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DAILY PAYMENT

Today, _____ two thousand and twenty-two,

at the request of:

STICHTING TERVORDERING OF FOSSIELV FREE MOVEMENT, a foundation with its registered office in Amsterdam, and its principal place of business at (1094 RS) Minahassastraat 1, Ruimte 110, Amsterdam;

Plaintiff,

in this matter electing domicile in (1075 BR) Amsterdam at Sophialaan 8, at the office of Brandeis B.V., of whom Mrs. F.M. Peters, A.J. van Wees and M.G.J. Gommer are appointed as lawyers by the plaintiff and will act as such with the right of substitution;

DAUGHTERED:

The public limited company **Koninklijke Luchtvaart Maatschappij N.V.**, having its registered office in Amstelveen, and principal place of business at Amsterdamseweg 55 (1182 GP), Amstelveen, which in this case has elected domicile in (1077 WM) Amsterdam, at Beethovenplein 10, at the office of Stibbe Advocaten, of whom Mrs. B. Katan and V. van het Lam are appointed as procedural lawyers in this case, therefore I hereby give notice of my intention to file a writ of summons without supporting documents to that elected domicile, by each separately sending a copy thereof to

OM:

On Wednesday 20 July two thousand and twenty-two at 10.00 a.m., not in person but represented by a lawyer, to appear at the court session of the District Court of Amsterdam, Civil Law Team, Commercial Division, to be held in one of the rooms of the court building at Parnassusweg 280 in (1076 AV) Amsterdam.

WITH NOTICE THAT:

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- a) If a defendant fails to appoint a lawyer or to pay the court fee to be mentioned hereinafter in time, the court shall give default judgment against that defendant and grant the claim described below, unless it appears to him to be unlawful or unfounded or if the statutory time limits and formalities have not been complied with;
- b) in the event of each of the defendants appearing in the proceedings, a court fee shall be payable within four weeks from the date of appearance;
- c) The amount of the court fees is stated in the most recent annex to the Civil Cases Court Fees Act, which can be found on the website: www.kbvg.nl/griffierechtentabel;
- d) a court fee for impecunious persons, as determined by or pursuant to law, is levied on a person who is impecunious, if he has submitted a copy of the application at the time when the court fee is levied:
 - 1) a copy of the decision to grant legal aid, as referred to in section 29 of the Legal Aid Act, or if this is not possible due to circumstances that cannot reasonably be attributed to him, a copy of the application as referred to in section 24(2) of the Legal Aid Act, or
 - 2) a statement from the Board of the Legal Aid Board, as referred to in section 7(3)(e) of the Legal Aid Act, showing that his income does not exceed the incomes referred to in the Order in Council under section 35(2) of that Act;

NOW and THEREFORE, to hear and determine against the defendants on behalf of the plaintiff as follows:

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"While we are meeting here today, the climate crisis rages on with intense heatwaves. Yet in your marketing you tell us that if we fly with KLM we help you create a more sustainable future. But all you have to offer are false solutions, that won't make flying sustainable.

**So here is my question to you, are you going to stop misleading us in your advertising?
Are you going to tell the truth?"**

Marianna van der Stel, Fossil Free NL

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1 TERMS AND A F ABBREVIATIONS

1.1 Concepts

Concept	Definition
ABP Fossil Free	<p>ABP Fossielvrij is a campaign group within the Fossielvrij movement aimed at making the investment portfolio of ABP pension fund fossil-free.</p> <p>See also: https://gofossilfree.org/nl/abp/</p>
Air France-KLM S.A.	<p>French-Dutch holding company resulting from a merger between the airlines Air France and KLM.</p>
Avoid & Shift	<p>Avoid and shift is an approach to influencing the behaviour of consumers in order to reduce their CO₂ emissions.</p>
Carbon Credits	<p>Carbon Credits are tradable units of account that represent a certain amount of greenhouse gas emission avoidance or storage. The amount of emission avoidance or removal amounts to 1 tonne of CO₂ per <i>carbon credit</i>.</p>
ClientEarth	<p>ClientEarth is a global environmental law organisation that focuses on using the law to change existing systems and thereby protect the earth for - and with - its inhabitants.</p> <p>See also: https://www.clientearth.org/</p>
CO₂OL Tropical Mix	<p>A reforestation project in Panama for which carbon credits are issued.</p>
CO₂ZERO	<p>KLM's CO₂ compensation programme.</p>
Decarbonisation/decarbonisation	<p><i>Decarbonisation</i> is the process by which countries, companies, individuals or other entities work to make their existence free of CO₂ (mainly from fossil fuels). In the case of companies, it is not only about making their end product</p>

	CO ₂ -free, but also about making the entire production chain around it CO ₂ -free.
E-fuels	E-fuels are synthetic fuels produced by using electricity and CO ₂ (and therefore still burning fossil fuels).
Elbers	Elbers stands for Mr Pieter Elbers, the former CEO of KLM.
Fit for 55	Fit for 55 is a package of measures from the European Commission to review the EU's climate, energy and transport legislation and to achieve the goal of a climate neutral EU by 2050.
Flying V	The Flying V is a V-shaped model aircraft developed by TU Delft in cooperation with KLM.
Fossil-free	The Foundation for the Promotion of the Fossil Free Movement. See also: https://gofossilfree.org/nl/
Globiom study	A study commissioned by the European Commission into the indirect land use resulting from the additional demand for biofuels in Europe.
Greenwashing	Misleading statements about the climate policy and climate impact of a company or organisation with the aim of creating a sustainable public image.
The European Court of Auditors	The European Court of Auditors, the independent external auditor of the European Union. See also: https://www.eca.europa.eu/nl/Pages/values-mission-and-vision.aspx

The European ETS system	An EU emissions trading scheme for the greenhouse gas CO ₂ .
InfluenceMap	<p>InfluenceMap is an independent NGO that meticulously researches lobbying activities and maps how companies and financial institutions influence the climate crisis.</p> <p>See also: https://influencemap.org/</p>
Paris climate agreement	<p>Also called the Climate Agreement: The Paris Agreement on Climate Change is the first, universal, legally binding global climate treaty. It was signed on 22 April 2016 and ratified by the European Union on 5 October 2016.</p>
Climate law	<p>Act of 2 July 2019, providing a framework for the development of policies aimed at irreversibly and gradually reducing the Netherlands' emissions of greenhouse gases in order to limit global warming and climate change (Climate Act)</p>
Koninklijke Luchtvaart Maatschappij N.V.	<p>Dutch airline, based at Schiphol Airport, part of Air France-KLM S.A.</p>
Friends of the Earth	<p>The Environmental Defense Association.</p> <p>See also: https://milieudefensie.nl/</p>
Neste	<p>Neste is a producer of biofuels.</p> <p>See also: https://www.neste.nl/</p>
Advertising Fossil Free	<p>Advertising Fossil Free is a campaign group within the Fossil Free Movement aiming for a ban on fossil advertising similar to that of tobacco-related advertisements.</p>

	See also: https://verbiedfossielereclame.nl/
Science Based Targets Initiative	<p>The Science Based Targets Initiative is a partnership between CDP, United Nations Global Compact, World Resources Institute and the World Wide Fund for Nature (WWF). The SBTi sets reduction targets for certain sectors based on the state of the art science.</p> <p>See also: https://sciencebasedtargets.org/</p>
Social tipping point	Social tipping points are rapid social and economic changes that (in the case of climate change) rapidly and significantly reduce human greenhouse gas emissions.
Stay Grounded	<p>Stay grounded is a network of various organisations and aims to reduce air traffic and its negative impact on the climate.</p> <p>See also: https://stay-grounded.org/</p>
Transport & Environment (T&E)	<p>European Federation for Transport and Environment AISBL</p> <p>T&E (Brussels) is an NGO that focuses on achieving an affordable transport system with zero emissions and minimal impact on health, climate and the environment. T&E bases this on sound scientific insights.</p> <p>See also: https://www.transportenvironment.org/</p>
WLO	WLO stands for <i>prosperity and living environment</i> .

1.2 Abbreviations

Abbreviation	Definition
A4E	Airlines for Europe. See also: https://a4e.eu/
ACM	The Consumer and Market Authority. See also: https://www.acm.nl/nl
ACM Guidance	The ACM Sustainability Claims Guidelines.
ANBI	A public benefit institution.
CAGR	The Compound Annual Growth Rate.
CMA	The UK Competition and Markets Authority. See also: https://www.gov.uk/government/organisations/competition-and-markets-authority
CO₂	The greenhouse gas carbon dioxide.
CORSIA	The Carbon Offsetting and Reduction Scheme for International Aviation.
IATA	The International Air Transport Association. See also: https://www.iata.org/
IPCC	The Intergovernmental Panel on Climate Change.

	See also: https://www.ipcc.ch/
KLM	Koninklijke Luchtvaart Maatschappij N.V.
MRC	The Environmental Advertising Code. See also: https://www.reclamecode.nl/nrc/milieu-reclame-code-mrc/
CSR	Corporate social responsibility.
MWh	Megawatt hour.
RCC	The Advertising Code Committee. See also: https://www.reclamecode.nl/reclame-code-commissie/
Directive OHP	The Unfair Commercial Practices Directive.
SAF	Sustainable Aviation Fuels, i.e. 'sustainable aviation fuel'.
SEI	The Stockholm Environment Institute. See also: https://www.sei.org/
Shell	Shell plc.
STBi	The Science Based Targets Initiative.
T&E	Transport & Environment.
UCO	Used Cooking Oil, i.e. used deep-frying fat.

UNEP	The United Nations Environment Programme. See also: https://www.unep.org/
UNFCCC	The United Nations Framework Convention on Climate Change. See also: https://unfccc.int/

1.3 Sources and footnotes

1. In this writ of summons, Fossil Free will frequently invoke and refer to public sources for the substantiation of its claims, which can be consulted via the Internet and which are not subject to change. These sources include scientific sources, government information, news sites or the websites of KLM or its parent company. Fossil Free assumes that KLM will not dispute the existence of these sources or their content (at most, what consequences this information should have).
2. In order to keep the amount of material for your Court manageable, Fossil Free has chosen not to submit all these sources on paper as production. This would then involve many thousands of pages. Where Fossil Free believes that the source may be changeable and/or is so important, Fossil Free will submit it as a production, either in its entirety or the relevant chapter of a report if it is very large. For the rest, Fossil Free refers to the relevant web pages in the footnotes (with hyperlinks). Should your Court or KLM have a need for a paper version of the source, Fossil Free will of course send this on first request.

2 INTRODUCTION

2.1 Core of the matter

3. This case looks at the urgent duty of companies like KLM, which sell the most polluting products available today, to be honest about the extent to which they and their products contribute to harmful climate change.
4. The aviation industry is a major consumer of fossil fuels, namely petroleum in the form of kerosene. KLM, as the largest airline company in the Netherlands, has a very significant impact on the climate, particularly through the CO₂ emissions of its aircraft when kerosene is burned, the greenhouse gas emissions of the entire kerosene supply chain, the other greenhouse gases emitted by aircraft, and the warming effect otherwise caused by its flights.

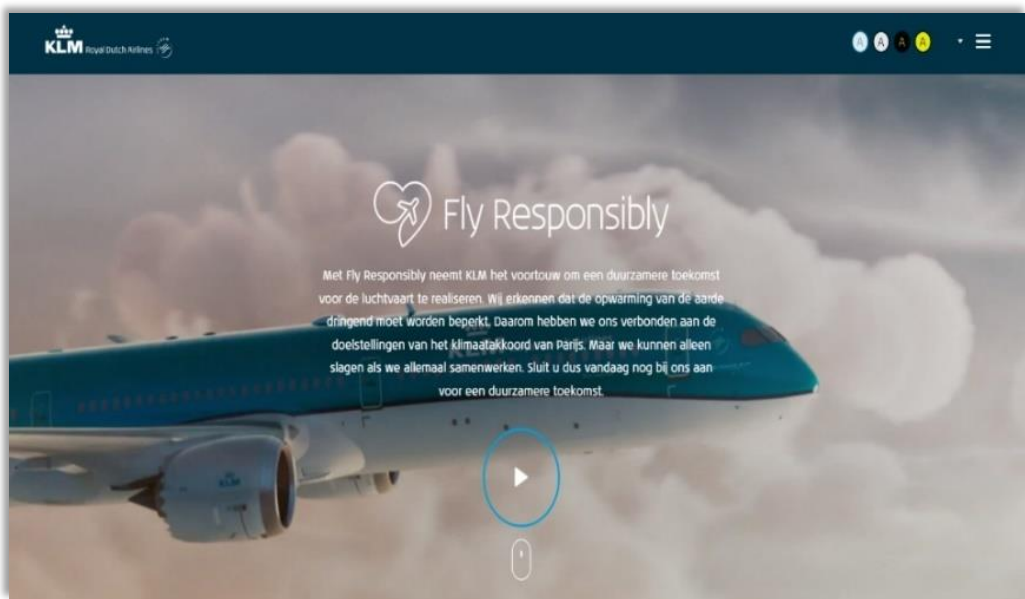
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5. KLM makes a misleading representation of this in its advertisements and other communications to the public. In its communications, which reach thousands if not millions of people, KLM tells the public that it can "create a more sustainable future together with [us]" and that it is "moving together towards more sustainable travel". When a customer buys a ticket online, he/she has the opportunity to "offset" and "reduce" his/her impact, with a product touted as "CO₂ZERO". This marketing is laced with images of green leaves, younger generations and futuristic aircraft.
6. These claims sound green, but are vague, fundamentally flawed and in breach of the Unfair Commercial Practices Directive¹ ("**Directive OHP**"). If you take the trouble to look deep into KLM's website for substantiation, you will see that KLM tells people that it and the wider aviation industry are on track to meet the internationally agreed temperature target in the Paris Climate Agreement. KLM does not mention, however, and this is crucial, that both KLM and the aviation industry are counting on further "*business as usual*" growth in air traffic, something that is completely at odds with the Paris objective. Such growth is the opposite of KLM's "Fly Responsibly" claim, which it uses as a brand and logo - a claim that is both an invitation to the public and a praise of KLM's own responsibility. The claims suggest that KLM is fully committed to addressing the climate crisis and has the solutions. This advertisement creates a false confidence among passengers that flying can be done sustainably, also among people who are actually concerned about flying and the climate. Fossil Free wants this "*greenwashing*" to stop.
7. According to Fossil Free, KLM's advertising in which it makes sustainability claims is unfounded and extremely harmful. In order to meet the Paris target, it is of great importance that polluters communicate honestly about the extent to which they contribute to or hinder the achievement of this target. Only in this way can consumers decide with enough knowledge whether or not to buy certain services and products, such as airline tickets, in the light of climate considerations. After all, *greenwashing* actually promotes flying and the pollution it causes. The transformation that achieving climate targets entails requires that companies, especially those selling products with the greatest impact, such as aviation, do not mislead the public. Misleading advertising by companies such as KLM is a major obstacle to the decarbonisation of the economy and to the "*social tipping points*" required for this. Moreover, companies that actually make an effort to green their products and services in line with the climate objectives cannot benefit from this. Ultimately, *greenwashing* leads to a less green economy and stands in the way of the urgently needed energy transition: the opposite of being "more sustainable", in other words.

¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149/22).

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8. At the centre of this case are the following statements made by KLM in the context of its recent "Fly Responsibly" campaign, the "CO2ZERO" product and the "KLM Real Deal Dagen" marketing.
- a. In December 2021, KLM launched its renewed "Fly Responsibly" advertising campaign, in which KLM makes several sustainability claims. In this campaign, KLM claims that its "path" to the "net-zero ambition" for 2050 (see no. 16) consists of investing in fleet renewal, operational improvements, CO2 compensation and sustainable jet fuels. All these measures would contribute to a "more sustainable future". However, none of them has a sufficiently material climate impact within the limited timeframe that is relevant for mitigating dangerous climate change.



Example of the "Fly responsibly" campaign

- b. Since January 2022, KLM has expanded its so-called CO2ZERO marketing. This programme offers KLM passengers the opportunity to participate in a CO2 compensation scheme by paying a small amount for reforestation or by contributing to the purchase of something the aviation industry refers to as "sustainable aviation fuels" or "Sustainable Aviation Fuels" (or "**SAF**"):

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Herbebossing	Herbebossing & Sustainable Aviation Fuel	Sustainable Aviation Fuel & herbebossing	Sustainable Aviation Fuel
<p>✓ Herstel bossen om 220 kg van uw CO₂-uitstoot te absorberen</p>	<p>✓ Herstel bossen om 215 kg van uw CO₂-uitstoot te absorberen</p> <p>✓ Draag bij aan duurzame vliegtuigbrandstof en verminder uw CO₂-uitstoot met 5 kg. Flying Blue-leden verdienen XP.</p>	<p>✓ Herstel bossen om 208 kg van uw CO₂-uitstoot te absorberen</p> <p>✓ Draag bij aan duurzame vliegtuigbrandstof en verminder uw CO₂-uitstoot met 12 kg. Flying Blue-leden verdienen XP.</p>	<p>✓ Draag bij aan duurzame vliegtuigbrandstof en verminder uw CO₂-uitstoot met 220 kg. Flying Blue-leden verdienen XP.</p>

Example of the claims made if you want to pay for SAF or reforestation

But CO₂ compensation does not undo climate damage and if a passenger pays something extra because of the addition of a tiny amount of SAF, this does not lead to the addition of more SAF than would have been added anyway, it does not reduce the CO₂ emissions of this passenger's flight in any way and the Paris climate target does not come any closer.

- c. Regularly, and in 2022 for example on 17 May, KLM launches a discount campaign encouraging people to fly at a discount to a range of destinations for a few weeks. Since this year, this discount action is called "KLM Real Deal Days".² As part of this promotion, people can, for instance, fly round trip to New York for only €349. KLM offered this year that if one books such a cheap flight and chooses to make a contribution to KLM's costs for adding SAF, KLM will "double" that amount. On balance, however, this only encourages people to fly more and puts much more CO₂ into the atmosphere than if they were to pass up this discount offer.

² These used to be called "KLM World Deal Weeks".

Real Deal Dagen
Deals voor de momenten die er écht toe doen.

Caribisch gebied > Noord-Amerika > Midden-Oosten > Azië > Latijns-Amerika >

Scroll naar beneden

KLM Real Deal Dagen

De Real Deal Dagen draaien om reizen voor de momenten die er écht toe doen. Want als we bewuster reizen, zijn alle momenten nog mooier.

KLM investeert volop in duurzame brandstof en wij nodigen je uit om ons hierbij te helpen. Kies je tijdens de Real Deal Dagen voor deze optie dan verdubbelt KLM dit bedrag met de [Duurzame Brandstof Bonus](#).

Duurzame Brandstof Bonus

KLM neemt het voortouw voor een duurzamere toekomst voor de luchtvaart. Daarom investeren we volop in duurzame brandstof (ook wel Sustainable Aviation Fuel of kortweg SAF genoemd). En jij kunt helpen! Kies je tijdens de Real Deal Dagen voor een bijdrage aan ons duurzame brandstof programma dan verdubbelt KLM dit bedrag met de Duurzame Brandstof Bonus.

PS: Heb je al eerder een boeking gemaakt of boek je via een reisagent? Dan kun je inloggen via [MijnReis](#) en daar je bijdrage selecteren.

Example of images from the Real Deal Days offer

9. In the opinion of Fossil Free, the sustainability claims made by KLM in the context of these campaigns are misleading. Therefore, Fossil Free claimed in this case that KLM should rectify these statements and cease repeating them.
10. It is important to keep in mind that KLM is part of an industry that easily formulates big ambitions, but has a very poor track record in delivering on those green promises.³ To give an example, an important part of KLM's proposed measures to reduce emissions is the use of "sustainable aviation fuels" (called "a promising solution" by KLM). KLM is one of the many airlines that have the ambition to use 10% of such fuels worldwide by 2030. As the graph below shows, such targets are not new, and they have all been completely missed in the past, including by KLM:⁴ The use of such fuels has never exceeded 0.05%, even in Europe.

³ <https://static1.squarespace.com/static/5d30896202a18c0001b49180/t/6273db16dcb32d309eaf126e/1651759897885/Missed-Targets-Report.pdf>.

⁴ More on this in marg. 224 below.

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11. Fossil Free is not demanding that flying be banned or that KLM close its doors. However, Fossil Free believes that the public has a right to know the truth about KLM and its product, and in particular the fact that, with a view to climate change, there is no such thing as "more sustainable" or "responsible" flying and that the only sustainable thing KLM can do is to fly fewer planes. Fossil Free believes that to bring aviation in line with the Paris objective, people need to be informed and social norms and awareness about flying need to change. Fossil Free therefore wants the public not to be lulled to sleep by KLM's green credentials, and then to actually believe that booking a flight with KLM actually contributes to combating the damage of climate change. The climate crisis is urgent, and the extent to which companies contribute to the achievement of climate goals or, on the contrary, stand in the way of this should not be concealed by companies like KLM that cause serious pollution.

2.2 Importance of the case

12. The temperature in the world has risen by 1.1 °C since 1850.⁵ In the Netherlands, it is going much faster than average: since 1901 (the beginning of measurements in the Netherlands) the average temperature has increased by 2.3 °C.⁶ The greatest contribution to global warming is

⁵ IPCC on Twitter, 16 June 2022:

← Tweet



The global surface temp. is 1.1 °C higher compared to the late 19th century
🔴 Current CO2 levels are the highest in 2 million years

Find out more in our [#ClimateReport](#) on the physical science basis of [#climatechange](#).

⁶ See p. 11, https://cdn.knmi.nl/knmi/asc/klimaatsignaal21/KNMI_Klimaatsignaal21.pdf.

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made by the greenhouse gas CO₂ that is left behind in the atmosphere, among other things by burning fossil fuels. In addition, there are other important greenhouse gases (non-CO₂ emissions) that are released during combustion and that contribute to the greenhouse effect, such as methane, nitrogen and, in the case of aviation, the condensation trails from aircraft ('contrails').

13. Aviation is also the fastest growing sector in terms of emissions.⁷ The countries at the 2021 UN Climate Change Conference in Glasgow emphasised the role of aviation in climate change (**Production 1**):⁸

"Recognising international aviation's material contribution to climate change through its CO₂ emissions, along with its additional, but less well-defined, contribution associated with non-CO₂ emissions. "

14. The Intergovernmental Panel on Climate Change ('IPCC') recently concluded in April 2022 that further warming will lead to forest fires, extreme heat, tornadoes, storms and floods. Warming costs lives, damages health, destroys homes, causes great uncertainty and increases inequality in the world. The IPCC Special Report on 1.5 °C 2022, Summary for Policymakers, B.5.1 says:⁹

"Climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth are projected to increase with global warming of 1.5 °C and increase further with 2 °C. "

And,

"Limiting global warming to 1.5 °C, compared with 2 °C, could reduce the number of people both exposed to climate-related risks and susceptible to poverty by up to several hundred million by 2050 (medium confidence)."

15. In order to agree on a single target for the maximum increase in global mean surface temperature, 196 countries adopted the Paris Agreement in 2015, a decision taken under the United Nations Framework Convention on Climate Change (UNFCCC). This international climate change treaty commits signatory states, among other things, to the goal of *"limiting the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change"*.¹⁰ If warming is limited to 1.5°C, climate change will still have significant dangerous

⁷ <https://www.europarl.europa.eu/news/nl/headlines/society/20191129STO67756/uitstoot-van-vliegtuigen-en-schepen-feiten-en-cijfers-infografiek>.

⁸ Glasgow, UN Climate Change Conference UK 2021, COP26 Declaration, <https://ukcop26.org/cop-26-declaration-international-aviation-climate-ambition-coalition/>.

⁹ <https://www.ipcc.ch/sr15/chapter/spm/>.

¹⁰ KNMI, <https://www.knmi.nl/over-het-knmi/nieuws/nederland-warmt-ruim-2-keer-zo-snel-op-als-de-rest-van-de-wereld#:~:text=The%20temperature%20in%20the%20Netherlands%20has%20more%20%20C%20BoC%20increased.>

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consequences. However, science shows that in that case there is a reasonable chance of preventing the greatest risks of climate change from occurring.

16. To achieve this goal, following the clear conclusions of the 2018 IPCC Special Report on 1.5°C, the Glasgow Climate Pact recognised that limiting global warming to 1.5°C means requiring a rapid, deep and sustained reduction in global greenhouse gas emissions of 45% by 2030, and then "net zero" emissions by 2050. "Net zero" then means achieving a general balance between greenhouse gases produced and greenhouse gases removed from the atmosphere. For the record, that net zero balance has to be achieved at a much lower emission level (after *decarbonisation*) than today.
17. However, this does not only mean that this balance will exist in 2050, but also that, in the meantime, only a limited amount of CO₂ will be emitted, if the amount of CO₂ in the atmosphere is not to become such that the much greater risks of dangerous climate change arise. Once emitted into the atmosphere, CO₂ remains there for hundreds of years and builds up in quantity in the meantime. By 2030, at least 45% less CO₂ must be emitted in net terms than in 1990 in order to have a reasonable chance of limiting warming to 1.5 °C (just). The European legal target for greenhouse gas reduction is even 55%.¹¹
18. This goal (i.e. reaching net zero in 2050 and reducing CO₂ emissions rapidly) is described as "net zero in 2050", but this is an oversimplification that could give the wrong impression: net zero in 2050 is only sufficient to limit warming to 1.5 °C if the way to it - the pathway - is through a reduction of CO₂ emissions by about half in 2030.¹²
19. 2030 is soon, and we are now living in what has been called the '*decade of action*' or '*the critical decade*' for accelerated action by governments around the world: it has to be done now, as soon as possible and in the period before 2030, otherwise it will be too late. Climate action is therefore about making changes now to prevent the risks from becoming greater than they already are. As some very prominent scientists argue:

*"There are sound scientific and economic reasons to reduce emissions as much and as fast as possible."*¹³

20. KLM says so itself:

"We need to focus on reducing our negative emissions now, as this is the decade of action." (KLM Climate Action Plan 2022, **Production 2**)

¹¹ See also Preamble of the European Climate Change Act (para. 26): 'In view of the objective of climate neutrality for 2050, greenhouse gas emissions should be reduced and greenhouse gas removals improved by 2030 so that the net greenhouse gas emissions, i.e. emissions after removals, throughout the economy should be at least 55 % below 1990 levels by 2030 at Union level'.

¹² See Article 4(1) of the European Climate Change Act, <https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32021R1119&from=EN>.

¹³ <https://www.nature.com/articles/s41558-021-01245-w.pdf>, p. 17.

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21. Air France-KLM S.A.'s corporate policy is that KLM actually wants to sell more flights and pursue growth. In November 2019, KLM announced the Go Forward plan, which aims to *"regain a leadership position in Europe"*, including a focus on KLM's intercontinental operations: *"To [strengthen] KLM's leadership position at Schiphol while continuing to grow to become the benchmark carrier for connecting traffic to and from Europe."*¹⁴
22. At the moment, however, it is not possible to fly sustainably. After all, there are currently no developments that will contribute (in time) to achieving sustainable flying: a fuel other than kerosene is not available in any relevant quantity and it is unlikely that this will change sufficiently in the coming years. It is also not the case that it can be expected that within the next 10 years (or even 20 years) the existing fleet of aircraft will have been substantially replaced by new (currently not even existing) more fuel-efficient types or even alternatively powered aircraft, such that the total CO₂ emissions for the expected number of flight movements will decrease.
23. It is therefore contraction, not growth, that is required in view of the Paris climate target. The pursuit of alternative fuels and technology is worthwhile, but it must go hand in hand with the only way in which aviation can make a real contribution in the short term to reducing CO₂ emissions and achieving sustainability goals: flying less.
24. Mattijs ten Brink, CEO of Sunweb group said earlier this year: *"We are at a turning point. And if I'm wrong, that turning point should come as soon as possible. I say that both as Mattijs and as the boss of Sunweb. The number of kilometres flown has to come down no matter what."* Ten Brink (58), who before joining Sunweb Group at the end of 2019, led holiday airline Transavia for six years and before that climbed the career ladder at KLM, sees no other solutions. *"My generation will not live to see completely clean flying. Initiatives with biofuel and electric flying are incredibly important but not the big answer. The only solution is to fly less."*¹⁵
25. However, the opposite is happening: aviation is expected to grow and continue to grow, as it always has. This is no different for KLM.
26. It is for this reason that Fossil Free believes that the growth pursued by KLM may not in any way be referred to as 'more sustainable', or as 'on the way to sustainable flying'. If KLM does use these terms, this is a case of *greenwashing*. Flying is never sustainable. Not in order to achieve the Paris climate target. The fact that KLM offers its passengers the opportunity to contribute to the costs of reforestation projects or the purchase of SAF does not make this any different. In fact, KLM's campaigns achieve the opposite. In fact, the use of such a form of *greenwashing* by KLM encourages the public to fly (more). The public has a right to know

¹⁴ See p. 23, https://www.airfranceklm.com/sites/default/files/press_release_investor_day_va_o.pdf.

¹⁵ Het Parool, 'Top man of holiday giant Sunweb sees only one future: fewer flights', 3 January 2022, <https://www.parool.nl/nederland/topman-van-vakantiegigant-sunweb-ziet-maar-een-toekomst-minder-vliegen-bd7caec1/>.

what it means when they choose to fly with KLM and to know that - by flying - they are not being sustainable or more sustainable.

27. Fossil Free believes that this is a classic case of deception and *greenwashing* by KLM. The Advertising Code Committee already confirmed this with regard to one part (reforestation). However, Fossil Free goes further and also involves the general sustainability claims and SAF in this dispute.

3 PARTIES

3.1 Fossil-free

28. Fossielvrij is an ANBI foundation that has been working to combat the climate crisis since 2013.
29. Fossil Free is the result of a growing citizens' movement: the "Fossil Free Movement". Although it is a foundation, it is first and foremost a citizens' movement, i.e. a growing network of students, citizens and professionals who are calling on their own employers, municipalities, universities or pension funds to break their financial or other ties with the fossil industry (so-called "divestment") in order to tackle climate change and accelerate the transition to a sustainable economy with renewable energy. This movement is part of the global *divestment movement* supported by the organisation "350.org".
30. Fossielvrij (Fossil Free) is organising a strong, locally anchored citizens' movement to hold coal, oil and gas companies accountable for the consequences of their business practices. It wants to create space for a just transition to a decentralised energy system based on renewable sources.
31. Fossil Free cooperates with and supports campaign groups that support the achievement of the Fossil Free objective. Advertising Fossil Free¹⁶ - itself not a legal entity - is such a campaign group within the fossil free movement. Advertising Fossil Free campaigns for a legal ban on fossil advertising and sponsorship. This concerns advertising and sponsoring:
- a. by the fossil and aviation industries,
 - b. for air travel and cruises, and
 - c. for cars, motorbikes and mopeds with a fossil fuel engine.
32. Fossil Free has recently amended its articles of association and clarified that it can take legal action. *Greenwashing* is also diametrically opposed to the energy transition that Fossil Free has set itself the goal of promoting. That is why Fossil Free has explicitly stated that it considers

¹⁶ <https://verbiedfossielereclame.nl/>.

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it its objective to oppose this. However, the core of its objective - standing up for the climate - has remained unchanged.

33. ABP Fossielvrij, a campaign group within Fossielvrij aimed at making pension fund ABP's investment portfolio fossil-free, was voted number 1 in the 'Sustainable 100' of the newspaper Trouw in 2021. In this campaign, Fossil Free, which is therefore a citizens' movement, worked in several ways with teachers and civil servants to persuade ABP to stop investing in fossil companies. Partly due to the work of Fossil Free, ABP decided to sell those investments at the end of 2021. Fossil Free advertising came third in the same Sustainable 100 election, in part due to its successful campaign to have Amsterdam ban fossil advertisements.
34. Fossil Free was also a co-prosecutor (and admissible) in the case brought by Milieudefensie and others against Shell.¹⁷ Fossil Free was also a plaintiff in an administrative law case, initiated by campaign group Amsterdam Fossil Free, against the heat plan of (among others) the municipality of Amsterdam.¹⁸
35. Fossil Free is also supported by ClientEarth, a global environmental law organisation, which focuses on using the law to bring about a change in existing systems to protect the earth for - and with - its inhabitants. ClientEarth UK is a charitable organisation registered in the United Kingdom, but ClientEarth has equivalent charitable organisations in Germany, Poland, Spain, Luxembourg, Belgium and also in China and the United States, making it a global network.
36. ClientEarth UK intends to participate in the proceedings itself, and is therefore one of the signatories of the summons letter to KLM sent by Fossielvrij and ClientEarth on 24 May 2022 (**Production 3**).
37. ClientEarth's constitution is available on the website of the UK Charity Commission.¹⁹ The "Charitable Objects" of ClientEarth UK are, inter alia, to promote and encourage the improvement, restoration, preservation and protection of the environment, including the protection of human health, in the public interest and to promote, assist, undertake and commission research into the law, practice and jurisprudence relating to the environment and matters related thereto, including the impact, direct or indirect, of any human activity on the environment and to publish the results of such research.
38. ClientEarth also acts against *greenwashing* by companies. It is widely accepted that good consumer information is necessary to promote environmental protection, i.e. achieving the objective of the Paris Climate Agreement. ClientEarth regularly appears in the media to speak out on *greenwashing* and other issues related to corporate climate accountability. For example, ClientEarth has taken action against BP and published an extensive and widely cited report on *greenwashing* by nine major high-emission companies. ClientEarth has also been

¹⁷ Court of The Hague, 26 May 2021, ECLI:NL:RBDHA:2021:5337.

¹⁸ See the judgment of the Judicial Division of the Council of State of 16 February 2022, no, 20200352/1/R1, see: <https://www.raadvanstate.nl/@129852/202003259-1-r1/>.

¹⁹ <https://register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/1053988/governing-document>.

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in discussion with the UK Competition and Markets Authority (CMA) about its guidelines and consumer protection. It has also been in contact with the UK Advertising Standards Authority in relation to its Climate Change and Environment Project. It has also been in contact with the UK Financial Conduct Authority in relation to its regulation of climate-related issues, and is involved in a landmark French case against alleged *greenwashing* practices by TotalEnergies in France brought by Greenpeace France, Les Amis de la Terre France and Notre Affaire à Tous. In 2019, ClientEarth, together with Greenpeace Poland and local residents, among others, successfully took legal action against Europe's largest coal-fired power plant. This led to a decision by the Polish government in 2021 to eventually close the coal plant and the associated coal mines.²⁰

39. ClientEarth, like Fossil Free and Advertising Fossil Free, is a member of the coalition that is calling for a Europe-wide ban on fossil advertisements through a European citizens' initiative.²¹
40. Fossil Free has been assisted for the factual substantiation of its subpoena, in particular by an expert Mr Derik Broekhoff. Mr Broekhoff (USA) has been a senior scientist at the Stockholm Environment Institute ("SEI", <https://www.sei.org/>), an independent climate institute established at the initiative of the Swedish government, since 2015. The board of SEI is appointed by the Swedish government. Its current Chairperson is Ms Isabella Lövin, former Deputy Prime Minister and Minister of Environment and Climate of Sweden.
41. The expertise of Broekhoff concerns *climate change mitigation*, including the impact of greenhouse gases and carbon offsets.
42. Broekhoff is a leading expert on the climate aspects of these proceedings and has published extensively on the subject. For a more complete overview of his track record, please refer to the report he prepared for the present case (**Production 4**). Frequent reference will be made to this report in the following.

3.2 KLM

43. KLM is part of Air France-KLM since the merger with Air France in 2004. The shares in Air France-KLM are for 28.6% held by the French state and for 9.3% by the Dutch state. The remaining shares are held by China Eastern Airlines, Delta Air Lines, Inc. and 44% by other investors (KLM Annual Report, **Production 5**).²²
44. Due to the agreements and regulations surrounding the merger of KLM and Air France, KLM has a somewhat complicated shareholder structure.) As a result, Air France - KLM holds 93.84% of the economic rights of KLM, 99.70% of the dividend rights of KLM and 49% of the voting rights of KLM. Two Dutch foundations together hold 44.84% of the voting rights of

²⁰ <https://www.clientearth.org/latest/latest-updates/news/challenging-poland-s-flagship-coal-plant/>.

²¹ https://europa.eu/citizens-initiative/initiatives/details/2021/000004_nl.

²² <https://img.static-kl.com/m/7f18a4405ec39c57/original/KLM-2021-Annual-Report.pdf>, under 1.

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KLM, the Dutch State holds 5.92% of the voting rights and the remaining minority shareholders hold 0.24% of the voting rights and 0.30% of the dividend rights of KLM.²³

45. KLM generates its turnover from three core activities: passenger transport,²⁴ and, to a much lesser extent, cargo transport²⁵ and technical support and aircraft maintenance.²⁶ KLM operates its business worldwide. KLM Cityhopper, Martinair and Transavia are also part of the KLM Group.²⁷ Transavia is a budget airline with a strong focus on growth. KLM's business model focuses on frequent flyers, such as tourists and business travellers.

4 CLIMATE CHANGE

4.1 Dangerous climate change

4.1.1 Introduction

46. It is a fact that the earth's temperature is rising and the climate is changing due to human activity, namely through the emission of greenhouse gases into the air.²⁸ The climate change caused by this has major consequences for people, nature and the environment. This is also recognised by the Dutch government²⁹ and the Supreme Court.³⁰ The Supreme Court has established that there is a direct, linear relationship between man-made emissions of greenhouse gases, which are also caused by the burning of fossil fuels, and global warming.³¹ These facts can therefore be taken as a starting point in these proceedings.
47. Human-induced climate change is already having a widespread, negative impact on people and nature. Some of these negative effects are also irreversible; nature and mankind are no longer able to adapt to them. Some of these negative impacts are also irreversible; nature and people are no longer able to adapt to them. The negative effects on human communities include water scarcity, damage to (yields of) agriculture, livestock and fisheries, malnutrition, increased infectious diseases, heat stress, displacement and mental health damage. These effects will further increase in the coming years (IPCC 15, 2022 Full Report C.1.3, **Production 6**).³²
48. The IPCC (see also rn. 56) writes about this (**Production 7**):³³

"Human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to

²³ <https://img.static-kl.com/m/7f18a4405ec39c57/original/KLM-2021-Annual-Report.pdf>.

²⁴ (**Production 5**), p. 36-41.

²⁵ (**Production 5**), p. 41-42.

²⁶ (**Production 5**), p. 42.

²⁷ (**Production 5**), p. 55.

²⁸ <https://www.urgenda.nl/themas/klimaat-en-energie/klimaatvragen/waarom-weten-we-zeker-dat-de-mens-klimaatverandering-veroorzaakt/>.

²⁹ <https://www.rijksoverheid.nl/onderwerpen/klimaatverandering>.

³⁰ Supreme Court, 13 September 2019, ECLI:NL:PHR:2019:887 (*Environmental Defense v. the State*).

³¹ Supreme Court, 13 September 2019, ECLI:NL:PHR:2019:887 (*Milieudefensie v. the State*), r.o. 2.1.

³² https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FinalDraft_FullReport.pdf.

³³ <https://www.ipcc.ch/report/ar6/wg2/resources/spm-headline-statements/>.

nature and people, beyond natural climate variability. Some development and adaptation efforts have reduced vulnerability. Across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected. The rise in weather and climate extremes has led to some irreversible impacts as natural and human systems are pushed beyond their ability to adapt. (high confidence)."

49. The Supreme Court has further accepted as factual that the increase in the concentration of greenhouse gases in the atmosphere can lead to a *tipping point* being reached.³⁴ The risk of such tipping points increases "*at a steep rate*" at a temperature increase between 1 °C and 2 °C. Crossing such a *tipping point* may cause abrupt and drastic climate change and lead to new *tipping points*. Effects of exceeding such *tipping points* may include the (increasingly rapid) melting of the polar caps and glaciers and changes in sea currents and associated weather influences (e.g. the warm Gulf Stream in the Atlantic or El Niño). This can lead to extensive damage to ecosystems, threatening food supply for example, loss of land and habitat and further damage to health and loss of human life.³⁵

50. In the Netherlands too, the damage to the climate is already being felt. The KNMI says the following in its Climate Signal '21:

*"In the Netherlands, the temperature has risen about twice as fast as the world average since 1901. The effects of climate change are clearly noticeable: on 25 July 2019, the mercury went through the historic mark of 40°C, and in the last two decades, the number of days with extreme precipitation increased. Dry seasons also stood out in three consecutive years (2018, 2019 and 2020), raising the relevant question of whether this will become more frequent and/or intense in the future."*³⁶

51. According to the KNMI, the direct effects of climate change in the Netherlands will be far-reaching and widespread. For example, climate change will affect our drinking water: not only will the number of pathogens (such as Salmonella and Listeria) increase,³⁷ but the low river level of the Meuse will also endanger the drinking water supply of 7 million people.³⁸

52. Other effects of climate change on health mentioned by the RIVM are an increase in infectious diseases, such as Legionellosis and Lyme disease, an increase in allergic symptoms and an increase in the number of cases of skin cancer due to increased UV radiation.³⁹ A heat wave also causes extra mortality among vulnerable groups, according to the national government.⁴⁰ Research shows that heat stress in the Netherlands has cost an estimated 250 vulnerable and

³⁴ Supreme Court, 13 September 2019, ECLI:NL:PHR:2019:887 (Milieudéfense v. the State), section 4.1-4.8.

³⁵ IPCC 2019, 'Impacts of 1.5 °C of Global Warming on Natural and Human Systems', chap. 3, 3.5.2.4 and 3.5.2.5, https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Chapter_3_LR.pdf.

³⁶ https://cdn.knmi.nl/knmi/asc/klimaatsignaal21/KNMI_Klimaatsignaal21.pdf, p. 6.

³⁷ <https://www.rivm.nl/klimaat-en-gezondheid>.

³⁸ Deltares, Low river discharge of the Meuse, June 2002, <https://www.deltares.nl/nl/nieuws/klimaatverandering-raakt-ook-drinkwaterproductie-maas/>, p. 5 and 6.

³⁹ <https://www.rivm.nl/klimaat-en-gezondheid>.

