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**Our reference**

IENW/BSK-2024/154465

**Enclosure(s)**

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Date

Re: Status of Balanced Approach procedure and RBV case

Honourable Speaker of the House of Representatives,

On 24 June 2022, the Cabinet issued the Schiphol Outline Decree to restore the balance between the importance of the international airport and the quality of the living environment.<sup>1</sup> This was necessary due to the great urgency to restore the legal position of local residents and to reduce noise nuisance around the airport in the short term. This need is illustrated by court cases that have been and continue to be filed since then.

Since then, efforts have been made to implement the Outline Decree. The House has been periodically informed about this.<sup>2</sup> Documenting the Outline Decree has proven to be complex, partly due to the international context and various ongoing court cases. In this context, the House has been informed about the cassation appeal in the summary proceedings between KLM c.s./IATA et al. and the State, as well as the ruling in the court case between the Stichting Recht op Bescherming tegen Vliegtuighinder (hereinafter: RBV) and the State.<sup>3</sup> There have been various developments in the past period that will have to lead to adjustments in the announced measures. This way, the court's ruling in the RBV case, as well as the outcomes of the talks with the European Commission in the context of the European mandatory Balanced Approach procedure, are implemented in the best possible way. This parliamentary letter provides further explanation.

**Status of implementation of the Outline Decree**

An important pillar in the Schiphol Outline Decree is reducing noise nuisance at Schiphol. In that regard, we are currently following the European Balanced Approach procedure. In the context of this procedure, the Cabinet notified a package of measures with the European Commission on 1 September 2023,<sup>4</sup> to meet the set noise abatement objective of -20% of people experiencing severe disruption during the day, and -15% of people experiencing severe disruption at night.

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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, 471, 486, 489 and 496.

<sup>3</sup> Parliamentary Papers II 2023/24 29665, Nos. 495 and 498.

<sup>4</sup> Parliamentary Papers II 2023/24, 29665, no. 481

This package of measures consisted of:

- Using quieter aircraft at night;
- Reduction of the usage of the secondary runways (Aalsmeer Runway and Zwanenburg Runway).
- A maximum of 452,500 aircraft movements per year, of which a maximum of 28,700 at night;

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The aim was to have these measures take effect in November 2024 but in January 2024, the House was informed that, given the ongoing talks with the European Commission, this is no longer feasible and that the measures cannot be implemented until 2025 at the earliest. In the past period, there have been numerous talks with the European Commission at both official and political levels. The European Commission has asked questions, in particular about the proportionality of the various measures and the intended pace at which the noise abatement objective will be achieved. In addition, the European Commission emphasises the preference for alternative measures to achieve the noise abatement objective, instead of a reduction in the number of aircraft movements, because it follows from the European regulation that a reduction in the number of aircraft movements is a matter of last resort when taking measures.

### **Ruling in RBV case**

The court in the RBV case orders that the State must enforce laws and regulations within 12 months. This means that the anticipatory non-enforcement) must be ended within this period. In addition, the court states in the ruling's grounds that structural balancing is required between the interests of local residents and Schiphol's importance for the Dutch economy. It also follows from the ruling that the legal position of local residents, including those who live further away from Schiphol, must be improved in the Airport Traffic Decree (LVB), which is to be amended.

This constitutes several dilemmas for the Cabinet, which have been shared with the House previously.<sup>5</sup>

- Time: in the RBV case, the court gives the Cabinet 12 months to implement the ruling. Under normal circumstances, this is not a feasible timetable for carefully establishing new or amended regulations.
- National versus international: nationally, local residents are subjected to (noise) nuisance and legal uncertainty. This requires us to take quick steps to combat this. Internationally, there are various legal obligations that follow from the Noise Ordinance, the Slot Regulation and aviation treaties. Great importance is attached to careful procedures and gradualness. The latter in particular is difficult to reconcile with quick action.
- Possible conflicting court rulings: The advocate general at the Supreme Court concludes in the cassation appeal filed by KLM et al./IATA et al. that the Balanced Approach procedure must be followed in order to stop anticipatory non-enforcement. This does not correspond with considerations of the court in the RBV case, which actually uses the principle that it is not necessary to follow the Balanced Approach procedure to stop anticipatory non-enforcement. The Supreme Court's ruling in the cassation appeal is expected around the summer of 2024. If the Supreme Court follows the advice of the advocate general, there will be conflicting judicial rulings, which could put the State in a jam.

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<sup>5</sup> Parliamentary Papers II 2023/24 29665, no. 498

- The content: restoring the balance means, among other things, that there must be noticeably less noise nuisance for local residents. Opinions differ greatly about how this can be achieved. Local residents are focusing on fewer flights, while the aviation sector is mainly focusing on technological innovation as an optimal way to reduce noise nuisance.

