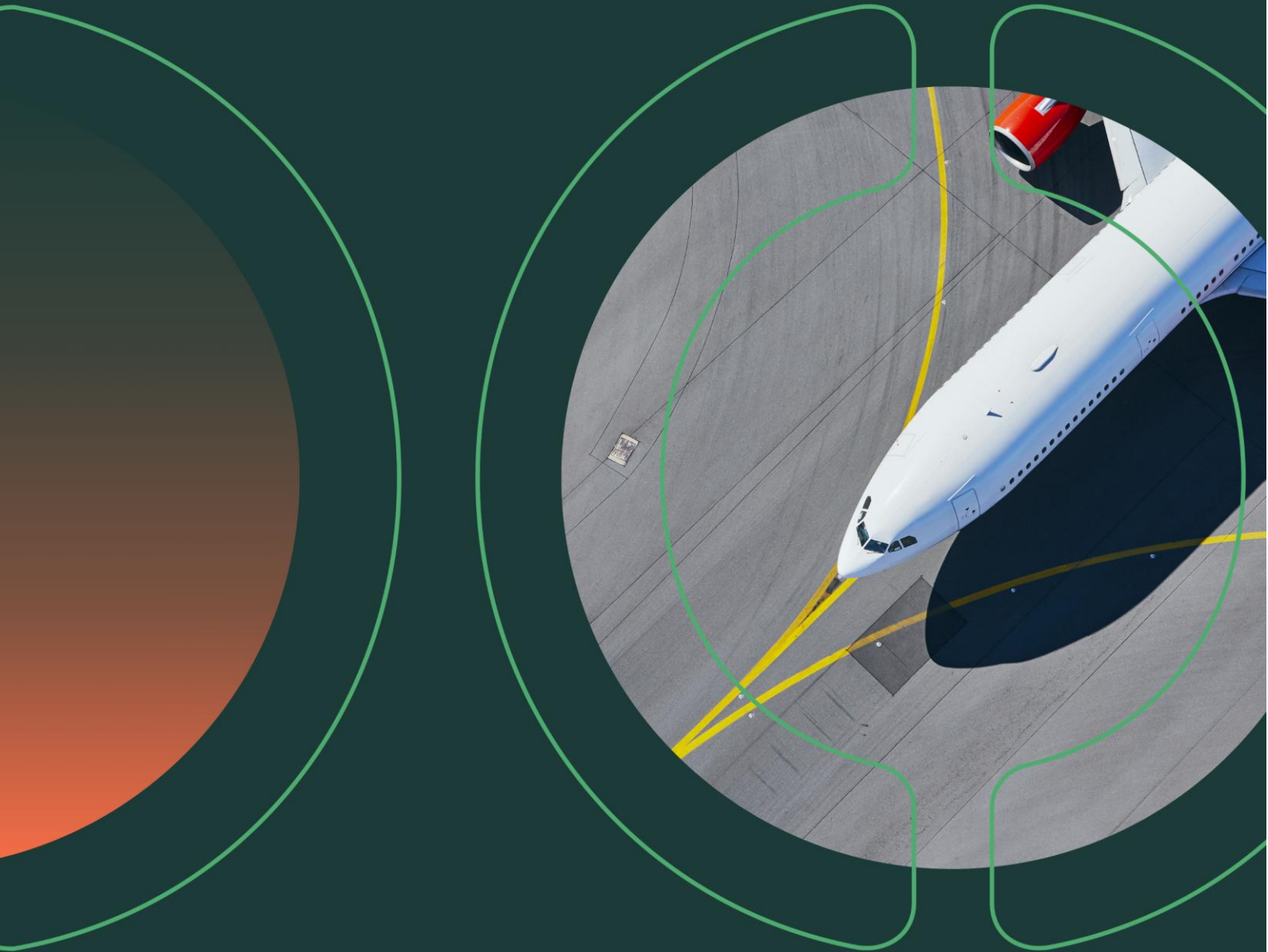




Toolkit: Legal avenues to challenge airport expansion

Legal toolkit | 5th May 2026

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What is the toolkit?