⁴⁰ <https://www.rijksoverheid.nl/onderwerpen/klimaatverandering/gevolgen-klimaatverandering>.

elderly people their lives each year, even if the heat waves after 2019 are not included.⁴¹ As climate damage becomes more likely, it also becomes more uninsurable.⁴² In contrast to Germany and Belgium, the severe floods of 13 and 14 July 2021 fortunately did not cause any fatalities in the Netherlands. However, the (insured) damage suffered was estimated at about € 160 to 250 million.⁴³ In addition to flood damage, 800,000 homes in the Netherlands are at risk of subsidence due to drought.⁴⁴

53. Furthermore, the non-CO₂ effects have a direct impact on the environment. For example, nitrogen can be harmful to humans when inhaled and is bad for biodiversity; it causes oak forests to die out and the legs of young birds to break due to lack of calcium.⁴⁵

4.1.2 International - scientific and political - consensus

54. In 1992, the world's most important climate agreement, the UNFCCC, was concluded at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro. The Netherlands ratified this convention in 1993. This is a framework convention and has as its goal (Article 2):

"a stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."

55. This was followed in 2015 by the United Nations' Paris Climate Agreement. The 27 European member states have jointly signed up to this Climate Agreement. The goal of the Paris Climate Agreement is: "to limit global warming to well below 2 °C. With a clear prospect of 1.5 °C".

⁴⁶

56. The IPCC is a United Nations organisation that evaluates the state of the science in relation to climate change. Since the IPCC's 2018 Special Report Global Warming of 1.5 °C, the international scientific consensus has been that climate damage becomes more severe as warming increases, and that an increase of no more than 1.5 °C is the minimum requirement to limit the extent of dangerous climate change.⁴⁷ Chapter 3 of this report states (**Production**

⁴¹ <https://www.rivm.nl/nieuws/klimaatverandering-leidt-nu-al-tot-meer-sterfte-door-hitte>.

⁴² Netherlands Authority for the Financial Markets, <https://www.afm.nl/nl-nl/nieuws/2021/oktober/schade-klimaatverandering-vaker-onverzekerbaar>.

⁴³ <https://www.verzekeraars.nl/publicaties/actueel/merendeel-claims-wateroverlast-limburg-en-brabant-door-verzekeraars-afgehandeld>.

⁴⁴ <https://nos.nl/artikel/2375471-droogte-leidt-tot-grote-schade-aan-woningen-in-hele-land>.

⁴⁵ <https://www.nu.nl/klimaat/6130230/van-vogels-tot-eikenbos-stikstof-nekt-leven-op-de-veluwe.html>.

⁴⁶ <https://www.rijksoverheid.nl/onderwerpen/klimaatverandering/klimaatbeleid>.

⁴⁷ The Dutch Supreme Court has also acknowledged this in Supreme Court, 20 December 2019, ECLI:NL:HR:2019:2006, section 4.3: "For some time now, there has been a broad consensus in climate science that global warming should be limited to a maximum of 2 °C and that this means that the concentration of greenhouse gases in the atmosphere should be limited to a maximum of 450 ppm. There is now a consensus in climate science that safe warming is limited to a maximum of 1.5 °C and that this means that the concentration of greenhouse gases in the atmosphere must be limited to a maximum of 430 ppm'.

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8):⁴⁸ *"Overshooting [1.5 °C] poses great risks for natural and human systems, especially if the temperature at peak warming is high, because some risks may be long-lasting and irreversible, such as the loss of some ecosystems. "*

57. Global warming of no more than 1.5 °C is also feasible if the right decisions are taken now to initiate a far-reaching transition as soon as possible, including in the transport sector:⁴⁹

"Limiting the risks from global warming of 1.5 °C in the context of sustainable development and poverty eradication implies system transitions that can be enabled by an increase of adaptation and mitigation investments, policy instruments, the acceleration of technological innovation and behaviour changes. "

58. The IPCC reports also outline the necessary emission reductions that are needed to have a chance of limiting climate change to a (global) warming of 1.5 °C. These necessary emission reductions have also led to a broad acceptance of the "net zero" goal in 2050.⁵⁰ This requires strong reductions in emissions before 2050, along a specific *pathway*:⁵¹

"In model pathways with no or limited overshoot of 1.5°C, global net anthropogenic CO2 emissions decline by about 45% from 2010 levels by 2030 (40-60% interquartile⁵² range), reaching net zero around 2050 (2045-2055 interquartile range)."

59. The 2018 IPCC report also highlighted that CO2 emissions accumulate in the atmosphere. If the amount of CO2 in the atmosphere exceeds a certain value, the chances of limiting warming to 1.5 °C are greatly reduced. As a result, there is now only a limited "budget" of CO2 that can still be emitted: *the global carbon budget*. That budget is almost finished:⁵³

"Limiting global warming requires limiting the total cumulative global anthropogenic emissions of CO2 since the pre-industrial period, that is, staying within a total carbon budget (high confidence). By the end of 2017, anthropogenic CO2 emissions since the pre-industrial period are estimated to have reduced the total carbon budget for 1.5 °C by approximately 2200 ± 320 GtCO2 (medium confidence). The associated remaining budget is being depleted by current emissions of 42 ± 3 GtCO2 per year (high confidence)."

60. This clearly shows that it is insufficient and wrong to consider a net zero target for 2050 as the only goal to pursue. The cumulative CO2 emissions on the way there - the trajectory - are essential.⁵⁴

⁴⁸ IPCC 2018, 'Impacts of 1.5 °C of Global Warming on Natural and Human Systems', chap. 3, 3.5.2.4 and 3.5.2.5, <https://www.ipcc.ch/sr15/chapter/spm/>.

⁴⁹ (Production 8).

⁵⁰ See also <https://unfccc.int/climate-action/race-to-zero-campaign>.

⁵¹ (Production 8).

⁵² An interquartile range (IQR) is a statistical way of indicating the difference between the first quarter (25%) and the third quarter (75%). In a bell curve, the middle part is taken as the starting point.

⁵³ (Production 8).

⁵⁴ (Production 4), D.5.

61. As of 2019, the estimated remaining carbon budget that gives us a 67% chance of limiting warming to 1.5°C is about 400 GtCO₂. That is an extremely limited budget. It is roughly equal to the global CO₂ emissions from the period between 2010 and 2019. This remaining budget is far less than the estimated future emissions from existing fossil fuel infrastructure (drilling rigs, oil pipelines, refineries, etc.), which means that such infrastructure that also fuels KLM will have to close down early.⁵⁵
62. The Conference of the Parties to the UNFCCC concluded in 2021 (the "Glasgow Climate Pact", **Production 9**) at the most recent United Nations meeting on climate change warned of the lagging global emissions reductions since the world's governments adopted the Paris Climate Agreement.⁵⁶ The Glasgow Climate Pact further states that this is the critical decade:⁵⁷
- "(...) recognizes that limiting global warming to 1.5 °C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century, as well as deep reductions in other greenhouse gases; Further recognizes that this requires accelerated action in this critical decade".⁵⁸*
63. It is now scientifically proven that each year of delay in reducing emissions reduces the remaining time available to achieve 'net-zero' emissions and keep warming below 1.5°C by as much as about two years.⁵⁹
64. Continued extraction and use of fossil fuels under current policies will keep us on the current path to catastrophic climate change, with average global warming estimated to be well short of the Paris Climate Agreement target, reaching 3.2 °C warming by 2100.⁶⁰
65. The IPCC has described the current situation as follows:⁶¹
- "Human-induced climate change is widespread, rapid, and intensifying. It is a threat to our well-being and all other species. It is a threat to the health of our entire planet. Any further delay in concerted global climate action will miss a rapidly closing window."*
- "We are at a crossroads. The decisions we make now can secure a liveable future. We have the tools and know-how required to limit warming."⁶²*
- "We have options in all sectors to at least halve emissions by 2030. Limiting global warming will require major transitions in the energy sector. This will involve a substantial reduction in fossil fuel use [...]. Having the right policies, infrastructure*

⁵⁵ (Production 6) AR6 WGIII Tech Summary TS-16, Figure TS.3 and TS-26.

⁵⁶ The outcome of the UN meeting in Glasgow is available at https://unfccc.int/sites/default/files/resource/cma2021_10_add1_adv.pdf.

⁵⁷ (Production 9).

⁵⁸ (Production 9), p. 3 par 17.

⁵⁹ <https://www.nature.com/articles/s41558-021-01245-w.pdf>, p. 17.

⁶⁰ (Production 6).

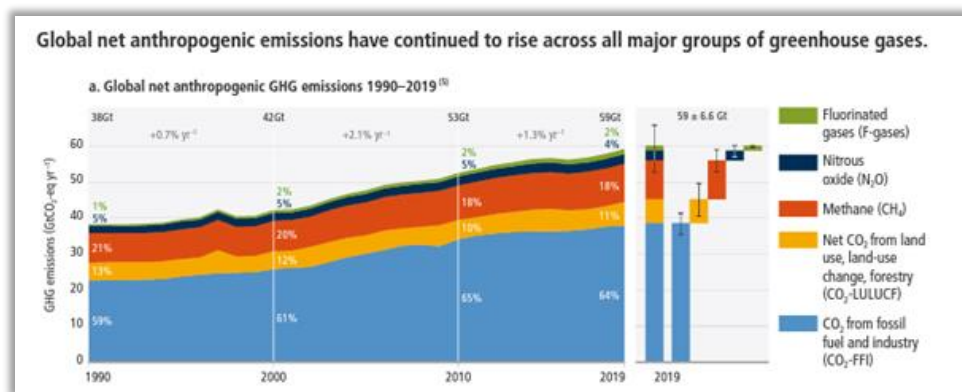
⁶¹ <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>.

⁶² <https://www.cnn.com/2022/04/04/ipcc-report-climate-scientists-issue-ultimatum-on-1point5-degrees-goal.html>.

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*and technology in place to enable changes to our lifestyles and behaviour can result in a 40-70% reduction in greenhouse gas emissions by 2050."*⁶³

66. The need for immediate action on emissions is well illustrated by the following recent IPCC charts. The following diagram shows that fossil fuels have caused a continuous increase in emissions in recent years - despite repeated warnings from the scientific community, emission reductions have still not begun. ⁶⁴



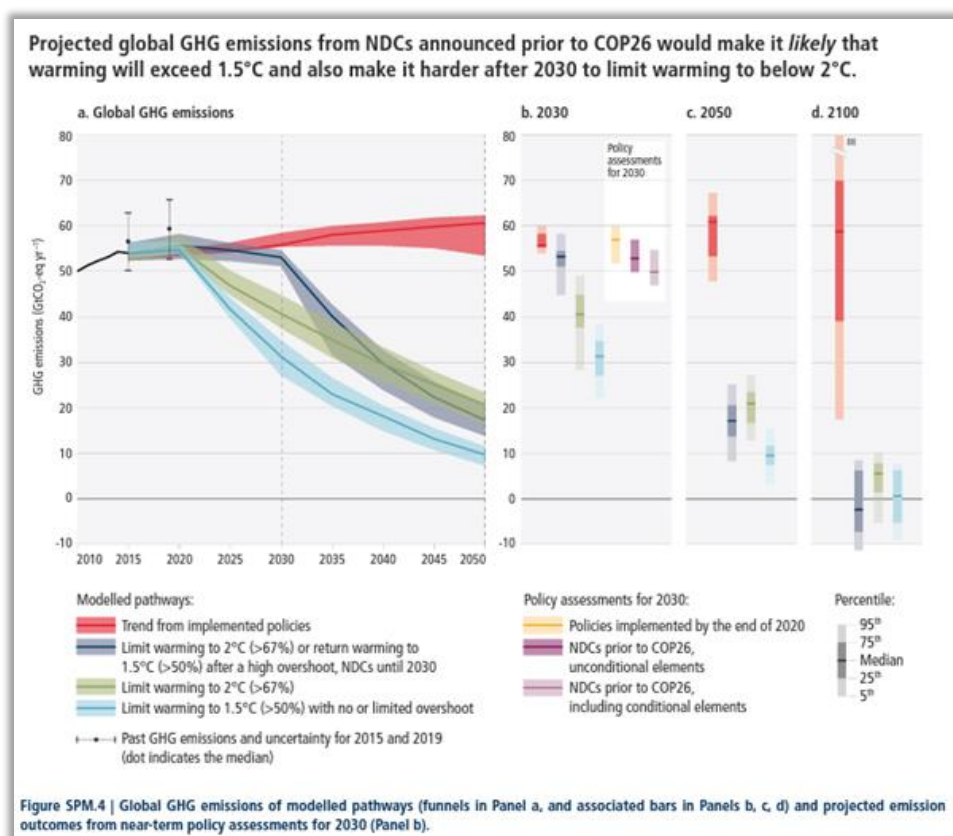
65

67. The diagram below shows that there is a widening *gap* between our current disastrous path to over 3°C warming and the immediate and rapid reductions needed to limit warming to 1.5°C or 2°C.

⁶³ <https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>.

⁶⁴ <https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>.

⁶⁵ (Production 6).



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68. As a result of these projections, 'net zero by 2050' is a scientific concept that refers to the almost universally accepted goal of limiting global warming to 1.5 °C (see also par. 4.3.1).⁶⁷ It is also crucial to understand that it is not "just" a 2050 goal, but the pathway to this goal that matters. CO₂ emissions are cumulative and therefore the already accumulated stock of CO₂ in the atmosphere must also be taken into account. Added to this are the (more) varying levels of emissions and the effects of non-CO₂ emissions. It is for this reason that the IPCC estimates the remaining CO₂ budget (see marg. 59), and states that "*every tonne of CO₂ emissions adds to global warming*".⁶⁸
69. The substantive measures for implementing the Climate Agreement ("**Climate Agreement**") (**Production 10**)⁶⁹ have now been laid down by the Dutch state in the Dutch Climate Act ("**Climate Act**"). These include a 49% reduction in CO₂ emissions by 2030 compared to 1990, which is also laid down in the Climate Action Plan⁷⁰. Furthermore, the coalition agreement of the current cabinet agreed to tighten the 2030 target in the Climate Act to at least 55% CO₂ reduction.⁷¹

⁶⁶ (Production 6).

⁶⁷ See no. 59 and <https://www.fsb.org/wp-content/uploads/P141021-1.pdf>, p. 30.

⁶⁸ This is reflected in https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM_final.pdf.

⁶⁹ <https://www.klimaataakkoord.nl/documenten/publicaties/2019/06/28/klimaataakkoord>.

⁷⁰ (Production 2).

⁷¹ Coalition Agreement 'Looking out for each other, looking forward to the future' available at <https://www.rijksoverheid.nl/regering/coalitieakkoord-omzien-naar-elkaar-vooruitkijken-naar-de-toekomst/2.-duurzaam-land/klimaat-en-energie>.

70. The need to tackle climate change has also been recognised at the European level⁷² and goals have been set for 2030 and 2050 for reducing CO₂ emissions, energy saving and the development of renewable energy.⁷³ These targets and accompanying measures have been included in, among others, the European Climate Act. The overarching goal of the European Union is to make Europe climate neutral by 2050.⁷⁴ The EU is also working on a 'Fit for 55' package of measures to revise its climate, energy and transport legislation and align it with this objective.⁷⁵

4.2 Impact of aviation on climate change

4.2.1 General

71. Regarding the relationship between aviation and dangerous climate change, there are four main aspects:

1. Aviation contributes significantly to dangerous climate change.
2. The contribution of aviation to dangerous climate change is increasing very rapidly.
3. The contribution of aviation to dangerous climate change and the consequences of that contribution are completely disproportionate.
4. Aviation's contribution to dangerous climate change that is not caused by CO₂ emissions is not addressed in the measures proposed by KLM.

72. Aviation thus has an important share in and responsibility for climate change. This will be discussed in the following paragraphs based on the four points above.

4.2.1.1 Aviation contributes significantly to dangerous climate change

73. The fact that CO₂ emissions from aviation have a major impact on the climate has long been known (**Production 11**).

Fossil Free refers to a research report by the European Federation for Transport and Environment, usually abbreviated as Transport & Environment or T&E. Also in the rest of the writ of summons, frequent reference will be made to research of T&E. T&E is a European NGO based in Belgium with offices in Great Britain, France, Spain, Poland, Italy and Germany. T&E has been in existence for 30 years and aims to achieve an affordable transport system with zero emissions and minimal impact on health, climate and the environment. T&E pursues its goals through sound scientific research and involves experts from other NGOs in drafting its reports. In this way, T&E acts as an important "umbrella" organisation. Among other things, T&E has helped to expose "the diesel scandal". T&E has also ensured that the EU sets the most ambitious CO₂ requirements for

⁷² See also https://ec.europa.eu/clima/climate-change/consequences-climate-change_nl.

⁷³ <https://www.consilium.europa.eu/nl/press/press-releases/2021/06/28/council-adopts-european-climate-law/>;
https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_nl;
https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3541.

⁷⁴ https://ec.europa.eu/clima/eu-action/european-green-deal/european-climate-law_nl.

⁷⁵ <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition>.

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cars and trucks worldwide. Furthermore, T&E has successfully campaigned against diesel made from palm oil and for a global ban on heavily polluting marine fuel oil. T&E receives financial contributions from the European Commission, the German government and London Transport, among others.

74. Aircraft burn large quantities of kerosene, a highly polluting fossil fuel.⁷⁶ Moreover, as has been known for some time, the non-CO₂ effects of aviation are much greater. According to a study by the European Aviation Safety Agency, these non-CO₂ effects far exceed the warming effect of CO₂ by up to three times (see also rn. 68).⁷⁷ If the non-CO₂ effects are also taken into account, the share of greenhouse gas emissions from European aviation, without counting the Covid19 years, is⁷⁸ more than 10% of total EU emissions.⁷⁹
75. In order to reduce the climate impact of aviation in line with the objective of the Paris Climate Agreement, curbing the growth of the aviation sector is inevitable.⁸⁰ However, aviation is following the opposite path. The sector continues to aim for annual growth in aviation.⁸¹ This will further *increase* aviation's impact on the climate, while a rapid *reduction* in emissions is necessary to achieve the objective of the Paris Climate Agreement.
76. In order to maintain their growth policies, companies and industry associations are lobbying intensively *against* aviation regulation proposals that aim to achieve climate targets, according to research by Influencemap (**Production 12**, and further explained in rn. 169).⁸² This is diametrically opposed to their claims of support for those objectives.

4.2.1.2 Aviation's contribution to dangerous climate change is increasing very rapidly

77. Not only does aviation have a significant impact on dangerous climate change, but that impact has been growing rapidly in recent years (especially in Europe), hand in hand with the growth of the aviation industry, and much more than other sectors and the general increase in emissions.⁸³
78. Annual CO₂ emissions from Dutch aviation have also grown significantly, also in relation to the growth of the Dutch economy, according to figures from the Central Bureau of Statistics. In 1990, CO₂ emissions were 5.3 megatons (3% of the emissions of the entire Dutch economy),

⁷⁶ Transport & Environment, 'Roadmap to climate neutral aviation in Europe', March 2022, p. 14; Climate Action 100+ (2022), Global Sector Policy: Investor Actions to Align the Aviation Sector with the IEA's 1.5°C Decarbonisation Pathway, p. 4.

⁷⁷ EASA (2020), Updated analysis of the non-CO₂ climate impacts of aviation and potential policy measures pursuant to the EU Emissions Trading System Directive Article 30(4), report for the European Commission, p. 35-36.

⁷⁸ It is wise to calculate with the 2019 figures as the currently best available information, because the figures in at least the two following years are affected by the effect of Covid-19, which is probably only temporary and does not give an accurate picture of the trend.

⁷⁹ (**Production 11**), increased by non-CO₂ x3. P. 4, Roadmap: "Aviation traffic in Europe grew 67% between 2005 and 2019 and its emissions by 24% (see Fig. E.1), meaning **they now represent 4.9% of the bloc's pre-Covid total**. And that just covers the CO₂ effects - more on the non-CO₂ effects below". 4.9% is CO₂ emissions. The warming effect of non-CO₂ emissions is three times greater than that of CO₂. 3 x 4.9% is more than 10%.

⁸⁰ (**Production 6**), Technical Summary, TS-67.

⁸¹ This is evident from, among other things, the Ministry of Infrastructure and the Environment's Draft Aviation Policy Document 2020-2050 ('Flying responsibly to 2050'), in which the word 'growth' appears no less than 77 times and the word 'shrinkage' only once.

⁸² InfluenceMap (2021), How the aviation industry has lobbied to weaken and delay climate regulation, https://influencemap.org/evoke/10507/file_proxy.

⁸³ <https://www.forbes.com/sites/trapier/2019/12/04/the-worlds-top-10-carbon-dioxide-emitters/?sh=6390619d2d04>.

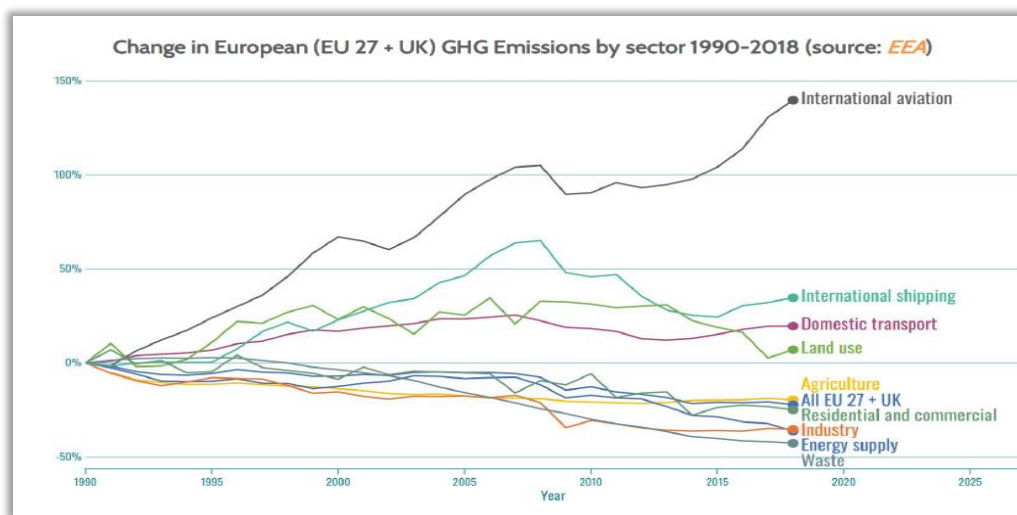
This is an unofficial machine translation of the Dutch original version

and in 2005 they were already 11.6 megatons of CO₂ and 5.6% of the emissions of the entire Dutch economy.⁸⁴ By 2019, the total annual emissions of CO₂ from Dutch aviation had already grown to 12.1 megatonnes of CO₂, equivalent to 6.4% of the emissions of the Dutch economy. The figures are included in the table below:

DUTCH ECONOMY EMISSIONS VS DUTCH AVIATION SECTOR EMISSIONS⁸⁵

Year	Dutch economy MtCO ₂	Air transport MtCO ₂	%
1990	178,552	5,298	2.967202832
2005	207,093	11,610	5.606176935
2010	214,415	11,764	5.486556444
2015	200,673	12,837	6.396974182
2019	189,491	12,099	6.384999815

79. This is in line with the entire European aviation industry. CO₂ emissions from aviation in 2019 were⁸⁶ more than double those of 1990.⁸⁷ The graph below also shows that the climate impact of European aviation has increased very rapidly, and is far greater than that of any other sector.



⁸⁴ <https://www.cbs.nl/nl-nl/visualisaties/verkeer-en-vervoer/uitstoot-en-brandstofverbruik/uitstoot-luchtvaart>.

⁸⁵ <https://opendata.cbs.nl/#/CBS/en/dataset/83300ENG/table>.

⁸⁶ It is wise to calculate with the 2019 figures as the currently best available information, because the figures in at least the two following years are affected by the effect of Covid-19, which is probably only temporary and does not give an accurate picture of the trend.

⁸⁷ (Production 11).

80. A study by the research bureau CE Delft provides a forecast for Dutch aviation under an unchanged policy (**Production 13**).⁸⁸ The study takes account of WLO (Welfare and Environment) growth scenarios developed by CPB and PBL. The WLO High scenario combines a relatively high population growth with a high economic growth of approximately 2% per year. The WLO Low scenario combines limited demographic development with moderate economic growth of approximately 1% per year.⁸⁹ For aviation, the WLO scenarios also include proposed restrictions on noise standards and CO₂ taxes (which KLM and the aviation sector are now lobbying against). Other environmental policies for aviation are not included in the scenarios .
81. The historical growth of aviation passengers since 1997 is most in line with the WLO High scenario.⁹⁰ If that growth scenario is applied to the number of passengers in 2017 (76 million), the number of passengers in 2050 will be 150 million (WLO High and Low combined). Cargo volumes are also expected to triple, from 1.8 million tonnes in 2017 to 6.1 million tonnes in 2050.⁹¹
82. The number of flight movements has also risen sharply in recent years. It is expected that the number of flight movements will increase in 2050 to 1.01 million (in a low scenario) and to 1.2 million (in a high scenario).⁹²
83. If one is optimistic and assumes an intended efficiency improvement of 2% per year, this forecast still leads to CO₂ emissions of 12 megatons in 2030 and 14 megatons in 2050 for Dutch aviation.⁹³ However, if the average, realised efficiency development (0.7 percent per year, period 2010-2015) is used, the CO₂ emissions of Dutch aviation in 2050 would amount to 23 megatons: double the 2005 level and an increase by more than a factor 4 compared to 1990.⁹⁴
84. Dutch aviation is therefore currently following a scenario that leads to considerable growth in CO₂ emissions - it has been calculated that the current course is in line with a global temperature increase of 2.5 to 4 °C in 2050.⁹⁵ Far above the 1.5 °C threshold, in other words.

⁸⁸ CE Delft is an independent research and consultancy organisation specialised in developing innovative solutions to environmental and sustainability issues, see <https://www.ce.nl/>. The study concerned is entitled 'Should aviation grow to maintain our prosperity?' and can be consulted via: https://ce.nl/wp-content/uploads/2021/03/CE_Delft_190143_De_economische_effecten_van_krimp_en_groei_van_de_NL_luchtvaart_DEF.pdf.

⁸⁹ <https://www.wlo2015.nl/>.

⁹⁰ (**Production 13**).

⁹¹ Future vision written by Milieufederatie Noord-Holland, Greenpeace and Natuur & Milieu, available at: <https://milieufederatie.nl/actueel/visie-toekomst-luchtvaart.pdf>.

⁹² (**Production 13**).

⁹³ (**Production 13**).

⁹⁴ (**Production 13**).

⁹⁵ Netherlands Environmental Assessment Agency, Paris Agreement and Aviation, Possible consequences of the Paris climate agreement for the volume of aviation via the Netherlands, 2019, available at <https://www.pbl.nl/sites/default/files/downloads/pbl-2019-parijsakkoord-en-luchtvaart-3040.pdf>.

4.2.1.3 The contribution of aviation to dangerous climate change and the consequences of that contribution are completely disproportionate from a social point of view

85. The problem of global warming is above all a distributional problem: the effects are not necessarily felt by those who cause them. The solution requires radical change that must also be fair and equitable to be effective, as recognised in the Paris Climate Agreement and the IPCC.⁹⁶
86. In addition, the climate impact of aviation is particularly uneven and unfairly distributed. This means that only a small part of the world's population uses (a lot) of aviation and enjoys the benefits. The consequences of the emissions from all that flying, however, fall largely on the people who *do not use* it. The IPCC notes: "*[e]vidence highlights highly unequal GHG emission in aviation: only 2-4% of global population flew internationally in 2018.*"⁹⁷ The IPCC further points to scientific research from 2020 which calculated that 1% of the world's population is responsible for 50% of CO₂ emissions from commercial aviation.⁹⁸ Aviation emissions for people flying from European countries like the Netherlands are much higher than for most countries. However, developing countries⁹⁹ are expected to grow their aviation even more, which puts an even greater emphasis on the need to reduce flying in countries such as the Netherlands¹⁰⁰ so that Dutch people can contribute their "fair share".¹⁰¹
87. Stay Grounded is an organisation that campaigns for the reduction of aviation on the basis of science and in that context released a report in 2019 (**Production 14**). In addition, it has made the following estimating calculation. According to Stay Grounded, one return flight from Paris to New York emits 3.2 tonnes of CO₂ equivalent. That is more CO₂ than the average Ugandan uses in a whole year (1.1 tonnes of CO₂ equivalent), and also more than the emissions produced by the average Indian person in a whole year (2.6 tonnes of CO₂ equivalent). The emissions from a return flight from Paris to New York are also far in excess of what the average footprint per world citizen would need to be by 2030 to limit the maximum temperature increase to 1.5°C (i.e. 2.5 tonnes of CO₂ equivalent).¹⁰² The European Commission found that "*[s]omeone flying [in a commercial airliner] from Lisbon to New York and back generates roughly the same level of emissions as the average person in the EU does by heating their home for a whole year*".¹⁰³

⁹⁶ (Production 6).

⁹⁷ (Production 6), ch. 5, p. 5-26.

⁹⁸ <https://www.sciencedirect.com/science/article/pii/S0959378020307779>.

⁹⁹ (Production 11), p. 21.

¹⁰⁰ P. 5, https://stay-grounded.org/wp-content/uploads/2019/12/Degrowth-Of-Aviation_2019.pdf.

¹⁰¹ (Production 11), p. 21.

¹⁰² (Production 14).

¹⁰³ https://ec.europa.eu/clima/policies/transport/aviation_en.

4.2.1.4 Aviation's contribution to dangerous climate change that is not caused by CO₂ emissions is not addressed by the measures currently proposed by KLM

88. Aviation does not only contribute to dangerous climate change by emitting CO₂ when burning kerosene. Flying also contributes to climate change through non-CO₂ effects. These emissions lead, among other things, to the formation of condensation trails and ozone, which reinforce the greenhouse effect and, consequently, global warming. These non-CO₂ effects may have a shorter lifespan per flight than CO₂, but because flights are so frequent and so extensive, their impact is constantly felt and significant. The total impact of aviation on global warming is estimated to be three times the influence of CO₂ emissions alone (see also marg. 74).¹⁰⁴

89. The problem with the significant non-CO₂ effects is that they are not properly addressed by the measures put forward to reduce CO₂ emissions from aviation. The measures to reduce CO₂ emissions do not have the same (mitigating) effect on the non-CO₂ effects. The IPCC believes that attempts to reduce the non-CO₂ impacts of flying "*are complex, potentially involving technological and operational trade-offs with CO₂*".¹⁰⁵

4.2.1.5 Interim conclusion on the impact of aviation on climate change

90. The science shows the impact of aviation on climate change: the aviation sector contributes significantly to climate change through CO₂ and non-CO₂ effects; this contribution has grown much faster than in other sectors; the contribution is remarkably uneven; and most of the contribution is due to often omitted non-CO₂ effects, which make it more difficult to reduce the climate impact of aviation.

4.2.2 *KLM's emissions*

91. KLM is one of the major airlines worldwide and is the largest player in the Dutch aviation market. KLM reported emissions of 14 megatons of CO₂ for the year 2019, and thus about 7.6% of the total CO₂ emissions of the Dutch economy. If non-CO₂ emissions are added, KLM's total contribution to warming is equal to about 20% of total Dutch emissions.¹⁰⁶ In the decade between 2009¹⁰⁷ and 2019¹⁰⁸ (the last pre-Covid 19 year), KLM's emissions clearly increased.

92. By way of comparison: KLM, with its 8 megatons of CO₂, emits more than the entire Dutch road transport sector, which "only" emits 6.2 megatons of CO₂.¹⁰⁹

93. The urgent, pressing need to take action and strive for "net zero by 2050" also seems to be recognised by various companies within the aviation sector:

¹⁰⁴ The contribution of global aviation to anthropogenic climate forcing for 2000 to 2018, Atmospheric Environment Volume 244, January 1, 2021, 117834, <https://www.sciencedirect.com/science/article/pii/S1352231020305689>.

¹⁰⁵ (Production 6), ch. 10, p. 10-59.

¹⁰⁶ (Production 13).

¹⁰⁷ Sustainability Report Airfrance-KLM 2010, page 67,

https://www.airfranceklm.com/sites/default/files/publications/rapport_developpement_durable_va2010-11.pdf.

¹⁰⁸ Annual Report, 2019, p. 193: <https://www.airfranceklm.com/en/system/files/universalregistrationdocument2019va.pdf>

¹⁰⁹ <https://opendata.cbs.nl/#/CBS/en/dataset/83300ENG/table>.

- i. London Heathrow: *"Like every other part of the global economy, aviation needs to reach net zero emissions by 2050. That may seem like a long time, but if the substantive changes that are needed haven't been made by 2030, the industry won't be on track for its 2050 goal. This is the decade to make a difference"*.¹¹⁰
- ii. Rolls-Royce (manufacturer of jet aircraft engines): *"This is, and will be, a complex and difficult process, but the longer carbon emissions rise, the more painful and disruptive the transition. The choices we make now will determine the future for our generation and for those to come"*.¹¹¹
- iii. And KLM, too, claims to see the urgency: *"We need to focus on reducing our negative emissions now, as this is the decade of action."*¹¹²

4.3 What should aviation do to combat climate change?

4.3.1 General: net zero in 2050

94. It is clear from the IPCC reports that greenhouse gas emissions in all sectors must be reduced rapidly and significantly in order to maintain the probability of warming to no more than 1.5°C and to preserve a viable future for people everywhere.
95. As explained above, this means reducing global greenhouse gas emissions by at least 45% by 2030, compared to 2019 emissions, to reach "net zero" CO₂ by 2050. It means an immediate, drastic reduction in fossil fuel emissions in all sectors. It also means taking action to reduce energy demand, including by limiting the growth of aviation.
96. Achieving such a reduction will require a rapid end to our dependence on fossil fuels. After all, the burning of fossil fuels is the main source of the climate crisis (see rn. 12 hierboven).
97. It is also technically and economically feasible to reduce fossil fuels rapidly.¹¹³ However, it is also essential to reduce energy demand by intervening on the 'demand side', for example by limiting air travel (see also point 4.3.4 below). 4.3.3 below).
98. We cannot wait until 2030 (or later): after all, that would mean that the amount of CO₂ would only increase until then, and the small remaining CO₂ budget would be exhausted within a few years. Wrongly, many companies do adopt the "net zero 2050" goal, without immediately starting to implement the necessary action.
99. As the UN Secretary-General put it:

¹¹⁰ <https://www.heathrow.com/content/dam/heathrow/web/common/documents/company/heathrow-2-0-sustainability/further-reading/Heathrow%20Net%20Zero%20Plan%20FINAL.pdf>.

¹¹¹ <https://www.rolls-royce.com/~media/Files/Rolls-Royce/documents/others/rr-net-zero-full-report.pdf>.

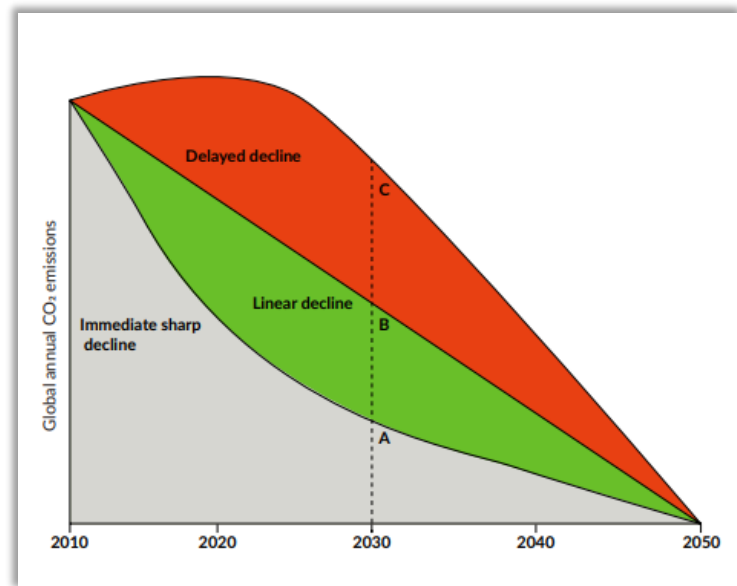
¹¹² (Production 2), p. 23.

¹¹³ (Production 6) "Meeting the ambitions of the Paris Agreement will require phasing out fossil fuels from energy systems, which is technically possible and is estimated to be relatively low in cost", Ch. 17, at 17-64.

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"You cannot claim to be green while your plans and projects undermine the 2050 netzero target and ignore the major emissions cuts that must occur this decade."**(Production 15)**¹¹⁴

100. The graph below shows that slowing down releases much more (red area) CO₂ into the atmosphere, which will have to be absorbed somehow - in ways that are not planned - if there is to be a reasonable chance of limiting global warming to a maximum of 1.5 °C. The emphasis must therefore be on immediate action in the remaining seven years of the 'critical decade':



101. Climate change is a problem of historical inaction combined with urgency. Declaring a goal of achieving "net zero by 2050", as both KLM and the aviation industry have done, essentially means that significant emission reductions must be made urgently in the current "critical decade" for accelerated action. In other words, it requires a "rapid decarbonisation" target of at least -45% of global emissions reductions. Failure to do so will only drive up already unsustainable cumulative emissions, exacerbate dangerous climate change and continue on the current path to catastrophic warming.

4.3.2 *The task for the aviation industry*

102. As outlined above (see para. 4.2 hierboven), it is clear that aviation is a major contributor to dangerous climate change. Aviation will therefore have to contribute to the acceleration of action in this critical decade. As will be further explained below, this cannot be achieved solely through the use of (currently sometimes hypothetical) forms of alternative fuels, technology and efficiency improvements. The only feasible way for aviation to make its necessary contribution to a chance of limiting global warming by 1.5°C is by flying less.

¹¹⁴ https://www.ipcc.ch/site/assets/uploads/2022/02/UN_SG_statement_WGII_Pressconference-.pdf.

¹¹⁵ "Defending the danger line, A manual for climate litigators", Roger Cox and Mieke Reij, published by Paulussen Advocaten and Milieudefensie, March 2022, page 13, see https://en.milieudefensie.nl/news/defending_the_danger_line.pdf.

103. T&E states on aviation emissions:

"Demand management is the most effective means to reducing emissions this decade (...)".¹¹⁶

104. A scientific study in the UK came up with the following summarised message for consumers:

*"The big actions are: travel less distance, travel by train or in small (or full) electric cars and stop flying; use the heating less and electrify the boiler when next upgrading; lobby for construction with half the material for twice as long; stop eating beef and lamb. Each action we take to reduce emissions, at home or at work, creates a positive ripple effect."*¹¹⁷ [lawyer's emphasis added]

105. KLM is a company with very high emissions, whose emissions are not decreasing enough to be in line with the internationally agreed climate targets.¹¹⁸ Therefore, to contribute to a chance of limiting warming to 1.5 °C, flying will have to be reduced in the remaining 7 years of the "critical decade".

4.3.3 *Aerial advertising hinders rapid decarbonisation*

106. Fossil advertisements, including aviation advertisements, impede the achievement of the Paris target in two important ways.

107. Firstly, aviation advertisements prevent a reduction in consumer demand, which would lead to a contraction in aviation itself. The IPCC points out that 40-70% emission reductions can be achieved by changing behaviour.¹¹⁹

108. According to the IPCC, demand-side strategies are crucial for the decarbonisation of the transport sector.¹²⁰ These 'demand strategies' are scientifically classified into three categories: Avoid ("*Avoid*"), Shift ("*Shift*") and Improve ("*Improve*"). For aviation, the IPCC underlines the need to reduce ("*Avoid*") air travel and to *shift* to rail wherever possible.¹²¹

109. The IPCC also emphasises that "*regulation of advertising*" is a tool for achieving decarbonisation.¹²²

¹¹⁶ (Production 11).

¹¹⁷ https://www.repository.cam.ac.uk/bitstream/handle/1810/299414/REP_Absolute_Zero_V3_20200505.pdf.

¹¹⁸ According to Fossil Free's own calculations based on data from Air-France KLM, emissions have only decreased by 1% since the Paris Climate Agreement. KLM itself states that its emissions have fallen by 4% since 2005. Emissions since 2010, however, have increased. In any case, emissions have not decreased drastically since Paris, as they should have.

¹¹⁹ (Production 6), ch. 5, 5-3.

¹²⁰ (Production 6), Technical Summary, p. TS-67.

¹²¹ (Production 6), ch. 5, 5-3, 5-40.

¹²² (Production 6), ch. 4, 4-76.

110. In a study by Greenpeace and The New Weather Institute, it was calculated that airline advertisements and their influence are directly responsible for the equivalent of 34 million tonnes of CO₂ emissions worldwide.¹²³
111. Secondly, aviation advertisements prevent the necessary broader social change.
112. According to the IPCC, to realise the above-mentioned demand strategies, significant changes in people's awareness and social norms and values are needed: "*Cultural change, in combination with new or adapted infrastructure, is necessary to enable and realise many Avoid and Shift options. The reason for this is that "people act and contribute to climate change mitigation in their diverse capacities as consumers, citizens, professionals, role models, investors, and policymakers".*"¹²⁴
113. Corporate advertising has an important effect on the necessary social changes, influencing people's awareness and social norms and values. A large number of companies, especially from the fossil sector, have already tried to derail climate change mitigation by targeted lobbying and using doubt-inducing media strategies.¹²⁵
114. According to the IPCC, advertising, especially for fossil products and services, is a major obstacle to making the economy low-carbon. Demand-side companies are involved in reducing emissions, also through advertising. Such companies:
- "either contribute to the status quo of a global high-carbon, consumption, and GDP growth-oriented economy, or help generate the desired change to a low-carbon energy-services, well-being, and equity-oriented economy"*¹²⁶
115. The IPCC goes on to say that in their interactions through their marketing, companies can influence the preferences and behaviour of consumers, with a clear effect on that decarbonisation:
- "Businesses and corporate organisations play a key role in the mitigation of global warming, through [...] the supply side interaction with changing consumer preferences and behaviours, e.g. via marketing. Business models and strategies work both as a barrier to and as accelerator of decarbonisation"*¹²⁷
116. In addition, according to the IPCC, in advertisements the responsibility of the company is sometimes shifted to the consumer and companies use the concerns that people have about the climate to strengthen their own brand:

¹²³ Greenpeace and New Weather Institute, Advertising climate chaos: How much is advertising for cars and flights fueling the climate emergency, p. 4, <https://www.greenme.it/wp-content/uploads/2022/02/advertising-climate-chaos-report.pdf>.

¹²⁴ (Production 6) Tech Summary.

¹²⁵ (Production 6), ch. 5, pp. 5-83 - references to Oreskes and Conway 2011, among others.

¹²⁶ (Production 6), Tech Summary.

¹²⁷ (Production 6), ch. 5, p. 5-83.