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The main thing is that the ruling must be implemented as much as possible. The Cabinet endorses the need to give more weight to the interests of local residents, both with regard to the restoration of the legal position and with regard to the reduction of noise nuisance at Schiphol in the short term. The interests of local residents and those of other stakeholders must be appropriately weighed against each other, both in this process and in future policy. Over the past period, the Cabinet has been considering how the ruling in the RBV case can be implemented with these dilemmas in mind. The Cabinet will therefore do the following:

### **1. Continuation of the Balanced Approach procedure with an adjusted package of measures**

The Cabinet concludes that the only and fastest way to start following up on the RBV ruling is to build on the foundation of the Balanced Approach procedure that has already been implemented. This procedure is mandatory under international regulations when taking measures that limit operations to reduce noise nuisance. The package of measures already notified will be supplemented with a number of new measures. The Cabinet is doing this to do justice to the ruling in the RBV case and to comply with the outcomes of the talks with the European Commission. Everyone can respond to this during an additional consultation in the near future. In doing so, all necessary (but not irreversible) procedural steps required in the context of due care are taken. This additional consultation will run from 24 May 2024 to 21 June 2024.<sup>6</sup>

After the consultation and continued talks with the European Commission, the (new) Cabinet can make a final decision on the final package of measures that will be laid down in regulations. The measures will be implemented over a period of three years, respecting international processes and deadlines for the slot distribution process. The proposed new package is described below. This proposed package of measures fits within the nature permit for Schiphol granted in September 2023, because the permit was issued for 500,000 aircraft movements or a lower number that will ultimately be recorded in an adjusted LVB.

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<sup>6</sup> <https://www.luchtvaartindetoekomst.nl/onderwerpen/samenwerking/geef-uw-mening-over-het-aangepaste-maatregelenpakket-schiphol/english-version>

*Composition of proposed adjusted package of measures*

*November 2024*

With effect from November 2024, KLM will at night voluntarily replace noisy aircraft with quieter ones. (*already notified*)

*November 2025*

The largest number of measures are introduced with effect from November 2025:

- Restriction of the use of the Aalsmeer Runway and Zwanenburg Runway, so they are no longer used between 13:00 and 15:00. This provides a rest period for those people who have been most affected by Schiphol's growth over the years. (*adjusted*)
- Fleet renewal: in the coming period, the aviation sector will replace some of its aircraft with new aircraft that make less noise.<sup>7</sup> (*new*)
- Differentiation of airport charges: Schiphol makes the use of the airport more expensive for noisy aircraft. This way, all airlines are encouraged to land and depart with aircraft that are as quiet as possible. (*new*)
- The noisiest aircraft are banned at night and are no longer allowed to arrive and depart from Schiphol between 23:00 and 07:00. This applies to the Boeing 747-400, for instance, an older aircraft that is mainly used for cargo flights. (*new*)
- The maximum number of aircraft movements at night will be further reduced. Currently, 32,000 aircraft per year are allowed to take off and land at Schiphol at night. From November 2025, the maximum will be 27,000. This is a greater restriction than previously included in the notification package of measures in September 2023. This is separate from the intended (partial) night-time closure, as explained below. (*adjusted*)
- These additional measures and their effect on the noise abatement objective lead to a maximum number of aircraft movements per year that is higher than in the previous package of measures from 1 September 2023<sup>8</sup>. The estimate is that this number is between 460,000 and 470,000<sup>9</sup>, partly as a result of the reservation for a (partial) night-time closure as described later in this letter. In addition to this capacity limitation, regulation of air traffic in the LVB may also have an effect on General Aviation (GA) traffic at Schiphol.

*November 2026*

- For November 2026 the Cabinet is considering a (partial<sup>10</sup>) night-time closure at Schiphol. To this end, it is important to understand the impact and consequences, both for noise reduction and for the airlines. Various variants are currently being studied. The results of this study are expected around the

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<sup>7</sup> The additional effect of fleet renewal in 2025 compared to the previously intended implementation date is included in this.

<sup>8</sup> The notification package of 1 September 2023 includes a maximum number of aircraft movements of 452,500 per year.

<sup>9</sup> This bandwidth has been included because there may be a different outcome depending on the outcome of the additional consultation. The final number will be included in the final package presented to the European Commission, which will also include the outcome of the consultation.

<sup>10</sup> Formally, the night period runs from 23:00 to 07:00. A possible closure of the airport in a shorter period than this time block, for instance, as proposed by Schiphol (00:00 - 05:00 for arriving flights and 00:00 - 06:00 for departing flights) is then called a 'partial' night-time closure.

summer of 2024. The Cabinet will then make a decision on whether to implement this measure.<sup>11</sup> The Cabinet is now setting aside part of the set noise abatement objective so that quick steps can be taken after the impact analysis. This new measure must then be consulted and notified with the European Commission, in accordance with the Balanced Approach procedure.<sup>12</sup> (new)

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### *Cabinet considerations regarding this package of measures*

The composition of the adjusted package of measures differs on a number of points from the package notified on 1 September 2023. A number of new measures have been added. Because a larger part of the noise abatement objective is achieved with these new measures, the total number of aircraft movements is higher than in the previous package of measures. After all, a reduction in the number of aircraft movements can only be used as a last resort, as the European Commission made clear during the talks. The exact extent of the total number of aircraft movements can only be determined after additional consultation.

