspension of track 1, the need and goal to restore the balance between Schiphol and its living environment remain. The government is therefore determined to continue the balanced approach procedure to reduce noise pollution and to record this in regulations (track 2).

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<sup>4</sup> Parliamentary Papers II 2022/23, 29665, no. 481

<sup>5</sup> Regulation (EU) No. 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment of rules and procedures for the introduction of noise-related operating restrictions at Union airports within the framework of a balanced approach and repealing Directive 2002/30/EC (OJEU 2014, L 173)

This means that Schiphol's environmental boundaries are legally established and there is legal certainty for local residents. With a view to track 2, the European Commission is expected to issue an advice on the submitted package of measures in early 2024.<sup>6</sup>

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However, steps must also be taken in the short term to limit Schiphol's impact on the environment. Given the consequences of the above for local residents, I have strongly appealed to KLM, as the largest user of Schiphol, to consider whether they will be able to take measures with effect from March 31, 2024, pending the balanced approach procedure. that limit noise pollution and give priority to the nighttime hours. KLM then indicated to me that it will do the following: with effect from March 31, 2024 (start of the 2024 summer season), KLM will use the quietest aircraft at night as much as possible and the aircraft that make more noise will be removed from the night. In addition, KLM - as part of the KLM group - strives not to schedule passenger flights between 00:00 and 06:00. These flights must then be moved to other times.

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#### *Follow-up*

The entry into force of the experimental scheme will be suspended until further notice; an amendment to this will be published shortly.

The inspector general of the Human Environment and Transport Inspectorate (ILT) will also receive an instruction to continue anticipatory enforcement. This means that if the limit values in the noise enforcement points are exceeded, the ILT will continue the policy of not imposing a measure on the sector if this is the consequence of flying in accordance with the strict preferential runway use of the New Standards and Enforcement System (NNHS). ).

This means that the situation before the experimental scheme is maintained. The actual operational capacity for the 2024 summer season must be redetermined 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 must work with LVNL, KMAR, Customs and the airlines to identify what can be carried out in an operationally responsible manner. The (more limited) availability of traffic controllers as a result of the tight labor market will in any case be a significant factor. 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.

#### *Finally*

The government knows that suspending anticipatory enforcement and the experimental scheme (track 1) is a bitter pill for the environment. This decision was taken after a renewed assessment of the interplay between the ongoing cassation appeal and the possible infringement proceedings. I emphasize that the government is committed to restoring the balance between Schiphol and its living environment. This remains an urgent task for which we remain committed

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<sup>6</sup> Measures: capacity reduction to 452,500 flight movements, of which 28,700 at night, quieter aircraft at night and less secondary runway use

to stake. In the near future, work will continue within track 2 (balanced approach procedure) to reduce noise pollution at Schiphol. The House will be informed about further developments in the periodic progress letters of the Schiphol Airport Environment Programme.

Yours faithfully,

THE MINISTER OF INFRASTRUCTURE AND WATER MANAGEMENT,

Mark Harbers

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