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"Corporate advertisement and brand building strategies also attempt to deflect corporate responsibility to individuals, and/or to appropriate climate care sentiments in their own brand building".¹²⁸

117. Scientists from other institutes also emphasise that decarbonisation requires a "social tipping point":

"Achieving a rapid global decarbonisation to stabilize the climate critically depends on activating contagious and fast-spreading processes of social and technological change within the next few years."¹²⁹

118. Advertising restrictions and bans, such as those in Amsterdam, can contribute to this, according to the scientists.¹³⁰

119. Scientists and experts, including the UN Environment Programme (UNEP), also specifically point to the need to restrict and regulate aviation advertising in order to reduce emissions.¹³¹ This, together with the specific reduction figures, is clarified in the UNEP table below [mark lawyer]:

Emissions Gap Report 2020

Table 6.1. High energy intensity (energy footprint/money spent by consumer), high income-elasticity of demand (luxury consumption)

Most impactful changes	Annual GHG emissions reduction potential Mean (min/max) tCO ₂ e/cap	Mechanisms for lifestyle change	Practical examples
Reducing use of long-haul flights/medium-haul flights	<p>One less long-haul return flight: 1.9 (0.7/4.5)</p> <p>One less medium-haul return flight: 0.6 (0.2/1.5)</p>	<p>Economic policies: end kerosene tax exemptions; implement frequent flyer levy; incentivize domestic tourism</p> <p>Legal frameworks: restrict airline and flight advertising, legal challenges to airport expansion</p> <p>Transport infrastructure: end further airport expansion in high-income countries; improve surface transport alternatives to aviation</p> <p>Social norms and social movements: changing desirability of air travel</p> <p>Social conventions: growing professional use of virtual meetings</p>	<p>Airport expansion plans in the UK legally rejected in their current form on climate grounds (Mitchell 2020)</p> <p>Domestic Austrian flights replaced with intercity rail between Vienna and Salzburg (Railway Gazette 2020)</p> <p>Tax exemptions for domestic tourism in India encourage land-based travel (Kumar 2016)</p> <p>Frequent flyer levy could reduce flying among the wealthy (Fouquet and O'Garra 2020)</p> <p>Changing norms around flying: 'flight shame' (Gössling et al. 2020)</p> <p>Rapid uptake and normalization of online work practices in response to COVID-19 (Carroll and Conboy 2020)</p>

¹²⁸ (Production 6), ch. 5, p. 5-83.

¹²⁹ Social tipping dynamics for stabilizing Earth's climate by 2050, Otto et al., p. 2354, <https://www.pnas.org/doi/10.1073/pnas.1900577117>.

¹³⁰ Social tipping dynamics for stabilizing Earth's climate by 2050, Otto et al., pp. 2358, 2361; Scaling behaviour change for a 1.5-degree world: Challenges and opportunities, Newell, P., Twena, M., & Daley, F. (2021), p.7, <https://www.rapidtransition.org/wp-content/uploads/2021/04/Cambridge-Sustainability-Commission-on-Scaling-behaviour-change-report.pdf>.

¹³¹ UNEP Emissions Gap Report 2020, p.; Quantifying the potential for climate change mitigation of consumption options, Diana Ivanova et al 2020 Environ. Res. Lett. 15 093001, p. 15, <https://www.sei.org/publications/quantifying-potential-climate-mitigation-consumption-options/>.

120. A large panel study by Citisens shows that 71% of Dutch people think the number of flights to and from the Netherlands should decrease and 75% think everyone should fly less.¹³² Other studies also point to the decline in acceptance of flying.¹³³ Under these circumstances, it is important for an aviation company that is committed to growth, to guarantee acceptance of this growth (see also no. 1) and to make sure that people who have doubts can still fly. 152) and to convince people who have their doubts to fly in a more "sustainable" way. This is exactly the intention of the "Fly Responsibly" campaign as follows from rns. 175, 176 and 177.
121. KLM's Fly Responsibly and CO2ZERO marketing are excellent examples of advertisements for fossil transport that deliberately play on the hesitation people may now have about flying. In doing so, these advertisements impede the achievement of the Paris target by contributing to keeping flying "normal" and thus contributing to "*the status quo of a global high-carbon, consumption, and GDP growth-oriented economy*". Such advertising works by introducing ideas and values "under the radar", without appealing to people's consciousness. ¹³⁴
122. The intermediate conclusion on this issue is therefore as follows: According to science, advertising is a major obstacle to the rapid decarbonisation of aviation. It discourages people from avoiding air travel or from switching (*Avoid & Shift*), while this is precisely what is needed. It also prevents important necessary changes in the social awareness of consumers, policy makers and investors, and blocks a '*social tipping point*'. This is how (misleading) fossil advertising is holding back the race to meet the Paris target.

4.4 KLM's Climate Action Plan 2022

123. KLM itself says it recognises the climate crisis and the role that aviation plays in it. It writes on the sustainability page of its website (**Production 16**):¹³⁵ "*We know that airlines have a great responsibility when it comes to sustainable travel. We are determined to contribute to a more sustainable future. (...)*"
124. KLM has included how it intends to contribute to this in the Environmental Policy Statement published in March 2018 (**Production 17**):¹³⁶

"We are committed to minimize the impact of our activities, by reducing our environmental footprint and protecting the environment beyond regulatory compliance."¹³⁷ [emphasis added].

¹³² <https://www.citisens.nl/panel/vliegen-er-zijn-voldoende-alternatieven-vinden-de-nederlanders/>.

¹³³ <https://www.nporadio1.nl/nieuws/stand-nl/d2644321-96ac-42d4-8e7f-1e6c757ea3d3/stand-nl-we-moeten-accepteren-dat-vliegvakanties-minder-vanzelfsprekend-zijn>, <https://www.hartvannederland.nl/nieuws/economie/toekomst-schiphol-verdeelt-nederland-helpt-vindt-tijd-van-vliegen-voorbij>.

¹³⁴

https://www.researchgate.net/publication/321837479_Dissociating_Controlable_and_Uncontrolable_Effects_of_Affective_Stimuli_on_Attitudes_and_Consumption.

¹³⁵ <https://www.klm.nl/information/sustainability>.

¹³⁶ <https://img.static-kl.com/m/1cf94d2a0be01a46/original/Environmental-Policy-Statement.pdf>.

¹³⁷ (**Production 17**).

125. On 12 April 2022, KLM published a new Climate Action Plan. Here too, KLM recognises the urgent need to take action:

*"However, over the past years' climate research has become more pressing. There are limits to our planet, and immediate action is needed if we want to continue to operate inside these limits. For us, it became clear that a strategy on sustainability is not sufficient, it needs to be in the core of our corporate strategy."*¹³⁸

126. KLM further acknowledges:

*"the aviation industry is a hard to abate sector when it comes to emission reductions, as alternatives are hard to find and demand keeps rising."*¹³⁹

127. KLM's Climate Action Plan primarily describes what KLM has done in the past. That has little value, since the action plan also notes that the previous policy was not sufficient. With regard to its new plan, KLM states that it is based on the Science Based Targets Initiative ("**STBi**").¹⁴⁰

128. STBi is a cooperation between various NGOs that focus on corporate social responsibility. CO2 reporting and environmental protection, namely CDP, the United Nations Global Compact, World Resources Institute and the World Wildlife Fund. SBTi develops strategic *pathways* for companies and financial institutions with which these organisations can reduce greenhouse gas emissions. The SBTi does not check whether the plans made are realistic and in line with the goals set.¹⁴¹

129. The SBTi formulates objectives, but until recently assumed the now outdated objective of a maximum global warming of 2 °C for aviation. The SBTi is now based, as explained below in no. 134 explained below, the SBTi is now based on the more ambitious goal of a maximum of 1.5 °C.

130. KLM writes the following about the SBTi in its Climate Action Plan:¹⁴²

"The sectoral decarbonisation approach (SDA) is a target setting methodology developed by the SBTi allowing companies to set science based GHG targets aligned with a well-below 2 °C scenario. Essentially, the SDA attempts to address a fundamental tension in corporate target setting: that rapid decarbonisation is incongruent with industry growth. For commercial aviation, this uncertainty could be framed as: "How much would the aviation sector's average carbon intensity need to decrease in order to achieve Paris aligned decarbonisation goals whilst also allowing for projected industry growth?" [emphasis added].

¹³⁸ (Production 2), p. 5.

¹³⁹ (Production 2), p. 7.

¹⁴⁰ (Production 2).

¹⁴¹ <https://sciencebasedtargets.org/>.

¹⁴² (Production 2), p. 15.

This is an unofficial machine translation of the Dutch original version

131. It is striking that, in the quote above, KLM uses the "frame" that the problem to be solved must be united with the assumption that continuous growth of the aviation industry would be necessary.

132. It is also important to note that the scenario KLM has outlined for itself is based on the low ambition level of "well below 2 °C scenario". However, KLM also states in its Climate Action Plan that it intends to commit to the current starting point of warming of less than 1.5 °C. KLM states:

*"Currently, a 1.5 °C pathway is under development for the aviation sector by the SBTi, which will be integrated into the SBTi Aviation Guidance and accompanying target-setting tool. Once the pathway is updated, we will update our own targets in line with SBTi guidance accordingly to 1.5 °C. Our current projections are based on a well below 2 °C scenario."*¹⁴³

133. So while KLM openly acknowledges that it should be aiming for the 1.5°C scenario, it chooses to continue on the inadequate 2°C path.

134. The SBTi has now also published the Corporate Net-Zero Standard, which SBTi says "includes the guidance, criteria, and recommendations companies need to set science-based net-zero targets consistent with limiting global temperature rise to 1.5 °C." The SBTi says that "Companies adopting the Net-Zero Standard are required to set both near-term and long-term science-based targets. This means making rapid emissions cuts now, halving emissions by 2030."¹⁴⁴ This Standard thus assumes a pathway to a maximum 1.5 °C warming, across all sectors, and based on a 4.2% reduction in emissions per year.¹⁴⁵

135. In its Climate Action Plan, KLM implements the SBTi targets in its own way. In this context, KLM formulates the following climate objective:¹⁴⁶

CO₂e reduction targets KLM group	CO₂ reduction in 2030 compared to 2019 (scope 1 & 3)
Intensity target (ppkm)	-30%
Projected absolute reduction (based on SBT forecasts)	-12%

Table 2. "Overview CO₂ Reduction Targets KLM Group."

136. KLM is thus aiming for a 30% reduction in emissions per passenger per kilometre, but because of the growth (in passenger numbers) that KLM is aiming for, the total reduction will not

¹⁴³ (Production 2), p. 15.

¹⁴⁴ <https://sciencebasedtargets.org/net-zero>.

¹⁴⁵ <https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf>.

¹⁴⁶ (Production 2), p. 13.

This is an unofficial machine translation of the Dutch original version

exceed 12%. In any case, an absolute reduction of 12% in 2030 is not in line with the reduction paths required for net zero in 2050 (see marg. 58). And, as discussed below, this expectation is also largely based on the implementation of as-yet non-existent technologies (see Chapter 5), which makes it very likely that even that will not be possible. 6), making it very likely that not even the absolute 12% reduction will be achieved.

137. About achieving an actual "net zero" of its total CO₂ emissions, (as opposed to the relative reduction or an "intensity" target per passenger per kilometre, which may mean that KLM's total emissions continue to rise) KLM writes in its Climate Action Plan:¹⁴⁷

"This is in line with previous targets and was chosen to calculate because only an absolute reduction will truly reduce our CO₂ emissions.
[emphasis added].

138. So KLM itself recognises that only reducing emissions in absolute terms will help to reduce CO₂ emissions.

139. According to the current Climate Action Plan, KLM aims to achieve its SBTi targets by taking the following measures (in brief): ¹⁴⁸

- A. Fleet renewal: Aircraft with more efficient fuel engines
- B. Operational measures: Optimising flight paths, electric taxiing, weight reduction etc.
- C. Sustainable Aviation Fuels (SAF)
- D. Network choices: Optimise KLM's network by choosing destinations, stopovers, refuelling points, etc.

140. In addition, KLM mentions matters in its Climate Action Plan that STBi does not recognise. This concerns (in summary): ¹⁴⁹

- E. Voluntary CO₂ "compensation": Passengers can voluntarily contribute to reforestation through carbon credits.
- F. Reducing energy use for ground operations: Saving on energy use for maintenance, heating, etc.
- G. "Multi Modalities": Investing in connection to train network
- H. "Internal CO₂ pricing": since 2022, KLM has set its internal price on the use of CO₂ at €60 per tonne.

¹⁴⁷ (Production 2), p. 17.

¹⁴⁸ (Production 2), p. 18 III Working towards 2030.

¹⁴⁹ (Production 2), p. 15 from p. 22 V Other activities (outside of SBTi scope).

This is an unofficial machine translation of the Dutch original version

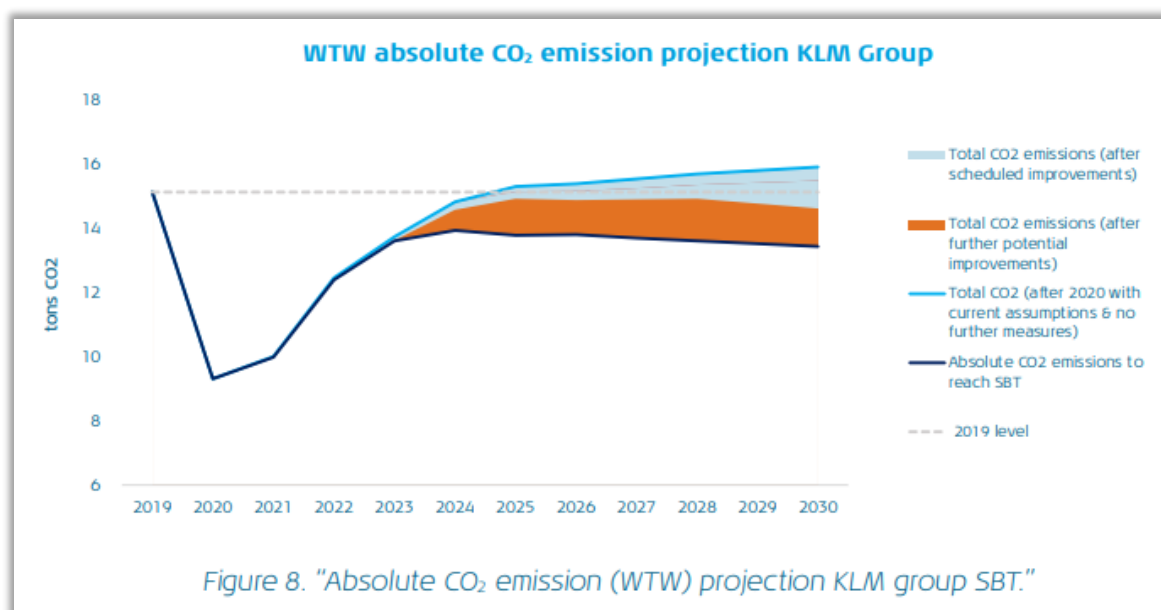
141. According to KLM, the previous targets are short-term goals: "*We need to focus on reducing our negative emissions now, as this is the decade of action.*"¹⁵⁰
142. KLM also provides its vision of the long-term goals it believes are necessary for a Net Zero scenario in 2050. In it, KLM mentions:¹⁵¹
- I. Technological developments: E.g. hybrid flying, electric flying and hydrogen flying
 - J. Alternative fuels: Further development of "sustainable aviation fuels", such as biofuels and synthetic kerosene
 - K. Operational efficiency: Further efficiency, e.g. through the Single European Sky (SES) initiative by means of (in short) a joint European air traffic control.
143. It is not obvious that KLM will achieve its 12% CO₂ reduction target with this package of measures, and as long as it continues to focus on growth (see below). 150 onwards), KLM will achieve its target of 12% CO₂ reduction by 2030.
144. This is because the reduction plan is highly dependent on the degree of availability of "sustainable aviation fuel". Measures other than "sustainable aviation fuel" are either insufficient (in the case of efficiency improvements) or too late to achieve reductions by 2030 (in the case of electric and hydrogen-powered aircraft). Fossil Free will elaborate further on this in marg. 192 of this writ of summons, but already now it can be said that KLM added no more than 0.18% "sustainable aviation fuel" to its fuel stock, which has no significant impact on reaching the targets. It is highly unlikely that this will change significantly in the near future. KLM itself recognises that it is mainly *wishful thinking* when it says: ¹⁵²
- "We need to go beyond the limits of the boundaries of the source of the percentage of SAF that we see".*
145. Add to this the fact that the SBTi also prohibits the inclusion of the other measure mentioned by KLM, "CO₂ compensation" through reforestation, and it is clear that KLM will not be able to achieve an absolute reduction of 12% in emissions if it simultaneously commits to growth.
146. The chart below from KLM itself is illustrative: ¹⁵³

¹⁵⁰ (Production 2), p. 23.

¹⁵¹ (Production 2), from p. 23 VI. Outlook towards 2050.

¹⁵² (Production 2), p. 20.

¹⁵³ (Production 2), p. 20.



147. The orange coloured part of the graph is a decrease due to "further potential improvements". These are improvements that KLM itself does not mention as concrete measures (see rns. 139 and 140). These "potential improvements" cannot be expected to materialise so quickly that they can actually contribute to the reduction "predicted" here. For the record: the SBTi only validates KLM's ultimate goal and not the realism of the proposed reduction path (see also rn. 127).
148. KLM's choice of a short-term, low level ambition "well below 2 °C" would mean that KLM knowingly contributes to the world rising above 1.5 °C. As the SBTi says:¹⁵⁴ "[s]caling up immediate action consistent with limiting warming to 1.5 °C is our last opportunity to preserve society as we know it. The next few years are critical". KLM's reissued climate action plan is largely based on the same activities that have failed to reduce its emissions over the past decade. The company has to recognise that its decision to grow means that it has no plan to meet even this unsustainable target.

4.5 KLM has a growth policy and lobbies against regulation, which is contrary to the goal of reducing CO₂ emissions from aviation

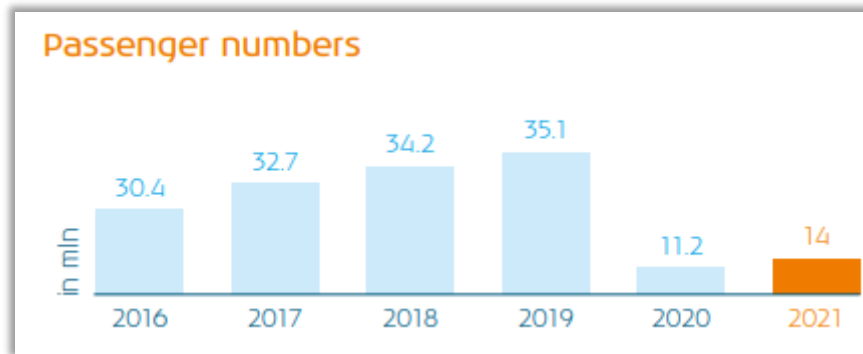
149. What is striking about KLM's Climate Action Plan is that it mentions the importance of combating global warming and complying with the Paris Climate Agreement, but it does not mention reducing air travel, even though this is the only feasible method of reducing air travel emissions within the terms of the Paris Climate Agreement.

¹⁵⁴ <https://sciencebasedtargets.org/blog/our-ambitious-new-strategy>.

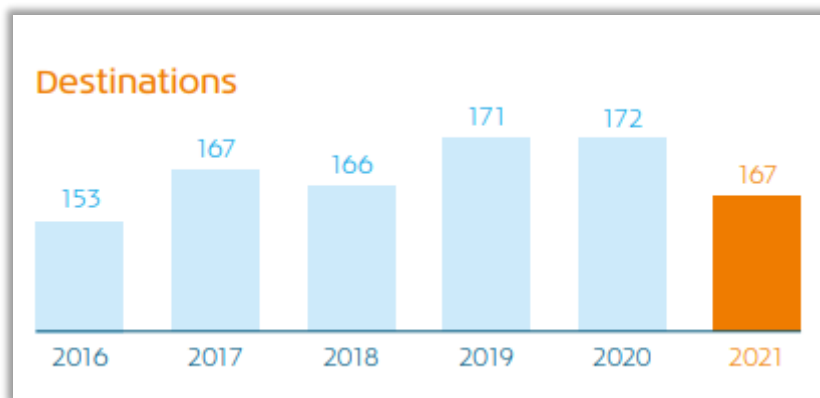
This is an unofficial machine translation of the Dutch original version

4.5.1 KLM prioritises growth

150. Just as KLM's emissions have grown, so too has its air traffic. This is also evident from its Annual Report 2021.¹⁵⁵ This annual report shows that the number of passengers increased from 2016 to 2019 (the Covid period is not taken into account):



151. The number of destinations also increases in 2016-2019 (with the exception of the Covid period, see page 39 of the Annual Report 2021):¹⁵⁶



152. KLM has a clear ambition to grow. It states in its annual report:

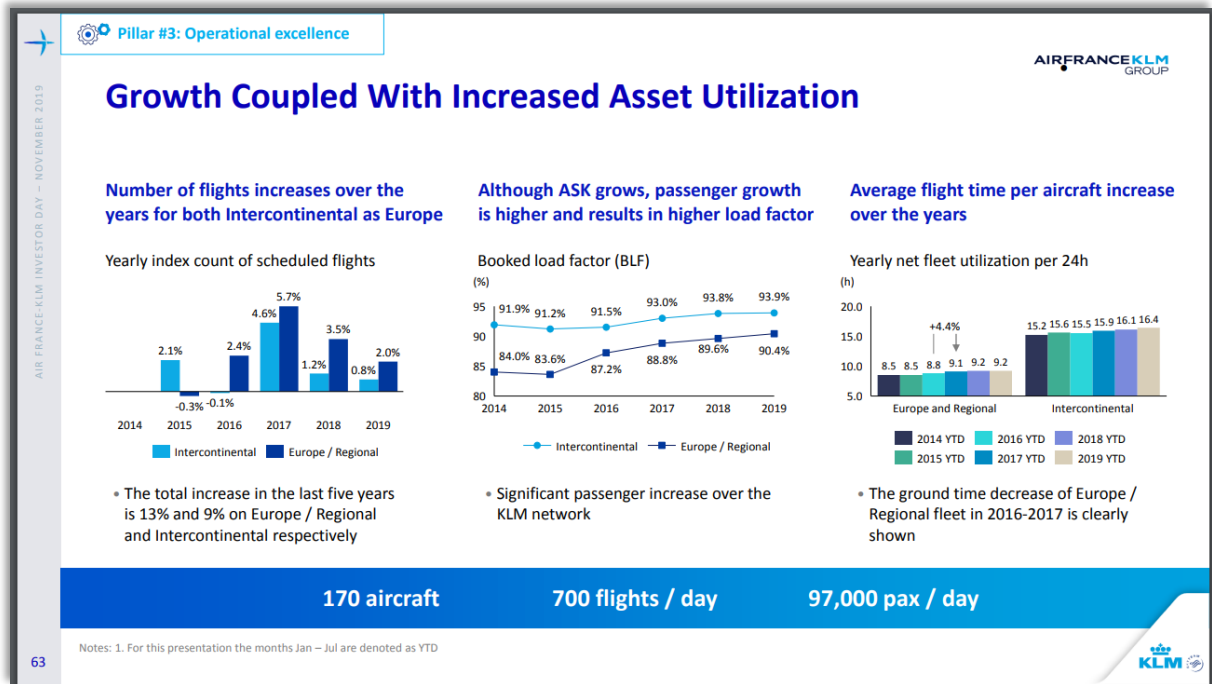
"(...) Long-term, it is important that the industry will get a clear perspective on moderate growth scenarios, in return for conditions such as a reduction in noise levels. Moderate growth will allow KLM to continue its business (...)"

153. In the information for its shareholders for the *investor day* on 5 November 2019, Air France - KLM explicitly addresses this:¹⁵⁷

¹⁵⁵ (Production 5).

¹⁵⁶ (Production 5).

¹⁵⁷ https://www.airfranceklm.com/sites/default/files/air_france-klm_investor_day_2019.pdf.



154. The press release for the *investor day* also stated that:

"Refocus Growth of Passenger Revenue on Most Profitable Segments by Leveraging Hubs and Powerful Brand Identities

(...)

For KLM, strengthen its leadership position at Schiphol while continuing to grow in order to become the benchmark carrier for connecting traffic to and from Europe.

(...)

For Transavia, consolidate its leading low-cost position in The Netherlands and aim to become the leading low-cost airline in France in terms of number of based aircraft.

More accurate targeting of customers for an increasingly personalised offer at a reduced cost of sale" [emphasis added].

155. According to Air France - KLM's annual financial report of 2021, the company is also committed to growth (**Production 18**):

"Over the longer term, fleet modernization will be reflected in the continued growth of the Boeing 787 and E195-E2 fleets at KLM and those of the A350-900s and A220-300s at Air France. Transavia (France and Netherlands) will see its fleet adapt to the growth market in the leisure segment."¹⁵⁸

¹⁵⁸ <https://www.airfranceklm.com/en/finance/publications>, p. 46.

"The Group plans to launch targeted strategic actions aimed at improving the medium and long-term operational performance, into line with the best international airline standards, while taking into account the environmental and societal issues linked to its growth." ¹⁵⁹

"the actions implemented by Air France - KLM to limit and reduce its environmental impact directly influence its ability to manage and develop its activities ("license to grow") in all regions of the world and over the long-term." ¹⁶⁰
[emphasis added].

156. KLM's annual report for 2021 also states that KLM wants to grow: ¹⁶¹

"We also maintained focus on the expansion and modernisation of Schiphol in order to keep the airport competitive and ready for future growth [...] Both KLM and Schiphol remain confident the aviation industry will recover. Long-term, it is important that the industry will get a clear perspective on moderate growth scenarios, in return for conditions such as a reduction in noise levels. Moderate growth will allow KLM to continue its business as well as to contribute to the prosperity of the Netherlands and improve the living conditions in the Schiphol area".

157. In its Climate Action Plan 2022, KLM assumes an annual growth rate of 1.95% (*Compound Annual Growth Rate*, "CAGR"). However, KLM's proposed growth of 1.9% CAGR in this "decade of action" is equivalent to a growth of approximately 20% over the next ten years. It is approximately the same growth that Air France-KLM has targeted for the Covid-19 pandemic of "[c]apacity growth +2 to +3% p.a." ¹⁶² *Business as usual*, then.

158. In a News Hour broadcast on 6 October 2019, Elbers said flying less would not help: ¹⁶³

*Elbers: "The moment you can go to Berlin in, let's say, three hours, you have a competitive product. And then I am very happy to connect that with the train."
Interviewer: "But you say Fly Responsibly, which is a big campaign of yours in which you say take the train a little more often. But at the same time you continue to offer flights".
Elbers: "No, we are not saying, take the train more often. We are saying."
Interviewer: "Consider taking the train more often".
Elbers: Exactly. That is a very important difference. (...)*

Interviewer: "Some people call it greenwashing, on the one hand making pretty commercials and saying 'think about the train...' but on the other hand continuing to fly."

¹⁵⁹ (Production 18), p. 128.

¹⁶⁰ (Production 18), p. 151.

¹⁶¹ (Production 18), p. 151.

¹⁶² https://www.airfranceklm.com/sites/default/files/air_france-klm_investor_day_2019.pdf, slide 114.

¹⁶³ https://www.npostart.nl/nieuwsuur/06-10-2019/VPWON_1303274.

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Elbers: When I look at what we have set out in our campaign [Fly Responsibly], we say, look at CO2 compensation, which means that you invest in trees and greenery to eventually complete the circle. Look at: is the train a good alternative. Carry less weight. We say in there a lot of aspects that we really think." Interviewer: "but what would really contribute is flying less." Elbers: "Yes, but the moment you start flying less, it may seem nice, because you get fewer emissions in the Netherlands, but the passenger who goes from Hangzhou to Rome is still going to fly, only no longer via Amsterdam, so we don't gain anything worldwide. But more importantly, at the end of the day you have to keep earning and making money to invest in that sustainability." [lawyer's emphasis added]

159. And in other media appearances, Elberts tries to introduce the phenomenon of "moderate growth" as a means to make sustainability possible:

"Aviation is one of the pillars of our economy. Maintaining the level of prosperity is a minimum condition for sustainable development. Replacing our fleet requires investments, which we pay for out of profits. So if we want to make investments to reduce noise pollution and CO2 emissions, we must continue to grow in moderation".¹⁶⁴

"As KLM, we also want to become more sustainable more quickly by investing in fuel-efficient aircraft. To do so, we must be able to continue to grow at Schiphol in order to make a profit and be able to continue to invest with this".¹⁶⁵

"(biofuel, ground processes, CO2 emissions per passenger)".¹⁶⁶

"I am not an advocate of unbridled growth. But moderate growth is necessary to become more sustainable"¹⁶⁷

160. KLM's firm opposition to the reduction of flying is evident from its response to the Dutch government's announcement on 24 June 2022 that the number of flight movements at Schiphol is to be reduced to a limited extent. KLM says it was taken by surprise by the announcement and further that this measure is "dramatic" for KLM. KLM even states that reducing the number of flight movements "will not achieve the desired impact on climate and quality of life". Other European airports will increase air traffic to compensate for the shrinkage of Schiphol, according to KLM.¹⁶⁸ In fact, this means that KLM's position is that others must reduce traffic first, before it does so. KLM thereby assumes that a 100% displacement effect will take place. However, the Dutch government says that this policy will have a major impact on CO2 emissions from Dutch aviation.¹⁶⁹

161. The outgoing CEO noted that growth is and will remain the goal:

¹⁶⁴ <https://www.ewmagazine.nl/nederland/achtergrond/2019/11/pieter-elbers-co2-uitstoot-per-passagier-daalt-189920w/>.

¹⁶⁵ <https://www.luchtvaartnieuws.nl/nieuws/categorie/2/airlines/klm-topman-pieter-elbers-inzetten-op-duurzame-luchtvaart>.

¹⁶⁶ https://www.npostart.nl/buitenhof/13-05-2018/VPWON_1283479?st=premium.

¹⁶⁷ <https://www.trouw.nl/duurzaamheid-natuur/klm-vliegen-is-als-drinken-doe-het-met-mate~b778d24e/>.

¹⁶⁸ <https://nieuws.klm.com/krimp-schiphol-heeft-grote-negatieve-gevolgen-en-staat-haaks-op-regeerakkoord/>.

¹⁶⁹ <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/06/24/hoofdlijnenbrief-schiphol>.

"The lack of growth potential was a problem, but now this disastrous shrinkage scenario may be upon us. [...] That people want to fly less is a myth when I see how many customers are booking with us again. That we must do things more sustainably is beyond dispute. We are working on that, we are leading the way."¹⁷⁰

162. KLM's decision to continue growing, while aviation has the fastest growing impact of all sectors, is in direct contradiction to the Paris objective.

4.5.2 *KLM lobbies against climate regulation that could lead to reduced emissions*

163. KLM says one thing to the Dutch population in its advertisement, and another to the legislator: Air France-KLM conducts an intensive lobby, including through its parent company Air France-KLM and industry organisations such as the International Transport Association (IATA). This lobbying is done against government regulations (in the Netherlands and Europe) that are intended to reduce greenhouse gas emissions from aviation. For example, Air France-KLM opposes proposals by the European Commission to achieve the climate objectives (Article 4 of the European Climate Act). The European Commission proposes, among other things, to phase out the allocation of free emission rights to (a.o.) aviation and to implement the global CO₂ compensation and reduction scheme for international aviation (CORSA) through the EU ETS.¹⁷¹

164. Of all airlines, Air France-KLM spends the most money on lobbying. Detailed EU transparency records show that Air France-KLM steadily increased its lobbying expenditure to around €400,000 in the period 2016-2019. Then in 2020, Air France-KLM doubled its lobbying expenditure to €950,000.¹⁷²

165. Air France-KLM is lobbying to weaken or block European climate measures, which are part of the European "Fit for 55" policy package aimed at achieving the European target of 55% emissions reduction by 2030 compared to 1990 (see above in marg. 69 and 95). This, while another CE Delft study shows that the proposed EU Fit for 55 legislation will be insufficient to prevent the growth of emissions from Dutch aviation in 2030 compared to 2005. Emissions will grow from 10.9 MtCO₂ in 2005 to between 12.9 and 14.8 MtCO₂ in 2030, depending on which growth scenario and level of EU policy emerge.¹⁷³ With this legislation, the Dutch government's proposed plans will not even be met.¹⁷⁴ This policy package, and KLM's lobbying against it, involves the following elements:

¹⁷⁰ https://www.noordhollandsdagblad.nl/cnt/dmf20220627_61823116.

¹⁷¹ P. 18, and p. 23, <https://influencemap.org/report/Aviation-Industry-Lobbying-European-Climate-Policy-131378131d9503b4d32b365e54756351>.

¹⁷² <https://www.lobbyfacts.eu/datacard/air-france-klm?rid=064616126640-05>.

¹⁷³ CE Delft Dec 2021 study, <https://cedelft.eu/publications/effects-of-the-fit-for-55-package-on-the-dutch-aviation-sector/#:~:text=We%20found%20that%20in%20the,passengers%20travelling%20through%20Dutch%20airports>

¹⁷⁴ CE Delft Dec 2021 study, <https://cedelft.eu/publications/effects-of-the-fit-for-55-package-on-the-dutch-aviation-sector/#:~:text=We%20found%20that%20in%20the,passengers%20travelling%20through%20Dutch%20airports>. See also footnote 68.

- i. Air France-KLM is against the taxation of kerosene fuel. Kerosene as a fuel for aviation is exempt from taxation in Europe, and thus treated differently from fossil fuels used for road transport and some international train connections. Air France-KLM is lobbying against proposals to end that exemption.¹⁷⁵
- ii. While KLM claims that "Sustainable Aviation Fuel" will be the main pillar for reducing its emissions, IATA and its lobbying organisation the Airline Coordination Platform¹⁷⁶ have repeatedly lobbied to significantly limit the scope of the EU's proposed requirement to integrate SAF (the SAF mandate).¹⁷⁷ The CEO of KLM and the CEO of Air France-KLM sit on the "board of governors" of IATA.¹⁷⁸ Air France-KLM supports the March 2022 statement by the Aviation Alliance, which on the one hand claims to support the SAF mandate in general, but at the same time points out various cost and competition problems that would be associated with that SAF mandate and therefore advocates for adjustments and restrictions to it. Another Air France-KLM lobby group argues that the taxpayer should pay for the "sustainable aviation fuel" through subsidies.¹⁷⁹ And Air France-KLM opposes an increase from 5% to 6% SAF blending obligation.¹⁸⁰
- iii. The EU ETS CO₂ tax system (CO₂ pricing for aviation) does not yet cover flights with destinations outside the EU, i.e. presumably the majority of aviation emissions.¹⁸¹ Air-France KLM opposes the full inclusion of its operations in the EU ETS,¹⁸² and seeks to maintain the ineffective international scheme for CO₂ offset and reduction in international aviation (CORSIA) as an alternative.¹⁸³
- iv. Air-France KLM's position paper of April 2022 seeks to relax and extend the international CORSIA industrial compensation programme,¹⁸⁴ which has been shown to be ineffective in reducing aviation emissions.¹⁸⁵

¹⁷⁵ (Production 12), p. 30.

¹⁷⁶ (Production 12), p. 18, and 23.

¹⁷⁷ (Production 11).

¹⁷⁸ Membership of the Board of Governors, IATA, <https://www.iata.org/en/about/corporate-structure/boardgovernors/>.

¹⁷⁹ <https://a4e.eu/wp-content/uploads//Airlines-for-Europe-A4E-FF55-Summary.pdf>.

¹⁸⁰ <https://skift.com/2022/06/09/europes-sustainable-aviation-fuel-mandate-leads-world-in-policy-and-debate/> and https://lobbymax.org/site/data/000/767/Air-France-KLM_Key-Messages_SAF_04-2021.pdf.

¹⁸¹ It is probably not the majority of flights, but it is certainly the majority of flight kilometres and emissions from aviation. There could be more flights between the EU, but these are shorter flights with smaller planes that produce far fewer emissions per flight. E.g. 150 people flying to Spain vs. 300 people flying to India. Long-haul air travel is a small % of flights, but causes a large % of emissions. See: <https://www.eurocontrol.int/publication/eurocontrol-data-snapshot-co2-emissions-flight-distance>.

¹⁸² (Production 6), p. 10-100.

¹⁸³ (Production 6) According to the IPCC, "By its nature, CORSIA does not lead to a reduction in in-sector emissions from aviation since the program deals mostly in approved offsets. At its best, CORSIA is a transition arrangement to allow aviation to reduce its impact in a more meaningful way later." And see also: "The EU study finds: Regulating EU airline pollution with Corsia alone is the worst option. This option is associated with the biggest global net aviation CO₂ emissions increase..." <https://www.transportenvironment.org/discover/revealed-unpublished-eu-analysis-scathing-airline-co2-deal/>.

¹⁸⁴ (Production 11).

¹⁸⁵ (Production 12), p. 9 and 10.

- v. Only a minority of EU Member States tax tickets for international aviation.¹⁸⁶
Air France-KLM opposes climate taxes by member states on tickets.¹⁸⁷

166. KLM says about its lobbying activities in its annual report 2021:¹⁸⁸

"KLM, in close coordination with Air France, actively clarifies its position towards the European institutions and the Dutch government, both directly and through industry bodies such as IATA, Airlines for Europe (A4E), BusinessEurope, BARIN and VNO-NCW, regarding changes in European and national regulations".¹⁸⁹

167. And on page 26:

"Fit for 55 aims to make Europe fit for a CO2 reduction of 55 per cent by 2030 compared to 1990, paving the way towards Europe becoming the first climate-neutral continent in the world. Measures pertaining to the aviation industry include a strengthening of the European Emissions Trading System (EU ETS), a European blending obligation for SAF and a proposal for a tax on kerosene. We have responded positively to the proposals, but disagree with the tax on kerosene, as it does not support the sector to become more sustainable, especially as its proceeds are not spent on in-sector decarbonisation. This could put a break on investments in sustainability, which would undermine efforts to improve the quality of the environment. KLM has shared its views with the European Commission and the European Parliament through a comprehensive position paper."¹⁹⁰ [emphasis added].

168. Air France-KLM is even more direct. Its 2021 annual report states:

"Risks related to the environment

Acceptability of air transportation growth

(...)

The air transport industry is subject to a significant level of environmental legislation governing areas such as the exposure of people to aircraft noise and local emissions, air quality, the treatment of waste products, and the introduction of taxes on airlines and obligations to ensure the compliance of their operations. For example, since 2020, airline tickets issued by all airlines have attracted a tax on all flights departing from France (but not on arrivals), except connecting flights.

¹⁸⁶ European Commission, Directorate-General for Mobility and Transport, Taxes in the field of aviation and their impact: final report, Publications Office, 2019, <https://data.europa.eu/doi/10.2832/913591>.

¹⁸⁷ (Production 5), p. 32.

¹⁸⁸ (Production 5), p. 66.

¹⁸⁹ (Production 5), p. 66.

¹⁹⁰ (Production 5), p. 27.

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This tax will raise funds for investment in greener transportation infrastructure, including rail.

Such legislation may have a significant negative impact on the Group's operations and growth which could be reflected in more substantial costs, and could lead to competitive distortions between airlines when applied solely to a specific geographical area.

The debate about the role of aviation in climate change increases the risk that CO₂ emissions will be subject to more rigorous pricing in the future. In future, the regulation will also take into account the "non-CO₂ climate impact of aviation", such as condensation trails and nitrogen oxide emissions which may impact aviation activities."¹⁹¹

"Air France - KLM is a member of the representative associations for the airline industry (IATA, ATAG, A4E, FNAM) which engage in lobbying activities directed at the relevant national, European and international authorities and bodies (ICAO, European Union, supervisory Ministries in France and the Netherlands) to promote effective solutions for the environment, and also to ensure that the measures which are put in place do not lead to any distortion in competition between the air transportation players (...)." ¹⁹² [emphasis added].

169. InfluenceMap is an independent NGO that meticulously researches lobbying activities and maps how companies and financial institutions influence the climate crisis.¹⁹³ InfluenceMap also researched the role of the sector lobby mentioned by Air France-KLM:

"InfluenceMap's analysis on climate-related lobbying has identified an increasingly common industry strategy to support long-term net-zero targets while opposing specific Paris-aligned near-term policy measures to achieve them. The European aviation industry has fully embraced this tactic, strategically delaying ambitious climate regulation for aviation while hiding near-term inaction on decarbonization.

- *In February 2021, the European aviation industry (including Airlines for Europe) announced sector-wide support, as part of the Destination 2050 Initiative, for net-zero aviation emissions from all flights within, and departing the EU, UK, and EFTA by 2050. The report was released during key EU deliberations on climate regulation for aviation, and was emailed to EU Commission officials pre-release in February 2021 by Airlines for Europe, who stated that "in the current crisis the industry is finding itself, the strategic significance of such commitments cannot be underestimated".*

¹⁹¹ (Production 18), p. 151.

¹⁹² (Production 18), p. 151.

¹⁹³ (Production 12), p. 151.

However, the report's key commitments do not appear to outline support for any specific, ambitious near-term climate policies to decarbonize the sector.

- *Simultaneously, the European aviation industry has actively and collectively lobbied against nearly all strands of specific European climate regulation for aviation, including all climate-related taxation for aviation. For example, Airlines for Europe, Europe's leading aviation industry association, in an April 2020 EU consultation response argued that "climate policy regulation in the form of sector-specific taxes, levies or bans are ecologically and economically counterproductive". Similarly, statements from airline CEOs in 2019-20 including International Airlines Group, Ryanair, and Air France-KLM appear to oppose climate-related aviation taxes, disputing their environmental benefits, with an Air France paper emailed to EU Commission officials in March 2021 arguing "new taxation must be avoided."¹⁹⁴*

"The research identifies a two-point strategy used by the sector to avoid regulation directly addressing their climate emissions. Firstly, at a European level, the aviation sector has communicated high-level support for net-zero EU aviation emissions by 2050 while opposing specific national and EU-level climate regulations to help deliver that target in their direct engagements with policymakers. Secondly, at a global level through the UN body for aviation, the International Civil Aviation Organization (ICAO), industry has lobbied for the CORSIA offsetting scheme to take precedent over policies addressing absolute aviation emissions reductions. At the same time, using the context of the COVID-19 pandemic, industry lobbyists have successfully pushed for the scheme to be watered down further."¹⁹⁵

170. The above shows that KLM, also through Air France - KLM and the underlying industry organisations, actively opposes government measures aimed at reducing the contribution of aviation to the climate crisis in the "critical decade". This runs counter to, for example, the expectations of the UN Race to Zero initiative for companies to demonstrate credible climate action. The UN Race to Zero asks companies to "*align external policy and engagement, including membership in associations, to the goal of halving emissions by 2030 and reaching global (net) zero by 2050*".¹⁹⁶ KLM, and the aviation industry, do the opposite. Internally, therefore, they actually oppose sustainability.

