

The Government of Canada submits the following response to the Ministry of Infrastructure and Water Management of the Government of the Netherlands (Ministry) on the *Consultation Balanced Approach Schiphol*.

The Government of Canada (Canada) deeply values its robust and positive partnership with the European Union on reducing greenhouse gas emissions and addressing climate change, including in the aviation sector. Canada recognizes the difficult choices that the Netherlands faces in addressing noise-related issues around Schiphol airport, and stands ready to participate in efforts to help mitigate those issues in a manner that minimizes the impact on important international air transport links.

Canada welcomes the opportunity to provide input on the Ministry's consultation document, *Balanced Approach procedure for Schiphol* (Consultation), and remains open to discussing options and solutions, mindful of the overall objectives of reducing noise and greenhouse gas emissions, in the context of a fair consultative approach that meets all associated international agreements.

The Balanced Approach

The Ministry's proposal and Consultation does not appear to take into account all bilaterally and multilaterally agreed frameworks that govern the process of government decisions regarding operations for international airports. Additionally, the proposal and Consultation appear to be inconsistent with EU Regulation 598/2014 on noise management, and Annex 16 to the Chicago Convention, which apply a "Balanced Approach" principle. The International Civil Aviation Organization's (ICAO) Guidance on the Balanced Approach to Aircraft Noise Management ("ICAO Guidance") sets out that in undertaking actions to address noise, interested stakeholders, including members of the public and impacted aircraft operators, should be consulted from the assessment through to the implementation phases. Moreover, as outlined in the ICAO Guidance, the Balanced Approach principle suggests that States shall, after assessing the noise situation at an airport, pursue reduction of noise at the source, noise abatement operational procedures, and land-management options before resorting to operational restrictions.

This approach is reflected in Article 5.3 of EU Regulation 598/2014, which requires Member States to ensure that, when noise-related action is taken, the following combination of available measures is considered, with a view to determining the most cost-effective measure or combination of measures:

- (a) the foreseeable effect of a reduction of aircraft noise at source;
- (b) land-use planning and management;
- (c) noise abatement operational procedures;
- (d) not applying operating restrictions as a first resort, but only after consideration of the other measures of the Balanced Approach.

Specifically, Member States shall not apply 5.3 (d) operating restrictions as a first resort, but only after consideration of the other measures, consistent with the Balanced Approach principle.

The Ministry is seeking input on a combination of measures, based on specific noise

objectives, that would introduce significant operating restrictions – namely, reductions in flight movements to abate noise nuisances. This is inconsistent with the Balanced Approach principle by proposing a set of quantitative reductions in June 2022 (Schiphol Outline Letter), well before the Consultation period (March 15 – June 15, 2023) and well before any of the first three measures described in Article 5.3 of EU Regulation 598/2014 were explored and implemented. Furthermore, the first time a noise abatement objective was presented was on January 24, 2023, during the second technical session, and became part of the consultation documents presented at the March 15, 2023, technical session. The Consultation puts forth specific noise objectives, however it does not provide details on how these objectives were determined, nor does it provide details on stakeholder consultations that took place prior to June 2022. Canada therefore feels that a significant aspect of the consultative process has not been undertaken, and remains available to discuss how domestic Dutch demands for noise reduction could be addressed in a manner that is consistent with international obligations.

Consultation Documentation

The Consultation documentation specifies that a number of measures have been taken since 2006 to reduce noise nuisance in the Schiphol vicinity and that these measures can be categorized into the first three measures described in Article 5.3 of EU Regulation 598/2014. While some of these measures may be categorized under the first three measures described in Article 5.3 of EU Regulation 598/2014, this should not be construed to imply that these measures have been exhausted, or that the requirement to consider these measures per the Balanced Approach have been fulfilled. EU Regulation 598/2014 also states that an assessment of the noise situation at an airport is required prior to introducing the Balanced Approach. Stakeholder consultation into the noise assessment and the setting of noise objectives is essential, so that the Ministry can conduct the Balanced Approach exercise from an informed position. The ICAO Guidance also sets out that all stakeholders should be consulted at each step. However, this Consultation is the first time that stakeholders are being consulted on measures to be taken at Schiphol airport to reduce noise nuisance. As such, it can be deduced that the measures were selected following the Dutch government's direction that standards for the airport must be consistent with a specific number of aircraft movements annually.

