Subject: Your application for access to documents - EASE 2023/6840

Dear Mr. Teffer,

We refer to your request for European Commission documents registered on 15 November 2023 under the above-mentioned reference number.

You request access to “all communication with the Dutch government, including but not limited to letters and e-mails from and to Commissioner Vălean, regarding the Balanced Approach procedure for airport Schiphol, between 1 August 2023 and 14 November 2023”.

We have identified the following documents as falling within the scope of your application:

1. Letter from DG MOVE to the Dutch authorities sent on 16 August 2023 with questions on the planned operating restrictions at Schiphol Airport, registered with the reference Ares(2023)5048337.

2. E-mail from the Dutch authorities to Commissioner Vălean’s Cabinet sent on 23 August 2023 to set up a call between the Commissioner and Minister Harbers, Minister of Infrastructure and Water Management of the Netherlands, registered with the reference Ares(2023)7895894.

3. E-mail from the Dutch authorities to DG MOVE sent on 1 September 2023, with the subject “Notification operational restrictions Schiphol Airport”, registered with the reference Ares(2023)5960286, and containing as attachments:

   3.1 A copy of the Letter from Minister Harbers to Commissioner Vălean sent on 1 September 2023 concerning the notification of the introduction of operating restrictions at Amsterdam Airport Schiphol in accordance with Regulation (EU) No 598/2014;

   3.2 The notification document of the introduction of operating restrictions at Amsterdam Airport Schiphol in accordance with Regulation (EU) No 598/2014 (in Dutch);
3.3 A courtesy translation into English of the Notification document.

4. Email from the Dutch authorities to the other EU Member States with DG MOVE in copy, sent on 1 September 2023, concerning the notification of the introduction of operating restrictions at Amsterdam Airport Schiphol in accordance with Regulation (EU) No 598/2014, registered with the reference Ares(2023)5962226, and containing as attachments documents 3.2 and 3.3 above.

5. Email from the Dutch authorities to DG MOVE, sent on 1 September 2023, registered with the reference Ares(2023)5961466, and containing the attachments to the Notification of the introduction of operating restrictions at Amsterdam Airport Schiphol, namely:

5.1. Annex I – Consultatiedocument van belanghebbenden Balanced Approach procedure Schiphol;
5.2. Annex II – Addendum Balanced Approach Study Schiphol Airport To70;
5.3. Annex III a – Addendum Cost-effectiveness of noise mitigating measures for Schiphol Airport, Decisio and Beelining;
5.4. Annex III b - Cost effective Measures Balanced Approach Sensitivity Analysis, Decisio and Beelining;
5.5. Annex III c - Cost-effectiveness of noise mitigating measures for Schiphol Airport, Decisio and Beelining;
5.6. Annex IV - Consultatierapport Balanced Approach Schiphol, AT Osborne;
5.7. Annex V - Uitvoeringstoets combinaties mogelijke maatregelen Balanced Approach Schiphol, LVNL;
5.8. Annex VI - Uitvoeringstoets alternatieve maatregelen, LVNL;
5.9. Annex VII - Uitvoeringstoets ILT voorstellen uit consultatiedocument;
5.10. Annex VIII – Bestemmingenanalyse voor adequate bereikbaarheid;
5.11. Annex IX – Q&As technical cooperation sessions;

6. Email from the Dutch authorities to Commissioner Vălean sent on 1 September 2023, concerning the notification to the Commission of the introduction of operating restrictions at Schiphol Airport in accordance with Regulation (EU) No 598/2014, registered with the reference Ares(2023)6084907, containing as attachments documents 3.1, 3.2 and 3.3 above, and:

6.1 Cover Letter from the Dutch authorities.

7. Email from the Dutch authorities to DG MOVE sent on 11 September 2023 informing about the adoption of an experimental decree, registered with the reference Ares(2023)6173983, and containing as attachments:

7.1 Temporary regulation of the Minister of Infrastructure and Water Management of 11 September 2023, No. IENW/BSK-2023/13636, establishing replacement limit values for noise exposure at enforcement points and rules for strictly preferential treatment of runway use at Schiphol Airport;
7.2. A courtesy translation of the experimental decree in English.
8. E-mail from the Dutch authorities to DG MOVE sent on 22 September 2023, registered with the reference Ares(2023)6436111, and containing as attachments:

- 8.1 Cover letter from the Dutch authorities
- 8.2. Letter from the Dutch authorities to DG MOVE of 20 September 2023 concerning planned operating restrictions at Schiphol Airport;
- 8.3. A court ruling concerning Schiphol Airport in Dutch;
- 8.4. A courtesy translation of the court ruling in English.

9. E-mail from the Dutch authorities to DG MOVE sent on 2 October 2023, registered with the reference Ares(2023)6654691, and containing as attachment a courtesy translation of document 8.2.

10. Letter from DG MOVE to the Dutch authorities sent on 27 September 2023, containing questions regarding the Netherlands’ notification of planned operating restrictions, registered with the reference Ares(2023)6539246.

11. Meeting report of a technical meeting held on 3 October 2023 between DG MOVE and the Dutch authorities in the context of their notification on the Schiphol operating restrictions notified under Regulation (EU) No 598/2014, registered with the reference Ares(2023)6746793.