¹⁹⁴ (Production 12), p. 20.

¹⁹⁵ (Production 12), p. 4.

¹⁹⁶ <https://climatechampions.unfccc.int/wp-content/uploads/2022/06/EPRG-interpretation-guide-2.pdf>, p. 14.

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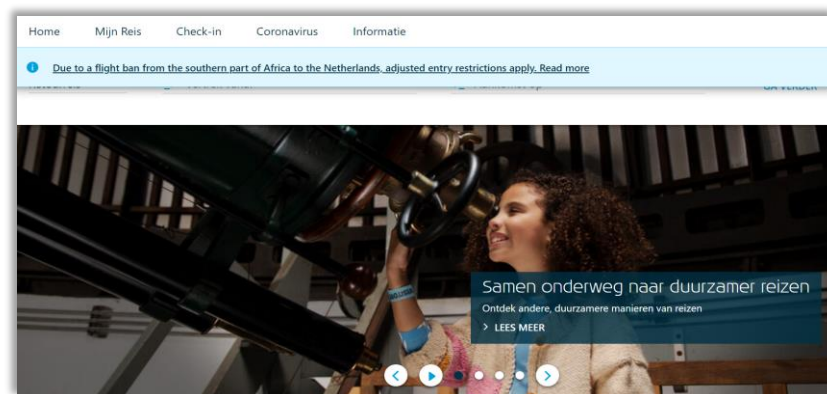
171. The results of research into lobbying documents and the work of InfluenceMap and others show that KLM lobbies intensively, both directly and indirectly through industry organisations, to block, weaken and delay policies aimed at reducing short-term emissions in the aviation sector.

5 KLM'S SUSTAINABILITY MARKETING

172. Against the background of unprecedented public concern about the future of climate change and the impact of flying on the climate, the KLM advertisements at the centre of these proceedings create the impression that flying is or becomes somehow more sustainable by flying with KLM and by taking advantage of the possibility offered by KLM to pay something to KLM for SAF and reforestation.
173. The ads claim that KLM is on a journey together with customers ("our greatest adventure ever") to "more sustainable travel" and a "more sustainable future", summed up in the Paris goal. The CO2ZERO marketing claims that customers can offset and reduce the impact of flying ("You too can do your bit to make aviation a more sustainable industry. Let's change the future together!").
174. This is false, misleading and by reassuring people who are increasingly concerned about their contribution to climate change by flying, it only perpetuates the growth of aviation. It also encourages more flying (and more emissions), which is diametrically opposed to the rapid decarbonisation of aviation. In the following, these statements will first be listed.

5.1 "Fly Responsibly" advertising campaign

175. In December 2021, KLM launched its renewed advertising campaign "Fly Responsibly", which focuses on aviation and sustainability (**Production 19**). The campaign consists of the vague and simplistic claims that it is on the path to more sustainable travel and a more sustainable future, with more detailed web pages explaining what this means. KLM claims in this campaign that its and the industry's path to the "net-zero ambition" consists of: fleet renewal, operational improvements, CO2 offsets and "Sustainable Aviation Fuels", SAF. On the basis of all these measures, KLM invites the public to join KLM in creating a *sustainable future*.



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An image from the renewed "Fly Responsibly" advertising campaign

176. KLM's advertising promotes its own activities and path in conjunction with those of the wider aviation industry - the advertising promotes the sustainability of flying in general. For example:

"With Fly Responsibly, KLM is taking the lead in creating a more sustainable future for aviation"¹⁹⁷

"The aviation industry has the ambition to achieve just zero CO2 emissions by 2050 and to underline this promise, we are developing our own path"¹⁹⁸

"What the Industry Can Do [...] Together we can make a bigger difference [...] Only if we all work together can we really make a difference. All aviation industry stakeholders, all airlines, all manufacturers - the whole business community"¹⁹⁹

"For centuries we have dreamed of travelling to other, distant worlds / But this world is still our only home / Fortunately, the way we travel is changing / And together we are moving towards a more sustainable future / Because more sustainable travel is our greatest adventure ever / Together on the road to more sustainable travel"²⁰⁰

177. The campaign was launched on 7 December 2022 and ran until 9 January 2022. However, on 1 July 2022, just before the service of this writ of summons, the website was still on KLM's website (**Production 20**, printout of KLM's Fly Responsibly web pages shortly before the writ of summons). The physical advertisements were also placed at various locations for a long time. For instance, a billboard with the Fly Responsibly advertisement was placed at Schiphol Airport on 14 May 2022.

178. The trade press reported that the campaign video was broadcast in the Netherlands, Sweden, Norway, the United Kingdom, Germany, the United States, Canada, Brazil and China. The advertising agency that created the campaign, Dentsu, says the following about KLM's Fly Responsibly campaign:

"The film is to show that KLM is truly committed to sustainability and fully understands how urgent this topic is for customers and the broader industry. The film is inspired by Dutch astronaut Wubbo Ockels who spoke to the world from space. In 2014 to say that when you've seen the world from his perspective you are able to value it in different ways. The pale blue dot we live on is the only home we've got. It's our past, present and future. A place full of wonder, mystery, life and humanity. Space will always be fascinating, but traveling sustainably on our own precious planet is the

¹⁹⁷ https://flyresponsibly.klm.com/nl_nl#home / (Production 19).

¹⁹⁸ https://flyresponsibly.klm.com/nl_nl#home / (Production 19).

¹⁹⁹ https://flyresponsibly.klm.com/nl_nl#keypoints?article=WhatIndustryDo / (Production 19).

²⁰⁰ https://flyresponsibly.klm.com/nl_nl#home / (Production 19).

mission that matters now. A mission that can only be accomplished by an airline willing to take the lead and the travellers who want to join. The film shows how KLM has shifted the focus back to travel on our own vibrant world by telling the story of young girl, the next generation, looking at our planet through a giant telescope. By turning this powerful lens onto both KLM and our passengers she sees the world, and the best way to make the most out of traveling - in a whole new way. The film directs customers towards KLM's Fly Responsibly Platform where they can find more information on KLM's sustainability drive, as well as the industry-wide efforts being undertaken, and the personal contribution customers can make."²⁰¹

179. Several travel websites described the campaign as follows:

*"The campaign targets consumers who want to fly but are increasingly uncomfortable about the impact that air travel is having on the environment. They are seeking confirmation that their chosen airline, KLM, shares their concern and is working to reduce the impact of travel. [The campaign will be rolled out worldwide on 13 December in a number of vital, fast-growing markets, the UK, Norway, Sweden, Germany, the US, Canada, Brazil and China]"*²⁰²

180. The purpose of the advertising slogan "Fly Responsibly" is evidenced by the awards given by the advertising industry in 2019 for the previous Fly Responsibly campaign:

*"Client asked us to develop a campaign that would take the message that KLM truly cares for people to the next level. Objectives: a) generate maximum brand awareness, b) generate maximum brand sympathy in all markets the brand operates in, with a focus on their key markets. [...]"*²⁰³

181. There is no doubt that the goal of KLM's sustainability campaign is ("brand awareness and sympathy") to sell more tickets. KLM's advertising agency, Dentsu, gave the following reason for this, in December 2021: "[w]ithin a year, 3 in 5 people will start to boycott brands who don't act on climate change", and stated that there is "a direct link to sales and brand perception associated with green issues and environmental impact."²⁰⁴

182. And also Forbes Magazine noted in July 2019 that the aim was to persuade people to fly anyway:²⁰⁵

The "Fly Responsibly" campaign is very powerful. KLM positions itself as a champion of sustainable travel, anticipating competitors and catching flight-shamers off-guard."

²⁰¹ <https://www.dentsu.com/nl/en/klm-appoints-dentsu-benelux>.

²⁰² <https://www.travelprofessionalnews.com/klm-launches-new-sustainability-branding-campaign>.

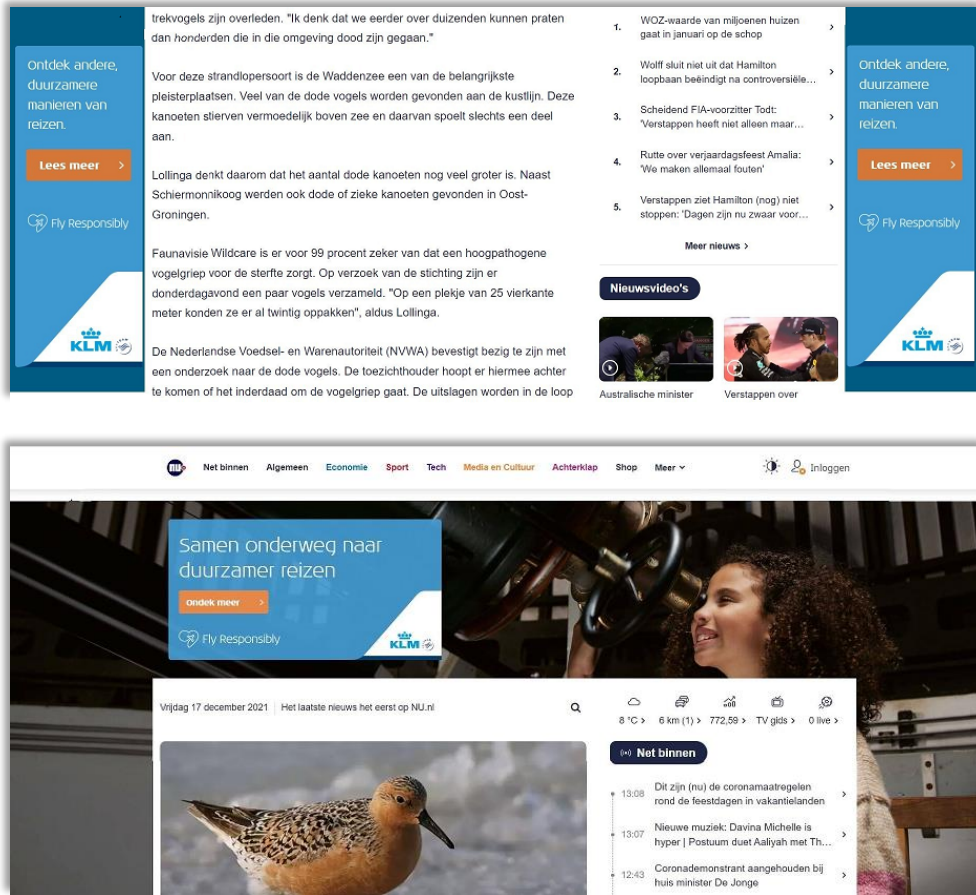
²⁰³ (Production 12, p. 17) and <https://www.adcn.nl/archives/fly-responsibly>.

²⁰⁴ <https://www.dentsu.com/news-releases/the-rise-of-sustainable-media-global-release>.

²⁰⁵ <https://www2.eurobest.com/winners/2019/pr/entry.cfm?entryid=2742&award=101&order=0&direction=1>.

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183. As far as Fossil Free has been able to find out, the campaign also consisted of TV ads, physical ads at Schiphol Airport, online "banner" ads on their news websites, marketing emails and targeted ads on social media platforms such as Facebook and Instagram.



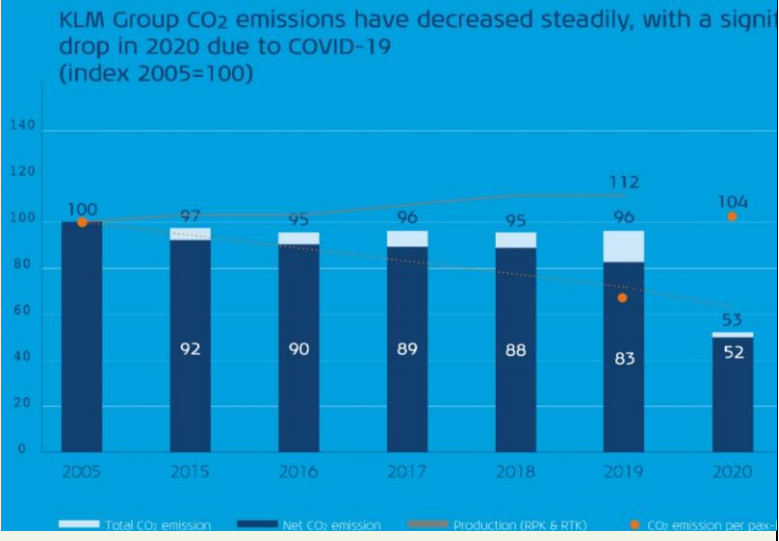
Images of online "banner" ads at www.nu.nl

184. It is also likely that advertisements were displayed in other physical locations, such as in the printed press and on social media platforms not owned by Facebook.

185. We find the following expressions in the campaign:²⁰⁶

#	Location	Expression
1	Advertising in social media	<i>Fortunately, the way we travel is changing And together we are moving towards a more sustainable future Because more sustainable travel is our greatest adventure ever Together on the road to more sustainable travel</i>
2	Physical advertising	<i>Join us in creating a more sustainable future</i>

²⁰⁶ (Production 19)

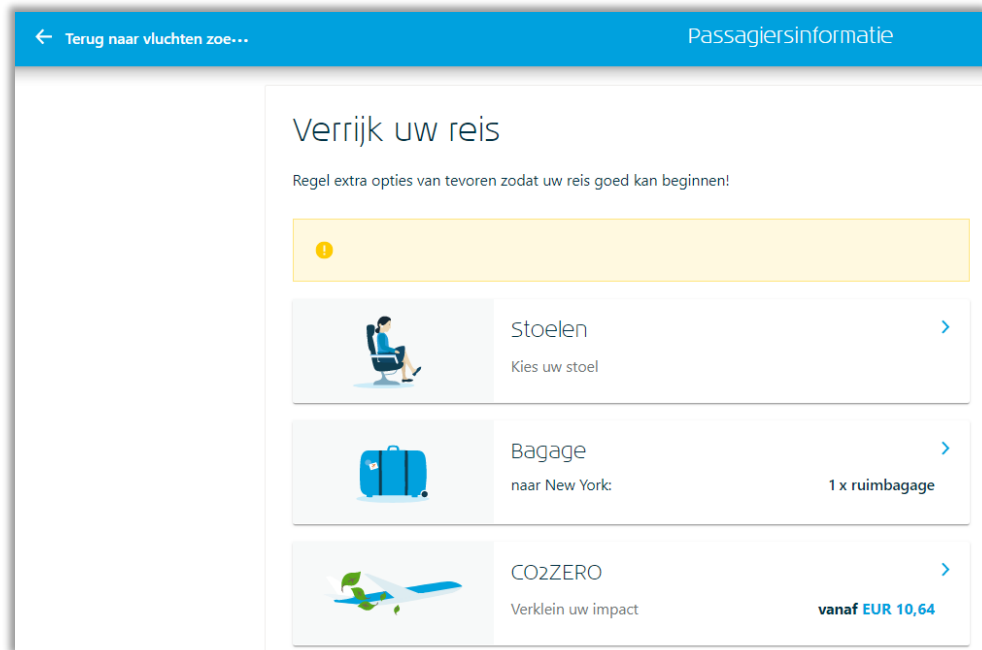
3	KLM.nl website, "Fly Responsibly" webpage:	<p><i>With Fly Responsibly, KLM is taking the lead in creating a more sustainable future for aviation. We recognise the urgent need to limit global warming. That is why we have committed ourselves to the objectives of the Paris Climate Agreement. But we can only succeed if we all work together. So join us today for a more sustainable future.</i></p>																																								
4	KLM.nl website, "What we do" webpage:	<p><i>The aviation industry has the ambition to achieve net zero carbon emissions by 2050 and to underline this promise, we are developing our own pathway based on the Science Based Targets initiative.</i></p> <p><i>This path consists of various measures, all of which will contribute to reducing our CO2 emissions. Such as fleet renewal, operational improvements and carbon offsetting. But by far the biggest contribution will be made by replacing fossil aviation fuel with sustainable aviation fuel or SAF (Sustainable Aviation Fuels).</i></p>																																								
5		<p>CO2 emissions of the KLM Group have been steadily declining</p>  <table border="1"> <caption>KLM Group CO2 emissions (index 2005=100)</caption> <thead> <tr> <th>Year</th> <th>Total CO2 emission</th> <th>Net CO2 emission</th> <th>Production (RPK & RTK)</th> <th>CO2 emission per passenger</th> </tr> </thead> <tbody> <tr> <td>2005</td> <td>100</td> <td>97</td> <td>100</td> <td>100</td> </tr> <tr> <td>2015</td> <td>92</td> <td>90</td> <td>95</td> <td>95</td> </tr> <tr> <td>2016</td> <td>90</td> <td>89</td> <td>96</td> <td>96</td> </tr> <tr> <td>2017</td> <td>89</td> <td>88</td> <td>95</td> <td>95</td> </tr> <tr> <td>2018</td> <td>88</td> <td>83</td> <td>96</td> <td>96</td> </tr> <tr> <td>2019</td> <td>83</td> <td>53</td> <td>112</td> <td>112</td> </tr> <tr> <td>2020</td> <td>52</td> <td>53</td> <td>104</td> <td>104</td> </tr> </tbody> </table>	Year	Total CO2 emission	Net CO2 emission	Production (RPK & RTK)	CO2 emission per passenger	2005	100	97	100	100	2015	92	90	95	95	2016	90	89	96	96	2017	89	88	95	95	2018	88	83	96	96	2019	83	53	112	112	2020	52	53	104	104
Year	Total CO2 emission	Net CO2 emission	Production (RPK & RTK)	CO2 emission per passenger																																						
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2017	89	88	95	95																																						
2018	88	83	96	96																																						
2019	83	53	112	112																																						
2020	52	53	104	104																																						
6		<p><i>Sustainable aviation fuel: a promising solution</i></p> <p><i>[...] So why doesn't KLM just switch to SAF? Unfortunately, it is not that simple. The global production of SAF only covers about 0.1% of the total fuel consumption of the aviation industry and is held back by a status quo:</i></p> <p><i>there is very little production capacity available worldwide</i></p>																																								

		<p><i>as a result, SAF is at least 2 to 3 times more expensive than regular kerosene</i></p> <p><i>Due to the high prices, very few airlines are willing - and able - to purchase SAF</i></p> <p><i>and because there is so little demand, production capacity is not scaled up</i></p> <p><i>To break this deadlock, a strong signal is needed from the aviation industry to increase and boost SAF production, and ultimately bring down prices. SAF is a crucial component of the aviation industry's trajectory to achieve zero carbon emissions by 2050. It is therefore important that we succeed.</i></p> <p><i>KLM has therefore decided to act as an industry leader in creating this demand-driven signal. KLM currently has a significant share of the global SAF market, but this still covers less than 1% of our entire fuel consumption. To meet our climate ambitions, we aim to use 10% SAF by 2030. To do this, we are working with SkyNRG to build Europe's largest SAF plant. In addition, since January 2022, we have been blending in a small percentage of SAF on KLM flights departing from Amsterdam.</i></p> <p><i>Yes, we are now talking about small quantities of SAF, which produce only small reductions in CO2 emissions. We cannot create this market alone, but we can - and will - show the way.</i></p>
7		<p><i>First passenger flight on sustainable synthetic kerosene.</i></p> <p><i>[...] This first flight is an important milestone in the development of sustainable synthetic kerosene as a viable alternative to fossil fuels. It is also a major step towards a sustainable future for the aviation industry.</i></p>
8		<p><i>Smaller carbon footprint, more forests</i></p> <p><i>For ten years, we have been offering a simple service that allows you to offset your personal share of the CO2 emissions from your flight. With our CO2ZERO service, you can reduce the environmental impact of your flight.</i></p>
9		<p><i>Together we can make your business travel more sustainable</i></p>

		<p><i>KLM is not alone in its desire to do business in a more sustainable manner. Many other companies, in all sorts of industries, feel the same way. We are partnering with such companies to stimulate the availability of sustainable aviation fuel on a large scale and to make it more economically competitive with fossil kerosene.</i></p>
10		<p><i>STEP BY STEP TO A SUSTAINABLE FUTURE</i></p> <p><i>SUSTAINABILITY CAN BE PROMOTED IN ALMOST ALL ASPECTS OF OUR BUSINESS. FOR EXAMPLE, A SMALL REDUCTION IN FLIGHT WEIGHT HAS A NOTICEABLE EFFECT.</i></p>
11	<p>KLM.nl website, "What you can do" webpage:</p>	<p><i>What you can do</i></p> <p><i>[...] If you do decide to fly, there are always ways to reduce your impact on the environment.</i></p>
12		<p><i>CO2ZERO</i></p> <p><i>[...] If you want to reduce the environmental impact of your flight even further, our CO2ZERO offer now includes a number of sustainable jet fuel options in addition to the reforestation programme.</i></p> <p><i>Reforestation can compensate the CO2 emissions of the aviation industry in a natural way. With reforestation, you pay a small contribution to offset (part of) the impact of your flight on the environment. This does not affect the direct emissions of the flight itself, but you help by planting trees that absorb the CO2 from your flight.</i></p> <p><i>The new SAF-based options in CO2ZERO have a double environmental benefit. First, you directly reduce the net CO2 emissions of a flight. Secondly, you help grow the SAF market. With these initiatives, KLM aims to make flying more sustainable in a fully transparent manner. [...] Of the SAF income received through ticket prices and the extensive CO2ZERO programme, 100% will be used directly, transparently and exclusively to purchase new SAF and promote the production of SAF worldwide.</i></p>

13	KLM.nl website, "What the industry can do" webpage: ²⁰⁷	<p><i>Together we can make a bigger difference</i></p> <p><i>Only if we all work together can we really make a difference. All aviation industry stakeholders, all airlines, all manufacturers - the whole business community. Together, we can promote the production of sustainable jet fuel, accelerate fleet renewal and achieve more, faster and better. That is why we have launched this initiative calling on everyone to fly responsibly. We kindly invite you to join us in making aviation more sustainable.</i></p>
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186. As the table shows, KLM refers several times to its CO2ZERO programme in the explanatory web pages of the "Fly Responsibly" campaign. The texts are also accompanied by pictures of nature reserves, rainforests and blue backgrounds with clouds.
187. Customers encounter the CO2ZERO marketing both in general advertisements (see the Fly Responsibly campaign above and the Real Deal Days below) and while booking a flight, where they are told that one of the "extra options", besides paying for extra baggage or more legroom, is "Reduce your impact" with CO2ZERO. This option is decorated with images of a plane from which leaves grow.



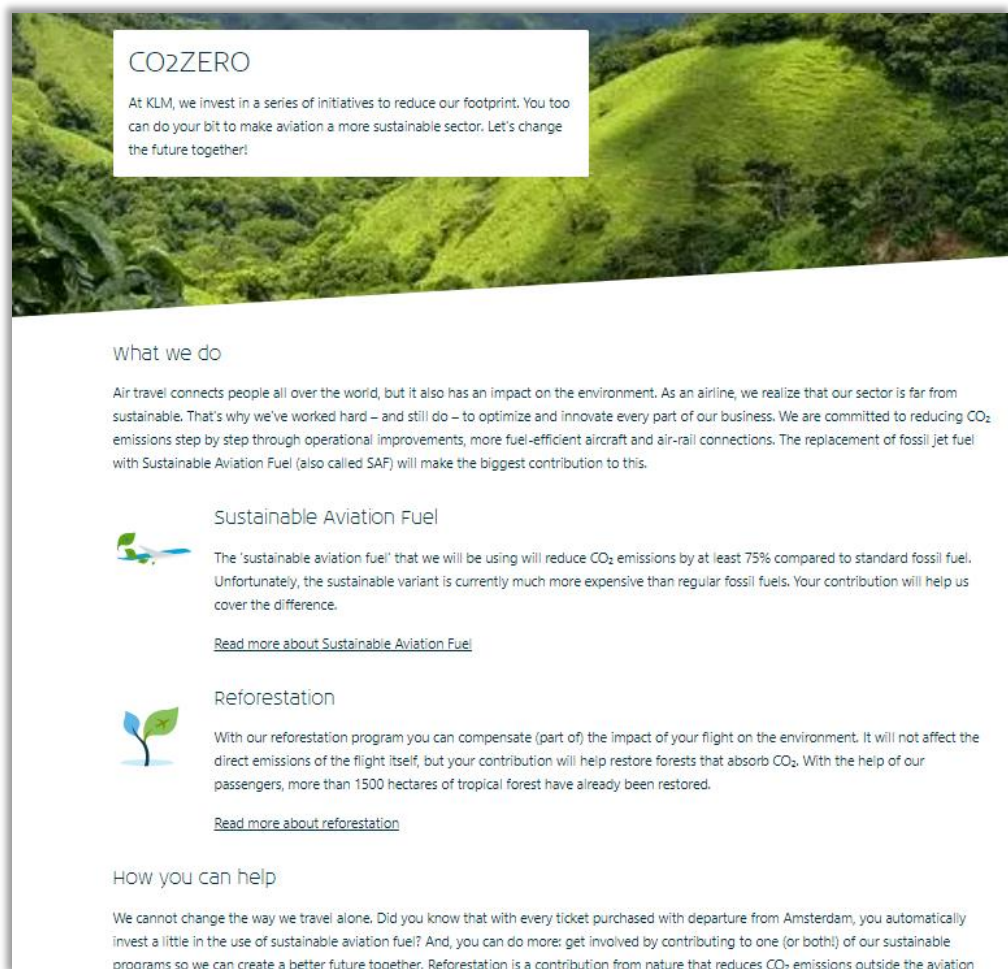
Screenshot of the page offering the CO2ZERO to consumers on the KLM website

²⁰⁷ (Production 19).

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5.2 CO₂ZERO marketing

188. Since 2008 KLM has offered the CO₂ZERO programme (**Production 21 and Production 21a**). Under the CO₂ZERO programme, customers can compensate for the CO₂ emissions of their flight for a few euros, according to KLM. This money goes towards planting new forests or preserving existing forests in which trees grow that absorb CO₂ emissions.
189. The CO₂ZERO programme was expanded in January 2022. KLM not only offers the option to pay for reforestation, but also the possibility to contribute to the cost of sustainable aviation fuels. If someone clicks on "Reduce your impact", they will be directed to the page below for selecting different CO₂ZERO options.



A view of KLM's CO₂ZERO programme, including the "SAF" and "reforestation" compensation options offered

190. The claims made by KLM under the CO₂ZERO programme are as follows:²⁰⁸

²⁰⁸ (Production 21).

#	Location	Expression
14	KLM.nl website, booking pages, "Extra Options" webpage:	<p><i>CO2ZERO</i></p> <p><i>Reduce your impact</i></p>
15	KLM.nl website, booking pages, CO2ZERO webpage:	<p><i>CO2ZERO</i></p> <p><i>At KLM, we are investing in a range of initiatives to reduce our footprint. You can also do your bit to make aviation a more sustainable industry. Let's change the future together!</i></p> <p><i>With our reforestation programme, you offset (part of) the environmental impact of your flight. It does not affect the direct emissions of the flight itself, but your contribution helps restore forests that absorb CO₂.</i></p> <p><i>How you can help [...] And, you can do more: join us by contributing to one (or both!) of our sustainability programmes, so that together we can create a better future. Reforestation is a contribution from nature that reduces CO₂ emissions outside the aviation industry, but SAF has a direct impact on making flights more sustainable.</i></p> <p><i>Restore forests to absorb [x] kg of your CO₂ emissions</i></p> <p><i>Contribute to sustainable aviation fuel and reduce your CO₂ emissions by [x] kg</i></p> <p><i>Your CO₂ absorbed by reforestation 0 kg CO₂</i></p> <p><i>Your CO₂ reduced by SAF 0 kg CO₂</i></p>
16	CO2ZERO programme	<p><i>Our CO2ZERO programme includes not only SAF, but also our reforestation project. You are in control: choose if you want to contribute fully to SAF or if you prefer a mix of both initiatives.</i></p>

5.3 "KLM Real Deal Days" marketing

191. On 17 May 2022, KLM launched the "KLM Real Deal Days" campaign (**Production 22**), an old offer campaign that KLM regularly uses - formerly known as KLM World Deal Weeks - in a new guise. This offer invites people to buy discounted flights to more than fifty destinations for a fortnight and to choose to purchase the CO2ZERO "Sustainable Aviation Fuel" product

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when booking, under the invitation to "travel more responsibly" in the context of "Fly Responsibly". If one chooses to do so, KLM will "double" each euro spent by the consumer on this product (a "Sustainable Fuel Bonus").

192. The claims made by KLM in the context of this campaign are as follows:²⁰⁹

#	Location	Expression
17	KLM Real Deal Days (website):	<p><i>The Real Deal Days are about travelling for the moments that really matter. Because when we travel more consciously, all moments are even more beautiful.</i></p> <p><i>KLM is investing heavily in sustainable fuel and we invite you to help us do so. If you choose this option during the Real Deal Days, KLM will double this amount with the Sustainable Fuel Bonus.</i></p>
18	Frequently asked questions:	<p><i>What are the KLM Real Deal Days?</i></p> <p><i>KLM Real Deal Days is a price promotion from KLM that lasts for 2 weeks. This campaign offers discounts on more than 50 destinations worldwide. The Sustainable Fuel Bonus also applies to the campaign: if you book a ticket during the Real Deal Days and choose to invest in sustainable fuel, KLM will invest with you and double your contribution. Because when we travel more consciously, all our moments are even more beautiful.</i></p> <p><i>What is the Sustainable Fuel Bonus?</i></p> <p><i>KLM is taking the lead in creating a more sustainable future for air travel. That is why we are investing heavily in sustainable fuel (also known as Sustainable Aviation Fuel or SAF for short). If you choose to contribute to our sustainable fuel programme during the Real Deal Days, KLM will double this amount with the Sustainable Fuel Bonus. Select one of the three Sustainable Aviation Fuel options and reduce your expected CO2 emissions. KLM will double every euro you contribute to SAF.</i></p>

²⁰⁹ (Production 22).

	<p><i>Will KLM also double your contribution to reforestation?</i></p> <p><i>It's great if you choose to contribute to reforestation, but the Sustainable Fuel Bonus does not apply here. During the Real Deal Days campaign, this bonus only applies to sustainable aviation fuel (Sustainable Aviation Fuel or SAF for short).</i></p> <p><i>Does the Sustainable Fuel Bonus also apply to KLM Holidays package holidays?</i></p> <p><i>The Bonus only applies to flight ticket bookings. Package holidays fall outside the Sustainable Fuel Bonus, because a different sustainability offer applies to KLM Holidays bookings. Are you booking a complete package holiday with KLM Holidays? KLM will cover the expected CO2 impact of your share of the flight. All amounts are invested directly in the CO2OL Tropical Mix reforestation project in Panama.</i></p> <p><i>Why is KLM taking this initiative?</i></p> <p><i>We believe it is important that our customers make a conscious choice to fly. We understand that people are concerned about climate change and take responsibility for reducing the impact of our operations on our environment. In addition to fleet renewal and improving operational innovation and efficiency, we want to reduce emissions by encouraging the production of sustainable fuel. Therefore, we have chosen to blend 0.5% SAF as standard on flights from Amsterdam. Customers who want to do something extra can contribute to the purchase of even more sustainable fuel through CO2ZERO.</i></p> <p><i>How is KLM reducing its carbon footprint?</i></p> <p><i>An important contribution to the sustainability policy is KLM's major investment in fleet renewal, with the introduction of more fuel-efficient and quieter aircraft. KLM also saves fuel through operational efficiency, including the optimisation and reduction of weight on board. The use of electric ground power is essential to reduce CO2 emissions from ground processes. KLM is also a pioneer of sustainable jet fuel, which reduces CO2 emissions by at least 75% compared to standard fossil fuel. In addition, we are working together with many different parties to shape the future of flying, for example through the</i></p>
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		<p><i>development of new, energy-efficient aircraft; the use of 100% renewable energy; climate-neutral aviation logistics operations; and the impact of sustainable aviation on the passenger. The stimulation of entrepreneurship and the training of new talent is also an important pillar.</i></p> <p><i>What else is KLM doing in the area of sustainability?</i></p> <p><i>Look further at Fly Responsibly KLM.com</i></p>
19	NPO 3FM, broadcast of Mark and Ramon ²¹⁰	<p><i>0:05:</i></p> <p><i>10These are Real Deal days at KLM, deals for the moments that really matter. Like experiencing adventures together on Aruba. Starting from 599 euro.</i></p> <p><i>There are only two real deal days left.</i></p> <p><i>So take a look, on KLM.nl</i></p> <p><i>0:05:36</i></p> <p><i>If you choose sustainable fuel during the KLM Real Deal days, KLM will double your contribution. Because when we travel more consciously, all our moments are even more beautiful.</i></p>

6 CONTRARY TO WHAT IT SAYS IN ITS ADVERTISING, KLM'S POLICY IS NOT SUSTAINABLE

193. As mentioned, KLM makes various sustainability claims in its commercial communications. The claims KLM makes in advertisements 1, 3, 15 and 17 are of a more general nature. KLM claims that air travel is on its way to "more sustainable travel" and a "more sustainable future". Also linked to these claims are explanatory web pages in which KLM stresses that the measures proposed there contribute to "more sustainable travel" (claim 1), a "more sustainable future" (claims 1, 3 and 17) and to "making aviation a sustainable industry" (claim 15). KLM's CO2ZERO claims (8, 12, 14, 15, 17 and 19) specifically address SAF and claims 4, 12, 15 and 17 address CO2 compensation. All this against the background of KLM's claim that it is committed to "the Paris climate objectives" (claim 3).

194. In this part of the subpoena, Fossil Free will explain that these claims do not correspond to the state of the art and collectively misrepresent whether the climate impact of flying can be

²¹⁰ <https://www.npo3fm.nl/uitzendingen/mark-en-ramon/f61e5a23-e700-4e84-ac6b-538a7ad84eb5/2022-05-29-mark-ramon>.

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"compensated", and whether KLM and the aviation industry in general, as KLM also states, contribute to or undermine the achievement of the Paris objective.

195. In its advertising, KLM is extremely brief about the sustainability characteristics allegedly associated with aviation and the CO₂ZERO programme. More can be found on KLM's website than in the briefly formulated advertisements, but this information (i) is still not substantiating the advertisement claims, (ii) is not correct and indeed misleading, and (iii) will not be found and consulted by the "average" consumer (the reference person, see below in rn. 340) will not find and consult before he or she decides to purchase an airline ticket.
196. KLM does acknowledge that "today's aviation is far from sustainable", but it does not explain the past or expected future CO₂ (or non-CO₂) emissions of aviation.²¹¹ However, at the same time KLM tries in the same expression²¹² and through its claims (in particular 1 through 13) to create the impression that KLM and the airline industry in general are working hard on (the rollout of) measures against this problem. With claims 12 and 14 and 15, KLM also creates the impression that the impact of a flight (i.e. the "far from sustainable" aspect of flying) can be reduced, mitigated or absorbed.
197. However, KLM's claims about such a measure (such as other types of aircraft) lean on fuels that are or will be scarce by definition and inventions that lie far in the future. And in addition - and in the meantime? - KLM promotes, within the framework of its CO₂ZERO programme, the possibility for passengers to pay a financial contribution to KLM in connection with "sustainable aviation fuel" and reforestation, as if that would make its current products (airline tickets) less harmful. These claims and pretend measures together aim to "educate *consumers who want to fly but are increasingly uncomfortable about the impact that air travel is having on the environment*" by telling them that KLM has solutions, because KLM "*shares their concern and is working to reduce the impact of travel*"²¹³ - i.e. in line with climate targets. The claims make KLM's product - flying - look "more sustainable" than it really is.
198. Any such claims by KLM must be substantiated by scientific and factual evidence on, in particular:
- a. the effective possibilities of decarbonisation of aviation and its feasibility; and
 - b. Whether compensation for the negative climate impact of aviation is possible.
199. As will be shown below, the idea that the climate impact of (part of) a flight can be compensated is not based on sound scientific evidence and selling so-called "compensation" is a misrepresentation. Furthermore, Fossil Free will show that the various theoretical measures for making aviation CO₂-free throughout the product chain have serious feasibility problems and limitations in practice. Incidentally, Fossil Free is of the opinion that it is not necessary

²¹¹ (Production 19).

²¹² (Production 19).

²¹³ <https://www.travelprofessionalnews.com/klm-launches-new-sustainability-branding-campaign/>.

for it to constantly prove the limits of and the problems with the proposed measures and with CO₂ compensation: it is up to KLM to provide sound substantiation of the impression created by its advertising (see also Section 6:195(1) of the Dutch Civil Code). Fossil Free is of the opinion that KLM is not able to do so and will explain this in more detail below.

6.1 Growing aviation is not sustainable

200. It was explained above in para. 2.2 it was explained that in order to meet the Paris target, it is necessary to reduce the aviation sector. In para. 4.5.2 It was explained that KLM, instead of opting for such a rapid and necessary reduction of CO₂ emissions, is aiming for *business as usual*, i.e. growth, both in its business plan and by intensively lobbying for regulations that would make this growth possible (see par. 4.5.1).

201. The need for just and equitable climate action means that European action must aim higher (see section 4.1). 4.2). Policies that do not meet these conditions cannot be presented as sustainable and, in a climate sense, responsible, because the scientific consensus is that such rapid reductions in CO₂ emissions are urgently needed if there is to be a reasonable chance of limiting the escalating and dangerous effects of climate change to internationally agreed levels. Apart from that, the use of such policies for advertising is clearly problematic - and particularly for advertising by airlines, which promote the use of flying by the public and stimulate the sale of (more) airline tickets.

202. Below, Fossil Free will explain that the targets KLM has set itself are insufficiently ambitious to be considered in line with the Paris objective. Fossil Free will also explain that the means proposed by KLM to achieve the targets it has set itself are also completely insufficient to be in line with the Paris Climate Goal.

6.1.1 KLM's target is not aligned with 1.5 °C

203. In the KLM Climate Action Plan (see par. 4.4) KLM has committed itself to certain short-term climate targets. KLM expects that these targets meet the requirements set by the SBTi and that SBTi will validate them, i.e. that SBTi confirms that the targets as formulated by KLM are in line with certain climate scenarios drawn up by the SBTi (the SBTi targets, see rn. 130). KLM's (main) target is to reduce emissions by 12% in 2030 compared to 2019 (see also rn. 136).

204. As explained above (in para. 148), KLM's SBTi targets have a low level of ambition, as they refer to a "well below 2°C target" and are only a short-term objective. By doing so, KLM contributes to the current pathway in which there is a very high probability that global warming will exceed 1.5 °C (see also rn. 64). Moreover, KLM has not substantiated that it has a credible plan on the basis of which it will achieve even this - too limited - goal.

205. The SBTi targets to which KLM wishes to commit itself are also outdated. SBTi itself agrees with this. As early as July 2021, SBTi announced that it would no longer accept applications for validation of targets with a low ambition level ("well below 2°C" instead of the more

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ambitious and necessary "maximum 1.5 °C") after 15 July 2022. SBTi explained that this was because of current scientific insights:

"The new strategy is being rolled out in response to increasing urgency for climate action and the success of science-based targets to date. [...] to have a fighting chance of limiting warming to 1.5 °C, we need to urgently scale-up and mainstream the adoption of 1.5 °C-aligned targets [...] We need every company to play their part, and set science-based 1.5 °C-aligned emission reduction targets to help us halve global emissions in the next eight years".

206. All applications for approval of SBTi targets after 15 July 2022 must therefore be aligned with the necessary 1.5 °C path. After it became known that the low ambition targets would no longer be considered after 15 July 2022, KLM stated that it would submit its target validation application for the low ambition target to STBi in time for that closing date, so that its target would still be assessed under the outdated regime. After approval of this application, KLM has five years, according to the transitional regime offered by SBTi, to continue its - outdated, low ambition - policy.
207. Apart from the various sector targets, the SBTi offers validation of a long-term net zero target that is aligned with the 1.5 °C target: the Corporate Net Zero Standard. This is a cross-sectoral *pathway* and implies a reduction pathway that goes far beyond KLM's plans. The Corporate Net Zero standard is based on a reduction of 4.2% per year, in an attempt to reach the 1.5°C target.²¹⁴ KLM has not set a 1.5 °C target and has not requested validation under the SBTi Corporate Net Zero Standard. This while KLM does promote its long-term objective of achieving net zero by 2050 in its advertising. SBTi now requires companies to: *"Don't: Describe near-term targets as net-zero aligned. To be in line with a net-zero future your organization has to have its long-term targets approved by the SBTi."*²¹⁵
208. SBTi also requires that companies do not use references to the SBTi to suggest that their policies to meet the STBi targets have been approved: *Don't say: Our net-zero / decarbonization / abatement strategy has been validated / approved by the SBTi."*²¹⁶
209. The following paragraphs will discuss the policies and specific measures mentioned by KLM to bring aviation to net zero by 2050:

"This path consists of several measures, all of which will contribute to reducing our carbon emissions. Such as fleet renewal, operational improvements and carbon

²¹⁴ <https://sciencebasedtargets.org/net-zero>.

