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By e-mail and registered mail

Date: 23 July 2020

Subject: **KLM financial support package**

Dear 10.2.e

Stichting Piloten Aandelen AFKLM (SPAAK) is a trust set up for and by KLM pilots to promote their collective interests in the long term and to promote the continuity of KLM. As of 30 June 2020, SPAAK owned 2.51% of the Air France-KLM shares and 1.83% of the voting rights.

This letter is sent to you pursuant to general principles of French law regarding rights of minority shareholders and applicable provisions of the French *Code de commerce*. We specifically ask you to share this letter with all the members of the Board of Directors of Air France-KLM in advance of the Board meeting scheduled to take place at the end of July 2020.

On 25 June 2020, the Board of Directors of Air France-KLM approved a financial support package backed by the Dutch State for KLM for an amount of EUR 3.4 billion (the "**Support Package**"). The Support Package includes two loans: (i) a revolving credit facility in an amount of EUR 2.4 billion granted by a consortium of 11 banks and (ii) a direct loan in an amount of EUR 1 billion granted by the Dutch State.

Drawings subsequent to the first drawings under these loans are subject to certain conditions to be fulfilled by KLM. One of the conditions to the loans is a contribution to be made by employees in the form of a specifically prescribed reduction of their salaries up to 20% (the "**Employee Contribution Condition**").

SPAAK acknowledges that the Support Package is necessary to KLM in order to weather the present COVID-19 crisis.

However, the Employee Contribution Condition raises the following important concerns:

- (i) The Employee Contribution Condition directly violates the provisions of (x) the International Labor Organization (ILO) Conventions 87 and 98 which guarantee trade union freedom and collective bargaining freedom and (y) Article 10 of the Dutch Wages and Salaries Act (WLV) which grants very limited powers to the Minister of Social Affairs to take a generic wage measure in the event of a crisis. Please see the legal opinion of Prof. dr. mr. P.F. van der Heijden (professor of international labor law at the Leiden University and former independent chairman of the ILO Committee on Freedom of Association), enclosed as an Annex 1 hereto (the "**Legal Opinion**"). This Legal Opinion is only a sample of the opinions expressed by labor law experts on this subject.
- (ii) All unions associated with KLM have indicated that they are unable to meet the conditions. The precise and dictated scale for staff cost reduction will lead to a mess within KLM. No union envisions how the scale can be met in combination with meaningful agreements about reorganization. An implementation is now being dictated in advance, of which many doubt whether it can ever be agreed upon and by which no union feels bound. Please refer for further details to the union's common statement enclosed as Annex 2 (the "**Union Statement**").
- (iii) The Employee Contribution Condition conflicts with the values on which negotiations with employees and their representatives have been conducted within Air France-KLM in order to create a win-win situation. As you know, these values are: "trust, respect, transparency & confidentiality".

Should the Employee Contribution Condition not be fulfilled, drawings under the direct loan will no longer be possible. Without the support of the direct loan, KLM's financial situation will worsen which could ultimately lead to its bankruptcy and will jeopardize the continued existence of the Air France-KLM group as a whole.

We therefore question KLM management's decision (pursuant to the authorisation given by the Air France-KLM's Board of Directors) to approve the Support Package under these conditions which, as indicated above, jeopardizes the continuity of the business of the Air France-KLM group.

In this context, we ask you the following two questions:

- Could you please (i) justify that the Employee Contribution Condition complies with applicable provisions of labor law and, in particular, those referred to in paragraph (i) above and (ii) explain how the Employee Contribution Condition can be fulfilled in combination with meaningful agreements about reorganization?
- Could you please indicate (i) how Air France-KLM management contemplates fulfilling the Employee Contribution Condition and (ii) if fulfilment of such condition is not possible, how Air France-KLM management intends to proceed in order to obtain the financial support required to avoid KLM's bankruptcy?

We kindly ask you to refer the above to the Board of Directors of Air France-KLM to (i) discuss the above as soon as possible and at the latest during the Board meeting scheduled to take place at the end of July 2020 and (ii) initiate renegotiation of the conditions of the Support Package and in particular the Employee Contribution Condition in order to replace these with a more general, legally correct and for unions realizable contribution target.

We thank you in advance for providing us with a response as soon as possible and in any event by the requisite deadline set by the *Code de commerce* at the latest. We reserve all our rights in case we do not receive any answer or if the answers provided are not satisfactory.