This toolkit is designed to help Stay Grounded assess possible legal and campaigning routes to achieving capacity caps and limits at airports in the EU. It sets out:

- How regulations like caps or other reductions in airport capacity can be introduced under current EU legislation to inform campaigns for such caps.
- Potential legal avenues to challenge new airports or airport expansions.

This toolkit focuses on EU law. It is not intended to be comprehensive, rather it attempts to draw out the most promising routes and avenues for legal campaigns and challenges. It also provides some relevant examples of caps or limits introduced under domestic law but does not provide a complete overview of national laws applicable to airports across Europe. Local or EU legal advice (as applicable) from qualified lawyers in the relevant jurisdiction should always be sought before taking legal action.

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Opportunity Green provided a final version of this toolkit to Stay Grounded on 5 May 2026. There may have been changes to the law since that date that are not reflected in this toolkit. Opportunity Green has not updated this toolkit since that date and has no responsibility for any changes made by any other parties to the toolkit.

How to use this toolkit

This toolkit is divided into three sections.

Section A (Recommendations) sets out our key recommendations for potential legal avenues to challenge airport expansions.

Section B (Caps and limits) sets out the key potential routes under EU law to introduce airport caps and limits and the principal types of caps that can be used.

Section C (Legal avenues) sets out the key potential legal avenues to challenge airport expansions under EU law as well as key legal barriers. It also includes some examples of legal challenges as well as key resources and contacts. The key thematic areas it considers are:

1. Air quality
pages 10 to 16

2. Biodiversity
pages 17 to 20

**3. Climate
change**
pages 21 to 26

4. Noise
pages 27 to 31

Section D (Stay Grounded) this part of the toolkit is intended for Stay Grounded to populate as is most useful for the network. It may contain useful contacts or resources on the constraints we discuss in this toolkit.

SECTION A: Recommendations

A broad range of legal frameworks apply when considering airport caps and limits, and addressing the environmental impacts of airport expansions.

Caps and limits

This toolkit demonstrates that under the current body of EU law, there are relatively few legal barriers to Member States introducing airport capacity caps and limits. Notwithstanding any potential barriers created by national laws, there exists several legal avenues for Member States to lawfully reduce airport capacity under EU law. As discussed throughout this toolkit, (i) the Air Services Regulation (Article 20), (ii) the Slot Regulation (Articles 6 and 8), (iii) a Member States' air quality plan under the Ambient Air Quality Directive and (iv) the protection of a Natura 2000 site pursuant to Article 6(3) of the Habitats Directive, represent four lawful routes to apply a cap or limit to airport capacity. Relatedly, this provides concerned individuals or groups with legal tools and avenues to demand airport capacity reduction. The barrier is arguably more one of political will, rather than legal impediment, and as such, our key recommendations in relation to the pursuit of potential caps and limits are:

1. **Advocacy and awareness-raising** about the ability of Member States to prescribe legislative caps, including in accordance with the Slot Regulation and the Air Services Regulation (see page 6). Awareness raising among governmental officials and local Members of Parliament should be seen as an important advocacy lever outside of the legal space to push for greater action.
2. **Legal and political campaigning** in relation to the ongoing potential revision of EU aviation laws, to try to ensure that such levers are not diminished and, if anything, are strengthened.

Legal avenues to challenge airport expansions

This toolkit has outlined a range of different approaches that could potentially be used to challenge new airports or airport expansions. These include: air quality, biodiversity, climate change, and noise pollution. Legal challenges are complex, and the analysis in this toolkit is necessarily high level. Further research and expert legal advice should be sought before pursuing any legal action. It should also be noted that the observed discretion afforded to Member States' national laws (in particular, regarding noise and air quality, as well as national policy instruments and laws not examined by this toolkit that may govern the national or regional approach to airport capacity and expansion) may interfere with the execution of the recommendations set out below. Choosing the most promising route will require a fact-sensitive investigation, and legal challenges are often cross-cutting, addressing multiple issues. Our key recommendations are:

1. **Promising Environmental Impact Assessment (EIA) route:** Recent [case law](#) on the EU EIA Directive (in the context of offshore oil & gas / fossil-fuel projects) has shown that EIAs need to include the likely downstream emissions of projects (where these are connected to the intended, inevitable activity of a project and therefore deemed reasonably foreseeable), irrespective of where those

emissions occur and regardless of whether those emissions may be considered in respect of any other projects.¹ Following this precedent, it **could** be argued that, by analogy, EIAs for new airports and airport expansions *should* include all emissions from arriving and departing flights (and non-CO₂ emissions) and this potentially provides a ripe area for challenge where these emissions are not materially considered as part of the assessment (see pages 22-23). Generally, an EIA must also demonstrate the impact of a project on the health and well-being of local residents, noise levels and biodiversity. Public participation is also a requisite of the EIA process under EU and binding customary international law. In turn, this represents a transparent procedural process for concerned individuals to challenge on the grounds that are most applicable to their situation (e.g., the inadequate assessment of excessive nitrogen levels). If this procedure is not followed, those concerned may be able to follow a judicial review process to challenge this.

2. **New Air Quality Directive:** By 11 December 2026, Member States are required to have transposed the new EU Air Quality Directive into national law, including short and long-term pollutant limit values for Member States to attain (set out in [Annex I](#)). This must also include compensation provisions for individuals and organisations affected by air pollution and should lead to better monitoring of air pollution and quality. This provides a potential new angle for legal challenges in the future.
3. **Beyond noise:** Noise is one of the more challenging grounds to tackle airport expansions, due to the restrictive mechanism under the EU Balanced Approach Regulation which provides that operational restrictions can only be introduced in response to noise concerns as a last resort. Whilst noise pollution is extremely serious and has significant impacts on the local population, other grounds of challenge may prove more fruitful. For long-term campaigning purposes, the EU legislative review process should be monitored for a call for evidence and/or public consultation on the revision of the EU Balanced Approach Regulation. Concerned individuals and groups can in theory contribute to this process, raising issues on the Regulation's inconsistency with EU and international climate law obligations.²
4. **Monitoring:** Where Member States have obligations to submit **periodic reports pursuant to the aims and objectives of a Union law**, the report, as well as the proper execution and delivery of actions committed to within the report, should be monitored (e.g., the submission of air quality action plans every year; the record-keeping of highly-polluting airport 'hotspots' as sampling points under the 2024 Directive from December 2026 onwards; and the mitigation measures to improve the air quality standards within an air quality action plan pursuant to the Directive - discussed in detail below). Failures in relation to this process may give rise to a basis for legal challenge. See section C.1, 'air quality', below, for more information on the reporting requirements.

¹ *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20

² In addition, where WHO recommendations have been established, they should be implemented into EU legislation as 'best available science', notably on noise levels and air quality standards where these have not yet been adopted. Concerned individuals and groups should similarly monitor the EU legislative review process for provisions related to noise and air quality (in particular) and input to the consultation process where this opportunity arises, advocating for the adoption of WHO recommendations.

5. **Get legal advice:** If you want to challenge an airport expansion and think you may have grounds to, it is important to get legal advice as soon as possible. Domestic law and procedures vary, so advice should be sought from lawyers in the jurisdiction in which the relevant airport is located. Note that challenges may be subject to strict time limits (EU-level rules leave time limits to the discretion of Member States, however the time limit must be ‘reasonable’ to enable effective participation) so it is important to seek legal advice promptly.

SECTION B: Caps and limits

Member States are able to introduce legislative capacity caps at airports for a variety of reasons without contravening EU law, including in response to climate change or air pollution. Member States should take care to ensure that such caps align with certain requirements of EU legislation, but generally (with the exception of noise pollution, for which there is a restrictive procedure) Member States are free to legislate to cap airport capacity.