The Cabinet realises this will come as a disappointment to many local residents. Within the strict international regulations and court rulings in the Netherlands, a sensitive balance has been sought between, on the one hand, reducing noise nuisance and restoring the legal position of local residents, and on the other hand, the proportionality of the measures and the expected reactions of international governments and stakeholders. The Cabinet believes this is the maximum achievable in the short term.

The measures now in place will also cause noticeably less nuisance. And the possible (partial) night-time closure can also have a significant impact on the nuisance experienced by local residents. These measures are in line with the most frequently heard complaints from local residents, which are collected and analysed by the Schiphol Residents' Contact Centre (Bewonersaanspreekpunt Schiphol, BAS):

- Large noisy aircraft that fly low and make a lot of noise, especially in the evening and at night;
- The large continuous number of aircraft movements;
- Air traffic at night that wakes people up in the middle of the night.

## **2. Restoration of the local residents' legal position and protection**

The measures that follow from the Balanced Approach procedure will be documented in a new LVB. This will put an end to the prolonged tolerated situation and restore the legal position of local residents. In order to offer better legal protection to people who live further away from Schiphol, the Cabinet will add additional noise enforcement points. This means that more people can rely on the standards associated with these enforcement points if they are exceeded. Where

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<sup>11</sup> If a (partial) night-time closure is decided against in future Cabinet decision-making, additional measures will be taken to achieve the set noise abatement objective. In that case, a consultation will also be organised for this.

<sup>12</sup> Because the impact analysis is not yet ready, the (partial) night-time closure measure cannot yet be included in the additional consultation to be initiated. This cannot be postponed due to the 12-month period imposed by the court.

exactly these points will be located and how they are implemented is currently being studied. This has no consequences for the possibilities for residential construction, because the contours of Schiphol and therefore the restriction areas do not change.

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The Cabinet will check the noise calculations against measurements more often, in order to ensure the calculations correspond to practice as closely as possible. This is a periodically repeating action, which arises from a frequently expressed wish of the surrounding area. Furthermore, local residents are more actively informed about how they can enforce their rights. In addition, more enforcement options are being explored for the ILT. For instance, by focusing enforcement activities on Schiphol's performance more often (seasonally), instead of annually. The Cabinet expects to have an initial picture of this after the summer of 2024. The House will be informed about the progress thereof.

Lastly, a bill is being prepared that will make it possible for local residents to appeal against the LVB to the Administrative Court. The Council of State's recommendation in this regard has recently been received. This bill will be submitted to the House of Representatives as soon as possible.

#### *Consideration of appeal*

As reported to the House, the Cabinet must within 3 months of the verdict ruling the RBV case decide whether to appeal. Normally, it takes much longer than 12 months to arrive at a new LVB. This relates to a number of necessary procedural steps, such as drawing up an Environmental Impact Report (MER), but also a preliminary procedure in both Houses and request for a recommendation from the Council of State. The Cabinet will do everything it can to determine a new LVB as quickly as possible. At the same time, it relies on the support of others, and the process is surrounded by many uncertainties. Despite the efforts to achieve the fastest possible result, completion within 12 months is practically impossible. In addition, there is the dilemma mentioned earlier, of the possible legal conflict between the ruling in the RBV case and the upcoming ruling of the Supreme Court.

The Cabinet is therefore forced to appeal against the ruling. Emphatically not because we disagree with the purport of the ruling, but because of the strict term imposed by the court and the possible legal 'jam' mentioned earlier. A request for suspension of the ruling will also be made, because otherwise the clock will continue to tick on the 12-month deadline while the appeal is pending.

I would like to emphasise once again that the Cabinet agrees with the purport of the ruling. More weight must be given to the interests of local residents. The Cabinet continues to work on this during an appeal. On appeal, further clarification and more time will be requested so the Cabinet can take all necessary steps to adopt the regulations and implement the ruling.

**The balance is not yet 'finished'**

Reading this letter may give the impression that the higher number of aircraft movements and the filing of the appeal represent a change of course, but that is not the case. The objective is unchanged and the Cabinet is now taking the next procedural step. This is in order to document the outcomes of the Balanced Approach procedure in the LVB as soon as possible and to take a significant step in the short term in limiting the levels of nuisance around Schiphol.

For the Cabinet, the balance is not yet 'finished'. In the future, the Cabinet no longer wants to focus on a maximum number of aircraft movements, but on environmental standards. Noise emissions must decrease from year to year, so the negative effects of aviation on the surrounding area also continue to decrease. This allows us to permanently monitor the balance between Schiphol and the surrounding area. And within these frameworks, prospects also arise for the aviation sector.

The House will be informed about the next steps regarding the Schiphol Outline Decree, through the periodic Schiphol Airport Programme progress letter.

Yours sincerely,

THE MINISTER OF INFRASTRUCTURE AND WATER MANAGEMENT,

Mark Harbers

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