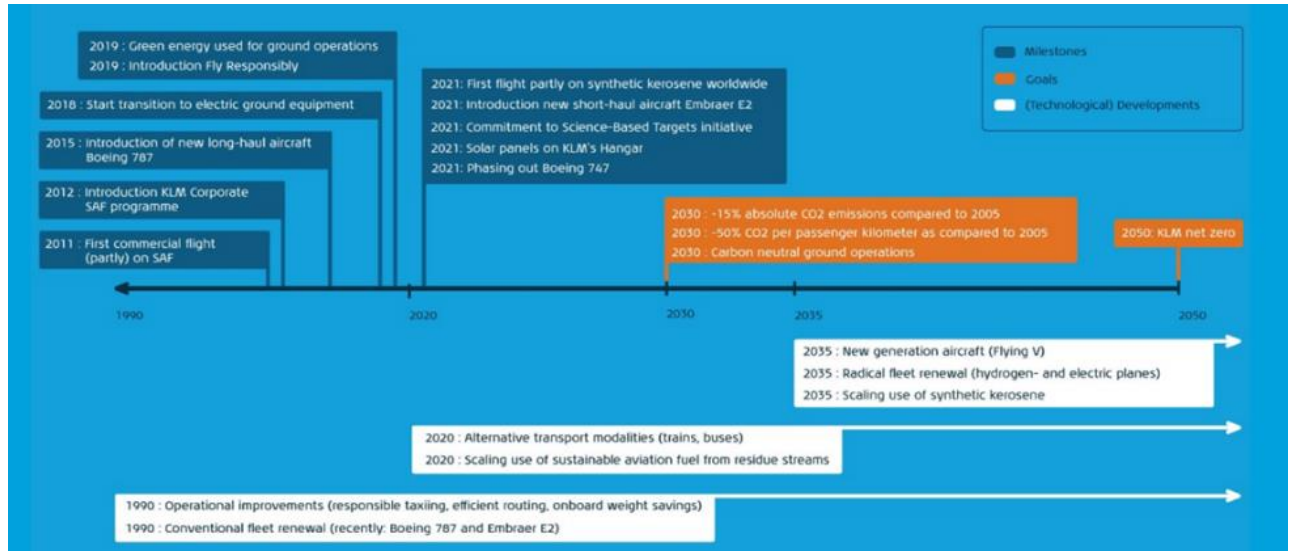
²¹⁵ The whole truth and nothing but: how to accurately communicate your science-based targets - Science Based Targets, <https://sciencebasedtargets.org/blog/the-whole-truth-and-nothing-but-how-to-accurately-communicate-your-science-based-targets>.

²¹⁶ The whole truth and nothing but: how to accurately communicate your science-based targets - Science Based Targets, <https://sciencebasedtargets.org/blog/the-whole-truth-and-nothing-but-how-to-accurately-communicate-your-science-based-targets>.

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offsetting. But by far the biggest contribution will be made by replacing fossil jet fuel with sustainable aviation fuel, or SAF (Sustainable Aviation Fuels)."²¹⁷

210. For people who browse (click) through KLM's web pages, KLM's web page "What we do" provides a graph of how these measures will ensure that KLM will reach net zero in 2050:



Timeline "What we are doing" to achieve net zero in 2050

6.1.2 Efficiency improvements

211. KLM refers to efficiency improvements as a way to get to net zero in 2050:

"Innovative devices:

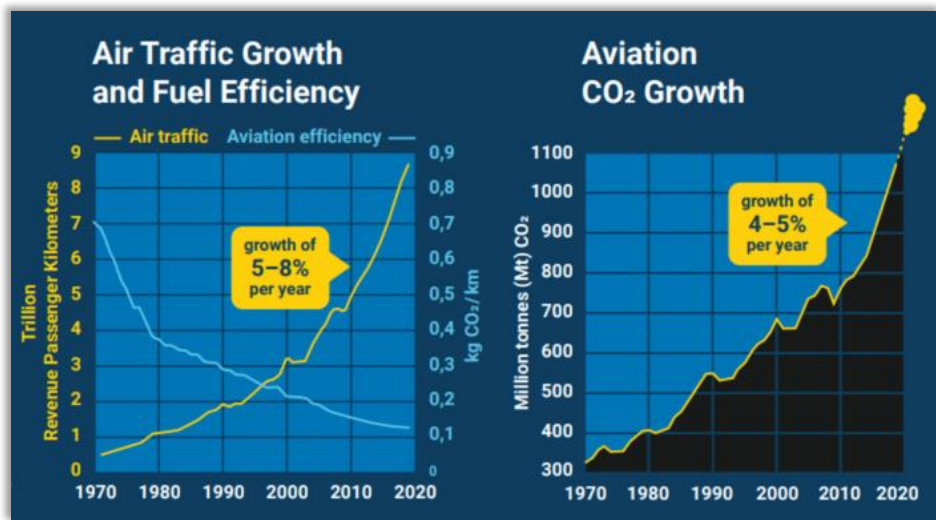
Fleet renewal is currently the largest contributor to airline CO₂ reduction. With a more fuel-efficient fleet we can significantly reduce our carbon footprint. For long-haul flights, the Boeing 747 will be replaced by the Boeing 787 (the phase-out has been accelerated due to the corona crisis). In 2015, KLM welcomed the first B787 Dreamliner and we recently added a newer version to our fleet: the Boeing 787-10. These B787s are powered by more efficient engines than other comparable aircraft. In addition to lightweight construction materials, the B787s burn less fuel and emit up to 31% less CO₂. This year we are expanding our fleet with the Embraer 195-E2 for shorter distances. This Embraer consumes 9% less fuel compared to the previous Embraer 190 and emits 31% less CO₂ per passenger."²¹⁸ [lawyer's emphasis added]

²¹⁷ (Production 19).

²¹⁸ (Production 19).

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212. Fleet renewal refers to the purchase of new, more efficient aircraft. Operational measures and network choices refer to attempts to fly more efficiently and use less kerosene per passenger per kilometre .
213. However, efficiency improvements will not lead to an overall reduction in emissions and also offer little scope for further gains. Hereafter, in rn. 212 and onwards, Fossil Free explains that there is almost no room for more efficient flying, that the expected steps will take a very long time and that up until now it has always been the case that when flying becomes more efficient, there is only more flying, which cancels out the efficiency advantage in terms of CO₂ emissions. In addition, it means that the influence of aviation on the climate is rapidly increasing (see 4.2.1.1).
214. The problem with these measures is that they will not reduce the total climate impact of aviation, as long as the number of flights continues to rise, as KLM and the entire aviation industry intend. Historically, efficiency improvements have only led to more growth because efficiency leads to cheaper flights, and therefore more demand.²¹⁹ This is also shown in the charts below. The first shows that increased fuel efficiency went hand in hand with strong growth in aviation. The second shows that CO₂ emissions from aviation have risen correspondingly sharply.



215. This problem is all the greater because modern aviation is already very efficient, which means that the possibilities for further improvements are very small and slow. Experts expect a further slowdown in efficiency development based on current capital investments.²²⁰ The reality is as stated by the IPCC:

²¹⁹ See also <https://www.atag.org/component/attachments/attachments.html?id=707> p. 22, which states among other things: "Affordability of air travel A key driver in the growth of passenger traffic has been the steady decrease in the real price of air travel - by 89% since jet aircraft first flew in 1950. Indeed, since 1970 the real price of air travel has been reduced more than 70% through the deregulation of the aviation market in the 1980s, the development of more fuel efficient aerospace technologies and the introduction of low-cost carriers. It is now more affordable for more of the population to travel by air".

²²⁰ (Production 11).

"the scope for reducing CO₂ emissions from aviation through improved airplane technology or operations is limited and unable to keep up with the projected growth, let alone reduce beyond the present emission rate at projected levels of demand". ²²¹

"In the future, Cumpsty et al. (2019) suggest that the highest rate of fuel burn reduction achievable for new aircraft is likely to be no more than about 1.3% per year, which is well short of ICAO's aspirational goal of 2% global annual average fuel efficiency improvement. [...] Thus, the literature does not support the idea that there are large improvements to be made in the energy efficiency of aviation that keep pace with the projected growth in air transport". ²²²

216. Now that ideas for new types of aircraft are also too far in the future for KLM to be able to contribute to achieving its targets in 2030 or even 2050 (see pars. 6.4.1 and 6.4.2 below), the measures must come from "Sustainable Aviation Fuels". The fact that "sustainable aviation fuel" will not be able to fulfil this promise is explained by Fossil Free below.

6.2 "Sustainable aviation fuel", also referred to as SAF

6.2.1.1 What is meant by "sustainable aviation fuel"?

217. In its advertising, KLM frequently mentions "Sustainable Aviation Fuels" or SAF. However, KLM's advertisements do not clearly and sufficiently explain²²³ what this actually is. This while, for example, the Guidelines for the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices state that *"Environmental claims can be misleading if they are based on vague and general statements regarding environmental benefits, such as "environmentally friendly", "green", "friend of nature", "ecological", "sustainable", "good for the environment", "climate friendly" or "kind to the environment".*²²⁴

218. "Sustainable aviation fuel" is a term coined by the aviation industry. It refers to two types of aviation fuel that are not fossil: biofuels and synthetic fuels. Biofuels are made from organic material, such as waste and surplus crops, usually used cooking oil. Synthetic fuels can be produced by using electricity and CO₂ (and thus still burning fossil fuels) Synthetic fuels are also called e-fuels, or electrofuels, PtL (power-to-liquid) fuels or synfuels.

²²¹ (Production 6), p. 10-61.

²²² (Production 18), p. 10-61.

²²³ One can click on one of the images on the 'what we do' and one is then directed to a Youtube video. This video promotes KLM's investment in the construction of a fuel factory. This plant would use regional, organic waste such as used frying fat and waste streams from other industries The click-through is not prominent and the video does not contain a clear, lucid explanation, <https://www.klm.nl/information/sustainability/sustainable-aviation-fuel>.

²²⁴ Guidelines on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices, Explanatory Memorandum to Article 12 of the Directive.

6.2.1.2 "Sustainable aviation fuel" generally has a negligible effect on reducing CO2 emissions from flying

219. In the claims (4, 6, 7, 9, 12, 17) KLM presents sustainable aviation fuel as a fuel that will reduce CO2 emissions and that is scalable if there is sufficient demand for it. In all its communications to consumers, KLM refers exclusively to "sustainable aviation fuels" and "synthetic fuels".
220. The use of the label "sustainable aviation fuel" or "SAF", without a sufficient explanation of what this actually is (in KLM's case: biofuel that is said to originate from used cooking oil), is in itself misleading. After all, there are important qualifications needed to be able to describe biofuels as 'sustainable', as will be discussed below
221. KLM creates the impression that SAF is a "promising solution", and is a viable, scalable measure currently held back by a lack of "demand" (see advertisement (claim 6), but is the most important measure to reduce the negative climate impact of aviation in the remaining years of "the critical decade". KLM states that (claim 4) *"by far the greatest contribution to KLM's path to net zero in 2050 will be made by replacing fossil jet fuel with sustainable jet fuel."*
222. At present, KLM uses only a very small percentage of "sustainable aviation fuel" (in the form of biofuel) for its fuel consumption, namely 0.18% for its flights departing from Amsterdam.²²⁵ KLM and the entire aviation sector want to increase this to 10% by 2030 (claim 6).
223. KLM states in its Real Deal Days advertisements (see par. 5.3) that it adds 0.5% SAF. During the conversation between Fossil Free and KLM on 24 June 2022 (see rn. 464) KLM stated that it will add 2% SAF this year. However, it is unclear whether this refers to the entire fleet or only to flights departing from Amsterdam. This percentage will appear in Air-France KLM's annual report for 2021.²²⁶ According to French legislation, aircraft must use at least 1% SAF for all flights from France by 2022, in anticipation of the European ambition to gradually increase to 2% by 2025 and 5% by 2030, as part of the European Green Deal. Strangely enough, the 2% percentage is not mentioned on the KLM website itself. Of course, if KLM does add 2% SAF this year, this will still create the problems mentioned in par. 6.2 and, because of the minimal quantity, would still be a drop in the ocean.
224. Looking at the past, there is little reason for hope. All "sustainable jet fuel" targets set to date have been completely missed by the aviation industry and in reality the percentage of "sustainable jet fuel" used in the EU has remained at around 0.05%. KLM has been trying to *"[promote] the implementation of sustainable biofuels in aviation"* for a decade. In 2013, KLM's target was for its entire fleet to fly on (an average) 1% biofuel by 2015.²²⁷ Since KLM's fuel consumption in 2021 consists of only 0.18% "sustainable aviation fuel" and in 2022 only

²²⁵ <https://nieuws.klm.com/klm-breidt-aanpak-voor-sustainable-aviation-fuel-verder-uit/#:~:text=KLM%20start%20today%20with%20the%20sustainable%20fuel%20to%20buy.>

²²⁶ (Production 5).

²²⁷ [https://nieuws.klm.com/klm-en-wnf-maken-zich-samen-sterk-voor-duurzamere-luchtvaart/.](https://nieuws.klm.com/klm-en-wnf-maken-zich-samen-sterk-voor-duurzamere-luchtvaart/)

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wants to blend 0.5% but only for all flights from Amsterdam, this goal has been missed by a wide margin.²²⁸ Even this minuscule increase in the use of biofuels is far outweighed by the additional emissions caused by the growth.

6.2.1.3 Biofuels based on used cooking oil do not offer the claimed emission reductions

225. In its advertisements KLM does not explain which types of biofuels it uses or intends to use. According to the press release from its "SAF" supplier, Neste, KLM buys biofuel made from used cooking oil (**UCO**).²²⁹
226. Anyway, in some places on its website and in its press releases KLM mentions the possible use of biofuels from waste (i.e. forestry waste and possibly household and agricultural waste). It has been tried, but so far it has not been possible to produce aviation fuels from these sources in a technically and commercially feasible way (**Production 23**).²³⁰ According to the IPCC, these fuel products are unlikely to be used on a commercial scale and therefore the development of measures such as carbon pricing or imposed reduction obligations is necessary²³¹. KLM lobbies against such measures (see par. 4.5.2). Nevertheless - and against better judgment - KLM is counting on being able to source the fuels to a considerable extent in the future.²³²
227. Biofuels fall into two types: crop-based (these are generally not considered sustainable) and biofuels such as waste cooking oil or other waste-based products (which may be sustainable).
228. There are four problems with KLM's claim that biofuels based on waste materials such as waste cooking oil (UCO) would deliver a large *overall* emission reduction and would be sustainable. Although there is room to make small quantities of fully waste-based biofuels, (i) aviation does not exclude the use of unsustainable crop-based biofuels, (ii) waste-based biofuels have an indirect negative impact on the climate, (iii) used cooking oil can be subject to serious fraud and (iv) the available quantity of waste-based biofuels is very limited.²³³

6.2.1.4 Crop-based biofuels

229. It is not clear whether KLM has completely ruled out the possibility of using crop-based biofuels in the future. It seems that it only intends to use biofuels from "residue streams" (waste)²³⁴, but that is not certain.

²²⁸ KLM's press release refers to 0.5% SAF being added to flights departing from Schiphol on 10 January 2022. This does not mean that KLM's entire fleet flies with 0.5% SAF. KLM itself writes in the same press release that the percentage of SAF in 2019 was only 0.18%. Whether that will still be the case in 2022 is not known to Fossil Free.

²²⁹ (**Production 5**) p. 191, "KLM has purchased SAF for flights out of Amsterdam Airport Schiphol. This sustainable fuel produced by Neste from used cooking oil will bridge the gap until the coming on stream of the SAF production plant".

²³⁰ See also <https://theicct.org/sites/default/files/publications/Sustainable-aviation-fuel-feedstock-eu-mar2021.pdf>, p. 11.

²³¹ (**Production 6**), ch. 10, 10-27.

²³² (**Production 23**).

²³³ (**Production 11**).

²³⁴ See the video by KLM on YouTube: <https://www.youtube.com/watch?v=pb7R8XyNb7U>.

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230. The aviation sector has not excluded the use of biofuels from crops (palm oil, soybean oil) either. This is at least allowed under CORSIA,²³⁵ the only internationally agreed policy.²³⁶ There are plans for a very large "sustainable jet fuel" plant in Paraguay, which would use soybeans as a feedstock. Shell is planning a "sustainable jet fuel" plant in Rotterdam, which will partly run on crops. Biofuels from crops often lead to deforestation and can be as CO₂-intensive or even more emission-intensive than kerosene due to (indirect) land-use change.²³⁷ Transport & Environment shows this in the figure below, which is based on the Globiom study carried out for the European Commission (**Production 24**):

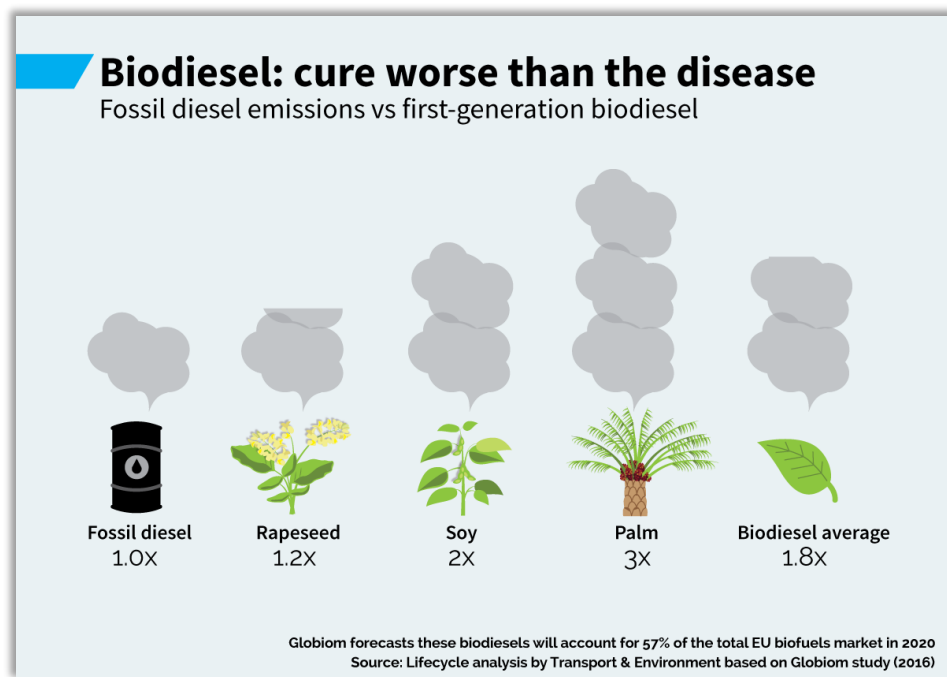


Illustration illustrating the conclusions of the European Commission's Globiom study

6.2.1.5 Indirect impacts of scaling up biofuels from waste

231. The supply of UCO (used cooking oil as fuel) is also very limited. The existing European demand for used cooking oil is greater than the supply in Europe. This means that more than half of the fuel used in Europe is imported, mainly from China, Indonesia, Malaysia, Russia, the US and Saudi Arabia. Even if KLM (could) choose to use only European waste, this will indirectly also increase the demand for waste from outside Europe. Moreover, it is not always 'real' waste in the sense that it cannot be used for anything else. Outside Europe, UCO is also

²³⁵ Carbon Offsetting and Reduction Scheme for International Aviation', the global scheme of the International Civil Aviation Organisation ICAO, Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) (icao.int).

²³⁶ ICAO, Environmental Report 2019, https://www.icao.int/environmental-protection/Documents/EnvironmentalReports/2019/ENVReport2019_pg228-231.pdf.

²³⁷ https://www.transportenvironment.org/wp-content/uploads/2021/07/2016_04_TE_Globiom_paper_FINAL_o.pdf, on the issue of land use for biofuels see also rn. 260.

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used as food for livestock and/or for other purposes such as heat. Within and outside Europe, UCO can also be used for road transport.

232. However, if the UCO is sold to parties who use it as aviation fuel, which is more profitable financially, this often means that the UCO can no longer be used locally as a basis for e.g. animal feed and must therefore be replaced by other raw materials, such as "fresh" (not previously used) oil in the form of e.g. new palm oil (**Production 25**).²³⁸ This causes an "indirect displacement effect", such as deforestation for palm oil plantations. These indirect displacement effects of biofuel use are not measured, but research shows that they do occur.²³⁹ As a result, the claimed CO₂ reduction by UCO may actually turn out to be very different.
233. Another indirect effect of using large quantities of waste oil for aviation is that it is already largely used to replace fossil fuels in the road transport sector. The amount of truly sustainable waste oils (e.g. collected from restaurants) is finite and limited - "*waste oils are highly resource-constrained*".²⁴⁰ An unprecedented increase in the demand for this waste oil in aviation would extract the limited resource for other uses. This is a problem because using a tonne of waste oil to make aviation fuel saves significantly fewer emissions than using that tonne of oil to make fuel for road vehicles, and the production costs for aviation fuel are also higher.²⁴¹ The use of waste oil would therefore lead to greater emission reductions if it were used for road transport instead of aviation. Using waste oil as a biofuel for aviation instead of road transport means that there is an opportunity cost in terms of foregone CO₂ savings. This is in fact a hidden extra CO₂ price.²⁴²

6.2.2 *Fraud sensitivity of UCO*

234. Finally, the newly discovered uses have made used cooking oil more expensive (and more profitable) than "virgin" palm oil from crops. In addition, it is very difficult to guarantee that UCO is actually 100% used cooking oil. This creates an incentive and an opportunity for fraud.²⁴³ Fraud can be committed in different ways: mixing virgin oil with UCO, using entirely virgin oil for the production of biofuel instead of UCO and providing false proof of sustainability. According to researchers at Delft University of Technology, "*this is made possible by the fact that it is very difficult to detect the difference between UCO and blends of UCO and virgin oil.*"²⁴⁴

²³⁸ Transport & Environment, 'Used Cooking Oil (UCO) As Biofuel Feedstock in EU,' p. 43 , https://www.transportenvironment.org/wp-content/uploads/2021/07/CE_Delft_200247_UCO_as_biofuel_feedstock_in_EU_FINAL%20-%20v5_o.pdf

²³⁹ The Dark Side of Neste's Biofuel Production - Milieudedefensie, <https://en.milieudedefensie.nl/news/02097-opm-rapport-neste-21.pdf>.

²⁴⁰ (**Production 23**).

²⁴¹ Department for Transport UK, p. 48-49 at 4.27 and 4.28 , https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005382/sustainable-aviation-fuels-mandate-consultation-on-reducing-the-greenhouse-gas-emissions-of-aviation-fuels-in-the-uk.pdf.

²⁴² (**Production 23**).

²⁴³ (**Production 11**), p. 50.

²⁴⁴ (**Production 11**), p. 50.

235. There are also other forms of fraud, such as double-certifying the same batch of UCO or working with restaurants to throw away cooking oil before it becomes waste oil. In other words, if UCO prices are high enough, there is a financial incentive to produce more waste cooking oil.²⁴⁵

236. This fraud is not a theoretical problem. UCO fraud in the Netherlands is a recurring problem, resulting in various criminal investigations.²⁴⁶ The European Court of Auditors also ruled that certification is "not fully reliable".²⁴⁷

6.2.3 *Limited availability of biofuel from waste*

237. Apart from the problems mentioned above, the biggest problem for the use of UCO is that UCO (and other waste not otherwise usable) is only available in very limited quantities and that it is not scalable to the extent that the aviation industry and KLM claim.²⁴⁸

238. The expert NGO International Council for Clean Transportation²⁴⁹ estimates that by 2030 waste-based fuels will be available for only 5.3% of Europe's aviation fuel demand. This is still "without taking into account the political and economic barriers to SAF production".²⁵⁰

6.2.3.1 The CO₂ZERO SAF product offered by KLM

239. In addition to the above-mentioned problems regarding "sustainable aviation fuel", KLM's statements about "sustainable aviation fuel" in its CO₂ZERO programme are also misleading in other ways.

240. KLM states that it is "leading the way" and is a "pioneer" in the field of "sustainable aviation fuel" (claim 17). However, KLM's "ambition" to obtain 10% of its total fuel requirement²⁵¹ from "sustainable aviation fuel" by 2030 does not make it a sustainability pioneer. Neste itself states that "sustainable aviation fuel" will reduce CO₂ emissions by up to 80% compared to fossil kerosene.²⁵² KLM itself states that it is 75%.²⁵³ For the record: even if the most favourable percentage is used, the CO₂ reduction is at most 8%. It should be noted that the state support of the Dutch state obliges KLM to blend 14% SAF by 2030, for flights departing from the Netherlands.²⁵⁴

²⁴⁵ (Production 11), p. 50.

²⁴⁶ (Production 11), p. 51.

²⁴⁷ Euractiv, 'industry source one third of used cooking oil in Europe is fraudulent', <https://www.euractiv.com/section/agrifuels/news/industry-source-one-third-of-used-cooking-oil-in-europe-is-fraudulent/>.

²⁴⁸ M. Hillyer, 'Clean Skies for Tomorrow Leaders: 10% Sustainable Aviation Fuel by 2030', 22 September 2021, <https://www.weforum.org/press/2021/09/clean-skies-for-tomorrow-leaders-commit-to-10-sustainable-aviation-fuel-by-2030/>.

²⁴⁹ The International Council on Clean Transportation is an independent non-profit organisation established under US tax law. It provides technical and scientific analysis to environmental regulators. It is funded by the ClimateWorks Foundation, the William and Flora Hewlett Foundation, the Energy Foundation, and the David and Lucile Packard Foundation.

²⁵⁰ (Production 23).

²⁵¹ (Production 2), p. 20.

²⁵² <https://www.neste.com/releases-and-news/aviation/neste-supply-klm-additional-sustainable-aviation-fuel-flights-out-schiphol>.

²⁵³ (Production 2).

²⁵⁴ Frequently asked questions about financial aid to KLM | Rijksoverheid.nl,

<https://www.rijksoverheid.nl/onderwerpen/staatsdeelnemingen/vraag-en-antwoord/financiele-steun-aan-klm>.

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241. The ambition to achieve a 10% global SAF blend by 2030 is also part of the "Clean Skies for Tomorrow Coalition", a group of 60 companies (including seven airlines).²⁵⁵
242. In short, KLM is and will be legally obliged to use much more SAF anyway and many other airlines have the same ambition. KLM, too, states that 10% SAF use is not enough to meet its SBTi targets. In its Climate Action Plan, KLM writes:²⁵⁶

"Potential activities

In order to reach our goals, we need to go beyond our current commitments. We already made a commitment of 10% worldwide, however we realise that this may be not enough. Therefore, the options to be evaluated are whether more SAF can be purchased, or whether SAF with a higher sustainability level than 75% is opted for. The latter significantly impacts the reduction potential of SAF."

243. There are no biofuels that offer a higher sustainability level (CO₂ emission reduction compared to kerosene) of 75% or 80%. The aviation industry has so far always failed to meet its SAF targets. This is easily expressed in the following graph:²⁵⁷



244. There is no realistic indication that KLM will now be able to meet these targets. Nor is it the case that by purchasing the CO₂ZERO SAF product, one is ensuring that KLM will use more

²⁵⁵ Weforum, 'Clean skies for tomorrow leaders commit to 10 sustainable aviation fuel by 2030, 2021, <https://www.weforum.org/press/2021/09/clean-skies-for-tomorrow-leaders-commit-to-10-sustainable-aviation-fuel-by-2030/>.

²⁵⁶ (Production 2), p. 20.

²⁵⁷ Missed Targets Report, p. 36,

<https://static1.squarespace.com/static/5d30896202a18c0001b49180/t/6273db16dcb32d309eaf126e/1651759897885/Missed-Targets-Report.pdf>.

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"sustainable aviation fuel". No, one is paying a contribution to the extra costs KLM has to incur to be able to buy "sustainable aviation fuel" that it seems to be buying anyway, also as a result of its current legal requirements. No extra "sustainable aviation fuel" is used because the consumer has paid for it. Yet KLM writes on its website:

"We cannot change the way we travel on our own. Did you know that with every ticket purchased departing from Amsterdam, you automatically invest a little bit in the use of sustainable aviation fuel? And, you can do more: get involved by contributing to one (or both!) of our sustainable programmes, so that together we can create a better future. Reforestation is a contribution from nature that reduces CO₂ emissions outside the aviation industry, but SAF has a direct impact on making flights more sustainable. Don't want to choose? Contribute to a mix of both. It's entirely up to you." [lawyer's emphasis added]²⁵⁸

"Contribute to sustainable aviation fuel and reduce your CO₂ emissions by 16 kg".

"Your CO₂ reduced by SAF 16 kg CO₂".

245. Broekhoff writes:²⁵⁹

"[A]dditionality as a logical requirement applies to any kind of consequential mitigation claim, whether realized through carbon credit purchases or other means. Thus, when KLM suggests that customer purchases of 'Sustainable Aviation Fuel' (SAF) could directly reduce CO₂ emissions that result from flying, the validity of this claim rests on whether such purchases in fact result in increased use of SAF in an amount proportional to the customer's imputed fuel consumption, beyond any quantity of SAF that would have been procured and used in the absence of such purchases. Without an explicit demonstration of this causal relationship, any suggestion that such purchases will reduce the emissions impact of a customer's flight is not tenable. An arrangement where KLM nominally allocates to paying customers some portion of the SAF it was already procuring, for example, would not pass this test.

246. It is also not the case that consumers help to grow the "sustainable aviation fuel" market by making them pay a contribution to KLM, as claimed in (claim 12). KLM has been trying to "promote sustainable aviation fuel" for a decade without success (para. 6.2.1.2). Anyway, there are simply legal frameworks on the basis of which KLM and all European airlines have to use "sustainable aviation fuel" much more than they do now (pars. 4.5.2 and 6.2.1.2). The incentive to use more "sustainable aviation fuel" will have to come from these legal requirements in particular. How a donation to KLM will achieve this instead is completely unclear.

²⁵⁸ (Production 21).

²⁵⁹ (Production 4).

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247. This is also important in the light of the Real Deal Days offers. KLM claims that it is doubling the passenger's contribution to "sustainable jet fuel", but it is unclear whether and how this would lead to the purchase of more sustainable jet fuel. Moreover, the contribution of minuscule amounts of "sustainable jet fuel" to the reduction of emissions of that particular passenger is negligible and, in any case, many times less than the CO₂ emissions caused by the additional flight.
248. In its statements on its website, KLM says the following about SAF.²⁶⁰

On the "What can you do" page KLM writes:

"The new SAF-based options in CO₂ZERO have a double environmental benefit. First, you directly reduce the net CO₂ emissions of a flight. Secondly, you are helping to grow the SAF market. Since SAF is currently much more expensive than regular jet fuel, your contribution helps us to cover the difference. If you fly with KLM, from now on you can choose either or both options via My Trip on the KLM website or via the KLM app."

The CO₂ZERO page then states:

"To help us compensate for the higher price, we have increased our ticket prices by a few euros. This increase is based on the distance of the flight. In Economy Class, the price difference is between EUR 1 and EUR 4, in Business Class between EUR 1.50 and EUR 12. This way, you directly reduce the CO₂ emissions of your flight and contribute to a larger share of this sustainable fuel."²⁶¹

And:

"Contribute even more? You can choose to contribute (a percentage of) the difference between regular fossil fuel and sustainable fuel. The price is based on the carbon footprint of your trip and depends on several factors, such as the distance of your flight and the type of aircraft.

In our extensive price overview you will find the fare per destination. The prices are based on departure from Amsterdam Airport Schiphol. We do not have an overview of all possible routes, but you can see the exact price for the percentage of SAF you want to contribute to in My Trip or when booking your flight." [lawyer's emphasis added]²⁶²

249. The text, and especially the use of the word 'contribute' is ambiguous, but the suggestion that is made in all these statements is that if a passenger makes a financial contribution for SAF, KLM will add extra SAF to the fuel tank of the aircraft in which the passenger will fly. This

²⁶⁰ (Production 21).

²⁶¹ (Production 21a).

²⁶² (Production 21a).

reading was also confirmed orally by KLM to Fossielvrij, during the conversation they had on 24 June 2022 (see below rn. 464): Fossielvrij expressed doubts about the extent to which extra SAF was refuelled if a passenger pays a SAF contribution, to which KLM was repeatedly very adamant in stating that this is indeed the case and that if a passenger pays for SAF under the CO₂ZERO programme, then a proportionate amount of extra SAF is actually added that would otherwise not have been in the aircraft's tank.

250. When Fossielvrij asked whether this meant that if all passengers paid extra for SAF, the aircraft would fly 100% SAF, according to KLM, this was confirmed by KLM, with the remark "to the extent that sufficient SAF is available". In view of the wording of the advertisement, the practical problems of adding SAF per passenger (even if one books a ticket the day before?) and the scarcity of SAF, Fossil Free has serious doubts about the correctness of the advertisement of KLM as shown above ("*this way, you directly reduce the CO₂ emissions of your flight*", underline added), and as it was repeated with great certainty during the interview. Moreover, the verbal qualification 'as far as SAF is available' is not found on these web pages, while that is a very important reservation, given the extreme scarcity of SAF. Fossil Free suspects that in reality the payment by the passenger is no more than a contribution to the costs incurred by KLM anyway, whether or not for the purchase of SAF ordered earlier or planned anyway.

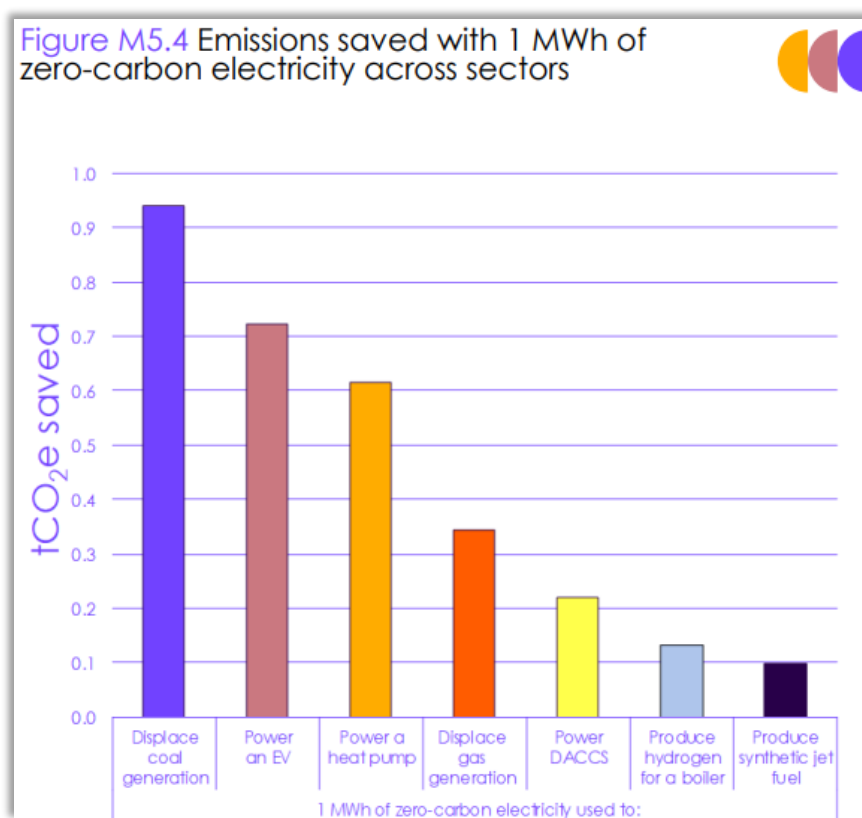
6.2.3.2 Synthetic fuels do not help either

251. The other form of "sustainable aviation fuel" are synthetic fuels, sometimes called e-fuels. These are also referred to under the vague name of "Sustainable Aviation Fuels", but are not operational. Nevertheless, KLM makes reference to the existence of these synthetic fuels in its advertising statements, see (claim 7).
252. According to KLM's website, it has operated one flight using 500 litres of sustainably generated e-fuels supplied by Shell. KLM presents this as an important step for the "*development of sustainable synthetic kerosene as a viable alternative to fossil fuels. It is also an important step towards a sustainable future for the aviation industry*". KLM says it will scale up the use of synthetic kerosene from 2035".
253. The impression given is that synthetic fuel is a viable alternative to jet fuel and a solid way to reach net zero by 2050. Again, there are major problems in making these fuels on a large scale and with the raw materials for this form of aviation fuel: electricity, water and CO₂.
254. Renewable electricity is needed to make these fuels. It is unlikely that there will be enough renewable electricity to use for e-fuels (**P roduction 26**, Climate Change Committee].²⁶³ Production of synthetic fuels is a very inefficient process. Large amounts of renewable energy are needed to produce such fuels. The scarce amount of renewable energy can be used more

²⁶³ The CCC, Sector Summary Electricity Generation, 2020, <https://www.theccc.org.uk/wp-content/uploads/2020/12/Sector-summary-Electricity-generation.pdf>.

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efficiently to save other forms of CO₂ emissions, such as those from coal-fired power stations, and to replace fossil fuels by using this renewable energy for electric vehicles and even hydrogen boilers in homes, as shown in the table below.²⁶⁴



255. E-fuels for aviation are actually the *least* efficient use of renewable electricity. This scarce energy could be used much more effectively elsewhere to replace fossil fuels. Renewable electricity is urgently needed to replace fossil fuels for the needs of the electricity grid, to meet the new electricity demands of, for example, cars, heating, cooling, data.
256. Each MWh of renewable electricity used for aviation e-fuels therefore comes with a significant "opportunity cost", as this energy could also be used by other sectors, saving much more CO₂. This will remain the case as long as there is a (strongly) growing need for renewable energy for these alternative applications, such as road transport and domestic energy use (heating, cooking, etc.).
257. Even the use of (fresh) water needed to convert renewable energy into hydrogen and then into energy is problematic. Research has shown that in order to make green hydrogen, huge amounts of clean, fresh water are needed. This will probably have a negative effect on water scarcity in (many) areas.²⁶⁵

²⁶⁴ (Production 26).

²⁶⁵ <https://www.rechargenews.com/energy-transition/vast-majority-of-green-hydrogen-projects-may-require-water-desalination-potentially-driving-up-costs/2-1-1070183>.

258. Another problem with synthetic fuel is the other raw material it requires: CO₂. The 500 litres of synthetic fuel produced by Shell that KLM used for its test, used CO₂ from fossil fuels, partly captured from an oil refinery in Pernis via the very expensive and as yet commercially unproven method of "carbon capturing". The problem with this, of course, is that it depends on pumping and processing oil before the refinery turns it into greenhouse gas. Moreover, carbon capture cannot capture 100% of the emitted CO₂. Therefore, the CO₂ savings of synthetic fuel compared to regular fossil fuels is limited: it has been calculated that it is only 15-35%.²⁶⁶
259. In view of this, it is also suggested that an even more expensive technique, called "Direct Air Capture", be used to collect CO₂ to make e-fuels. Direct Air Capture technology uses vast amounts of energy (renewable or fossil) to capture CO₂ from the air. This technology is still in its infancy and it is unknown if it will ever be used at scale. If renewable energy is used for Direct Air Capture, the production is very inefficient and it is estimated that technical development could lead to only 10% of this energy being effectively converted into aircraft propulsion power by 2030. Some 90% of the energy is therefore lost.²⁶⁷ On balance, the renewable energy needed to power Direct Air Capture would result in greater CO₂ savings if it was used to store the CO₂ permanently once it is extracted from the air, rather than being used to fuel aircraft, as the table above shows.
260. At the request of the Ministry of Infrastructure and Water Management, a committee consisting of Prof. Henri Werij (TU Delft), Prof. Richard van de Sanden (TU Eindhoven) and Prof. Harry Hoeijmakers (University of Twente) issued an advisory report on the matter. Their opinion is that e-fuels produced in this way for aviation are very inefficient and the CO₂ costs are very high:

"If you consider the total amount of land area required to produce the sustainable electricity needed for e-fuels and you compare this with the land area and the amount of water required for biofuels, the e-fuel route seems far more efficient, even though you need roughly four times more electrical energy for production than is ultimately stored in the e-fuel. This means that to produce an amount of e-fuel equal to the current annual kerosene consumption in the Netherlands (4 Mton), you need approximately 22 GW of sustainably generated electricity. It is obvious that we can never generate that in our country. This is true for all sectors and for the whole of Europe. We will have to generate energy outside our national borders, for example in desert areas and at sea with floating wind farms where hydrogen is

²⁶⁶https://www.fch.europa.eu/sites/default/files/FCH%20Docs/20200720_Hydrogen%20Powered%20Aviation%20report_FI_NAL%20web.pdf, p. 54.

²⁶⁷https://www.fch.europa.eu/sites/default/files/FCH%20Docs/20200507_Hydrogen%20Powered%20Aviation%20report_FI_NAL%20web%20%28ID%208706035%29.pdf, p. 44 and https://www.transportenvironment.org/wp-content/uploads/2020/12/2020_12_Briefing_feasibility_study_renewables_decarbonisation.pdf p. 32 NB this concerns the efficiency loss of the entire production chain. See also www.transportenvironment.org/wp-content/uploads/2020/12/2020_12_Briefing_feasibility_study_renewables_decarbonisation.pdf p. 34. T&E only assumes the efficiency in the aircraft engine. Even in that case, T&E assumes that the estimated yield by 2050 will be only 43%.

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produced locally. The same applies to the corresponding CO₂ capture from the atmosphere." (Production 27)²⁶⁸

What these experts do not mention when suggesting that hydrogen should be produced in the desert or at sea is that the supply of clean, fresh water (see marg. 257) will be a major problem.

261. T&E state about this:

"Achieving a low greenhouse gas emissions footprint across the system as a whole is therefore entirely dependent on the application of an appropriate and effective regulatory regime to ensure that any growth in electrofuel production must be accompanied by the development of additional zero-carbon renewable power generating capacity. The regulatory framework in the proposal for a new Renewable Energy Directive for the period 2021-2030 would be inadequate to ensure the deployment of additional renewable power generation capacity, and therefore is not fit to guarantee that expansion of electrofuels production actually reduces the overall greenhouse gas intensity of EU transport and therefore should be amended as described below." [emphasis added].

262. In general, therefore, it can be said that there are the following problems with synthetic fuels:

- a. There is not enough renewable energy. There will not be enough renewable energy to allow aviation to use large amounts of it.
- b. CO₂ savings in aviation are much lower than in other sectors. This means significant "opportunity costs" of CO₂.
- c. They come too late. E-fuels are not an answer to the climate emergency. The technology is still in the pilot phase and in the coming years, well beyond 2030, heavy investments will be needed to scale up production.

263. As a result, e-fuels will not contribute significantly to reducing CO₂ in the atmosphere and making aviation more sustainable E-fuels will only be used minimally, or at best in the distant future, when we may have sufficient renewable energy.

264. KLM's Climate Plan of April 2022 recognises this, although it is not fully explained:

"The supply potential for synthetic kerosene, produced using CO₂ recycled or captured from the atmosphere and renewable electricity, is greater and may be sufficient. However, this also depends very much on the amount of surplus renewable electricity allocated to the aviation sector."²⁶⁹ [emphasis added lawyer]

²⁶⁸ H. Werij and others, 'Second opinion on fact sheet and technical briefing: Future of sustainable aviation', 21 June 2021, https://www.eerstekamer.nl/overig/20220217/second_opinion_op_factsheet_en/document.

²⁶⁹ (Production 2), p. 23.