Key EU legislation to consider is as follows:

- 1. Air Services Regulation** – This regulation provides common rules for operations in the EU internal market for air services, as well as market entry and pricing. Provided the Member State can demonstrate adequate justification for imposing a cap, and that such measures are non-discriminatory, transparent and proportionate, it is possible to limit or refuse the exercise of traffic rights where a serious environmental problem exists (under Article 20).
- 2. Slot Regulation** – Provided the cap is established in legislation, a cap introduced for environmental reasons (including climate change) should operate as an ‘environmental constraint’ that slot coordinators should have regard to when allocating slots at the airport. Airlines have a conditional right to ‘historic slots’ (slots that they have used for 80% of the previously allocated period) but this is not an absolute or a property right, and it can in theory change.³ This means that airlines only get priority to keep historic slots if certain legal conditions continue to be met (and can be withdrawn if operational or environmental constraints so require). As such, nothing in the Slot Regulation prevents a legislative cap being introduced.
- 3. Balanced Approach Regulation** – Where Member States wish to address excessive noise from aircraft, the Balanced Approach Regulation must be followed which provides that operating restrictions should only be pursued as a last resort after other noise-mitigation measures have been fully considered and found insufficient. Limits on the basis of noise are therefore restricted by this regulation.

In short, Member States have a wide discretion to introduce airport caps and limits, where the Air Services and Slot Regulation provide a lawful avenue to reduce airport traffic.

³ For more information on how the Slot Regulation can be invoked to reduce slot capacity at congested airports for environmental reasons see Opportunity Green’s briefing: [‘Reducing airport capacity on climate grounds under the EU Slot Regulation’](#)

The types of capacity cap/limits that could be introduced include:

- 1. Short-haul** – For example, France introduced a [short-haul flight ban](#) in 2022 on all air routes within France where several direct rail connections per day of less than two and a half hours exist ([Spain](#) has also introduced a similar ban). This cap was brought in and approved by the European Commission under the Air Services Regulation (see above). In its assessment of whether serious environmental problems exist, the European Commission deemed it necessary that sustainable transport choices are promoted in light of France’s obligations to urgently reduce greenhouse gas (GHG) emissions and incentivise transport decarbonisation under both the European Climate Law and Green Deal. However, given the small number of flights that are within the scope of the ban,⁴ the decision has been [criticised](#) for effectively sidelining the negative impacts of long-haul flying.
- 2. Night** – The health impacts from noise pollution are compounded when the noise occurs at night. Therefore, a reduction of night-time flights can benefit local residents who experience excessive noise levels. For example, Group for Action on Leeds Bradford Airport (GALBA) led a [successful campaign](#) concluding in a public inquiry that upheld planning conditions designed to protect local residents from excessive aircraft noise where Leeds Bradford Airport had attempted to challenge the preexisting night-time flight cap. Zurich Airport has had a long-standing ban on almost all night-time flights since 2010 and Ciampino Airport in Rome, Italy imposes night-time restrictions along with a cap of 65 daily flights after a culmination of over 2000 complaints to the judiciary from citizens demanding air quality and noise levels be adhered to.
- 3. Pollutant-specific limits** – Airports and Member States are able to introduce specific GHG emissions ‘ceilings’ or ‘limits’ in order to ensure they are working towards the multiple climate, environmental and health obligations under EU and international law discussed in this toolkit. See section C.3, ‘Climate change’, for more information on the effectiveness of pollutant-specific limits. In a coalition agreement, the Dutch Government has announced plans to introduce a [CO₂ cap at Schiphol and Lelystad Airport](#), where the combined total of CO₂ emissions at both airports must be lower in 2030 than at Schiphol in 2024. This is not yet set in law.

Upcoming legislative revision and consultations: advocacy opportunities

The current state of flux for EU aviation legislation represents an opportunity for advocacy for concerned members of the public. Where legislation is under review, the European Commission will likely provide opportunities for public consultation on the effectiveness of the current legislation; including how it pertains to environmental, social and climate measures. Recently announced or pending revisions are as follows:

⁴ 3 out of 100 domestic flight paths: The French citizen assembly called for a ban of all air routes in France with a rail connection of less than 4 hours. The proposal was narrowed down to 2,5h and even this rule was still tailored on purpose to save certain routes (for instance Lyon-Marseille, 1h30 by train).

