



June 21, 2024

**VIA THE WEB PORTAL:**

Ministry of Infrastructure and Water Management  
Postbus 20901  
2500 XP Den Haag  
Netherlands

**Re: Additional consultation Balanced Approach Schiphol**

Dear Balanced Approach Consultation Team:

Federal Express Corporation (FedEx) is a U.S. certificated air carrier, authorized to conduct all-cargo operations pursuant to the U.S.-EU air services agreement.<sup>1</sup> FedEx has been a member of the Netherlands business community since 1984 and continues to contribute significantly to the economy throughout the country. We employ nearly 3,000 team members in the Netherlands to handle nearly 17.5 million shipments annually. Every day, we connect Dutch businesses to more than 220 countries and territories worldwide through our global express network. FedEx views the Netherlands as a key focal point in our global network.

**Support for Comments Filed by Industry Associations**

FedEx supports the comments filed by the International Air Transport Association (IATA), Airlines for America (A4A), and the European Express Association (EEA) in the instant consultation. We offer the following additional comments that focus on Phases 2 and 3 of the current proposal that merit emphasis.

**Balanced Approach**

FedEx underscores that the Government of the Netherlands is bound by the Chicago Convention,<sup>2</sup> the U.S.-EU air service agreement<sup>3</sup> and EU regulation<sup>4</sup> to adhere to the International Civil Aviation Organization (ICAO) Balanced Approach to Aircraft Noise Management (Balanced Approach),<sup>5</sup> before introducing operating restrictions to address noise-related concerns at Amsterdam Airport Schiphol (AMS). We appreciate that the Government of the Netherlands has undertaken consultations with affected stakeholders. However, as addressed in detail in the lawsuit pending

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<sup>1</sup> Air Transport Services Agreement between the Government of the United States of America and the European Community and its Member States of 2007, as amended. (*EIF June 29, 2020*)

<sup>2</sup> See, Part V, volume I, of Annex 16 to the Chicago Convention of Civil Aviation (1944), 15 U.N.T.S. 295

<sup>3</sup> See, Article 15 of the U.S.-EU air services agreement.

<sup>4</sup> See, Article 6 of Regulation (EU) No 598/2014.

<sup>5</sup> ICAO Doc 9829 AN/451 (Rev. 2007)

before the Dutch Supreme Court,<sup>6</sup> we remain concerned that these Balanced Approach principles are not being followed. It is of paramount importance that noise targets be established *first* and that alternative remedial actions be taken before imposing operational restrictions. As reflected in the principles, operational restrictions should always remain a last resort.

## **Phase 2: Concerns on Timing and Substance**

We understand the Government's desire to respond to the timeline established by the District Court of the Hague decision in the Foundation for the Right to Protection against Aircraft Nuisance (RBV) case.<sup>7</sup> We stress, however, that the proposed implementation dates for Phases 2 and 3 lack clear relevance to a noise target and that the pace is still too rapid for certain measures, like forced capacity reductions and airport closure. The rapid pace of introduction of these measures is particularly noticeable when compared to other initiatives in the Netherlands, such as the introduction of zero-emissions zones, where businesses receive ample time to implement changes to their fleet or operations.

We believe that, if necessary, Governments can introduce noise-related operating restrictions after a robust assessment of the first three pillars of the Balanced Approach. If such an operating restriction need is ultimately determined necessary the restriction should be *gradually* introduced and take into consideration regulatory solutions that carefully manage the operational realities of incumbent carriers, including medium- and long-term protections for their operations. Once introduced, the restriction should be subject to monitoring to fully assess the effectiveness of the solution before any additional restrictions are imposed.

We note that Phase 2, beginning in November 2025, would (1) impose higher charges on aircraft with certain noise profiles, (2) exclude aircraft with certain noise profiles, and (3) reduce use of certain runways. These three initiatives would likely lead carriers to operational changes, including updating and advancing some fleet renewal plans – another stated goal of Phase 2 of the proposal. We strongly urge the Government of the Netherlands to review the actual impact of these three proposed measures against a clearly established and feasible noise target and to assess the effectiveness of those proposals before considering the implementation of any of the proposed Phase 2 operational reductions. Any operational reductions should be considered only after compliance with the Balanced Approach.