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6.2.4 Interim conclusion regarding "sustainable aircraft fuel"

265. As the above shows, biofuels based on waste are very limited, are subject to serious risks of fraud and indirect negative effects and are also needed for more efficient use in other sectors. Synthetic fuel is a possibility for the future, but it currently requires unrealistic amounts of renewable energy that could be much better used elsewhere (even based on the idea of direct capture and storage). Moreover, it contributes to the already existing water scarcity. It is therefore very difficult to call biofuels and synthetic fuels 'sustainable aviation fuel', at least without explaining these important problems.

266. "Sustainable aviation fuel" is therefore currently not a credible factor for sustainable aviation. Therefore, the claims made by KLM in this respect, namely 4, 6, 7, 12, 16, 18 and 19, are not justified. That these claims are also misleading in a legal sense will be further elaborated on below, in (ch. 8).

6.3 CO₂ compensation via reforestation does not make flying sustainable either

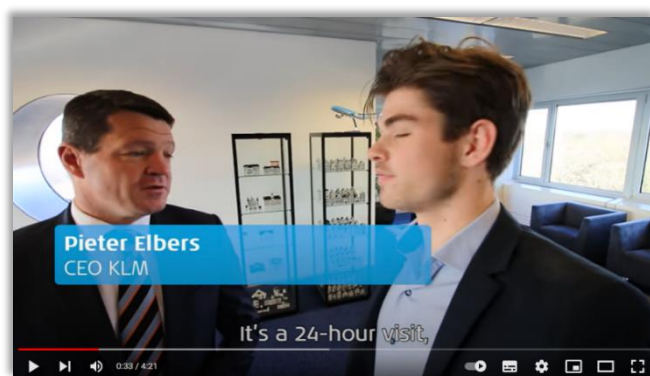
267. As part of its CO₂ZERO-programme, and to elaborate on its sustainability agenda, KLM offers passengers the possibility to pay a small amount of money for reforestation, as this would compensate for CO₂. Fossil Free believes that there is no compensation and that paying for reforestation does not make flying more sustainable.

268. With the CO₂ZERO programme, KLM makes a direct link between its sustainability and reforestation. The consumer is urged to do his or her "part to make aviation a sustainable industry". They are then told that by making a small contribution to the reforestation programme, they can "(...) *compensate (part of) the impact of [their] flight on the environment*".

269. The "reforestation" product appears to be in the form of the purchase of *carbon credits* by KLM. Those *carbon credits* are sold by a particular forestry project, in this case the "CO₂OL Tropical Mix" project in Panama.



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Some images from a marketing film by KLM in the context of CO₂ZERO, in which the CEO of KLM figures, while he flies to Panama and back for a one-day visit and plants a tree.²⁷⁰

270. Carbon *offsetting* is based on the idea that you can reduce or remove CO₂ from the atmosphere, for example by planting and growing trees. The trees then absorb the CO₂ into their organic matter (biomass). That absorption of CO₂ can be "offset" against CO₂ that is emitted in an accounting way. It seems that the plus (emission of CO₂) can be "set off" against the minus (uptake of CO₂), so that, from an accounting point of view, a "balance" is created: compensation, in other words.
271. To be able to do this accounting calculation, *carbon credits* have been developed. These are units of account that represent a certain amount of an emission avoidance or a removal of greenhouse gases.²⁷¹ A *carbon credit* is issued for the prevention of emissions (a specific emission avoidance) or the removal of greenhouse gases. The amount of emission avoidance or emission removal per *carbon credit* is 1 tonne of CO₂. The buyer of a *carbon credit* can then "write off" (*retire*) that credit to show that it has been "used". Buyers can choose to redeem credits against an emission of the same magnitude made by this buyer. Mathematically, the emission is then "offset" against a reduction represented by the *carbon credit*.
272. The SBTi stipulates that *Carbon Credits* may not be used to achieve the SBTi targets. SBTi writes about this in its Science Based Targets Criteria and Recommendations of October 2021:

²⁷⁰ Available at <https://www.youtube.com/watch?v=cTYKDwIVaQo>.

²⁷¹ Goldstandard, 'What makes good carbon credit', <https://www.goldstandard.org/blog-item/what-makes-good-carbon-credit>.

"The use of carbon credits must not be counted as emission reductions toward the progress of companies' near-term science-based targets. Carbon credits may only be considered to be an option for neutralizing residual emissions (see Net-Zero C30) or to finance additional climate mitigation beyond their science-based emission reduction targets (...)"²⁷²

273. There are many reasons why *carbon credits* do not contribute to sustainable flying. The expert in this field is, as said, Broekhoff. He eventually comes to the following conclusion about KLM's CO2ZERO marketing:

*"I believe it would be misleading for KLM to suggest to its customers that purchasing offsets can truly compensate for, or reduce the impact of, flying. Any option to use carbon credits should be presented as a potentially useful way to help accelerate climate action. Carbon credits should not be presented as a way to make up for, or compensate, aviation emissions that are not consistent with safe and equitable climate goals."*²⁷³

274. Broekhoff describes that, in order for there to be compensation, a number of logical conditions must be met: ²⁷⁴

- a. The removal or reduction of greenhouse gases must be **additional**. This means that the removal or reduction would not have taken place anyway, but by other means. It must actually and separately contribute to a reduction or prevention of greenhouse gas emissions. In short, you cannot designate an existing forest or a forest that would be planted anyway and claim *carbon credit* for it. That has no impact on the amount of greenhouse gases in the atmosphere.
- b. The removal or reduction associated with the *carbon credit* should **not be overestimated**. If the emission is not equivalent to the removal or prevention of another emission, there is no balance.
- c. The removal or reduction must be **permanent**. The lifetime of greenhouse gases is very long and the CO₂ storage associated with the *carbon credit* should be of the same duration. About 25% of emissions remain in the atmosphere for up to thousands of years.
- d. The removal or reduction must be counted only once, and be **exclusive** in that sense. It is clear that the carbon credit for that removal or reduction cannot be used twice, for example because the country in which the forest is located and for which the *carbon credit* was issued includes the same trees in its own reporting.

²⁷² Science Based Targets, p. 10, 42, <https://sciencebasedtargets.org/resources/files/Net-Zero-Standard.pdf>.

²⁷³ (Production 4).

²⁷⁴ (Production 4).

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- e. The removal or reduction should **not contribute to social injustice or have other negative environmental effects**. For a *carbon credit* to be truly sustainable, it must not, of course, have undesirable, negative side effects.

275. Fossil Free does not dispute that planting trees, if done with respect for nature, interests of local people, etc., can be good for the climate. Planting trees is good and should be done. However, as a mathematical fiction to "compensate" for emissions, it does not, or at least not sufficiently, contribute to supporting the label "sustainable".

(i) Carbon Credits are not a compensation for aviation emissions

276. As outlined above, the pathway to net zero by 2050 requires significant and rapid emission reductions and a reduction in the use of fossil fuels. It also requires preserving and increasing carbon sinks such as forests, which are threatened by deforestation and climate change. Both are needed to limit global warming to safer levels. Relying on one (reforestation) to offset the other (emissions) is problematic. The fiction of "offsetting" is therefore becoming increasingly inaccurate as the need to reduce, not offset, emissions becomes more pressing (rn. 101). A consensus is therefore emerging among scientists and experts. This consensus concerns the principle that the use of *carbon credits* is only appropriate in a way that does not impede the need to fully and directly reduce emissions in line with the shrinking carbon budget for the 1.5 °C climate target (with trajectories reaching "net zero" around 2050). However, describing the purchase of Carbon Credits as "reducing your impact" and compensating for the CO₂ emissions of aviation is completely at odds with this. This is also the opinion of Broekhoff:

"Purchasing carbon credits can still help to advance global mitigation efforts, but cannot make up for the opportunity cost of flying if travelling by air was avoidable. The purchase of carbon credits should instead be viewed as supplementary climate action that may help to advance global mitigation efforts despite any decision to fly, not as "neutralizing" compensation for flying that somehow erases the opportunity cost. The impact of a flight is what it is; purchasing carbon credits does not reduce it.

²⁷⁵

277. And further, that of the Voluntary Carbon Markets Integrity Initiative, an expert agency affiliated with the international Task Force on Scaling Voluntary Carbon Markets, which says:

"The imperative for overall and absolute emissions reductions globally, to keep 1.5 °C within reach, necessarily means the end to 'traditional' offsetting - where carbon credits are purchased instead of reducing avoidable emissions within the value chain of a company. It is no longer sufficient or legitimate to achieve long-term 'equivalence' through counterbalancing emissions with carbon credits".²⁷⁶

²⁷⁵ (Production 4).

²⁷⁶ Vcmintegrity, 2021, p. 31, <https://vcmin integrity.org/wp-content/uploads/2021/07/VCMI-Consultation-Report.pdf>.

(ii) Not additional

278. For almost all reforestation areas, including those of KLM, additionality is always uncertain. That the forest in question is additional, i.e. that it would not have existed if it had not been a *carbon credit* project, is a hypothetical assumption. This assumption is also increasingly subject to discussion as countries in compliance with Paris are pursuing reforestation and trying to obtain international financing for it.²⁷⁷ For some situations (valuations, damage calculations), a hypothetical assumption can work to achieve an outcome. In this case, however, it must be kept clear that fossil fuel emissions are 100% certain, while the additionality of compensation is by definition uncertain. Even a small uncertainty about additionality means that the label 'compensation' cannot be applied to it. States could, for example, count reforestation projects towards their own targets. This is a problem that has not been recognised as such before.²⁷⁸

279. Broekhoff states about additionality:

"If mitigation claimed as an offset is not additional, then purchasing carbon credits yields no change in global emissions. It would therefore be invalid to claim that the carbon credits have counterbalanced emissions.

Unfortunately, the determination of additionality is deceptively difficult and subject to inherent uncertainty. It requires comparison to a counterfactual scenario where demand for carbon credits is not present. While carbon credit certification programs take pains to try to ensure that credited mitigation is additional, their determinations are unavoidably prone to at least some subjectivity and error. Multiple studies have suggested that, for a wide range of mitigation activities certified as carbon offsets, additionality claims are not reliable (Alexeev et al. 2010; Cames et al. 2016; Haya 2009; Haya et al. 2020; Haya and Parekh 2011; Ruthner et al. 2011; Schneider 2009; Trexler 2019). "

(iii) Not permanent

280. Fossil fuel, as long as it is not burned, is a form of CO₂ storage: fossilised organic matter. In this form CO₂ can be stored stably for millions of years. A tree also stores CO₂ in its organic material. However, a tree is a short-lived and extremely unstable form of CO₂ storage. So the storage is not permanent. Fossil fuels and trees are thus fundamentally incomparable CO₂ storage sources. A large part of the CO₂ emitted by fossil fuels remains in the atmosphere

²⁷⁷ Newclimate, 'net zero report' October 2020, P. 47-48 : "In historical offsetting mechanisms, additionality could be proven by showing that local legislation did not require the activity and that offsetting revenues could help overcome barriers which would otherwise prevent implementation. Since the coming into force of the Paris Agreement, the concept of additionality needs to be redefined and should imply complete certainty that the project supported could not realistically have been implemented otherwise through unilateral ambition enhancements on the part of the host country", https://newclimate.org/sites/default/files/2020/10/NewClimate_NetZeroReport_October2020.pdf.

²⁷⁸ (Production 4), p. 9, "Gold Standard cannot guarantee that the current projects will be relinquished by Panama".

This is an unofficial machine translation of the Dutch original version

longer than a tree can live. To claim that stable, long-term storage (fossil fuels) can be replaced by unstable, short-term storage is taking a huge risk.

281. The reforestation projects are only guaranteed for a limited time, sometimes no more than 20 years.²⁷⁹ This is out of all proportion to the basically eternity that the CO₂ would have been in the ground if it had not been pumped up to be burned in an aircraft engine. Also, such reforestation projects have now burned down, releasing the 'compensated' emissions into the atmosphere.²⁸⁰ Climate change, also caused by growing aviation, increases the risk of forest fires and floods, especially in areas where reforestation areas have been and are being established, something that the IPCC also warns against. This risk certainly exists with regard to the CO₂OL Tropical Mix in Panama that KLM uses.²⁸¹
282. KLM's Co2ZERO advertisement presents another problem, namely that, also according to KLM, the *carbon credits* only "compensate" for the CO₂ emissions of flying with KLM. The other non-CO₂ effects on the climate that a flight causes are not compensated for, but they do exist. KLM claims *"With reforestation, you pay a small contribution to compensate (part of) your flight's impact on the environment"*. The truth, however, is that even if it is assumed that there is "compensation", the donation only addresses about a third of the flight's environmental impact - the rest of the non-Co₂ impact is not even fictionally "compensated".
283. The German NewClimate Institute for Climate Policy and Global Sustainability, in a 2020 research report (Navigating the nuances of net-zero targets) writes the following about offset projects from aviation:

"Airlines' net-zero claims are not transparent about the climate impact of aviation and may mislead customers. Passengers may believe that their 'carbon-neutral' flight has no climate impact. This - in combination with relatively cheap flight tickets and short travel times - may lead to an increase in demand for short-haul aviation and associated emissions."

"Further, airlines' net-zero targets and claims focus exclusively on carbon emissions. However, air travel has significant non-CO₂ climate impacts that contribute to global radiative forcing (Owen et al., 2010), which are estimated to increase the climate impact of aviation by a factor of up to 3 (Atmosfair, 2016). Efforts to genuinely decarbonise the aviation sector should be encouraged and applauded, but misleading carbon neutrality and net-zero claims are not a

²⁷⁹ (Production 4): "While some carbon offset programs, such as the Gold Standard, maintain insurance mechanisms to address carbon losses (essentially, "buffer reserves" of credits that are issued but not circulated), there are questions about whether they are sufficiently robust (Hodgson 2021) and it is doubtful that such mechanisms can be effective over indefinite time periods (Schneider, Michaelowa, et al. 2019). Furthermore, in the case of the Gold Standard, the obligation to compensate for "reversals" (i.e., carbon losses) may extend for as little as 20 years - far short of what is needed to fully counterbalance carbon emissions."

²⁸⁰ <https://www.ft.com/content/3f89c759-eb9a-4dfb-b768-d4af1ec5aa23>.

²⁸¹ *Aridity, and agricultural and ecological drought are increasing (medium confidence). Fire weather is projected to increase (medium confidence)*. IPCC AR6, Regional Fact Sheet Central and South America. https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Central_and_South_America.pdf.

constructive approach to move towards this goal, and do not give an accurate representation of the sector's prospects."²⁸²

(iv) The price

284. Another indication that *carbon credits* are not actual compensation: the price. The price for a tonne of CO₂ currently averages €87.²⁸³ A *carbon credit* offered by KLM, however, costs an average of €3 for a tonne of "compensation".²⁸⁴

285. All in all, the possibility of "CO₂ compensation" paints a false picture of the climate impact of aviation and undermines actions that are relevant. KLM tempts consumers with the idea that they are doing something good for the climate by means of CO₂ compensation. This prevents airlines, and therefore KLM, from taking real action. All in all, KLM's repeated claims of "CO₂ compensation" and "reduce your impact" go too far in the context of the current climate emergency. In an attempt to sell flights, KLM suggests that making a donation compensates for aviation emissions, which could neutralise the climate damage of flying or provide a relevant "counterbalance". This is simply not true. This sham measure contributes to maintaining the "business as usual" growth of aviation - thus undermining short-term emission reduction measures in the highly polluting aviation sector.

286. It is therefore not surprising that a number of companies are stopping offering "compensation" and carbon offsets. The Dutch travel company Sunweb recently announced:

*"We are reminded by our customers, by public opinion and by experts that carbon offsetting is a dead end. Experts say it contributes too little to climate change. And customers are not waiting for it".*²⁸⁵

287. The service company Centrica also rules out compensation.²⁸⁶ The CEO of Wizz Air commented that "*in my view SAF and carbon offsetting are more greenwashing than real at the moment*" and called offsetting "*a bit of a joke*".²⁸⁷

288. The CEO of United Airlines also sees nothing in CO₂ compensation:²⁸⁸

"The truth is that carbon offsets, most of them aren't even real. [...] by the way, we produce 4,000 times as many annual emissions since the industrial era began. We

²⁸² Newclimate, Net zero Report October 2020, p. 51 and 52, https://newclimate.org/wp-content/uploads/2020/10/NewClimate_NetZeroReport_October2020.pdf.

²⁸³ Measured in May 2022, <https://www.carbonkiller.org/nl/i/wat-kost-een-co2-recht>.

²⁸⁴ The direct removal of CO₂ from the air and its permanent storage in rocks costs around €1000 per tonne of CO₂. See <https://climeworks.com/subscriptions>.

²⁸⁵ Het Parool, 'Top man of holiday giant sunweb sees only one future: fewer flights', 3 January 2022, <https://www.parool.nl/nederland/topman-van-vakantiegigant-sunweb-ziet-maar-een-toekomst-minder-vliegen~bd7caeci/?referrer=https%3A%2F%2Fwww.google.com%2F>.

²⁸⁶ Newclimate, Net zero report, October 2020, p. 50.

²⁸⁷ Bloomberg, 'Wizz Air CEO says green jet fuel offsets are greenwashing', 12 October 2021, <https://www.bloomberg.com/news/articles/2021-09-30/wizz-air-ceo-says-green-jet-fuel-offsets-are-greenwashing;%20https://airlinergs.com/wizz-air-chief-executive-calls-carbon-offsetting-a-bit-of-a-joke/#:~:text=Wizz%20Air's%20chief%20executive%20Jozsef,called%20carbon%20offsetting%20E2%80%9Cgreenwashing%E2%80%9D>.

²⁸⁸ <https://centreforaviation.com/analysis/reports/uniteds-kirby-carbon-offsets-a-fig-leaf-for-a-ceo-to-write-a-check-555398>.

simply can't plant 4,000 times as many trees. There's not space on the planet. [...] [A] tree [is] going to die later and put the carbon back into the atmosphere.

And what I hate about traditional carbon offset programmes is so many companies are using them, and they are a fig leaf for a CEO to write a check, check a box, pretend that they've done the right thing for sustainability when they haven't made one wit of difference in the real world. "

289. Within the European ETS the use of international *carbon credits* is excluded. ²⁸⁹

290. The European Financial Reporting Advisory Group is responsible for drafting the reporting standards that will apply to large companies in the EU under the Sustainability Reporting Directive. This group has prepared a draft reporting standard that also prohibits companies from using *carbon credits* as offsets in their sustainability reporting: "(...) *the undertaking shall: [...] not disclose carbon credits as a counterbalance or offset for its GHG emissions [...] not disclose carbon credits as a means to reach GHG emission reduction targets*". Instead, companies should disclose the purchase of *carbon credits* separately from their own emissions and emission reduction targets. ²⁹⁰

6.3.1 *Interim conclusion on reforestation*

291. The conclusion is therefore that reforestation does not lead to compensation of CO₂ emissions . The claims that KLM makes about this, namely (8), (12), (15) and (16), are therefore not justified. The fact that these claims are also misleading in a legal sense will be further elaborated on (in Chapter 8). 8).

6.4 **Other technical measures have negligible impact on flight sustainability**

292. KLM also mentions a number of technical measures, such as building new types of aircraft, as options for reducing the emissions from its flights. At this time, there is no reason to assume that within 10 or 20 years, the majority of KLM's fleet will have been replaced by new aircraft based on a technology that is not yet operational but that would produce significantly lower emissions.

293. A radical change in aircraft/engine architecture or design could possibly, in the very long term, bring about a step-by-step improvement in aircraft efficiency. However, the largest aircraft manufacturers Airbus and Boeing do not plan to develop a new aircraft with a clean sheet jet engine before the mid-2030s. Such an aircraft will therefore not be able to have any market position before the end of the 2040s. Even in 2040, the fleet will largely consist of aircraft certified in the years 2000 to 2010.

²⁸⁹ https://ec.europa.eu/clima/eu-action/eu-emissions-trading-system-eu-ets/use-international-credits_en#ecl-inpage-1353.

²⁹⁰ https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FsiteAssets%2FED_ESRS_E1.pdf, p. 37.

294. It follows from its own Climate Action Plan 2022 that KLM itself sees the development of other aircraft designs only as a long-term possibility, far beyond the all-important year 2030.²⁹¹ However, this does not prevent KLM from actively promoting these, sometimes even only theoretical, *future* measures to consumers, mind you: to promote the booking of flights with the *current* fleet. KLM claims (as follows from claims 4, 13) that these measures nevertheless contribute to a "more sustainable future".
295. However, to contribute to a "sustainable future", real, far-reaching action is needed in this "critical decade". Some of these options are Flying V, hydrogen and efficiency and are explained in more detail below.

6.4.1 *Flying V*

296. KLM says its net zero route is partly based on future aircraft: "2035: New generation of aircraft (Flying V)". Its Fly Responsibly web pages also state:

*"In addition to investing in existing aircraft, KLM is participating in the Flying V project together with TU Delft. Flying V is a design for a highly fuel-efficient long-haul aircraft with an aerodynamic shape and lower weight. This can reduce fuel consumption by 20% compared to today's most advanced aircraft. The first flight of the scale model took place in August 2020. In addition, we remain committed to research and development of innovative solutions for a sustainable aviation future."*²⁹²

297. It may be worth pursuing, but KLM itself does not build any aircraft and does not build airports to house such aircraft. These types of aircraft are still (far from) fully developed, approved for use and purchased/ordered by any airline. Aircraft manufacturers do not foresee sales of such aircraft within the next 20 years.²⁹³ TU Delft had done no more than perform a flight with a scale model of about 3 metres in length:

²⁹¹ (Production 2).

²⁹² (Production 10).

²⁹³ See e.g. <https://www.airbus.com/en/products-services/commercial-aircraft/market/global-market-forecast>.



An experiment with a scale model of the "Flying V"

298. Yet advertisements tout this experiment as a potential climate measure for aviation, while concealing the need to reduce flying. This while the Flying V cannot make a real contribution to a "net zero" goal in 2050 or the required sustainability in 2030. KLM will not deploy such aircraft on any scale from 2035, nor in time to have any significant effect before 2050. This kind of innovation project might be valuable in 2070, but it is simply irrelevant to the issue of "rapid decarbonisation".

299. The IPCC says about fleet renewal (e.g. by aircraft like the Flying V):

"The basic configuration of an aircraft has remained more or less the same for decades and will likely remain at least until 2037 (Cumpsty et al. 2019). [...] Radically different aircraft shapes, like the blended wing body (where the wings are not distinct from the fuselage) are likely to use about 10% less fuel than future advanced aircraft of conventional form (Cumpsty et al. 2019). Such improvements would be "one-off" gains, do not compensate for growth in emissions of CO₂ expected to be in excess of 2% per annum, and would take a decade or more to penetrate the fleet completely".²⁹⁴

300. T&E says the following about the industry's claimed redemption measure:

"However, until now most concepts realded by manufacturers have never made it to the skies. "

301. And:

²⁹⁴ (Production 6), pp. 10-59, 10-60.

*"The other, more disruptive aircraft configurations mentioned above are not expected before the 2040s and will thus have a limited impact on aviation's emissions by 2050. (...) It is clear, however, that revolutionary designs won't suffice to reach a 2050 decarbonisation target and that zero-emission propulsion methods will be key."*²⁹⁵

6.4.2 Hydrogen and electric flying

302. This section sets out the main technical evidence for hydrogen and electric flying. KLM makes no detailed claims about the role of hydrogen and electric flying in the future, but relies on them for an unspecified part of its trajectory (and sector path) towards net zero in 2050.

303. KLM states in its graph under "*What we are doing*" (see marg. 210) that there will be a "radical" change in the fleet from 2035 onwards, through the use of hydrogen aircraft and electric flying.

304. The general impression this creates is that hydrogen and electric aircraft will be a measure to get KLM (through emission reductions of an unspecified amount) and the aviation industry (through emission reductions of up to 20% in 2050) from 2035 to net zero in 2050. Apart from the question of whether sufficient sustainable energy will be available for flying in the foreseeable future, electric commercial aircraft exist only on paper.

305. According to the IPCC report, there is moderate confidence that "*Electrification could play a niche role for aviation and shipping for short trips.*"²⁹⁶ For shorter distances, flights by light aircraft carrying up to 50 passengers may be able to use electric power, but these aircraft make up only a small proportion of the global aviation fleet. ²⁹⁷ In addition, according to T&E, electric aircraft are likely to replace only 2.3% of flights in the EU by 2050 due to the weight of the batteries.²⁹⁸ T&E writes:

*"Such planes are expected to tackle only a small share of the emissions in the coming decades because of the fundamentally limited gravimetric energy density of batteries compared to other fuels."*²⁹⁹

306. In addition to these identified problems, there are a series of practical obstacles to electric aircraft:

307. Certification and safety regulations are likely to restrict the use of aircraft before they are finally put into service.³⁰⁰

²⁹⁵ (Production 11), p. 49-50.

²⁹⁶ (Production 6), Chapter 8.4.

²⁹⁷ (Production 6), p. 10-61.

²⁹⁸ (Production 11), p. 51.

²⁹⁹ (Production 11).

³⁰⁰ p. 47, https://www.destination2050.eu/wp-content/uploads/2021/03/Destination2050_Report.pdf.

308. All-electric aircraft are essentially unable to compete with jet aircraft in today's markets. They are likely to be propeller-driven aircraft with low capacity, small range, low altitude and low speed.³⁰¹

309. T&E writes:

*"Having the highest efficiency and no emissions, the electric aircraft is a great technological innovation, but will likely have a limited impact due to its physical constraints."*³⁰²

310. It therefore seems much more likely that electric aircraft will complement, rather than replace, existing aviation markets. They will essentially compete with current land transport options, such as road and rail, rather than air transport.

6.4.3 *Hydrogen-powered planes*

311. Hydrogen powered aircraft also exist only on paper. Earlier research into flying on hydrogen was discontinued in 2010.³⁰³ Currently, Airbus is working on a hydrogen-powered aircraft. Airbus says it has "the ambition" to have developed the first "zero-emission commercial aircraft by 2035" and that "hydrogen should make this possible".³⁰⁴ When developing a new aircraft, one has to take into account a so-called market penetration time of about 20 years. This means that it takes 20 years before a newly developed aircraft can be fully absorbed by the market. Hydrogen-powered planes will be in very limited use by 2050, mainly for short-haul flights, which could also often switch to rail or other electric transport.

312. There is also a real risk that the development of hydrogen-powered aircraft will stagnate and not be completed because of the investments and the need for fuel infrastructure. The costs will be very high. There are also uncertain non-CO₂ effects.³⁰⁵ The IPCC also notes about flying on hydrogen that:³⁰⁶

"The non-CO₂ impacts of LH₂-powered aircrafts remain poorly understood.

"LH₂ [flying on hydrogen] requires redesign of the aircraft, particularly for long-haul operations. Similarly, there would be a need for expanded infrastructure for fuel manufacture, storage, and distribution at airports".

313. T&E also notes the following about hydrogen-powered aircraft:

³⁰¹ p. 19, https://www.fch.europa.eu/sites/default/files/FCH%20Docs/20200507_Hydrogen%20Powered%20Aviation%20report_FINAL%20web%20%28ID%208706035%29.pdf.

³⁰² (Production 11), p. 36.

³⁰³ <https://www.bbc.co.uk/news/science-environment-11707135>.

³⁰⁴ Airbus, <https://www.airbus.com/en/innovation/zero-emission/hydrogen/zeroe>.

³⁰⁵ (Production 11), p. 53.

³⁰⁶ (Production 6), p. 10-61.

*"Hydrogen propulsion has more potential, but the industry's 20-year long stall in developing the technology will likely prevent it from saving more than 10% of emissions by 2050"*³⁰⁷

And:

*"Most emissions are caused by long-haul flights, which hydrogen will not be able to power in the foreseeable future because of engineering constraints linked to weight and volumetric penalty associated with the large fuel tanks that would be needed."*³⁰⁸

314. There are also other problems with switching to hydrogen as a fuel. At present, most hydrogen is produced from fossil fuels. 'Green' hydrogen from renewable energy has first to replace the use of current 'fossil' hydrogen applications (e.g. the use for fertiliser³⁰⁹), before it has to be used for aviation. Green hydrogen is also very expensive³¹⁰ and will hardly be able to replace kerosene. Unless kerosene becomes significantly more expensive, but the aviation industry and KLM are lobbying against proposals to tax kerosene (further) (see par. 4.5.2). This makes the rapid advance of green hydrogen-powered aircraft even less likely.

315. In principle, hydrogen-powered aircraft could develop into a solution for shorter flights in the future - these are the very flights that could be made by train or other electric means of transport. In any case, hydrogen-powered aircraft will not have an impact on the reduction of aviation emissions in the next two decades.³¹¹

6.4.4 *Interim conclusion regarding technological developments*

316. In short, technological developments such as new aircraft forms (Flying V) and electric and hydrogen powered aircraft may not reach eventual (commercial) development, may come too late or may have too limited an applicability for reducing aviation emissions in line with the Paris target. They may be valuable innovation projects to explore in the long term, but they will not be working measures in the near future. Therefore, the claims KLM makes about them, namely 4 and 7, are not justified. These proposed measures are pure, hypothetical developments in the future and should not be used to influence consumers' decisions in the here and now. That these claims are also misleading in a legal sense will be further elaborated on below, in section 4. 8.

³⁰⁷ (Production 11), p. 36.

³⁰⁸ (Production 11) p. 87.

³⁰⁹ <https://www.europeanfiles.eu/climate/clean-hydrogen-as-a-major-enabler-for-making-carbon-free-ammonia-and-fertilizers>.

³¹⁰ (Production 11), p. 53.

³¹¹ <https://www.reuters.com/business/aerospace-defense/airbus-tells-eu-hydrogen-wont-be-widely-used-planes-before-2050-2021-06-10/>.

6.5 Interim conclusion regarding KLM's sustainability claims

317. Unfortunately, it is currently the case that flying is not sustainable. KLM's sustainability claims are about the measures to make aviation free of CO₂ emissions in the future, and about the possibility of compensating for the impact of aviation now. As the above shows, the measures put forward are not expected to lead to a rapid reduction in CO₂ emissions as required to meet the Paris target and the goal of "net zero by 2050". It is also clear from the above that compensation is not possible. KLM's claims to the contrary are therefore incorrect.

7 CLAIMS AGAINST KLM

318. Fossil Free believes that KLM makes misleading claims about the sustainability of flying and of the sustainability products it offers to the public.

319. Fossil Free claims that the court:

- a. declares that the making of the marketing claims listed in rn. 185 and derivatives thereof, is unlawful,
- b. that KLM rectify these claims, and
- c. that it be prohibited from repeating those claims in the future, and
- d. that KLM includes a warning text on its product and its website.

320. Fossil Free has submitted the text of the rectifications it has claimed as attachments to this summons. Fossil Free can imagine that if the Court considers granting this claim, the parties will consult with each other about a possible specification of the text of the rectifications as well as the form thereof. It is conceivable that the parties will reach a (partial) settlement about this at that time.

321. With regard to the requested prohibition, the following has been stated. The core of Fossil Free's complaints is that KLM makes sustainability claims in its advertising which are not or insufficiently substantiated, in particular with regard to the impact that flying with KLM has or may have on climate change and the extent to which KLM contributes to a more sustainable future. Fossil Free claimed that, in line with the also claimed declaratory judgment, KLM is acting unlawfully by making the claims in the body of this summons under 185 up to and including 190 it should be prohibited to repeat those or similar expressions. Because it is very easy to vary on the literal text of these expressions and it is very difficult to predict what kind of claims and "spin" the advertising industry may come up with, Fossilvrij is claiming that KLM should be prohibited from not only making the same expressions but also similar ones.

322. Fossil Free primarily claims that the ban will apply without time limitation. Fossil Free believes that flying cannot be done in a sustainable way, and that there is nothing to suggest that this will ever be otherwise, even with ideas for electric or hydrogen powered flying, given the

reliance on scarce renewable electricity and the problem of non-CO₂ effects (par. 6.4). Moreover, KLM does not currently have a plan that, if implemented, would put it on the road to a more sustainable future. Also insofar as the claim of Fossil Free relates to the claims regarding reforestation, Fossil Free is of the opinion that the challenged claims in this respect are misleading and/or unlawful and will remain so forever: (real) reforestation may be good under certain circumstances, but even then it does not take away the harmful consequences of flying.

323. If it should be the case that (unexpected) technological or other developments would cause the challenged claims to become true after all, it is KLM's responsibility to enter into consultations with Fossielvrij, based on the evidence available at that moment, in order to make arrangements to leave the operative part of your judgment out of application to that extent, or to commence enforcement proceedings. This is also consistent with Article 12 of the OHP Directive and Article 6:193j of the Dutch Civil Code, namely that traders must be able to substantiate their claims with current, robust and generally accepted scientific evidence, from the moment that the claims in question are made.³¹²
324. In the alternative, KLM claims that your court should determine the condition under which these claims may be made again on the basis of the party's debate.
325. The misleading message of KLM that flying with KLM can somehow be sustainable has had a large reach and it must be taken into account that this message has contributed to the prevailing image of flying, and that also persons who have not bought a ticket yet but will do so in the near future are affected by this impression. Therefore Fossil Free demands that, in addition to the rectification to be sent to the people who have been issued with tickets in the relevant period, a warning text will be included in a prominent place on its homepage, the website booking tool and on the flight tickets issued for its flights, as follows: "*Aircraft consume fossil fuel and contribute to dangerous climate change*".
326. Fossil Free claims that this is reinforced by a penalty payment, because KLM has shown that it continues to make problematic advertising (e.g. "CO₂ZERO") even when the Advertising Code Committee opposes it.

8 LEGAL GROUNDS FOR THE CLAIMS AGAINST KLM

8.1 Introduction

327. In the following part of this summons, Fossil Free will explain the legal basis of its claims.
328. Fossil Free, as a citizens' movement, is an interest group, which according to its statutory objective does not stand for its own interests but for those of people and the environment. This brings us to the legal framework of collective action, and thus currently of WAMCA. With its

³¹² Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 81.

claims, Fossil Free not only has the interests of consumers at heart, but also promotes the interests of everyone within current and future generations, and in particular when it comes to climate, flora and fauna. Due to the *greenwashing*, i.e. misleading statements by KLM about other possibilities for sustainable flying than shrinkage, consumers expect to be able to fly without contributing (or less) to dangerous climate change and without damaging the climate, themselves or others. That *greenwashing* harms the climate is in pars. 175, 176 and 177 already explained. The interests of the environment (more specifically: the climate) are thus attributable to persons and therefore meet the concept described in Section 3:305a of the Dutch Civil Code.³¹³

329. In chap. 9 It will be further explained that Fossil Free is admissible in its claim and meets all the requirements of WAMCA.
330. Fossilvrij is of the opinion that KLM is acting unlawfully by making misleading claims. The obligation to refrain from deception, i.e. engaging in unfair and misleading trade practices, already follows from the law, within the meaning of Article 6:193b, Article 6:193c and/or Article 6:193d of the Dutch Civil Code. Fossilvrij is seeking an injunction against repetition thereof and an order for KLM to refrain from making unlawful claims in the future as well. The claim can be based on the qualified form of unfair trade practices as well as on tort due to the violation of an (unwritten) standard of care.
331. It follows from the statement of purpose in Fossil Free's articles of association that it pursues the interests of protecting, supporting and achieving social and environmental health for current and future generations. The claims fit within these objectives. KLM is violating those interests by making misleading claims, so that Fossil Free may defend those interests pursuant to Section 3:303 j° 3:305a of the Dutch Civil Code.
332. Fossil Free will demonstrate (in par. 8.28.3 Fossil Free will (in par.) demonstrate that KLM is acting unlawfully by its advertising statements as it violates Sections 6:193a up to and including 6:193j of the Dutch Civil Code. Next, it will discuss (in par. 401) that KLM is in violation of the Dutch Advertising Code and that the Advertising Code Committee has already ruled in this case. Fossil Free then shows (in par. 8.3) KLM also acts unlawfully on the basis of unwritten law.

8.2 KLM guilty of unfair trade practices

333. In the following chapter, Fossil Free will briefly present the legal framework for testing advertising statements. It goes without saying that Fossil Free has no intention of explaining the law to your court. However, the relevant legislation consists of a number of important existing and future European directives, as well as guidelines from the European Commission and Dutch implementation in the Civil Code. For the sake of clarity, Fossil Free will therefore

³¹³ Amsterdam Court of Appeal, 13 December 2007, ECLI:NLGHAMS:2007:BC0126.

first provide an overview of the relevant provisions before proceeding to their application to KLM's sustainability policy.

8.2.1 *European and Dutch provisions on unfair commercial practices*

334. The Unfair Commercial Practices Directive is a European directive from 2005 and contains rules on unfair commercial practices. The aim of this Directive is to remove barriers to the internal market and to achieve a high level of consumer protection.³¹⁴ Unfair commercial practices undermine consumer confidence and destabilise the market because they prevent consumers from making good choices.

335. The OHP Directive provides for maximum harmonisation.³¹⁵ Member States may therefore not set different rules from those prescribed by the Directive.³¹⁶ In the Netherlands, the rules of the OHP Directive have been implemented in Title 3 of Book 6 of the Dutch Civil Code, adhering as closely as possible to the text of the provisions of the OHP Directive.³¹⁷

8.2.1.1 Definitions

336. The relevant definitions on unfair commercial practices are as follows:

- **Commercial practices:** "any act, omission, course of conduct, representation or commercial communication, including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers." (Article 6:193a (1)(d) of the Civil Code, in accordance with Article 2(d) of the OHP Directive). The term 'commercial practices' is interpreted broadly and includes more than just product advertising. Commercial practices may also include, for example, Corporate Social Responsibility (CSR) claims and other sustainable ambitions of traders.³¹⁸
- **Trader:** "natural or legal person acting in the course of a profession or business or a person acting on his behalf". (Article 6:193a (1)(b) of the Civil Code, in accordance with Article 2(b) of the OHP Directive).
- **Consumer:** "natural person not acting in the exercise of a profession or business". (article 6:193a paragraph 1 sub a BW, in accordance with article 2 sub a Directive OHP).
- **Decision on a contract:** "a decision taken by a consumer as to whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product, irrespective of whether the consumer decides to act". (Article 6:193a (1)(e) of the Dutch Civil Code, in accordance with Article 2(k) of the OHP Directive). The term 'decision on a contract' also covers decisions that a consumer takes prior to a purchase, for instance as part of the purchasing

³¹⁴ Directive OHP, recital 23 and Article 1.

³¹⁵ This follows explicitly from recitals 14 and 15 and Article 4 of the OHP Directive. D.W.F. Verkade, "3 Scope of the OHP Directive and of Section 6.3.3A", in: D.W.F. Verkade, *Unfair Commercial Practices towards Consumers (Monographs of the Civil Code No. B49a)*, Deventer: Wolters Kluwer 2016.

³¹⁶ Some exceptions are included in Article 3 of the OHP Directive.

³¹⁷ MvT, *Parliamentary Papers II 2006/07, 30928, 3*, p. 15.

³¹⁸ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 29.

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process. This may be, for instance, a decision to click through on a website in response to a commercial offer.³¹⁹

- **Product:** "good, including electricity, or service". (Article 6:193a (1)(c) of the Dutch Civil Code, in accordance with Article 2(c) of the OHP Directive).

8.2.1.2 Layered structure

337. The section on unfair commercial practices has a layered structure:

1. General: Article 6:193b (1) of the BW (in accordance with Article 5 (1) of the OHP Directive) contains the general prohibition of unfair commercial practices. A commercial practice is unfair if it is in breach of the requirements of 'professional diligence' and if the average consumer's ability to make an informed decision is or may be restricted. The result is that the consumer takes, or is in a position to take, a decision on a contract which he/she would not otherwise have taken (Article 6:193 (2) BW, in accordance with Article 5 (2) OHP). This article is also referred to as the 'catch-all provision'.
2. Misleading/aggressive: Article 6:193b paragraph 2 of the DCC then indicates that a commercial practice is particularly unfair if a trader engages in a 'misleading commercial practice' as referred to in articles 6:193c up to and including 6:193g of the DCC (in accordance with articles 6 and 7 of the OHP Directive) or in an 'aggressive commercial practice' within the meaning of articles 6:193h and 6:193i of the DCC (in accordance with articles 8 and 9 of the OHP Directive). The misleading commercial practices are subdivided in the following articles into misleading actions (Article 6:193c DCC, in accordance with Article 6 OHP Directive) and misleading omissions (Article 6:193d DCC, in accordance with Article 7 OHP Directive), which will be explained below.
3. Black list: Finally, sections 6:193g and 6:193i of the Dutch Civil Code contain the black lists, derived from Annex I of the OHP Directive. These conducts are unlawful under all circumstances.

8.2.1.3 Misleading commercial practices (acts and omissions)

338. As follows from the above, a distinction is made between misleading actions and misleading omissions:

1. Misleading actions: Article 6:193c of the Dutch Civil Code (in accordance with Article 6 of Directive OHP) stipulates that a commercial practice is misleading if information is provided which is factually inaccurate, or which, by virtue of its general presentation, is likely to mislead the average consumer, for example with regard to the nature, main characteristics (such as availability, advantages, risks and performance), quality, price and/or price calculation of a product or service. It is misleading if it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

³¹⁹ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 31.

2. Misleading omissions: Article 6:193d of the Dutch Civil Code (in line with Article 7 of Directive OHP) stipulates that a commercial practice is also misleading if essential information which the average consumer needs to make an informed transactional decision is omitted or provided in an unclear, unintelligible or ambiguous manner, with the result that the average consumer takes, or is likely to take, a transactional decision that he would not have taken otherwise.

339. In short, the unfair commercial practices provisions prohibit traders from engaging in unfair commercial practices - including misleading actions and omissions - in the promotion, sale and supply of products and services to consumers. The provisions apply to commercial practices engaged in by traders before, during and after the conclusion of a commercial transaction involving a product.³²⁰

8.2.2 *The average consumer*

340. As follows from these provisions, it must be a case of misleading the 'average' consumer (the 'standard'). This must be based on the likely expectations of a consumer who is reasonably well informed and reasonably observant and circumspect, to whom the communication is addressed or whom it reaches.³²¹ In the case law of the Court of Justice of the European Union, the average consumer is a reasonably discerning person who is cautious and observant in his or her market behaviour.³²²

8.2.3 *Reversal of the burden of proof*

341. Section 6:193j (1) of the DCC further provides that in case of a claim based on unfair trade practices, the burden of proof is reversed. Not the plaintiff must prove that the information is misleading, but the trader must prove that the information provided by him or her is correct and complete, provided that this seems appropriate "*having regard to the circumstances of the case and taking into account the legitimate interests of the trader and any other party to the proceedings.*" ³²³

8.2.4 *Interpretation of rules on unfair commercial practices in the case of sustainability claims*

342. There are several documents that are used in the interpretation and application of the provisions of the Civil Code implementing the OHP Directive. Below we will discuss the European Commission guidelines for the application and interpretation of the OHP Directive chap. 8.2.4.1 and the Guidance on Sustainability Claims of the Authority for the Consumer and

³²⁰ Parliamentary Papers II, 2006/07, 30 928, no. 3, p. 1.