- **Aviation – fitness check of EU airport legislation**: public consultation closed on 28 October 2025. Opportunity Green, Transport & Environment, and other NGOs submitted responses specifically focusing on the legality of introducing airport capacity limits under the Slot Regulation. Further updates should be provided on the linked page in due course.
- **Aviation – EU air services rules (revision)**: public consultation closed on 15 December 2025.
- **EU Emissions Trading System (ETS) Aviation (revision)**: set to expand to capture international flights in 2027; however, this is attracting significant industry opposition.
- **Ambient Air Quality Directive 2024 (transposition)**: by 11 December 2026, Member States must transpose the more stringent provisions of the updated directive into national legislation. The pollution thresholds to be enshrined in national legislation by this date are set out in [Annex I](#) of the Directive.

1. Local air quality

Introduction

Aircraft emissions are a major source of local air pollution in and around airports, presenting serious risks to local residents and the environment. Pollutants from aviation can contribute to a wide range of severe health impacts (including cancer, cardiovascular and respiratory diseases, stroke, and fertility problems) and can lead to premature deaths.

Air quality-related health issues fall disproportionately on low-income communities and airport workers, often including a significant number of people from a non-white ethnic background and marginalised populations.

Where groups are experiencing air pollution in their local area, it should be noted that GHG emissions and other pollutants are also regulated under climate and biodiversity laws.⁵ Challenging one, some or all constraints can simultaneously improve local air quality, fostering community health benefits, while ensuring airports and States are reducing GHG emissions, in line with their climate and environmental obligations. See section C.3, 'Climate change' and section C.2 'Biodiversity' for more information.

Legal framework

International level⁶

- The international Civil Aviation Organisation (**ICAO**) addresses five pollutants from aircraft engines under the Chicago Convention,⁷ although standards have historically tended to reflect current technology rather than incentivising innovative green technologies or referencing health-based goals. Member States must adopt these international standards for them to have binding effect. The ICAO also provides non-binding guidance for managing airport-level air quality which is cited by the EU in its equivalent framework.

⁵ Note: while air quality standards are focused on LTO cycles, where emissions from landing and take-off have the greatest impact on localised air quality, this only accounts for 4% of all aviation emissions; the other 96% are emitted during the cruise phase and also impact health. See: [Stay Grounded Health Factsheet](#), page 5.

⁶ Additional treaties governing atmospheric pollution but do not have a tangible route to challenge local air quality at EU airports include: the 1979 Geneva Convention on Long-Range Transboundary Pollution (CLRTAP) and the eight protocols to CLRTAP; the 1985 Vienna Convention for the Protection of the Ozone Layer.

⁷ Chicago Convention, [Annex 16, Environmental Protection, Volume II](#), namely, nitrogen oxides (NO_x), carbon monoxide (CO) unburned hydrocarbons (HC), smoke and non-volatile particulate matter (nvPM). Most recently, the ICAO agreed a standard in 2019 for particulate matter, and CO₂ is regulated in a separate provision in the [Chicago Convention, Annex 16, volume III](#).

- The World Health Organisation (**WHO**) provides [global air quality guidelines](#) for safe exposure levels of certain pollutants and has published a resource package for the EU on '[Protecting health through ambient air quality management](#)'. However, this does not contain specific provisions relating to airport management.

EU level

Ambient Air Quality Directive 2024/2881/EU: Replacing two previous Directives on air quality (2004/107/EC and 2008/50/EC), the 2024 Air Quality Directive regulates the levels of 12 air pollutants through air quality targets and oversees the proper implementation of air quality plans and roadmaps adopted by Member States where specified pollutant limits are exceeded, with the aim of achieving a zero-pollution objective by 2050 and an interim 2030 target of reducing the health impact of air pollution by 55%. Member States have two years to transpose the provisions into national law (i.e., by 11 December 2026).

