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Date 14 November 2023

Regarding State of Affairs of Outline Decision for Amsterdam Airport Schiphol

On 24 June 2022, the government implemented the Outline Decision Amsterdam Airport Schiphol in order to strike a new balance between the importance of an international airport to the Netherlands and the quality of life in the area, specifically for local residents.<sup>1</sup> In regards to the implementation of the above-mentioned Decision in the form of a three-track approach, the House has been informed in the regular progress letters on the Programme For Amsterdam Airport Schiphol and Environs<sup>2</sup> and in the letter dated 1 September 2023.<sup>3</sup>

This letter is to inform the House that I have unfortunately been forced to suspend track 1 of the Outline Decision for Schiphol. As a result of the position of the European Commission, I have had to reconsider. The suspension means that anticipatory enforcement will not be terminated as of 31 March 2024 and that the preliminary scheme will not enter into effect on this date. However, I remain fully committed to and will continue to work on achieving the objectives of the Outline Decision, for example via track 2 (balanced approach-procedure). See below for a more in-depth explanation of why the suspension is necessary.

#### *Termination of anticipatory enforcement, preliminary scheme, and appeal in cassation*

On 1 September 2023, the House was informed in a letter of the termination of anticipatory enforcement. The letter announces that anticipatory enforcement will be terminated as of 31 March 2024, when the preliminary scheme will enter effect, in order to embed strictly preferential runway use. KLM c.s./IATA and others decided to legally challenge the decision, and have lodged an appeal in cassation. The date on which the Supreme Court's ruling can be expected is not yet known, but a ruling is not expected before the second quarter of 2024. In addition, the commencement of the notification phase in the context of the balanced approach procedure was also announced in the letter dated 1 September 2023. This is to ensure that a package of measures can definitively be recorded in the Airport Traffic Decree (LVB) with the intention of limiting noise nuisance in the immediate vicinity of Amsterdam Airport Schiphol (track 2). At this time, two new facts have emerged:

#### *1. International response*

As stated previously, Canada and the United States of America have expressed concern in regard to the reduction in capacity at Amsterdam Airport Schiphol.<sup>4</sup> Other countries have also expressed concern in regards to this matter. On 2 November 2023, the U.S. Department of Transportation issued an order, in which they state, among other things, that they consider the continuation of track 1, without following the balanced approach procedure, as a violation of EU regulations and the US-EU Air Transport Agreement from 2007. The United States considers a reduction in capacity

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<sup>1</sup> Parliamentary papers II 2021/22, 29665, no. 432

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

<sup>3</sup> Parliamentary papers II 2022/23, 29665, no. 481

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

to be unjust and discriminatory and believes that it will have a distorting effect on competition between airlines. This order dated 2 November 2023 is the first step in terms of countermeasures taken by the U.S. and requires that Dutch airlines share their flight schedules with the U.S. Government ahead of time. More far-reaching countermeasures may be announced in a second phase. On 13 November 2023, a Special Joint Committee (SJC) session was held in the context of the US-EU Air Transport Agreement. During the SJC, the United States repeated this observation and provided further clarification. *Letter from the European Commission*

In addition to the above, we received a letter on 13 November 2023 from the European Commissioner for Transport, Ms Valean, who expressed serious concern about not following the balanced approach procedure for the implementation of track 1 as per 31 March 2024. This letter states that the European Commission emphatically reserves the right to instigate infraction proceedings against the Netherlands in the next round, due to what it believes is non-compliance with European regulations. The European Commission urgently calls on the Netherlands to ensure that all possible steps are taken for compliance with European law.

#### *Suspension of ending anticipatory enforcement and preliminary scheme*

The appeal in cassation also refers to the relation with European Law. After receiving the letter from the European Commission, the government again considered awaiting the appeal in cassation before implementing track 1. Considering the position of the European Commission that continuing track 1, without following the balanced approach procedure, is not expected to be in accordance with European law<sup>5</sup>, the Netherlands will also become isolated. Based on the above-mentioned position, the government has decided to suspend track 1, at least until the Supreme Court has issued a ruling in the cassation proceedings. As stated above, this ruling is not expected before the second quarter of 2024.

#### *Objective remains*

Despite the suspension of track 1, the necessity and the objective of restoring the balance between Amsterdam Airport Schiphol and its environs remains. The government is therefore determined to continue with the balanced approach procedure to reduce noise nuisance and record this in legislation (track 2).

In doing so the environmental limits of Schiphol will again be legally established and there will be legal certainty for local residents. With a view to track 2, the European Commission is expected to issue a recommendation on the submitted package of measures at the beginning of 2024.<sup>6</sup>

However, steps need to be taken in the short term too, to limit the impact of Schiphol on its environs. I have urgently appealed to KLM, as the largest user of Amsterdam Airport Schiphol, considering the consequences of the above-mentioned for local residents, to review whether they would be able to take measures that limit noise disturbance and to prioritise nighttime hours in this, with effect from 31 March 2024, while awaiting the balanced approach procedure. In response, KLM stated that it would do the following: with effect from 31 March 2024 (the start of the 2024 summer season), KLM will make every effort to use the quietest aircraft during the night as much as possible, removing noisier aircraft from nighttime schedules. In addition, as part of the KLM Group, KLM strives to avoid scheduling passenger flights between 00.00 and 06.00. Any flight services currently scheduled between these hours will have to be moved to other times.

#### *Follow-up*

The entering into effect of the preliminary scheme will have to be suspended until further notice and an amending regulation will be published for this purpose in the short term. The Inspector-General of the Human Environment and Transport Inspectorate will also receive an airport operation ruling for the continuation of anticipatory enforcement. This means that the Human Environment and Transport Inspectorate will continue the policy of not imposing measures on the

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<sup>5</sup> (EU) Decree No. 598/2014 of the European Parliament and the Court dated 16 April 2014 in regard to the determination of rules and procedures for the introduction of noise-related limitations on operations at airports in the Union in the context of a balanced approach, and the withdrawal of Guideline 2002/30/EG (PbEU 2014, L 173)

<sup>6</sup> Measures: capacity reduction to 452,500 air transport movements, of which 28,700 at nighttime, the use of quieter aircraft at nighttime and less secondary runway use.

sector in the event the limit values in the noise enforcement points are exceeded as a result of flying in accordance with strictly preferential runway use in accordance with the New Environmental Standards and Enforcement System (NNHS). In this way the situation from before the preliminary scheme is maintained. The factual operational capacity for the 2024 summer season needs to be reviewed again by Schiphol, in the context of the slot allocation process. Schiphol will need to draft an addendum to its capacity declaration for the 2024 summer season. This requires cooperation between Schiphol and Air Traffic Control the Netherlands, Royal Netherlands Marechaussee, Dutch Customs, and the airlines, to determine which activities can be carried out in an operationally-responsible manner. The more limited availability of air traffic controllers as a result of labour market shortages will in any case be a significant factor in this. This situation does not uniquely apply to the Netherlands. It is then up to the slot coordinator ACNL to allocate any additional slots from the addendum.

*In conclusion*

The government is aware that suspension of termination of anticipatory enforcement and the preliminary scheme (track 1) is a tough pill to swallow for the local community. This decision was made after a new consideration of the interplay between the current appeal in cassation and the potential infraction proceedings. I would like to emphasise that the government still intends to restore the balance between Schiphol and its environs. This remains an urgent matter to which we remain fully committed.

In the coming period we continue to commit ourselves to working within track 2 (balanced approach procedure) to reduce the noise disturbance of Amsterdam Airport Schiphol. The House will be informed on further developments in regular progress letters on the Programme for Amsterdam Airport Schiphol and Environs.