12. Letter from DG MOVE to the Dutch Authorities sent on 12 October 2023 with complementary questions to the ones sent on 27 September 2023, registered with the reference Ares(2023)6934931.

13. E-mail from the Dutch authorities to DG MOVE sent on 20 October 2023, replying to DG MOVE’s questions about the notification, registered with the reference Ares(2023)7190494, containing as attachments:

- 13.1. Cover letter from the Dutch authorities to DG MOVE;
- 13.2. Beantwoording List of Questions EC (NL);
- 13.4. Bijlage II – Geluidbelastingkaarten luchthavens Schiphol 2021;
- 13.6. Bijlage IV – Bestemmminnalyse voor adequate bereikbaarheid;
- 13.8. Bijlage VI – Vijd voortgangsbrief programma omgeving luchthaven Schiphol;


Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents (1), we have come to the following conclusions.

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Concerning **documents 3.2 and 5.1. to 5.12** we note that they are already publicly available on the webpage presenting the notification document on the application of the balanced approach at Schiphol Airport carried out by the Dutch authorities (²). As a result, **document 3.3** may be disclosed as well. Please find enclosed a copy of this document.

Concerning **document 7.1**, we note that the temporary regulation is published in the Official Journal of the Kingdom of the Netherlands (³). As a result, **document 7.2** may be disclosed as well. Please find enclosed a copy of this document.

Concerning **document 8.3**, we note that it is already publicly available on the Court of Appeal’s webpage (⁴). As a result, **document 8.4** may be disclosed as well. Please find enclosed a copy of this document.

Please note that the documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originators, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Concerning all remaining documents listed above, I regret to inform you that your application cannot be granted, as disclosure is prevented by the exception to the right of access laid down in Article 4(2), third indent of Regulation (EC) No 1049/2001.

Article 4(2), third indent of this Regulation establishes that “the institutions shall refuse access to a document where disclosure would undermine the protection of (...) the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure”.

The exception foreseen in Article 4(2), third indent of the abovementioned Regulation applies in particular to investigations carried out by the services of the Commission to review a process for the introduction of operating restrictions, under Article 8(3) of Regulation (EC) No 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach (⁵).

The documents which you seek to obtain are covered by this exception, as they form part of the administrative file of an ongoing review, engaged by the Commission services under Article 8(3) of Regulation (EU) No 598/2014, following a formal notification submitted by the Dutch authorities, under Article 8(1) of Regulation (EU) No 598/2014, of their intention to introduce noise-related operating restrictions at Schiphol Airport.

Indeed, Article 8(1) of Regulation (EU) No 598/2014 sets out the following: “Before introducing an operating restriction, the competent authorities shall give to the Member States, the Commission and the relevant interested parties six months’ notice, ending at least two

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² Documents 3.2, 4.1, 5.1. 5.12 and 6.3: Notificatiedocument Balanced Approach procedure Schiphol | Rapport | Luchtvaart in de toekomst
³ Government Gazette 2023, 24537 | Overheid.nl > Official announcements (officielebekendmakingen.nl)
⁴ ECLI:NL:GHAMS:2023:1589, Gerechtshof Amsterdam, 200.326.686/01 (rechtspraak.nl)
months prior to the determination of the slot coordination parameters as defined in point (m) of Article 2 of Council Regulation (EEC) No 95/93 (...) for the airport concerned for the relevant scheduling period."

Under the procedure of Article 8(3) of Regulation (EU) No 598/2014 the Commission may “At the request of a Member State or on its own initiative” and “within a period of three months after the day on which it receives notice under paragraph 1, review the process for the introduction of an operating restriction. Where the Commission finds that the introduction of a noise-related operating restriction does not follow the process set out in this Regulation, it may notify the relevant competent authority accordingly. The relevant competent authority shall examine the Commission notification and inform the Commission of its intentions before introducing the operating restriction”.

Such review by the Commission is currently on-going, in order to ensure that the process for the introduction of operating restrictions and the measures envisaged by the Member State concerned are compatible with the requirements laid down in Regulation (EU) No 598/2014. This review has not yet been completed, and a decision on the abovementioned process and on the compatibility of the planned operating restrictions at Schiphol Airport with Regulation (EU) No 598/2014 has not yet been taken by the Commission. At this stage of the procedure, disclosure of the documents requested would affect the purpose of the review, as well as the climate of mutual trust between the authorities of the Member State in question and the Commission, also in relation to the purposes of that specific procedure.

Therefore, the disclosure of the requested documents at this stage of the procedure would undermine the protection of the objectives of the inspection and investigation activities carried out in the framework of Article 8(3) of Regulation (EU) No 598/2014, which in turn justifies the application of the exception laid down in Article 4(2), third indent of Regulation (EC) No 1049/2001 to these documents.

Therefore, for all of the reasons mentioned above, the exception laid down in Article 4(2), third indent of Regulation (EC) No 1049/2001 applies to these documents.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have examined whether there could be an overriding public interest in disclosure, but have not been able to identify any such interest.

We have considered whether partial access could be granted to the documents requested, pursuant to Article 4(6) of Regulation (EC) 1049/2001. However, given the nature and structure of the documents, no meaningful partial access would be possible without undermining the protection of the public interests described above. We have therefore concluded that it is not possible to grant partial access to the requested documents.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it by mail, to:

European Commission
Secretariat-General
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Magda KOPCZYŃSKA
Director-General