- **WHO alignment:** The Directive *aims* to bring standards closer to WHO recommended levels of air pollution (per its 2021 guidelines) (but overall EU levels are not currently aligned).
- **Air pollution hotspots and airports:** The revised 2024 Air Quality Directive introduces 'air pollution hotspots', defined as areas exposed to particularly high pollution concentrations that therefore require specific monitoring. These hotspots include sites affected by heavy pollution sources such as airports. The Directive stipulates it is 'crucial to systematically monitor air quality in air pollution hotspots' and take appropriate measures to minimize the health impacts in these hotspots (Recital 35). Annex IV provides further information on the proper installation of pollution hotspot sampling points, including that where relevant and to the extent possible, Member States should provide additional data in areas where sensitive population and vulnerable groups are exposed (e.g., residential areas, schools, hospitals, assisted living facilities, or office areas). Data analysis of 23 EU airports by the [European Environment Agency](#) confirms that airports can be a substantial source of air pollution and thus may require enhanced monitoring networks in line with the requirements for air pollution hotspots. Where airports are designated as air pollution hotspots under the revised Directive, this triggers enhanced monitoring obligations and requires Member States to take targeted measures to reduce health impacts – creating a direct enforcement pathway where ambient NO_x concentrations around airport sites persistently exceed the more stringent 2030 limit values.
- **Access to justice and compensation:** The revised Directive also introduces more demanding remedial standards. Citizens and organisations with sufficient interest⁸ are entitled to challenge the substantive or procedural legality of all decisions relating to sampling points, air quality plans and air quality roadmaps (Article 27). Further, they may seek compensation where damage to their health has occurred as a result of an intentional or negligent violation of the national rules transposing

⁸ Member States have discretion over what constitutes sufficient interest and impairment of right in keeping with the objective of giving the public concerned wide access to justice. The Directive clarifies any non-governmental organization that promotes the protection of human health or the environment and meeting any requirements under national law should be deemed sufficient.

certain provisions of the Directive (specifically those relating to air quality plans, air quality roadmaps and short-term action plans).⁹

The evidential burden is to prove whether the harm has been caused ‘intentionally or negligently’, and compensation is to be claimed from Member States’ competent authority or the airport itself.

The Commission can also impose penalties for inadequate implementation of the Directive under Article 29.

- **Human rights protection:** Member States must ensure there is access to justice and compensation in national legislation pursuant to Chapter VII of the Directive. Recital 49 provides that ‘the penalties provided for in this Directive should be effective, proportionate and dissuasive’, as directly relevant for: (i) the obligation to protect the right to life and to the integrity of the person, (ii) the right to healthcare in relation to the protection of human health and environmental protection, and (iii) the improvement of the quality of the environment in accordance with the principle of sustainable development.

Domestic level

It is beyond the scope of this toolkit to consider both domestic legislation on air quality and the effectiveness of each Member State’s air quality plan. It should be noted that Member States must transpose the Ambient Air Quality Directive into national legislation for it to have binding effect. However, once in effect, the Directive offers potential new enforcement routes (see ‘Access to justice and compensation under the Air Quality Directive’ below).

Campaign case study: kerosene exhaust emissions

In many countries industrial point source emissions of substances of pollutants such as NO_x, ultrafine particles, polycyclic aromatic hydrocarbons (PAHs), and black carbon are subject to strict regulatory controls, while equivalent emissions from airports — which arise not from a single point source but from a localised cluster of mobile sources (aircraft) — often fall outside comparable absolute restrictions at the local level. In a number of jurisdictions, Airport Traffic Decrees and equivalent instruments impose no binding emission limits on these pollutants, creating a significant regulatory gap. Environmental and health related interest groups can campaign on the inequity for communities living near, and workers employed at, airports compared to those in proximity to regulated industrial facilities.