³²¹ CJEU 16 July 1998, Case C-210/96, ECLI:EU:C:1998:369, paragraphs 29 to 30. D.W.F. Verkade (*Gut Springenheide*); ECJ EU 12 May 2011, Case C-122/10, ECLI:EU:C:2011:299, paragraphs. P.G.F.A. Geerts (*Konsumentenombudsman/Ving*); CJEU 26 October 2016, case C-611/14, ECLI:EU:C:2016:800, paragraphs. P.G.F.A. Geerts (*Canal Digital*); HR 27 November 2009, ECLI:NL:HR:2009:BH216, paragraph 4.2; HR 30 May 2008: ECLI:NL:HR:2008:BD2820, paragraph 4.2.

³²² For example: ECJ 28 January 1999, C-303/97 (*Sektellerei Kessler*), paragraph 36; ECJ 13 January 2000, C-220/98 (*Lifting*), paragraph 27; ECJ 4 April 2000, C-465/98 (*Adolf Darbo*), paragraph 20 and ECJ 19 September 2006, C-356/04 (*Lidl*), paragraph 78.

³²³ See also D.W.F. Verkade, *Unfair Trade Practices towards Consumers (Mon. BW nr.B49a)*, Deventer: Wolters Kluwer 2016/50.

Market ("ACM") chapter. 8.2.4.2. Also, the European Commission's legislative proposal on "greenwashing" published in February 2022 may help with the interpretation of the current provisions of the OHP Directive ch. 8.2.4.3.

8.2.4.1 European Commission Guidance

343. In December 2021, the European Commission presented the updated guidelines on the interpretation and application of the UCP Directive ("OHP Guidelines").³²⁴ Although the OHP Guidelines do not formally have legal status, they provide an important guide to the interpretation and application of the legislation on unfair commercial practices in concrete cases. The OHP Guidelines address, inter alia, the application of the OHP Directive to environmental/sustainability claims, including practical examples.

344. The OHP guidelines describe "environmental claims" or "green claims" as follows:

"An "environmental claim" or a "green claim" suggests (in commercial messages, marketing or advertising) or otherwise conveys the impression that a product or service has a positive or zero impact on the environment or does less damage to the environment than competing goods or services. The environmentally friendly character of the goods or services in question derives, inter alia, from their composition, the way they are produced, the way they can be disposed of or the fact that their use is more energy-efficient or less polluting."³²⁵

345. In this context, the OHP guidelines emphasise that the OHP Directive does not itself provide specific rules on environmental claims, but provides a legal basis for ensuring that traders do not present environmental claims in a way that is unfair to consumers.³²⁶ The OHP guidelines emphasise the fundamental principle that:

"...consumers must be able to trust environmental claims made by traders. Therefore, in order not to be misleading, environmental claims must be truthful, not be accompanied by false information and be presented in a clear, specific, unambiguous and accurate manner."³²⁷

346. With regard to **misleading actions** (Article 6:193 c (1) of the Dutch Civil Code and Article 6 of the OHP Directive), the OHP Guidelines explain that a sustainability claim may be factually correct, but can nevertheless be considered misleading in light of the context in which it is presented.³²⁸ This also means that the visual material and the general (product) presentation

³²⁴ Guidelines on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (2021/C 526/01), 29 December 2021. These Guidelines build on and replace the Guidelines on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices, SDW(2016) 163 final of 25 May 2016.

³²⁵ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 72.

³²⁶ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 73.

³²⁷ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 76.

³²⁸ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 76.

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surrounding a sustainability claim should truthfully and accurately reflect the extent of the environmental benefit and should not paint too rosy a picture of that benefit.³²⁹

347. Environmental claims can be misleading if they are based on vague and general statements about environmental benefits, without clearly substantiating the benefit and without specifying which aspect of the product the claim refers to. According to the OHP guidelines, examples of such claims are "environmentally friendly", "eco", "green", "friend of nature", "ecological", "sustainable", "good for the environment", "climate-friendly" or "kind to the environment", "non-polluting", "biodegradable", "emission-free", "low-CO₂", "reduced-CO₂", "carbon-neutral", "climate-neutral", as well as the more generic claims "aware" and "responsible".³³⁰
348. Since general terms such as 'knowingly' and 'responsibly' can cover many aspects, they can be considered misleading without or with poor qualification. Moreover, when using vague and ambiguous terms, the nuance must be such that these terms can only be interpreted in the way intended by the trader.³³¹
349. Furthermore, claims should be clear and unambiguous with regard to the aspect of the product to which they refer. If a trader makes an environmental claim by highlighting only one of several environmental impacts of the product, the claim may be misleading.³³²
350. In this context, the OHP guidelines stress that heavily polluting industries should ensure that their environmental claims are correct in relative terms, e.g. "less harmful for the environment" instead of "environmentally friendly". This will allow the average consumer to get a better idea of the relative impact of the product compared to other "sustainable" options (e.g. other travel options). In any case, an environmental claim should cover aspects that are significant in terms of the overall environmental impact of the product throughout its life cycle.³³³
351. With regard to **misleading omissions** (article 6:193d of the Civil Code, in accordance with article 7 OHP), the OHP Guidelines explain that vague and general claims are less likely to be misleading if traders supplement them with clear specifications or explanations about the environmental impact of the product. This can be done, for example, by limiting the claim to specific environmental benefits and explaining elsewhere what is omitted.
352. The provision of such additional information contributes to the fulfilment of the obligation in Article 6:193d (3) of the Dutch Civil Code (in accordance with Article 7(2) in conjunction with Article 7(4)(a) of the UCP Directive) to provide the consumer with essential information on

³²⁹ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 76.

³³⁰ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 77.

³³¹ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 77.

³³² Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 79.

³³³ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 78.

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the "main characteristics of the product" in an "unclear, unintelligible, ambiguous or untimely manner".³³⁴

353. If the trader provides additional information to the consumer, for instance on his website, such information should also be clear and understandable to the average consumer. The complexity and technical nature of the information should not be used to mislead about the accuracy of the green claims.³³⁵ Furthermore, the trader should be careful not to provide the additional information in a way that would require the consumer to 'take extra steps' to access it. ³³⁶
354. If no additional information is provided or it is provided in an unclear or ambiguous manner, this can be considered as misleading, depending on the assessment of the circumstances of the case. If there is no scope for specifying the environmental claim, the claim should, as a rule, be omitted.
355. These requirements also imply that claims about the product should be distinguished from more general environmental claims concerning the trader, his practices and sustainability policies.³³⁷
356. With respect to the **burden of proof on traders** (Article 6:193j of the Dutch Civil Code and Article 12 of the OHP Directive), the OHP Guidelines explain that any claim (including environmental claims) should be based on evidence that can be verified by a court. Claims should be based on sound, independent, verifiable and generally recognised evidence, taking into account updated scientific findings and methods. If expert studies cast doubt on the environmental impact, the trader should refrain from making the claim altogether.³³⁸

8.2.4.2 ACM Sustainability Claims Guidelines

357. Another important source for interpretation is the ACM Sustainability Claims Guidelines ("ACM Guidelines"), issued in January 2021.³³⁹
358. The ACM defines "sustainability claims" (or "environmental claims") as follows:
- "Claims that give the impression that a company's product or activity has no or less negative impact on the environment, or is less harmful to the climate, or, on the contrary, has certain environmental benefits. Environmental claims can refer to the impact on the environment in general or to certain aspects of the environment, such as air, water, soil, ecosystems, biodiversity or the climate."*
359. The ACM Guide contains rules of thumb and practical examples to help companies formulate sustainability claims. The rules of thumb are as follows:

³³⁴ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 79.

³³⁵ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 80.

³³⁶ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 80.

³³⁷ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 81.

³³⁸ Unfair Commercial Practices Guidelines, (2021/C 526/01), pp. 81-82.

³³⁹ Authority Consumer & Market, Sustainability Claims Guideline, ACM/20/039986, 28 January 2021 ("ACM Guideline").

1. Make clear what sustainability advantage the product has.
2. Support your sustainability claims with facts and keep them up to date.
3. Comparisons with other products, services or companies must be fair.
4. Be honest and concrete about your company's sustainability efforts.
5. Make sure that visual claims and labels are helpful to consumers and not confusing.

360. In its explanation of the rules of thumb, the ACM Guide reiterates the principles of OHP Guidelines. For example, the ACM Guidance emphasises that a trader may not emphasise insignificant sustainability benefits if the product has a significant negative impact on people, animals and the environment,³⁴⁰ the trader must substantiate sustainability claims with evidence³⁴¹ and that a trader may not use a claim about the company to make a product appear sustainable and vice versa.³⁴²

361. From sector letters of the ACM it further follows that it applies the general rule that additional information may be "at most one mouse click away" from the sustainability claim.³⁴³

8.2.4.3 The European Commission's anti-greenwashing proposal

362. In March 2022, the European Commission published its "*anti-greenwashing*" proposal to reform the OHP Directive.³⁴⁴ Although the existing legal framework already prohibits "*greenwashing*" and the OHP Guidelines reflect the current standards and jurisprudence on sustainability claims, the European Commission's new proposal aims to significantly facilitate enforcement.

363. Although the *anti-greenwashing proposal* has therefore not yet entered into force, it contains a number of useful and relevant positions of the European Commission, which can help in the interpretation of the existing legislation. For example, the European Commission confirms in the proposal that it is seeking, among other things, a ban on climate claims that are not supported by clear, objective and verifiable obligations and targets provided by the trader,³⁴⁵ a ban on "generic environmental claims" without the "recognised excellence in environmental performance" relevant to the claim³⁴⁶ and a ban on the assertion that the claims apply to the entire product when in fact the claim only relates to a particular aspect of the product.³⁴⁷

³⁴⁰ ACM Guide, p. 12.

³⁴¹ ACM Guide, p. 16.

³⁴² ACM Guide, p. 19.

³⁴³ In the spring of 2021, the ACM sent letters to more than 170 companies (in the clothing, dairy and energy sectors) requesting them to check their sustainability claims and, if necessary, adjust them to bring them into line with the legislation on unfair commercial practices. An example of such a sector letter is: <https://www.acm.nl/sites/default/files/documents/sectorbrief-kleding-duurzaamheidsclaims.pdf>.

³⁴⁴ Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards strengthening the position of consumers in the green transition by providing better information and protection against unfair practices, COM(2022) 143 final, 30 March 2022 ("Anti-Greenwashing Proposal").

³⁴⁵ Anti-greenwashing proposal, recital 4, p. 20.

³⁴⁶ Anti-greenwashing proposal, recital 9, p. 21.

³⁴⁷ Anti-greenwashing proposal, recital 11, p. 21.

8.2.5 *Application of the rules on unfair commercial practices to the statements of KLM*

8.2.5.1 General

364. As follows from the above, the European Commission and ACM documents set out the fundamental requirement for environmental marketing that claims must be truthful, clear, specific, accurate and unambiguous, measured against current, independent and generally accepted scientific evidence, in order not to mislead a consumer. Simply put, environmental claims must be consistent with the environmental evidence.

365. In the following, the various sustainability claims made by KLM in the "Fly Responsibly" campaign, the "CO2ZERO" marketing and the "Real Deal Days" campaign will be examined and it will be established that these claims are not in line with environmental evidence and are therefore misleading. Fossil Free believes that the misleading nature of the claims is already apparent from what is explained in ch. 4, 5 and 6:

- The only way to make flying more sustainable is not to fly or to fly less, but KLM and the airline industry aim for '*business as usual*' growth in air traffic (par. 4.5.1)
- None of the measures (efficiency, SAF, Flying V, electric or hydrogen aircraft) or products offered by KLM (SAF, reforestation) will put aviation on the path of rapid emissions reduction needed to contribute to the achievement of the Paris climate objective (par. 6.4)
- Any small bits of progress in emission reduction that exist or might exist, such as a small reduction in the weight of aircraft (claim 10), will most likely be cancelled out by the continued growth of aviation (par. 6.1)
- CO2 compensation products offered by KLM (SAF, reforestation) do not validly compensate or reduce the climate impact of flying (pars. 6.2 and 6.3).

366. So a passenger does not contribute to a "more sustainable future" or "more sustainable flying" by flying with KLM by paying a little extra to cover its costs for the small (0.5%) amount of SAF or by paying for *carbon credits* for reforestation.

367. KLM's suggestion otherwise undermines effective action to achieve the Paris target, because consumers are denied information on which to base a choice that does contribute to achieving the Paris climate target (in other words, they are given incorrect information on how to fly "responsibly") and because this conduct contributes greatly to maintaining the social and political "*license to grow*" of KLM and the industry. The claims are vague, ambiguous and not fair (misleading act)

368. KLM misleads consumers about the main characteristics of its services and products by using claims such as "*Together towards a more sustainable future*" and "*Together towards a more sustainable travel*" (6:193c(1)(b) of the Dutch Civil Code, corresponding to Article 6(1) of the OHP Directive). Examples are **claims 1 and 2**:

*"Thankfully, the way we travel is changing
And together we are moving towards a more sustainable future
Because more sustainable travel is our greatest adventure ever
Together on the road to more sustainable travel".*

"Join us in creating a more sustainable future".

369. KLM uses these terms to promote its products and services and thereby to encourage consumers to purchase flight tickets from KLM ("*So join us today for a more sustainable future.* ") (see also claims 11 and 17). By using these words, KLM creates the impression that its services are suitable for consumers who want to take into account the impact of flying on people, the climate and the environment, in short - for those who want to fly "responsibly" ("*Fly Responsibly*"). This is indeed how the advertising agencies involved described the purpose of the campaign (see rn. 180).
370. These are vague and ambiguous terms, which in no way reveal the specific sustainability benefits of KLM's products and services, nor the nature of KLM's sustainability efforts. By using the claims, consumers are likely to have more positive expectations about the environmental responsibility that KLM takes and the overall impact of flying with KLM than is warranted. This is reinforced by KLM's explanation that the claims refer to the Paris objective (e.g. **claim 3**, "*(...) KLM is taking the lead in achieving a more sustainable future for aviation [...] Therefore, we have committed ourselves to the objectives of the Paris Climate Agreement*"). The claims thus create the impression that flying with KLM has great sustainability advantages, because KLM is leading the aviation industry in making flying more sustainable and is also fully in line with the climate objective, while in reality the opposite is true.
371. Similar is the example in the ACM Guide (p. 11) about a supermarket chain that has switched to using a truck that runs on biodiesel. According to the ACM, the supermarket chain may not use the general claim "*With X on the road to a green future*" on the truck, because this may give consumers the impression that the supermarket chain has great sustainability advantages, while the only sustainability advantage is that its trucks run on biodiesel.
372. The general impression that KLM and the industry are environmentally conscious and fully committed to a "more sustainable future" for all inhabitants of the earth is supported by KLM's frequent and sophisticated use of images of nature and young children. Even the "*Fly Responsibly*" logo (an aircraft flying over a heart) suggests that KLM cares about the climate, (see also claim 19). The advertising images also evoke the image of exciting technological measures for sustainable aviation. See for instance:



Image from the Fly Responsibly campaign showing a plane flying over a heart

373. In its various marketing campaigns, KLM further refers to "sustainable aviation fuels" or SAF (e.g. **claims 6, 15 and 16**):

"Sustainable jet fuel: a promising solution".

"Contribute to sustainable aviation fuel and reduce your CO₂ emissions."

"KLM is investing heavily in sustainable fuel and we invite you to help us do so."

374. The use of the designation 'sustainable' aviation fuel, without sufficient explanation of what this actually is, is misleading. In practice, it is either (1) very limited stocks of biofuel based on used cooking oil that risk indirect deforestation, fraud and have a negative opportunity cost, or (2) synthetic fuels that are the least sustainable use of scarce renewable energy (see paras. 6.1 and 6.2)

375. Thus, KLM gives the impression that SAF is a "promising solution" and also a viable, scalable measure, currently held back by a lack of a "demand signal" ("*We cannot create this market on our own, but we can - and will - lead the way.*"), but which would be the most important way to reduce the climate impact of aviation. KLM states that "by far the biggest contribution" for the aviation industry to reach net zero in 2050 will be made by replacing fossil jet fuel with sustainable jet fuel (see, for example, **claims 4, 6 and 9**):

"But by far the biggest contribution will come from replacing fossil jet fuel with sustainable aviation fuel, or SAF (Sustainable Aviation Fuels)."

"SAF is a crucial component of the aviation industry's trajectory to achieve zero carbon emissions by 2050."

376. As follows from par. 6.2.1.2, however, the climate benefit of KLM's use of SAF has been negligible for more than a decade. According to the independent evidence, it is highly unlikely that biofuels based on waste and synthetic fuel will be commercially scaled up and used to have a material impact on reducing emissions by 2030.

377. Furthermore, KLM presents the SAF product as a unique selling point ("*To meet our climate ambitions, we want to use 10% SAF by 2030. (...) Moreover, since January 2022, we blend a*

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small percentage of SAF on KLM flights departing from Amsterdam."), while in reality the state support of the Dutch State obliges KLM to blend 14% SAF in 2030 for flights departing from the Netherlands (see rn. 240).³⁴⁸ Again, KLM thus wrongly creates the impression that it is a leader in sustainability, when in fact it is doing little more than is required of it.

378. The same applies to claims about CO2ZERO through contributions to reforestation (e.g. **claim 15**):

"With our reforestation programme, you offset (part of) the environmental impact of your flight. It does not affect the direct emissions of the flight itself, but your contribution helps restore forests that absorb CO2."

379. As follows from rn. 271, such offsets are not emission reductions and thus will not contribute to aviation reaching net zero in 2050. In relation to claims of carbon offsets, the OHP Guidelines also specifically note that this practice "*should not undermine near-term emission reduction measures in emission sectors.*" ³⁴⁹

380. From rn. 245 It follows that even when *carbon credits* are used by an "approved institution", there are problems with the integrity of the *carbon credit* offered.

381. KLM further presents its reforestation product as a way to reduce the (CO₂) impact of consumers (see for example **claim 8** and **claim 14**):

"With our CO2ZERO service you can reduce the impact of your flight on the environment."

"CO2ZERO

Reduce your impact".

382. KLM does this while it is clear that the reforestation product does not compensate for the CO₂ emissions of KLM flights and certainly does not reduce them. The claim is therefore misleading.

383. More generally, KLM does not sufficiently emphasise that the sustainability benefits of alternative fuels, technology and compensation in aviation are insignificant compared to the fact that CO₂ emissions from aviation (including KLM), as a highly polluting industry, have been steadily increasing over the years as a result of continued growth. In particular, KLM does not emphasise that immediate emission reductions and flight reductions are necessary to combat dangerous climate change, while KLM and the wider aviation industry opt for "*business as usual*" growth.

³⁴⁸ Frequently asked questions about financial aid to KLM | Rijksoverheid.nl, <https://www.rijksoverheid.nl/onderwerpen/staatsdeelnemingen/vraag-en-antwoord/financiele-steun-aan-klm>.

³⁴⁹ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 77.

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8.2.5.2 KLM does not or not sufficiently supplement claims with proper specifications/explanatory notes and presents claims in an ambiguous manner (misleading omissions)

384. KLM misleads consumers because it does not or not sufficiently complete its vague and ambiguous claims, provided with green or hopeful pictures, with correct, complete and clear specifications or explanations about the environmental effects of its product (misleading omissions as laid down in Article 6:193d paragraph 2 of the Dutch Civil Code and Article 7 paragraph 2 jo. 4 sub a Directive OHP).

385. KLM uses vague and ambiguous claims such as "*Together towards a more sustainable future*" and "*Travelling together towards a more sustainable future*", under the umbrella term "*Fly Responsibly*". The expressions are made through billboards, various social media platforms, television and in the background on the homepage of the booking:



Billboard at Schiphol Airport, photographed in May 2022

386. The advertisements themselves provide no context or explanation. The claims are usually accompanied by references to the KLM website (flyresponsibly.klm.com). However, it is unlikely that many people (or the custom) who saw a video advertisement on TV or social media or passed a billboard would actually go to KLM's website.

387. But even if someone does type in the web address, or clicks on a link on the KLM homepage, he or she first arrives at the general web page "Fly Responsibly" and has to click through several times to get to one of the three pages "what we do", "what you can do" and "what the industry should do". On these pages, three steps away from the vague and ambiguous claims shared with the public, KLM only provides the additional information. KLM thus also fails to comply with the requirement that the explanation of the claim may not be more than one mouse click away from the sustainability claim.

388. It is true that additional information is provided on the KLM website itself, but the link between the sustainability claims and the additional information is difficult for the consumer to make.

389. It must be stressed that the additional information provided by KLM is in itself also misleading, because it touts the measures that KLM and the aviation industry claim will bring

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flying in line with the Paris target (on the pages "what we are doing" and "what the industry should do") and touts the CO₂ZERO product (on the page "what you can do"). However, KLM does not mention in this supplementary information any of the following key points of the scientific evidence relating to the general advertising claims and the measures proposed by KLM, namely that:

- the aviation sector contributes significantly to climate change through CO₂ and non-CO₂ effects; this contribution has grown much faster than other sectors; the contribution is remarkably inequitable; and most of the contribution is due to non-CO₂ effects that make reducing the climate impact of aviation more difficult (par. 4.2);
- efficiency improvements will not lead to an overall reduction in rising emissions and also offer little scope for further gains (par. 6.1.2);
- waste-based biofuels are very limited, subject to serious risks of fraud and indirect effects, and are also needed for more efficient use in other sectors (point 6.3). 6.2);
- synthetic fuel is a possibility for the future, but requires unrealistic amounts of renewable energy that can be much better used elsewhere (para. 6.2.3.2);
- Technological developments such as new aircraft forms (Flying V) and electric and hydrogen powered aircraft may not be developed, may be too late or may have too limited an application in order to reduce aviation emissions in line with the Paris objective (para. 6.4);
- that the environmental impact of its mitigation measures is very limited, that emissions per flight are still extremely high and that immediate reductions in aviation emissions are necessary to meet the Paris climate target. This is explained in paragraphs (4.3 and 6.1);
- KLM is a company with very high emissions, whose emissions have hardly, or at least not sufficiently, decreased in line with the internationally agreed climate targets (rn. 76), as KLM states in claim 5;³⁵⁰
- that to contribute to a chance of limiting warming to 1.5 °C, flying will have to be reduced in the remaining seven years of the 'critical decade' (rn. 62);

³⁵⁰ According to Fossil Free's own calculations based on data from Air-France KLM, emissions have only decreased by 1% since the Paris Climate Agreement. KLM itself states that its emissions have fallen by 4% since 2005. Emissions since 2010, however, have increased. In any case, emissions have not decreased drastically since Paris, as they should have.

- KLM's decision to continue with the growth of the industry, making aviation the fastest growing (negative) impact of all sectors, is in direct contradiction to the rapid emission reductions required by the Paris target (para. 4.1.2);
- KLM is one of the leaders in actively lobbying, both directly and indirectly through industry organisations, to block, weaken and delay government policies aimed at achieving short-term emission reductions in the aviation sector to meet European climate targets (par. 4.5.2).

390. KLM further misleads consumers by *presenting* its claims in an ambiguous manner (misleading omissions as set out in Article 6:193d subsection 3 of the Dutch Civil Code and Article 7 subsection 2 of the OHP Directive). KLM fails to make a clear distinction between claims relating to specific products and more general environmental claims relating to KLM itself, its practices and its sustainability policy.³⁵¹ For instance, KLM uses claims (such as claims 10, 11 and 19) about its sustainability ambitions without clarifying that these do not affect the non-sustainable, CO₂-rich nature of its current product, whereas this should be reduced to be in line with the Paris target.

391. KLM also uses claims about negligible amounts of SAF/CO₂ compensation to make the company appear more sustainable. This is misleading, as follows from a specific example mentioned in the ACM Guidelines:

"A major oil company has developed a new technology to produce fuel from biomass ("biofuel"). This new fuel has 50% less CO₂ emissions than existing fossil fuels. The oil company advertises the new technology extensively, using claims such as "moving towards climate neutrality", "better for the environment" and "50% less CO₂ emissions". The oil company aims to produce 25,000 tonnes of the new biofuel by 2025, which is expected to be about 2% of the company's total fuel production (including fossil fuels). In these circumstances, the oil company's sustainability claims may be misleading to consumers because they give the impression that the company is more sustainable than it is given the limited share of biofuel production compared to fossil fuel production." ³⁵²

392. As in the above example, KLM's sustainability claims give the impression that the company is more sustainable than it is, given the limited share of SAF use (historically 0.18%) and CO₂ offsets compared to the increasing consumption of fossil fuels for the production of kerosene.

393. With respect to "sustainable aviation fuel", SAF, KLM fails to properly inform consumers about 1) the limitations of SAF supply (see pars. 6.2.1.2), 2) the total reduction resulting from SAF blending (80% of 0.5%, see rn 240), 3) the negative displacement effects of using SAF (see rn. 232), (4) the opportunity cost of using biofuels for SAF (see rn. 233) and (5) the high risk

³⁵¹ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 81.

³⁵² ACM Guide, p. 19.

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of fraud in the supply chain that could negate the (slightly) positive effects of using SAF (see marg. 234).

394. With regard to the purchase of *carbon credits* for a reforestation project, KLM omits all information that makes it clear that there is no valid "compensation" (see rn. 272).

8.2.5.3 The current claims are misleading compared to the scientific evidence (burden of proof on trader)

395. A trader must be able to prove that its sustainability claims are correct. This means that traders must be able to substantiate their claims with sound and generally accepted scientific evidence, from the moment the claims in question are used (Article 6:193j (1) of the Dutch Civil Code and Article 12 of the OHP Directive).³⁵³ Furthermore, the documentation relating to the claims must be up to date as long as these claims are used in the marketing.³⁵⁴

396. As follows from the analysis of KLM's marketing campaigns, KLM's claims are clearly not based on sound and generally accepted scientific/technical evidence. On the contrary.

397. KLM claims that it and the general aviation sector are on track to meet the Paris climate targets because it is "taking" a package of measures consisting of alternative fuels (SAF), CO₂ compensation and future technology (see claims **4**, **12**, **13**, **15**, among others). However, the scientific evidence contradicts these claims. First, this evidence shows that mitigating dangerous climate change requires all sectors to make rapid and significant emission reductions with immediate equitable action, aligned with at least a 45% reduction by 2030 compared to 2019 (rn. 16). Secondly, the science also shows that the measures of biofuels, synthetic fuels, offsets and new aircraft types are most likely insufficient to put aviation on this path without reducing air traffic (see rn. 317). Meanwhile, KLM and the aviation industry continue the growth that has led to a very rapid increase in CO₂ emissions in recent decades (par. 4.5.1).

398. Moreover, as explained above, KLM markets a product called CO₂ZERO of which it tells customers that it reduces their climate impact and compensates for CO₂ emissions (see **claims 8** and **14**). This she does, while it is a scientific fact that such products do not compensate, let alone reduce, the CO₂ emissions resulting from avoidable use of fossil fuels on KLM flights (see par. 6.3).

8.2.5.4 Conclusion

399. KLM's sustainability claims create the simplistic idea that the company and its products are much more sustainable than they really are.

³⁵³ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 81.

³⁵⁴ Unfair Commercial Practices Guidelines, (2021/C 526/01), p. 82.

400. KLM creates the impression that it is well on its way to meeting the Paris climate target ("*Fortunately, the way we travel is changing / And together we are moving towards a more sustainable future*") because of its package of measures of alternative fuels (SAF), CO₂ compensation and future technology, and suggests that these measures are the solution to make flying "sustainable travel" and "part of a more sustainable future", on the route to the Paris target. This is not true. Both KLM and the industry are striving for growth in aviation. This prevents the rapid reduction of CO₂ emissions that is urgently needed to limit the chance of (further) dangerous climate change. KLM and the industry are not contributing to the achievement of the Paris target, instead the growth plans contribute to the increased use of fossil fuels and a catastrophic warming of more than 3 °C.
401. KLM's advertising gives consumers a more positive impression of both KLM's environmental responsibility (in particular: the climate) and the nature of KLM's product (flying), thereby unjustifiably reassuring consumers who are increasingly concerned about climate change, while continuing the unsustainable "business as usual" growth strategy of the aviation industry. The business model and strategy of KLM, and the aviation industry in general, clearly constitute a significant obstacle to the decarbonisation of the transport sector.
402. Taken as a whole, KLM's sustainability campaign is an example of highly sophisticated marketing that discourages people from avoiding air travel or shifting to other modes of transport ("Avoid & Shift"), while this is so urgently needed. By "*appropriating climate care sentiments in their own brand building*" (the words of the IPCC in rn. 116), KLM tries to create its own narrative regarding the responsibility of the consumer. This hinders the necessary changes in the social awareness of consumers, policy makers and investors, and blocks a "social tipping point", as explained in rns. 49 and 117. This while there are now many alternative travel options that are increasingly accepted by the Dutch.³⁵⁵ These commercial practices enable consumers to make a decision they would not otherwise have made. Moreover, they slow down and delay the energy transition.

8.2.6 *Self-regulation: Dutch Advertising Code*

8.2.6.1 Dutch Advertising Code

403. The Dutch Advertising Code contains general rules on advertising. In addition, there are several special advertising codes, including the Environmental Advertising Code (MRC). This Code consists of twelve articles and applies to all advertising messages implicitly or explicitly referring to environmental aspects related to the production, distribution, consumption or waste processing of products (both goods and services).
404. Some important points of the Environmental Advertising Code (hereinafter the "MRC") are:

³⁵⁵ <https://www.citizens.nl/panel/vliegen-er-zijn-voldoende-alternatieven-vinden-de-nederlanders/>.

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- Environmental claims may not mislead about environmental aspects of the advertised product or about the advertiser's contribution to the maintenance or promotion of a clean living environment in general (article 2). In the explanation of this article it is indicated that deception often consists of over-emphasising a small improvement as a breakthrough. Marginal improvements must also be presented as such;
- Environmental claims must be demonstrably accurate, and the more absolute the claim, the greater the requirements placed on the evidence (Article 3). The explanatory memorandum states that, given the current state of the art, it will be difficult for many products to prove that they are absolutely environmentally harmless. Great restraint should therefore be exercised in respect of such absolute environmental claims;
- It must not be falsely suggested that comparable products do contain environmentally harmful components (Article 5);
- Environmental symbols may only be used if the origin is clear and there can be no confusion about the meaning of the symbol (Article 7);

8.2.6.2 Advertising Code Committee about CO₂ neutral and CO₂ZERO

405. On 8 April 2022, the Advertising Code Committee (RCC) decided that KLM is misleading consumers by giving them the idea that they can fully neutralise their flight if they buy CO₂ compensation (**Production 28**).³⁵⁶ The complaint, submitted by a large number of organisations including Fossielvrij, specifically concerned statements made as part of the CO₂Zero campaign. The complainants' objections focused on the use of the claims "CO₂ neutral" and "CO₂ZERO".
406. According to the RCC, KLM's claims were absolute environmental claims as referred to in article 3 MRC, of which the burden of proof of correctness lies with KLM.³⁵⁷ As a result, KLM had to prove with "*sound, independent, verifiable and generally accepted evidence*" that in practice full compensation of (the personal share of a passenger in) the CO₂ emissions of a flight is guaranteed.³⁵⁸ The RCC considered the substantiation brought forward by KLM as insufficient. The RCC also took into account that there is no complete scientific consensus about the degree of compensation by forest projects in general.³⁵⁹ Therefore, the Committee concludes that KLM has not demonstrated the correctness of the absolute environmental claims "CO₂ neutral" and "CO₂ZERO" to the extent required by Article 3 MRC.
407. The RCC considered the statements of KLM to be misleading within the meaning of Section 2 of the MRC, because the average consumer will assume that participation in the CO₂ZERO programme will result in the complete neutralization of the (personal) CO₂ emissions of the flight, while it has not been demonstrated that this promised result is guaranteed to be achieved in practice. According to the RCC, KLM thereby paints too rosy a picture of the benefit

³⁵⁶ Ruling Advertising Code Committee , 08 April 2022, 2021/00553, <https://www.reclamecode.nl/uitspraken/klm/reizen-en-toerisme-2021-00553/338478/>.

³⁵⁷ (**Production 28**), recital 3.

³⁵⁸ (**Production 28**), recital 4.

³⁵⁹ (**Production 28**), recital 5.

achieved by the compensation measures of KLM and its contribution to the promotion of a clean environment.³⁶⁰

408. KLM opposed the complaint and, although it accepted the result, it still appears to intend to maintain its claims about CO2ZERO in the future, thus continuing to give the public the impression that a small payment actually reduces and compensates for the climate impact of aviation.
409. The expressions that KLM submits to your Court are comparable to the expressions that were part of the complaint before the RCC. Fossil Free has deliberately chosen to bring proceedings before your Court instead of a new procedure before the RCC, because KLM does not sufficiently show that it is sensitive to the (non-binding) decision of the RCC and continues to make problematic advertisements. Fossil Free hopes to force the Court to order KLM to cease its unlawful statements, if necessary under penalty of a fine.
410. Just before issuing this writ of summons, the RCC also ruled on 28 June 2022 about a CO2 compensation claim of Shell (**Production 29**). In response to a complaint by Advertising Fossil Free, the RCC ruled in short that the absolute claim of Shell that the purchase of *carbon credits* leads to full compensation is too absolute within the meaning of 2 and 3 MRC. The RCC considered this:

"As the Commission has already considered in case 2021/00190, it considers it sufficiently plausible that such certified offsetting projects, which meet certain theoretical standards, provide a certain degree of offsetting, but reliance on these theoretical, agreement-based standards is not in itself sufficient to serve as a sufficient basis for absolute claims of full offsetting. For that purpose, such independent, verifiable and generally recognised evidence must be available that the promised full offsetting of CPO2 emissions is actually guaranteed and permanently achieved in practice. The Commission now also considers that what Shell has submitted is an inadequate substantiation of the latter. Shell has not shown that it is absolutely certain that full and permanent offsetting of CO2 is guaranteed through its forestry projects. In this respect it is important that there is no complete scientific consensus about the degree of CO2 compensation through forestry projects, as is also apparent from the documents submitted by the parties.

411. Although the RCC still considers some "degree of compensation" by reforestation projects "theoretically" possible here, this is still insufficient to make any sustainability claims. Fossil Free believes that also the suggestion of "some" compensation ("reduce your impact") is misleading, see also section 6.3. As Broekhoff writes: "*Carbon credits should not be presented as a way to make up for, or compensate, aviation emissions that are not consistent with safe and equitable climate goals*"^[1] (see rn. 275). It is scientifically clear that there is insufficient

³⁶⁰ (**Production 28**), Recital 6.

^[1] (**Production 4**).

basis to conclude that the required additional compensation (see marg. 280 et seq.) and permanent compensation (see marg. 282 et seq.) are present.

8.2.7 *Prohibition and rectification (Article 6:196 BW)*

412. It follows from Section 6:196 of the Dutch Civil Code that in case of misleading advertising the court can, at the demand of the injured party, prohibit the making of a misleading statement and/or impose a rectification. In proceedings on the merits the judge - unlike in summary proceedings - is obliged to award a requested prohibition if he establishes that the defendant should have refrained from making certain statements or acts. This follows from the independent meaning of article 6:196 (1) in relation to article 3:296 (1) of the Dutch Civil Code, which article does not allow the court any discretionary power.³⁶¹

8.3 KLM acts unlawfully

413. Above in par. 8.2 Fossilfreaks has explained that KLM is violating the law. In addition or in the alternative, Fossilfreedom is of the opinion that KLM is acting contrary to what is expected from it under unwritten public law (Section 6:162(2) of the Dutch Civil Code). With the advertising statements included in ch. 5 KLM violates the unwritten social decency standard that commercial deception is impermissible. In other words: KLM is obligated vis-à-vis the (Dutch) society not to make misleading statements about its products that cause widespread social damage. The standard of not misleading the public is also the basis of the Unfair Commercial Practices Act.

414. Below, Fossilvrij will explain that KLM is in violation of this (also) unwritten legal norm. Pursuant to Section 3:296 of the Dutch Civil Code, Fossil Free has requested compliance with this legal norm by means of (i) rectification and (ii) a prohibition on repetition of the contested statements.

8.3.1 *Irregularity*

415. With its "Fly Responsibly", the "CO2Zero-marketing" and the "Real Deal Days" campaigns, KLM acted contrary to an unwritten standard of care: namely that you should not mislead. This applies all the more if misleading leads to damage to the environment or people. The standard is also the basis of the Unfair Commercial Practices Act, which prohibits aggressive or misleading sales campaigns. In addition, this standard is also reflected in, for example, the European Commission's proposal of 30 March 2022 to include a ban on *greenwashing* in the Consumer Rights Directive. The fact that you cannot mislead people is, of course, also the basis for the annulment action on the grounds of fraud. It is also the basis for several legally punishable offences (fraud, forgery, etc.).

³⁶¹ HU 15 December 1995, NJ 1996/509 (Diaper Panties I).

416. The unwritten standard of care that one may not mislead another, and certainly not if that misleading leads to damage, is therefore a recognisable standard. Although the law mainly provides for those cases in which the misleading leads to damage to those who have acted by the misleading, this does not mean that it has no consequences in other cases. In Quint/Te Poel, the Supreme Court already ruled in 1956 that "*In cases which are not specifically provided for by law, the solution which fits within the system of the law and is consistent with the cases which are provided for by law must be accepted.*"³⁶² This view was recently confirmed by the Advocate General in Urgenda: "*Where the existing legislation does not provide a satisfactory solution or where it is otherwise in need of supplementation, the Dutch courts tend to look for a solution that fits within the system of the law and is in line with the cases that are regulated by the law. Then the chance of clashes within the trias politica is small.*"³⁶³

417. The case like the present one in which the damage is suffered not only by those who acted on the basis of the deception, but also by third parties because of the social and climate effect that greenwashing has, namely that it "*contribute[s] to the status quo of a global high-carbon, consumption, and GDP growth-oriented economy*" (see par. 4.3.3 This standard is not specifically regulated by law, but is appropriate within the existing legal framework and fully in line with it. KLM should therefore be aware of this standard and this standard should have prevented it from making the claims in ch. 5 from making the claims in ch.

8.3.2 *Attributability*

418. That the advertising statements of KLM are attributable to it need not be demonstrated. KLM has commissioned these advertising statements, has paid for them, and has approved the campaigns. It uses the expressions itself on its website.

8.3.3 *The damage caused by the deception of KLM*

419. Obviously, Fossil Free is explicitly not claiming any damages. However, this does not mean that KLM's unlawful actions do not cause damage. It does.

420. Reference is made to (pars. 4.3.3 and 8.2.5.5) where it is explained that advertising is a major obstacle to the rapid decarbonisation of aviation. It follows that KLM's misleading advertising contributes to slowing down the race to meet the Paris target.

³⁶² HR 30 January 1959, ECLI:NL:HR:1959:AI1600, NJ 1959/548 (Quint/Te Poel).

³⁶³ See paragraph 5.22 of the concl. P-G F.F. Langemeijer and A-G M.H. Wissink, ECLI:NL:PHR:2019:887, to HR 20 December 2019, ECLI:NL:HR:2019:2006, NJ 2020/41 (Urgenda).

8.3.4 *Relativity*

421. Because Fossil Free is not claiming compensation, Section 6:163 of the DCC does not apply. Therefore, Fossil-free is of the opinion that your Court does not have to test the relativity requirement of Section 6:163 of the DCC.³⁶⁴
422. It has been argued that Article 6:162 (1) DCC and Article 3:269 DCC also imply that there must be a wrongful act towards another and that therefore a relativity test must be applied. Fossil Free also meets this relativity test, if it applies.
423. The standard of care which KLM has violated - one may not mislead, especially if this is harmful to the person mislead and to third parties - is aimed precisely at protecting the supporters of Fossil Free. As will be further explained in Section 9.3, Fossil Free aims to stand up for current and future generations and to protect their health and the environment (including the climate) around them. In doing so, Fossil Free also sets out on behalf of this constituency to prevent and counteract misleading, inaccurate, incomplete and/or unfounded or insufficiently well-founded advertisements about, inter alia, the climate impact of companies, precisely because these advertisements *"by their misleading nature incite consumers to sell, purchase and/or use fossil products and services, or legitimise or stimulate this, and thus contribute to dangerous climate change."* (see **Production 30**)
424. Because it must be clear to everyone that air travel is not sustainable, must be reduced in order to achieve the Paris climate target and misleading statements about this undermine the fight against global warming, Fossil Free stands up for the interests of current and future generations whose interests are harmed by the misleading advertising of KLM, which wants to reassure people that flying is on the way to sustainability (or can be compensated for in some way) and thus prevents the reduction of flying.

8.3.5 *Performance of legal obligations (Article 3: 296 BW)*

425. It follows from the text of article 3:296 paragraph 1 of the Civil Code that he or she who is obliged to give, do or refrain from doing something in relation to another is sentenced to do so by the court, at the request of the entitled party.
426. As explained above, based on an unwritten standard of care, KLM should not mislead the public/consumer about the harmful effects of its product: flying. KLM should refrain from such deception. As has been extensively explained in the summons (see Section 6), KLM *does not do so* and misleads the public/consumers about the negative climate effects of flying. KLM therefore violates its duty to refrain from such deception.

³⁶⁴ Court of The Hague, 25 May 2021, ECLI:NL:RBDHA:2021:5337.