We are available to discuss the above and to play our role in the renegotiation of the conditions in order for the Support Package to be viable.

Sincerely yours,

10.2.e

Annexes:

- (1) Legal Opinion
- (2) Union Statement



## State aid and pay cuts

By Paul F. van der Heijden

We live in hard times. Companies and employees are in serious financial difficulties. Sometimes the government assists, such as with KLM. The state aid is subject to conditions in all kinds of areas: sustainability, bonuses, wages, to name a few. I would like to draw brief attention to those wages.

Take KLM. The government has offered a large package of help, largely in the form of (subordinated) loans. As a condition, KLM is asked, among other things, to reduce the wages of its staff, in a scale up to 20%. The pilots the most, the least earning the least, strongest shoulders etc.

Is it possible, in current collective labor agreements, to lower wages on behalf of the (rescuing) government? There is indeed a problem with this current practice.

In our country and most other countries, wages are set in free negotiations between unions and employers, the government has to stay out of that. This is also laid down in EU and international law. ILO Conventions 87 and 98 guarantee trade union freedom and collective bargaining freedom. The Netherlands is bound by this, the treaties are the "cornerstone" of the ILO, these are fundamental labor rights.

In the previous crisis (2008-2014), several countries took drastic wage measures, such as Spain, Greece and Portugal. Wages in current collective contracts were lowered by law. Understandably, unions have stood up against this with the International Labor Organization (ILO). The results of this can be read in statements of the ILO Committee on Freedom of Association (CFA). The Greek case (CFA 2012 No. 2820), the Spanish case (CFA 2013 No. 2918) and the Portuguese case (CFA 2015, No. 3072) have repeatedly emphasized the need to respect social dialogue even in difficult crisis situations. The CFA regrets the absence of a genuine consultation process (Spain), and recalls that measures that might be taken to confront exceptional circumstances ought to be temporary (Greece).

Now the above concerned generic wage measures that applied to all collective agreements.

In the Netherlands, Article 10 of the Wages and Salaries Act (WLV), under the influence of ILO regulations, grants very limited power to the Minister of Social Affairs and Employment to take a generic wage measure in the event of a crisis. That has not happened so far.

The KLM case involves interventions in a number of specific collective agreements. Ground crew, cabin crew and airline pilots have their own union and their own collective labor agreement. Article 10 of the WLV has not been written for interventions there. We have no national legislation for it. Aid to KLM must be given a basis in special emergency legislation, of course also to respect the budget law of the House of Representatives.

This is the difficulty. Although the Minister of Finance demands KLM that collective agreement wages are lowered, he has not consulted the unions involved. Those unions are party to the current collective contract. A clear omission, therefore, in the light of the ILO conventions on the right to collective bargaining. There is also no clarity about the temporality of the measures.

Everyone understands that in times of severe crisis and survival, action must be taken quickly and sometimes off the beaten track. Wage sacrifices can also be part of an aid package. Unions understand that, and there is no doubt that it can be talked about. However, crisis management by the government in the area of contractually agreed wages must take place with due observance of the basic rule that you consult the contract parties beforehand, and not only the employer.

*Author: Prof. dr. mr. P.F. van der Heijden is a professor of international labor law at Leiden University and was independent chairman of the ILO Committee on Freedom of Association (CFA) from 2002 to 2017.*

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**1 July 2020**

## **KLM unions are willing to contribute, but this way they cannot**

The unions are jointly calling on the government to leave room to the social partners to take measures to help KLM. Drop the dictated pay cut scale and assess the end result.

All employees want to help KLM to get through the corona crisis, in a collaborative and fair way. The government and bank loans provide help, which is highly appreciated by all employees. That is beyond dispute.

However, the reactions of the unions and Works Council show that the precise and dictated scale for staff cost reduction will lead to a mess within KLM. No union envisions how the scale can be met in combination with meaningful agreements about reorganization.

The scale included in the conditions is a simplification of a more complex reality. Various unions see various ways in which their domain can make a meaningful contribution to KLM's recovery. The unions are at the beginning of a reorganization process. An implementation is now being dictated in advance, of which many doubt whether it can ever be agreed upon and by which no union feels bound.

Consider before you begin, do not impose measures, but assess the outcome afterwards. Precisely to help KLM.