The Consultation documentation outlines three specific options for the reduction of noise nuisance, all of which require a reduction in flight movements, without consulting stakeholders at each step. In providing feedback to the Consultation, Canada would be providing input on a preselected set of measures that the Ministry is proposing without having had the chance to provide input at earlier stages in the process, including during the assessment of the noise situation and the setting of the noise abatement objective. This appears to be inconsistent with EU Regulation 598/2014 and ICAO Guidance, which state that consultations should happen from the assessment through to the implementation phases. This Consultation is being introduced at the implementation phase of potential operating restrictions, and international stakeholders are only being consulted now for the first time. International partners can provide much added value at all stages of the process.

While the Ministry has held four technical discussions, on December 22, 2022, January 24, 2023, March 8, 2023, and April 20, 2023, it did not ensure that all interested

stakeholders had the opportunity to participate, and these sessions did not provide adequate opportunity for stakeholders to understand and provide feedback on the technical analysis the Ministry has presented in the Consultation documentation. Additionally, these discussions were focused on the content of the Consultation documentation and only addressed potential measures outlined in Article 5.3.d of EU Regulation 598/2014, which should only be considered as a last resort.

Obligations under the Canada-EU Air Transport Agreement

It remains unclear how the Ministry is taking into account the Netherlands' obligations under the Canada-EU Air Transport Agreement (ATA). Limiting the number of aircraft movements would be inconsistent with the principle of an open capacity ATA (which Canada and the EU share). Article 18.3 of the Canada-EU ATA specifies:

The costs and benefits of measures to protect the environment must be carefully weighed in developing international aviation policy. When a Party is considering proposed environmental measures, it should evaluate possible adverse effects on the exercise of rights contained in this ATA, and, if such measures are adopted, it should take appropriate steps to mitigate any such adverse effects.

Canada is concerned that once the Ministry has selected measures restricting operations to reduce noise nuisances, the subsequent restriction of flight movements may potentially be implemented in a manner that unduly impacts Canadian air operators. Such an approach would be inconsistent with the fundamental objectives of the ATA, which aims to promote an international aviation system based on market competition – rather than governmental direction – among airlines in the marketplace. Furthermore, such an approach would be inconsistent with Article 13.1 of the ATA which specifies that “each Party shall allow a fair and equal opportunity for the airlines of the other Party to provide the air services under this Agreement”, which not only applies to scheduled passenger services, but also to new entrants and combination/all-cargo services. Such an approach would also appear to be inconsistent with i) the ATA's requirements to be non-discriminatory in slot allocation, access to airport facilities, and the application of environmental measures, as well as ii) Article 10.6 of the EU regulation on common rules for allocation of slots at Community airports (EEC 95/93), which includes provisions for new entrants in the market.

Conclusion

The Government of Canada strongly supports international climate objectives and the need to provide a better world for our citizens, and has climate objectives similar to those of the Government of the Netherlands. However, Canada has concerns that the process that has been undertaken thus far has not followed established EU regulations and international guidance, and believes that implementation of the Ministry's proposal may negatively impact Canadian air carriers. While cognizant of, and empathizing with, the challenges faced by the Ministry, Canada is nevertheless concerned that nearly every aspect of the analysis presented in the Consultation documentation, including the noise objectives and mitigation measures, appears to be based on a predetermined objective of limiting operations at Schiphol to 440,000 annually and/or limiting night flights to

29,000 or 25,000 annually. Accordingly, the Ministry appears to have presented options that essentially predetermine the outcome of the Balanced Approach assessment. Moreover, Canada believes that the three-month Consultation period does not provide interested parties with sufficient time to carry out their own independent analyses with a view to contributing detailed feedback on the options presented in the Consultation document and the associated technical analysis. Therefore, Canada cannot provide input on the options presented at this time.

Canada believes that, in calling for stakeholders' input on the proposed measures, the Ministry presumes implicit agreement with the approach that it has taken. Given the concerns expressed in this submission, Canada respectfully requests that the Ministry pause the Consultation process, follow the steps set out in EU Regulation 598/2014 and ICAO Guidance, and respect the obligations in the Canada-EU ATA.

Canada looks forward to continuing to engage with the Ministry and European Commission colleagues in respect of our mutual commitments to work with each other and with relevant stakeholders and partners, to find solutions, mindful of our strong shared values, partnership, and shared commitments to international obligations, including on climate change.