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427. KLM is also obliged to refrain from such deception towards those whose interests Fossilvrij defends (see par. 8.3.4). Therefore, pursuant to Section 3:296(1) of the Dutch Civil Code, Fossil Free may claim that your Court should order KLM to cease this deception.
428. Those for whom Fossil Free stands up (see pars. 8.3.4. and 9.4.1) also have a sufficient interest in Fossil Free's claim. As mentioned above in ch. 8 but also in rn. 114 the misleading advertisements of KLM are harmful for the climate and (therefore) for the supporters of Fossil Free. The claimed claim satisfies the interests of the supporters of Fossil Free and Fossil Free therefore has a sufficient interest in its claim.
429. Fossil Free is of the opinion that KLM is also obliged to refrain from deception in the future and therefore, because of this imminent breach, it wishes to claim a prohibition on future deceptions by KLM about the sustainability of flying. Fossil Free has a sufficient interest in preventing an imminent violation.³⁶⁵ After all, KLM is in breach of its legal duty towards Fossil Free and Fossil Free has a sufficient interest in preventing an imminent breach. That imminent breach is not theoretical: it is inevitable that KLM's advertising agencies will find another creative way to sell the idea of sustainability, so a prohibition on future deception is necessary to prevent a judgment from having no effect.
430. Even now that the "Real Deal Days" are over and KLM is no longer (very) actively spreading its "Fly Responsibly" campaign, Fossil Free still has an interest in its claim. Part of the content of these misleading advertisements is still available through KLM's web pages, among others.³⁶⁶ In addition, Fossil Free has an interest in ensuring that similar misleading advertisements by KLM will not be made in the future.

8.4 Conclusion on illegality

431. On the basis of the above, it must be concluded that KLM is acting unlawfully by making the challenged misleading advertisements. It does so either by violating the law (see par. 8.2) and/or by violation of an unwritten standard (see par. 8.3).

9 ADMISSIBILITY OF FOSSIL-FREE

432. Fossil Free is an established environmental organisation that has been working - successfully - towards its statutory goal since 2013. It does so very actively, very visibly, with broad support, not for profit and with integrity. It is obvious that there is no need to fear abuse or malpractice. Fossil Free should therefore be declared admissible in its claims as set out in this summons.

³⁶⁵ See also the conclusion of AGs Langemeijer and Wissink in par. 2.8 in HR 20 December 2019, ECLI:NL:HR:2019:2006, NJ 2020/41 with comment. J. Spier (Urgenda climate case).

³⁶⁶ (Production 19).

9.1 The recent amendment of article 3:305a Civil Code and the current standards framework for foundations with a non-pecuniary claim

433. Fossil Free is authorised to initiate this collective action on the basis of Article 3:305a of the Dutch Civil Code in conjunction with Article 1018c(1) of the Dutch Code of Civil Procedure. On the basis of Article 3:305a of the Dutch Civil Code, Fossil Free can bring a legal action to protect the interests of its objectives and supporters.
434. Article 3:305a of the Civil Code was amended when the WAMCA came into force.³⁶⁷ With the entry into force of the WAMCA the requirements have been tightened in order to prevent improper use of the collective action procedure.³⁶⁸ This perspective necessitates a restrained attitude on the part of the court when reviewing the organisation of an interest group. However, this does not usually prevent parties who are sued in a collective action procedure from raising admissibility defences. These defences are mainly put forward to escape the main action.³⁶⁹
435. Article 3:305a paragraph 1 DCC stipulates that (inter alia) the interest group (i) may bring a legal action to protect the similar interests of other persons ('the similarity requirement'), (ii) insofar as it promotes these interests pursuant to its articles of association ('the articles of association requirement') and (iii) the legal action adequately safeguards the interests of the persons on whose behalf the action is brought ('the guarantee requirement'). The guarantee requirement is further elaborated in article 3:305a paragraph 2 of the Civil Code.
436. Article 3:305a paragraph 3 of the Civil Code contains a number of additional admissibility requirements.
437. Article 3:305a paragraph 6 of the Civil Code contains a possibility for exception as far as the admissibility requirements of paragraphs 2 and 5 are concerned. The judge may, if the legal action is instituted with an idealistic aim and a very limited financial interest or if the nature of the claim or of the persons whose interests the legal action aims to protect gives cause for this, declare paragraphs 2 and 5 not, or not entirely, applicable.³⁷⁰
438. Fossil Free believes that, in this case, there is every reason to disapply paragraphs 2 and 5 altogether. These claims serve a purely idealistic purpose (proper consumer information to limit dangerous climate change for the benefit of current and future generations), fitting within the idealistic purpose of Fossil Free. In addition, these are claims without any financial interest. Fossil Free does not claim compensation for (mass) damage and also has no financial interest in these proceedings. This does not fit in at all with the nature of the organisation that

³⁶⁷ Act of 20 March 2019 to amend the Dutch Civil Code and the Code of Civil Procedure in order to enable the settlement of mass damage in a collective action (Settlement of Mass Damage in a Collective Action Act) (*Netherlands Law Gazette* 2019/130). The Mass Claims Settlement Act entered into force on 1 January 2020 by Royal Decree of 20 November 2019.

³⁶⁸ *Parliamentary Papers II* 2017/18, 34 608, 9, p.1.

³⁶⁹ See also K. Rutten, 'Art. 3:305a paragraph 2 of the Dutch Civil Code overshoots its goal!', *MvV* 2015/11.5, p. 324 and C.M.D.S. Pavillon & D.G.J. Althoff, 'Wise counsel is half the deed or much counsel but little gain? The impact of the Lawyers' Group Recommendations on the Bill on the Settlement of Mass Claims in a Collective Action', *MvV* 2017, p. 106.

³⁷⁰ *Parliamentary Papers II*, 2016/17, 34 608, no. 3, p. 16; GS Vermogensrecht, art. 3:305a BW, att. 32.1.

Fossil Free is, and it pledges that it will never adjust its claim in this way, nor will it contribute in any way to the institution of such a claim by another party.

439. Fossil Free will first consider the other legal admissibility requirements.

9.2 Equivalence requirement

440. Interest groups may bring legal actions on the basis of Article 3:305a of the Civil Code, if these are limited to the protection of similar interests. It follows from the established case law of the Dutch Supreme Court that the requirement of similarity is fulfilled when the interests for which the claim is lodged lend themselves to bundling, in order to promote efficient and effective legal protection for the benefit of the interested parties. The claims lend themselves to bundling if they can be adjudicated in one set of proceedings without reference to the special circumstances of the individual interested parties.³⁷¹

441. All interested parties in this case have in common that they are affected by the dangerous consequences of climate change due to continuous CO₂ emissions and non-CO₂ effects, to which KLM contributes by its unlawful actions. All are thus disadvantaged, or at risk of being disadvantaged. These interests are pre-eminently similar interests within the meaning of Section 3:305a of the Dutch Civil Code.³⁷² These interests are also the *raison d'être* of Fossil Free and form the core of its objective. This is also stated in Article 3.1 of the Articles of Association (see more on this in par. 9.3).

442. Furthermore, the claims against KLM (see ch. 7) require an abstract test, without the need to assess additional individual circumstances. The interested parties in this case are all affected in a comparable manner in time, degree and intensity by climate change due to CO₂ emissions.³⁷³ The claims are bundleable and therefore suitable for assessment in a collective action.

443. In essence, this is a public interest claim for the protection of the living environment. It is not necessary for an identifiable group of people to be in need of protection. The argument that efficient and effective legal protection can be promoted if individuals do not litigate individually about the same issue, but the legal debate takes place on a collective level, also applies to such claims.

444. According to the history of article 3:305a of the Civil Code, idealistic interests are also eligible for representation in a collective action. Social discord concerning the value to be attributed to

³⁷¹ HR 26 February 2010, ECLI:NL:HR:2010:BK5756 (*Stichting Baas in Eigen Huis/Plazacasa*).

³⁷² See also Rechtbank Den Haag 26 May 2021, ECLI:NL:RBDHA:2021:5337, section 4.2.4; Hoge Raad 20 December 2019, ECLI:NL:HR:2019:2006, section 5.9.2. That an interest group may be admissible in what is essentially a public interest claim, in the form of an action for prohibition based on unlawful act, was already decided in 1986 in the standard *Nieuw Meer* judgment (HR 27 June 1986, ECLI:NL:PHR:1986:AD3741, n.t.). W.H. Heemskerk (*Amsterdam: Nieuwe Meer*), paragraph 3.2): "In the first place, the interests involved in a claim such as the one in question - which is essentially aimed at obtaining a prohibition against further damage to the environment - lend themselves to a 'bundling' such as that brought about by the action of the environmental associations; on the contrary, in the absence of the possibility of such grouping, effective legal protection against a threat of harm to those interests - which generally affect large groups of citizens collectively, while the consequences of any harm to each of those citizens are often difficult to foresee - could be made significantly more difficult."

³⁷³ See for example Court of The Hague 26 May 2021, ECLI:NL:RBDHA:2021:5337, section 4.2.4.

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such interests or the manner in which those interests must be weighed against other, conflicting interests does not constitute an obstacle to admissibility in a collective action in the Netherlands. Nor does the fact that the interests at issue are 'diffuse', in the sense that the adverse consequences for individuals of an infringement of the right relied on are difficult to foresee, constitute an obstacle.³⁷⁴ Building on this, the Supreme Court has ruled that the fact that a substantial part of the persons whose interests are protected by a collective action do not agree with the objective of the action, does not preclude a claim on the basis of Article 3:305a of the DCC either. According to the Supreme Court, what is decisive is whether in the relevant case there are 'similar interests' within the meaning of Section 3:305a(1) of the DCC. This requirement is met if the interests involved lend themselves to bundling in order to promote efficient and effective legal protection for the benefit of the interested parties.

445. It follows from the above that the requirement of similarity has been met.

9.3 Statutory requirement

446. The requirement of the articles of association means that the interest to be promoted must be formulated in the articles of association of Fossil Free and that activities have been developed in the relevant field.

447. Representing the interests of the victims in these proceedings falls within the statutory objectives of Fossil Free. Article 3.1 of the articles of association³⁷⁵ states the following in this regard:

"3.1 The foundation's objectives are to, for the benefit of current and future generations: To promote, protect, support and bring about social, environmental and economic justice and health at local, regional and national levels, to remove the social legitimacy of coal, oil and gas companies (so-called "fossil companies") and to bring about alternative uses of investments and resources in order to accelerate the transition to a sustainable economy based on renewable energy."

448. Article 3(2) of the Articles of Association defines the activities of Fossil Free:

3.2 The foundation tries to achieve this goal, among other things, by taking on all possible tasks that may further its aim. For example:

³⁷⁴ See also Rechtbank Den Haag 26 May 2021, ECLI:NL:RBDHA:2021:5337, section 4.2.4; Hoge Raad 20 December 2019, ECLI:NL:HR:2019:2006, section 5.9.2. That an interest group may be admissible in what is essentially a public interest claim, in the form of an action for prohibition based on unlawful act, was already decided in 1986 in the standard Nieuw Meer judgment (HR 27 June 1986, ECLI:NL:PHR:1986:AD3741, n.t.). W.H. Heemskerk (*Amsterdam: Nieuwe Meer*), paragraph 3.2): "In the first place, the interests involved in a claim such as the one in question - which is essentially aimed at obtaining a prohibition against further damage to the environment - lend themselves to a 'bundling' such as that brought about by the action of the environmental associations; on the contrary, in the absence of the possibility of such grouping, effective legal protection against a threat of harm to those interests - which generally affect large groups of citizens collectively, while the consequences of any harm to each of those citizens are often difficult to foresee - could be made significantly more difficult."

³⁷⁵ (Production 30).

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- *Calling on public and private institutions and organisations such as universities, municipalities, insurers, banks, religious organisations and pension funds to break their financial ties with coal, oil and gas companies and become "fossil free".*
- *Preventing and counteracting misleading, inaccurate, incomplete and/or unsubstantiated public statements in the area of environmental and climate impact by the fossil industry and other companies and organisations, which by their misleading nature incite, legitimise or encourage consumers to sell, purchase and/or use fossil products and services, thereby contributing to dangerous climate change.*
- *Setting up and implementing campaigns and petitions.*
- *Building a strong network of initiators and sharing skills and knowledge through trainings and workshops.*
- *Conducting research or having research conducted.*
- *Entering into discussions with employees and managers of organisations.*
- *Organising, executing and participating in creative (public) actions.*
- *Making visible what the foundation stands for and what it does by actively seeking public debate and approaching the media.*
- *Connecting international and local groups.*
- *Joining international moments to strengthen the global Fossil Free movement.*
- *Organising meetings that benefit the cause.*
- *Entering into collaborations and partnerships that serve the purpose of the foundation.*
- *Investigating, initiating or participating in legal proceedings, whether or not as referred to in Article 305a of Book 3 of the Dutch Civil Code, which may benefit the objective.*
- *Developing other kinds of activities.*

449. The requirement of actual advocacy is thus fulfilled. Fossil Free is not sitting still and takes its tasks more than seriously. Among other things, it has undertaken the following activities since 2013 to further its statutory objective:

- A. Fossil Free was founded in 2013 and carried out the necessary acts of incorporation prior to that.
- B. Fossil Free maintains good contacts and cooperates with other environmental and climate interest groups, such as Client Earth.
- C. Fossil Free organises climate strikes, campaigns continuously for a fossil-free society and calls on (large) corporations to stop financing the fossil industry.
- D. Fossil Free conducted and commissioned factual and legal research into KLM's actions and consulted various external experts, such as climate scientists and external lawyers.

- E. Fossil Free sent a letter of summons to KLM on 24 May 2022 on behalf of its supporters.
- F. Fossil Free participated in and spoke at KLM's Annual General Meeting of Shareholders in 2022.
- G. Fossil Free entered into consultation with KLM on 24 June 2022 on behalf of its supporters.
- H. It follows from case law³⁷⁶ and literature³⁷⁷ that it is sufficient for Fossil Free to (attempt to) conduct the above consultation with KLM.
- I. Fossilvrij has instituted the present collective action claims against KLM on behalf of its supporters and will continue to do so.

9.4 Guarantee requirement

9.4.1 General

450. Article 3:305a paragraph 1 of the Civil Code provides that the interests of those whom the organisation represents must be adequately safeguarded. In doing so, the basic principles must not be lost sight of. Interest groups are free to set up their own organisation.³⁷⁸ Also, the right of access to the courts may not be slightly restricted.³⁷⁹
451. The guarantee requirement should be seen as a kind of filter for organisations that do not put the interests of the people they represent first. It is only intended for cases in which the court doubts the motives of the organisations concerned.³⁸⁰ Whether the guarantee requirement has been met depends on all the circumstances of the case.
452. In the present case, the interests of the interested parties are sufficiently safeguarded by Fossil Free. There is no reason to doubt its motives. For example, Fossil Free has been committed to climate and related issues for many years (see para. 3.1) and has more than sufficient knowledge, experience and skills to conduct this procedure. Fossil Free is supported in this by all kinds of experts and interest groups.
453. In addition, Fossil Free is not commercially driven and has no financial interest in the matter. It focuses entirely on its statutory objective: standing up for the interests of the climate and third parties.
454. For the sake of completeness, Fossil Free notes that it should not be obliged to meet the further criteria set in Article 3:305a (2) of the Dutch Civil Code with respect to the guarantee

³⁷⁶ See, for example, Court of Appeal of The Hague 28 May 2013, ECLI:NL:GHDH:2013:CA0587, para. 2.4.

³⁷⁷ E.g. Tzankova & Verhage, *Commentary on Civil Code Book 3*, Article 3:305a Civil Code, note C.1.3 and A.W. Jongbloed, *GS Vermogensrecht*, art. 3:305a BW, note 14 with reference to *Parliamentary Papers II*, 1991/92, 22 486, no. 3, p. 20 and N. Frenk, *Kollektieve aktie in het privaatrecht*, Deventer: Kluwer 1994, p. Jongbloed writes: "Now that the second paragraph requires prior consultation before admissibility [now article 3:305a paragraph 3 under c BW, addition of lawyer], the requirement developed earlier in case law, that actual activities must have been developed, has lost much of its meaning. "

³⁷⁸ Among other things because of the provisions of Article 11 of the ECHR.

³⁷⁹ Among other things in connection with the provisions of Art. 6 ECHR.

³⁸⁰ *Parliamentary Papers II* 2016/17, 34 608, no. 3, p. 18; *Parliamentary Papers II* 2011/12, 33 126, no. 3, pp. 5, 12; *Parliamentary Papers II* 2011/12, 33 126, no. 7, p. 9.

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requirement, since Fossil Free believes that it qualifies for application of the exception of paragraph 6 (see par. 9.1). If the exception only applies to subsections 2(a)-(e) and not to the opening words of Section 3:305a of the DCC, then Fossil Free also meets the opening words. The opening words contain the requirement of representativeness. Fossil Free will explain this requirement in more detail below.

9.4.2 Representativeness requirement

455. This is about the extent to which an interest group can be seen as representative of its supporters. That Fossil Free is representative of the interests at stake in this case is obvious. It is widely recognised as such.

- Fossil Free has a track-record in climate cases. It was a co-plaintiff in the case of Milieudefensie against Shell, in which the court in The Hague ruled in 2021. Fossil Free was declared admissible in its claims, and the case was won by the plaintiffs.³⁸¹
- Fossil Free sent out a questionnaire to its supporters in January 2022, asking them what their priority is. 95% of the supporters indicated that they would be "enthusiastic" or "very enthusiastic" if Fossil Free ran campaigns aimed at tackling misleading fossil advertisements.³⁸²
- Fossil Free is supported by 11,500 people who have shown support and interest in Fossil Free by subscribing to its newsletter, and who regularly participate in online and offline campaigns. Fossil Free has more than 5,000 followers on Twitter, 5,000 on Facebook and 2,000 on Instagram. From January 2021 to June 2022, Fossil Free NL received donations from 3,212 people.
- Fossil Free is recognised as a relevant climate organisation and financially supported by several established charities, often after due diligence: 350.org (<https://350.org/>), The Sunrise Project (<https://sunriseproject.org/>), Patagonia (<https://www.patagonia.com/how-we-fund/>), and Grassroots (<https://grassrootsonline.org/>). In the period 2018-2021, the organisation also received significant funding from the Dutch Postcode Lottery. Each of these charity organisations awarded donations and grants to Fossil Free after they positively concluded their due diligence on Fossil Free.

³⁸¹ As is known, this case concerned a WCAM case and not a WAMCA case. This does not alter the fact that the District Court of The Hague ruled that it had a sufficient interest in the instituted action (unlike some other plaintiffs, who were declared inadmissible in their claims): "r.o. 4.2.5: **The interest served by the collective action must be in accordance with the objective stated in the articles of association and must also be served de facto. Milieudefensie, Greenpeace Netherlands, Fossilvrij NL, the Waddenvereniging, Both Ends and JMA meet this requirement. ActionAid does not meet it, because it does not effectively represent the interests of Dutch residents enough to be admissible. ActionAid has a broadly formulated global statutory objective, with a special focus on Africa. It is mainly active in developing countries. What it does in the Netherlands is aimed at developing countries, not at Dutch residents. Its collective claim should therefore be declared inadmissible. 4.2.6. The other admissibility requirements of Section 3:305 of the Civil Code are rightfully not in dispute. The collective claims of Milieudefensie, Greenpeace Netherlands, Fossilvrij NL, the Waddenvereniging, Both Ends and Jongeren Milieu Actief are therefore admissible.**" [bold and underlining lawyer].

³⁸² <https://gofossilfree.org/nl/jullie-ideeen-over-de-fossilvrij-campagnes-in-2022/>.

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- Fossil Free regularly appears in television programmes such as Kassa and VPRO tegenlicht. In addition, Fossil Free regularly writes opinion pieces for renowned newspapers such as Het Financieel Dagblad and De Volkskrant. Newspapers and radio stations know how to find Fossilvrij on climate-related subjects. See (**Production 31**) for an overview of the past two years.
- Fossil Free is recognised and included as part of the European Citizens' Initiative on Ban Fossil Fuel Advertising and Sponsorships.³⁸³
- Fossil Free is recognised by 'the field', and is co-organiser of the Climate March 2022, together with Greenpeace, Milieudefensie and FNV among others, in which more than 10,000 people participated. An important focus of the Climate March was the *greenwashing* by KLM and the shrinkage of air travel. A representative of Fossilvrij (Fossil Free) spoke about protesting against aviation on the Vroege Vogels radio programme prior to the Climate March.



Images of the Climate March 2022 organised by Fossil Free, Greenpeace, Friends of the Earth and other NGOs

- Fossil Free is part of the "Shrink the Air" coalition, which is organising demonstrations at six regional airports in May 2022, and has now launched a petition.³⁸⁴
- Fossil Free demonstrated with a banner: "sustainable flying does not exist" at the Lower House debate on the sustainability of aviation on 16 June 2022.
- Fossil Free demonstrated with Fossil Free Education in 2017, 2018 and 2019 against Shell's children's marketing and lobbying festival (Generation Discover) in The Hague and Rotterdam.

³⁸³ <https://banfossilfuelads.org/about-us/>.

³⁸⁴ www.krimpdeluchtvaart.nl.

456. Whether an interest group is sufficiently representative can be deduced from various data. A clear-cut interpretation of this concept has not been given, because this would detract from other data that may also indicate that an interest organisation is representative.³⁸⁵
457. The case law and parliamentary documents relating to the earlier versions of Section 3:305a of the Dutch Civil Code also show that representativeness is a broad palette, in which various circumstances may play a role.
458. It is sufficient that the group of persons on which the interest organisation stands is accurately described.³⁸⁶ Pursuant to Article 3(1) of its Articles of Association, Fossil Free stands up for the following interests:
- "3.1 The foundation's objectives are to, for the benefit of current and future generations: To promote, protect, support and bring about social, environmental and economic justice and health at local, regional and national levels, to remove the social legitimacy of coal, oil and gas companies (so-called "fossil companies") and to bring about alternative uses of investments and resources in order to accelerate the transition to a sustainable economy based on renewable energy."*
459. Fossil Free will bring this procedure to the attention of all interested parties, including in newsletters and a petition. It will provide further information on this before the oral hearing.
460. In addition to the representativeness requirement of Section 3:305a(2) of the Dutch Civil Code, Title 14a of the Dutch Code of Civil Procedure refers to the 'narrowly defined group' on behalf of which an action is brought (Section 1018c(b) of the Dutch Code of Civil Procedure, 1018e(1)(a), (2) and (3) of the Dutch Code of Civil Procedure).
461. Fossil Free would like to make it clear that when Title 14a of the Dutch Code of Civil Procedure was introduced, the legislator did not intend to exclude collective actions in the public interest.³⁸⁷ It seems that when introducing Title 14a of the Dutch Code of Civil Procedure, the legislator simply did not give enough thought to public interest actions (but mainly to claims for damages, something that is not at issue here). The action hereby instituted is not a group action in which ultimately individual interests can be further individualised and in which there may be grounds to give individuals an '*opt-out*' (Section 1018f(1) of the Dutch Code of Civil Procedure) or an '*opt-in*' (Section 1018f(5) of the Dutch Code of Civil Procedure). However, the misleading aspect of KLM's statements that Fossilvrij contests, *greenwashing*, affects *all* present and future residents of the Netherlands in a negative way.³⁸⁸ It is somewhat strange to speak of a 'narrowly defined group' in that context.

³⁸⁵ *Parliamentary Papers II* 2003/04, 29414, 3, p. 15.

³⁸⁶ *Parliamentary Papers II* 2016/17, 34608, 3, p. 19.

³⁸⁷ *Parliamentary Papers TK*, 2017-2018, 34608, no. 6.

³⁸⁸ See also prof. A.W. Jongbloed, in *GS Vermogensrecht, article 3:305a DCC, note. 8* (2022) "Collective actions can be distinguished into class actions and general interest actions. The difference lies in the fact that in class actions the persons whose interests are at issue can be individualised, whereas this is not possible in general-interest actions, because in such actions the interests are of such a general nature that they form a facet of virtually everyone's existence."

462. In the ruling of 15 May 2021 on ethnic profiling, the District Court of The Hague did decide on admissibility, without going into the determination of the narrowly defined group.³⁸⁹ This was also the case in the reimbursement of contraception to women over 18 years of age.³⁹⁰³⁹¹

463. Therefore, Fossil Free is of the opinion that your Court does not need to proceed to the determination of a narrowly defined group because this collective action concerns a general interest. If your Court is of the opinion that it may nevertheless have to define a narrowly defined group, then Fossil Free requests your Court to provide a further explanation during the oral hearing, or at least that the group be defined as "*All natural persons residing in the Netherlands at the time of the issue of the writ of summons, and those who are born and reside in the Netherlands after the date of this writ of summons.*"

9.5 Additional admissibility requirements

9.5.1 Introduction

464. Article 3:305a(3) of the Dutch Civil Code contains a number of additional admissibility requirements for interest groups. Fossilvrij will explain below that it also meets these requirements: the board has no profit motive, the collective claims have a sufficiently close link to the Dutch legal environment and Fossilvrij has invited KLM for consultations. That consultation took place on 24 June 2022. KLM has not been able to convince Fossilvrij that the position put forward in this summons is incorrect or that another solution than instituting these proceedings could lead to a similar or better result.

9.5.2 No profit motive

465. Article 3:305a paragraph 3(a) of the Civil Code provides that directors involved in the establishment of an interest organisation and their successors may not have any direct or indirect profit motive, which is realised through the interest organisation.

466. Fossil Free complies with this as it and its directors have no profit motive (Article 3.3 of the Articles of Association).³⁹²

9.5.3 Sufficiently close links to the Dutch legal sphere

467. Pursuant to Article 3:305a(3)(b) of the DCC, the collective claim must have a sufficiently close connection with the legal sphere of the Netherlands. Fossil Free must make it sufficiently plausible that:

³⁸⁹ Court of The Hague, 16 May 2021, ECLI:NL:RBDHA:2021:10080 (Stichting Radar c.s. / The State).

³⁹⁰ Court of The Hague, 2 June 2021, (Clara Wichmann v The State), but can be found in the WAMCA register under "Filed Collective Claims", "Collective Claim against the State of the Netherlands (Ministry of Health, Welfare and Sport)".

³⁹¹ This is judged differently by the District Court of The Hague in a case against De Staat concerning the possibly competitive activities of the CBS by a party that represents the interests of (other) market researchers. In that case, a narrowly defined group was defined. See Court of The Hague, 9 February 2022, ECLI:NL:RBDHA:2022:1747 (MOA/De Staat).

³⁹² (Production 30).

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- (i) the majority of the persons whose interests the legal proceedings are designed to protect, have their habitual residence in the Netherlands; or
- (ii) the person against whom the legal action is directed is domiciled in the Netherlands and additional circumstances indicate a sufficient connection with the Dutch legal sphere; or
- (iii) the event or events to which the legal claim relates took place in the Netherlands.

468. Re (i): In the present proceedings, Fossilvrij is acting on behalf of Dutch citizens, who have their habitual residence in the Netherlands.

469. Re (ii): KLM has its registered office in the Netherlands. Also, the unlawful/misleading acts of KLM take place in the Netherlands.

470. Re (iii): this requirement refers to the place where the events actually took place. KLM has its head office in the Netherlands and Schiphol Airport is its "home port". KLM contributes to global warming, the consequences of which are already being felt in the Netherlands. It is not a reference to the place where the direct damage was suffered.³⁹³

471. It follows from the above that the collective claims in these proceedings have a more than sufficiently close connection with the Dutch legal sphere. On the basis of all three possibilities, there is a sufficiently close link with the Dutch legal sphere.

9.5.4 *Fossil Free invited KLM for consultation*

472. Section 3:305a(3)(c) of the Dutch Civil Code provides that Fossil Free must, in the given circumstances, have made sufficient efforts to achieve the things claimed by it by way of consultations with KLM. Observance of a two-week term after receipt by KLM of a request for consultations by Fossil Free, stating the claimed subject matter, is sufficient in this respect.

473. By letter of 24 May 2022, Fossil Free invited KLM for consultations (**Production 32**) and gave it two weeks' notice. KLM responded on 3 June 2022 (**Production 33**) and proposed a meeting in the week of 4 July 2022. On 9 June 2022 KLM, through its lawyer, replied that the meeting should take place earlier, at the latest in the week of 20 June 2022 (**Production 34**). KLM then proposed that the meeting should take place on 24 or 27 June 2022 (**Production 35**). Eventually the meeting took place on 24 June 2022. Although a good discussion took place about the issue, KLM also said that it would not comply with Fossil Free's requests. A few days after the meeting, Fossil Free informed KLM that it considered itself free to take legal measures.

³⁹³ *Parliamentary Papers II 2016/17*, 34608, 3, p. 28.

474. Fossil Free has made efforts to reach an amicable settlement with KLM, but these efforts have failed. Fossil Free has complied with the consultation requirement of Article 3:305a(3)(c) of the Dutch Civil Code.

9.6 Conclusion

475. The requirements of Section 3:305a of the Dutch Civil Code in conjunction with Section 1018c(1) of the Dutch Code of Civil Procedure for instituting collective proceedings have been met without any doubt.

10 PROCESS

476. Fossil Free believes that it cannot reasonably be disputed that its claims are admissible. However, the law stipulates that the procedure is divided into two steps: first the court must decide on admissibility, and only then can the court decide on the merits of the case. This intermediate step has been introduced in order to be able to assess, in case of competing interest groups, which one should become the exclusive advocate and to allow the court to give an intermediate decision so that individuals can make use of their opt-out right if necessary. If no other interest group comes forward (which is also not likely, but will be clear three months after the date of registration of the writ of summons), then this does not have to be taken into account from that moment onwards. Furthermore, it makes no sense to use an opt-out right in a public interest case, such as this one.
477. The big disadvantage of the stepped approach is that litigation takes a very long time and becomes very expensive. Fossil Free has to take into account that it can take up to a year before the substance of the case is dealt with. This is objectionable for the following reasons:
- a. It probably does not serve any purpose, as has been said.
 - b. This case is of an urgent nature, in the sense that in order to achieve the Paris climate target, it is important that by 2030 CO₂ emissions are reduced by 45% compared to 1990. Less than eight years of that period remains, and KLM's CO₂ and non-CO₂ climate impact amounts to a significant portion (at least 20%)³⁹⁴ of the emissions of the Dutch economy (see par. 4.2.2). Every year counts.
 - c. Fossil Free is an NGO, non-profit-making and its cause does not serve any commercial purpose. Fossil Free is dependent on donations for its existence and litigation. It is extremely inefficient to spend a year litigating about admissibility when there is no reasonable doubt about it.

³⁹⁴ See par. 91 from which it follows that the emissions from aviation in the Netherlands (practically: KLM) are about 12,099 Mt, which amounts to 6.38% of Dutch emissions. KLM's own statement also puts its emissions in 2019 at almost the same level: 12,072 Mt. Because the non-CO₂ effect triples the negative climate effect, KLM's real share is over 19%. However, this only concerns the direct emissions of KLM's direct business activities ('scope 1') The emissions caused by KLM's suppliers ('scope 2') or customers ('scope 3') have not been included in this calculation

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478. To this end, Fossil Free will seek consultations with KLM to try to reach agreement on how this phase can be skipped or at least significantly shortened.

11 JURISDICTION AND APPLICABLE LAW

479. Since both Fossil Free and KLM have their registered offices in the Netherlands, the Dutch court is competent to take cognisance of this dispute. As a result, Dutch law will also apply to the claims of Fossil Free against the defendant.

12 PROOF

480. If and in so far as the evidence is not yet deemed to be complete in all respects, Fossil Free will offer proof of all its contentions with all means at its disposal. This includes hearing witnesses, including the directors of Fossil Free, the directors of KLM, and the other experts and persons mentioned in this summons, and bringing further documents into the proceedings. Fossil Free will not voluntarily accept any burden of proof that does not rest with it.

481. Fossil Free also reserves the right to make additional claims for information on the topics mentioned in this and other subpoenas.

13 PETITUM

REASONS WHY

Fossil Free requests the court to rule as follows, as far as possible enforceable by provision:

Claim I: Exclusive representative

That Fossil Free is admissible in this collective action procedure and is appointed as exclusive advocate.

Claim II: Definition of narrowly defined group

If the Court is of the opinion that it should determine for which narrowly defined group of persons the exclusive representative represents the interests in this collective action within the meaning of Section 1018^e subsection 2 Rv: that this collective action relates to the following group of natural persons, i.e. all natural persons residing in the Netherlands at the time of the issue of the summons, and those who are born and come to reside in the Netherlands after the date of this summons ;

Claim III: Opt-out possibility

That any person residing or domiciled in the Netherlands will have the opportunity, during a period of three months after the announcement, within the meaning of section 1018^f, subsection 3, Rv, of the decision appointing the exclusive representative, to give notice in writing to the registry of the court to withdraw from the representation of their interests in this class action;

Claim IV: Declaration of rights

That it be declared that:

- I. The advertising statements made by KLM, #1 through #13 as described above in ch. 5 of the body of the writ of summons and suggesting that flying can be or become sustainable, for reasons stated in the body of this writ of summons, are misleading and unlawful and that KLM is therefore in violation of the fundamental rights referred to in the body of this writ of summons and the OHP Directive; and

The advertising statements made by KLM #14 through #19 as described above in ch. 5 of the body of the writ of summons, suggesting that the purchase of or contribution to a "compensation" product actually reduces, absorbs or compensates for part of the climate impact of flying for reasons stated in the body of this writ of summons, are misleading and unlawful, and that KLM is therefore in breach of the fundamental rights referred to in the body of this writ of summons and the OHP Directive;

Claim V: Prohibition and injunction

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- (i) That KLM is prohibited from doing so no later than one week after the date of the judgement to be passed in this matter:
 - a. The advertising messages #1 through #19 as described above in ch. 5 of the body of the Summons, or advertising messages with a text identical or similar thereto, as well as in which it is suggested through commendatory words that flying, whether with KLM or not, can be done in a way that is "sustainable" or "responsible" from a climate change perspective, in any form or manner, to be made public,
- (ii) That KLM is ordered to:
 - a. Within one week after the date of the judgment to be rendered in this case, to remove at his own expense the advertising statements #1 through #19 as described above in ch. 5 of the body of the Summons, and statements that vary therefrom but have essentially the same purport, and to remove them and keep them removed from all media in which these statements have been distributed, including but not limited to the KLM website, its social media channels, leaflets, flyers and periodicals distributed by KLM itself, (video) advertisements online or in print media, or otherwise; and
 - b. Within one week after the date of the judgment to be rendered in this case, to rectify at their own expense the advertisements #1 through #19 as described above in ch. 5 of the body of the summons to be rectified by:
 - i. to send letters to all persons and institutions to whom KLM issued tickets between 1 December 2021 and 23 May 2022, on KLM letterhead, using KLM's customary house style for correspondence with its customers, by post and by e-mail, containing, with the exception of the addressing the date and ending, and otherwise only the text as set out in Annex A to this summons, or such other text of the same nature and purport as the Court may deem fit, and without in any other way prejudicing the purpose and purport of the (publicity of the) rectification;
 - ii. the placement of a clear and well readable rectifying advertisement of half a page, to be made in KLM's house style, in five national newspapers (Trouw, AD, Telegraaf, Volkskrant and NRC) on the back page of those newspapers, without any comments or additions in any form whatsoever, with the text as stated in Annex B to this summons, or any other text of the same nature that the Court deems necessary, made in accordance with good printing practice, in a red frame with KLM's logo, under the heading "RECTIFICATION";
 - iii. for a period of four weeks, or such other period as the Court may deem appropriate, to place a clear and legible corrective text, to be created in KLM's house style, on all of its online marketing communications including banners and all social media accounts (Instagram, Twitter, LinkedIn etc.), which will

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remain visible when scrolling in any direction, with the text and in the form set out in Annex C to this summons, or any other text of the same nature that the Court deems appropriate;

- c. within three days after sending the abovementioned rectification letters, to send to Fossilvrij's legal advisers a copy of one of the rectification letters sent, dated but in which the data relating to the addressee have been rendered illegible, accompanied by a confirmation issued by a Dutch bailiff or notary public that the rectification was sent in that form by KLM to the group of persons and institutions specified in the judgment; and
- d. within one week after the date of the judgment to be rendered in this case, to display or have displayed at its own expense in a prominent place on the home page of the KLM website, the website booking tool and on the flight tickets issued for its flights, a clearly legible warning text reading '*Airplanes consume fossil fuel and contribute to climate change*', in the house style of KLM and in a font larger than the smallest font displayed at the same place.

Claim VI: Penalty payment

The amount claimed under V is on pain of a penalty of EUR 100,000, or such other amount as the Court may deem appropriate, for each time that KLM wholly or partly contravenes (one or more parts of) the prohibition and/or (one or more) orders claimed under V, in such a manner that this penalty shall be due as many times as (part of) the said prohibition is contravened and/or (part of) the said orders are not complied with, as well as a penalty of EUR 25.000 or such other amount as the Court may deem fit, for each day that the relevant breach or non-fulfilment continues, counting each part of a day as a whole;

Claim VII: Legal costs and fees

Order the defendant to compensate Fossilvrij for the extrajudicial costs and (legal) costs (Article 6:96 DCC and Article 1018l (2) Rv), being

- (i) the full extrajudicial costs incurred by Fossil Free, plus interest at the statutory rate from the date of the judgment to be rendered in these proceedings until the date of full payment, if necessary to be assessed and settled in accordance with the law; and
- (ii) the costs which Fossil Free will incur in connection with the actions which Fossil Free, in its capacity as (co-)exclusive representative, will be expected to perform until the final judgment, to be increased by the statutory interest as from the date of the final judgment to be rendered in these proceedings until the day of full payment, to be drawn up by state and to be settled in accordance with the law;

which amounts (i) and (ii) can be further estimated.

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The costs are for me, the bailiff

This case is heard by

Mrs. F.M. Peters, A.J. van Wees and M.G.J. Gommer

bureau Brandeis

Sophialaan 8, 1075 BR Amsterdam

T: 020 7606 505 / F: 020 7 606 555

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ANNEX A

Text proposal for rectification letters that KLM should send to its customers.

Subject: Correction of our sustainability claims

Dear [NAME]

KLM apologises for providing incorrect and misleading information about the sustainability of flying and the possibility of so-called CO₂ compensation in its advertisements and on its website. With this letter KLM wants to correct the incorrect impression created by its marketing and advertising.

Scientific consensus: flying harms the climate

There is scientific consensus that a rapid and drastic reduction of greenhouse gas emissions, such as CO₂, in all sectors is necessary in order to maintain the reasonable chance of limiting global warming to 1.5 °C as agreed in the Paris Climate Accord. The next few years will be decisive.

Dangerous climate change can already be felt all over the world. Global emissions of greenhouse gases continue to rise and the world is heading for catastrophic warming. More information can be found [here](#).

Burning fossil fuels, such as kerosene in aircraft engines, releases a lot of CO₂. This is the main cause of dangerous climate change. So flying aggravates climate change. Flying also has other effects, such as nitrogen emissions and condensation, which have a significant impact on the climate. Booking a flight is, for consumers, the product with the highest emissions that they can buy.

Flying less is the only thing KLM can do to limit climate damage

Alternative fuels (including "sustainable aviation fuels" or "SAF") and future technology cannot make flying "sustainable" in time, in line with the climate target of the Paris Climate Agreement. Flying must be reduced immediately to meet that climate target. It was therefore incorrectly misleading for us to speak of "sustainable flying". More information on the need to reduce flying is available [here](#).

However, KLM's policy is to grow and emit more CO₂.

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KLM intends to continue to grow. As long as we grow, our total CO2 emissions will increase. Our suggestion that our emissions will decrease and that flying can be done "sustainably" or "responsibly", and by flying with KLM a "more sustainable future" is closer, was false and misleading.

Climate damage is not reduced by making a financial contribution to KLM's CO2ZERO programme.

We ran a marketing campaign called "CO2ZERO". In it, we asked consumers to make small financial contributions to reforestation projects or to the cost of using small quantities of alternative fuels. We said this would "offset", "reduce" or serve as an "offsetting" to the negative climate impact of flying. That is just not true. The payments do not contribute to achieving the climate goal of the Paris Climate Agreement. The name "CO2ZERO" of our marketing campaign, was incorrect and misleading.

The only way to meaningfully reduce the impact of flying on the climate and contribute to achieving the climate targets is by not flying.

Yours sincerely,

[name and signature of CEO]

ANNEX B

Text proposal for the rectification to be published by KLM in Dutch newspapers

RECTIFICATION

KLM has made incorrect and misleading statements about the sustainability of flying and about the possibility of so-called CO₂ compensation in its advertisements and on its website. Here, KLM wants to correct the incorrect impression created by its marketing and advertising.

Scientific consensus: flying harms the climate

There is scientific consensus that a rapid and drastic reduction of greenhouse gas emissions, such as CO₂, is needed in all sectors in order to have a reasonable chance of limiting global warming to 1.5 °C, as agreed in the Paris Climate Accord. The next few years will be decisive.

Dangerous climate change can already be felt all over the world. Global emissions of greenhouse gases continue to rise and the world is heading for catastrophic warming. More information can be found [here](#).

Burning fossil fuels, such as kerosene in aircraft engines, releases a lot of CO₂. This is the main cause of dangerous climate change. So flying aggravates climate change. Flying also has other effects, such as nitrogen emissions and condensation, which have a significant impact on the climate. Booking a flight is, for consumers, the product with the highest emissions that they can buy.

Flying less is the only thing KLM can do to limit climate damage

Alternative fuels (including "sustainable aviation fuels" or "SAF") and future technology cannot make flying "sustainable" in time, in line with the climate target of the Paris Climate Agreement. Flying must be reduced immediately to meet that climate target. It was therefore incorrectly misleading for us to speak of "sustainable flying". More information on the need to reduce flying is available [here](#).

However, KLM's policy is to grow and emit more CO₂.

KLM intends to continue to grow. As long as we grow, our total CO₂ emissions will increase. Our suggestion that our emissions will decrease and that flying can be done "sustainably" or

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"responsibly", and by flying with KLM a "more sustainable future" is closer, was false and misleading.

Climate damage is not reduced by making a financial contribution to KLM's CO2ZERO programme.

We ran a marketing campaign called "CO2ZERO". We asked consumers to make small financial contributions to reforestation projects or to the cost of using small quantities of alternative fuels. We said that this would "offset", "reduce" or serve as "offsetting" the negative climate impact of flying. That is just not true. The payments do not contribute to achieving the climate goal of the Paris Climate Agreement. The name "CO2ZERO" of our marketing campaign, was incorrect and misleading.

The only way to meaningfully reduce the impact of flying on the climate and contribute to achieving the climate targets is by not flying.

Yours sincerely,

[name and signature of CEO]

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ANNEX C

Text proposal for the rectification/banner that KLM should publish/show on social media

Correction on KLM ads: There is no such thing as "sustainable" flying - flying must be reduced immediately to be in line with the goal of the Paris Climate Agreement.