



Court Decision to Halt Schiphol Airport Flight Cuts is 'Reprieve' for Passengers, Airlines, and the Dutch Economy

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The Hague – The International Air Transport Association (IATA) reacted positively to the decision by the Dutch court to uphold the legal challenges lodged by IATA, KLM and other airlines against the Dutch government's 'experimental regulation' to cut Schiphol airport's flight limit to 460,000 from November 2023.

IATA Director General Willie Walsh said: "We welcome the judge's decision. This case has been about upholding the law and international obligations. The judge has understood that the Dutch government violated its obligations in shortcutting processes that would bring scrutiny to its desire to cut flight numbers at Schiphol. This decision gives vital stability for this year to the airlines using Schiphol airport and maintains the choice and connectivity passengers value."

Winning this vital reprieve is good news for Schiphol's passengers, Dutch businesses, the Dutch economy and airlines. But the job is not done. The threat of flight cuts at Schiphol remains very real and is still the stated policy of the government. Schiphol airport themselves yesterday announced night flight cuts without consultation. Airlines understand the importance of resolving issues such as noise. The Balanced Approach is the correct EU and global legally-enshrined process for managing noise impacts. It has helped airports around the world successfully address this issue."

Q&A

What was the legal challenge about?

The Dutch government has recently decided to reduce the number of flight movements at Schiphol from 500,000 to 440,000 per year. We believed no legal basis existed for this reduction: it violates international treaties and European regulations. Governments can lower the number of flight movements in order to reduce noise, but only after having after a careful process, consisting of e.g. assessing the current noise level, setting a noise goal and considering alternative measures. This did not occur. The 440,000 cap is not a means to an end, but the objective. The Dutch government also sought to accelerate the implementation of this reduction by introducing an experimental regulation with an interim cap of 460,000 flight movements from 1 November 2023. We believed this interim cap is also subject to – and therefore in violation of - international treaties and European regulations.

IATA and airlines that fly into Schiphol sought to halt the application of this experimental regulation. KLM and other carriers based at Schiphol have launched a similar legal action. The carriers that joined IATA's action were: Air Canada, United Airlines, FedEx, JetBlue, British Airways, Vueling, Lufthansa, and Airlines for America.

What was the judge's decision?

The judge ruled that the State had not followed the correct procedure in introducing the proposed temporary regulation. According to European rules, the State can only reduce the number of aircraft movements at an airport after going through a careful process. This process entails, among other things: the State must identify various measures that can reduce noise pollution, the State must consult all interested parties, and a reduction in the number of aircraft movements is only allowed if it is clear that other measures to limit noise pollution are insufficient. The Interim Injunction Judge noted that the State had started that procedure for the proposed reduction of the number of aircraft



movements to 440,000 per year starting in the 2024/2025 season. But the State did not follow this procedure for the proposed temporary regulation in which the State wants to reduce the maximum number of allowed aircraft movements to 460,000 for the upcoming 2023/2024 season. Therefore the ruling states that the Dutch State may not reduce the number of aircraft movements at Schiphol from 500,000 to 460,000 for the season 2023/2024.

Why had the Dutch government ordered a cut in flight numbers?

The Minister for Water and Infrastructure in the coalition Dutch government is responding to the concerns of some residents who are principally concerned about noise. Local air quality and some greenhouse gas emissions (nitrogen and CO₂) have also been listed as 'concerns' but are not the reason for the cut. A letter (24.6.22) from Minister Marc Harbers to the President of the House of Representatives in the Hague states that the noise nuisance is the objective, but the Minister also admits that he has not yet investigated noise nuisance or set a specific nuisance objective, which are both requirements before being allowed to apply such restrictions:

On what basis were IATA and other plaintiffs seeking to have the 'experimental regulation' ruled unlawful?

IATA and the co-plaintiffs believe that the Dutch government must follow the Balanced Approach (BA), a process and methodology for mitigating noise at airports. The BA, which is enshrined in ICAO Annex 16 (part of the Chicago Convention, to which the Netherlands is party), international treaties and also in European Regulation 598/2014, explicitly states that flight reductions should be a last resort, only used when other possible measures have been exhausted. These measures include an objective determination of the noise situation and the noise objective; an inventory of possible measures; an estimation of the cost-effectiveness of those measures; operating restrictions as a last resort; and the principles of proportionality and non-discrimination. In IATA's view, the government has not followed this process.

Why does this matter so much to airlines?

There are multiple reasons, including:

- The need for clarity of the application of the BA in international and European law. Airlines wish to have legal certainty and a government should be compliant with its legal obligations.
- The most pressing priority is to have certainty for the Winter Season schedules, which are being planned now and will be mostly finalized in April. That's why we urgently needed to stop the enforced reduction and return to the 500,000 permitted flight movements.
- The arbitrary cut reduces airport slots which airlines are permitted to operate. These cuts will mean that airlines which were able to operate slots under grandfather rights will have them taken away. There is no precedent or methodology in place for this so very difficult to ensure fairness and prevent loss of connectivity. It also means new operators that were hoping to get slots at the airport will be unable to get them, which impacts consumer choice and competition.
- Risk of escalation. Previous arguments over noise restrictions have threatened international trade wars (e.g. the problems over the 'hush kit' aircraft in the 1990s that pre-date the BA). Removing slots will affect bilateral rights, open skies agreements and almost certainly lead to further international legal action.
- More generally, the cuts will negatively impact jobs and the economy of the Netherlands. A precise economic impact study of these cuts has not been made (an example of the BA not being followed). However, in 2019 an IATA 'Air Transport Competitiveness' study argued that restricting Schiphol airport (plus other taxes) could cost around 84,000 jobs compared to what might be generated if the Netherlands was able to expand Schiphol and cut taxes and charges.



What are the next steps?

Assuming the State does not appeal the decision in time, Schiphol's flight limit will remain at 500,000 for the Winter 23-24 season. Attention now moves to the consultation which has begun on limiting Schiphol on a permanent basis to 440,000 flights from 2024 onwards. We believe that the Dutch state is again at risk of not following the Balanced Approach by proceeding from the basis that flight numbers will be reduced to 440,000, rather than starting with measuring noise and defining a noise objective. Any flight cuts can only be a last resort to achieve this noise objective, not the starting point. We believe that the ruling today gives a strong indication that the State must follow the proper process and analyze all options.