Implementing operational reductions at AMS without first attempting to implement additional measures to manage noise will drastically accelerate service reduction without actual data, which will likely lead to unnecessary harm of the Netherlands' economy and connection to the global supply chains. As described in the letter submitted on June 15, 2023, by Air Cargo Netherlands (ACN), the Netherlands Association for Forwarding and Logistics (FENEX), and Transport and Logistics Netherlands (TLN) at in an earlier stage of this consultation, the economic contribution of air cargo to Schiphol and the Netherlands is tremendous and the proposed operational reductions

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<sup>6</sup> See, Royal Schiphol Group N.V. et al. v. IATA et al., Supreme Court of the Netherlands, Case Number 23/03380.

<sup>7</sup> See, Foundation for the Right to Protection Against Aircraft Nuisance v. Netherlands Ministry of Infrastructure and Water Management, District Court of the Hague, Case Number C-09-632625-HA ZA 22-610, (March 20, 2024).

will disproportionately affect cargo carriers. We do not see a compelling reason to rush to capacity reductions when the requirements of the Balanced Approach have not been satisfied.

- *Proposal #1. Increased airport charges for aircraft with certain noise profiles* provides an opportunity for a carrier to determine whether a particular operation offers a positive value proposition for the carrier and its customers. However, it also has the effect of market interference given that all-cargo operators compete with passenger carrier belly space, but do not have the wide variety of options available to passenger carriers to secure quieter aircraft. This should be carefully considered before applying charges as a tool to change the profile of operators at AMS.
- *Proposal #2. Excluding aircraft with certain noise profiles from nighttime operations at AMS* will undoubtedly change the nighttime noise profile at the airport. It will also reduce the flexibility of cargo carriers to meet the needs of their customers. Although FedEx does not operate aircraft to AMS that fall above the current nighttime noise limits, we note that such a proposal limits our ability to contract with other carriers when market conditions demand.
- *Proposal #4. Fleet renewal* is an important tool that carriers deploy to manage noise concerns. We stress that the Government of the Netherlands cannot force carriers to renew their fleets and note that carriers, like FedEx, have an inherent interest in operating fuel-efficient and quieter aircraft. New-build narrow-body freighters (like the B737), however, do not exist for all-cargo operators. FedEx will comply with the noise parameters set for AMS, but strongly urge that the realities of the aircraft market for cargo carriers be taken into account as the scheme is further developed.
- *Proposals #5 and #6. Reduction of flights* should not be imposed when other alternatives can still be evaluated and implemented. We are concerned about the impact that such reduction will have on small slot holders, like FedEx, and the “fair and equal opportunity to compete” guaranteed to us under the U.S.-EU air service agreement.<sup>8</sup>

### **Phase 3: Timing and Future Consultation**

We strongly oppose the Phase 3 proposals regarding nighttime closure of AMS and assert that the discussion is premature. Planning to disconnect the Netherlands from the worldwide economy for up to eight (8) hours nightly, without thorough review and assessment of the effectiveness of the measures advanced in Phase 2 appears to be a drastic reaction.

Night flights are an essential element of the express industry, rather than an operational preference. We time our flights to coincide with ground-side pick-up and delivery schedules which are finely tuned to customer needs, including their manufacturing processes. Night flights enable the latest possible pick-up towards the end of the working day and support next-day delivery services around the world for Dutch businesses. This model maximizes productivity and connectivity and is a key ingredient in the attractiveness of the Netherlands as a place to do business. We anticipate

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<sup>8</sup> See, Article 2 of the U.S.-EU Air Transport Services Agreement: “Each Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement.”

participating in the consultation if the Government of the Netherlands begins that formal consultation process.

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FedEx thanks you for the opportunity to continue to participate in these consultations and looks forward to contributing further. Please feel free to contact us regarding any questions. Victoria den Haring in the Netherlands and Brian Hedberg in Washington, D.C., are best placed to assist with any such enquiries. Their details are below.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick M. DiMento", followed by a horizontal line.

Patrick M. DiMento  
Director of Operations  
Vice President, Flight Operations & Training

PMD/bjh

CC:

Victoria den Haring, Senior Legal Counsel II, Legal Solutions Europe ([victoria.den.haring@fedex.com](mailto:victoria.den.haring@fedex.com))  
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