Regulatory bodies of the Netherlands and the four Nordic countries have requested a hazard evaluation of kerosene exhaust emissions through the European Chemicals Agency (ECHA) process, with a recommendation that the classification be elevated to 1B, meaning ‘probably carcinogenic for occupational exposure’. This recommendation, if formally adopted, would bring kerosene exhaust closer to the classification of diesel

⁹ See Ambient Air Quality Directive, Recital 49: “Where damage to human health has occurred as a result of a violation of the national rules transposing Article 19(1) to (5) and Article 20(1) and (2) of this Directive, and that violation has been committed intentionally or negligently, Member States should ensure that the individuals affected by such violations have the right to claim and obtain compensation for that damage from the relevant competent authority.”

exhaust emissions, which were designated as carcinogenic to humans (IARC Group 1) in 2012 and subsequently drove significant regulatory change in respect of both occupational exposure limits and fuel composition standards. Campaigning to protect airport workers on the basis of this emerging evidence, and invoking the precautionary principle where the risk of harm is sufficiently established even if not yet fully quantified, represents a credible strategy – both to drive down emission levels and to require protective measures such as the adoption of electric taxiing systems.

For developments as to the feasibility of this campaigning route, please contact Natuur & Milieu in the Netherlands.

Can air pollution be used as a justification for capping flights?

- Yes, air pollution could lead to caps or limits (see further Section B: *Caps and Limits*, p. 7 above). Unlike noise limits, mitigation measures for air pollution are not subject to the ‘balanced approach’ and therefore the restriction mechanisms outlined in the ‘Introduction’ (for example, night flight restrictions or pollutant-specific caps) can in theory be adopted as a mitigation measure in line with Member States’ air quality plans under both the current Directives on air quality, and the 2024 Directive. As the revised Directive imposes greater EU-wide air quality improvement targets, as well as the requirement to monitor and take appropriate measures to reduce the impacts of ‘air pollution hotspots’, this plainly strengthens the case for Member States to introduce a cap on these grounds, particularly where an airport has been identified as an ‘air pollution hotspot’.

Are there any legal avenues to challenge new or existing airports on the basis of air pollution?

- **Access to justice and compensation under the Air Quality Directive:**

New opportunity

From 11 December 2026, once Member States have transposed the 2024 Directive into national law, individuals and organisations should be able to claim compensation where damage to human health has occurred through breaches of air quality rules. This remains an untested route but provides a potential new avenue for challenging airports’ emissions.

The national rules and procedures for compensation claims should not ‘render impossible or excessively difficult the exercise of the right to compensation’ (Article 28(2)). Member States may establish limitation periods for bringing a compensation claims (i.e., three months within the alleged harm occurring) but the period shall not begin to run before the violation has ceased and the concerned person can reasonably be expected to know that they have suffered damage from the violation.

It should be noted that the penalties applicable to infringements of the relevant national legislation are not laid out by the Directive (Article 29). There is also no guarantee this legal avenue would result in a reduction of airport capacity.

Whilst there may be difficult issues around evidence and causation, the revised Directive offers a potential future route to challenge airport capacity based on the health impacts of air pollution. We recommend that the implementation of the Directive is monitored and any potential complaint on this basis is reassessed following transposition into national law.

In addition, members of the concerned public must have access to a review procedure before a court or another independent and impartial body established by law to challenge certain decisions related to sampling points and air quality plans. The Directive also lays out requirements of the review procedure which must (i) be fair, equitable, timely and not prohibitively expensive (ii) not be rendered excessively difficult or impossible, and (iii) provide adequate and effective redress mechanisms, including injunctive relief as appropriate. We note that a concerned party would likely have to first exhaust the domestic complaints process applicable to their national jurisdiction.

Potential campaigning avenues to challenge airport expansion

Air pollution can be used to campaign for capacity caps at airports (as above). In addition, there are other areas that may be worth considering for campaign work:

- **Targeted campaign at airport ‘hotspots’:** From 11 December 2026 onwards, Member States will introduce sampling points, at locations which pose a high risk of exceeding air pollution limit levels, likely including in proximity to large airports. Such sampling points would help provide the evidence for policy intervention and/or legal challenges. If this provision is not transposed, citizens and interested organisations may challenge the domestic legislation on this point. Where monitoring is absent, claimants face an evidential difficulty: it is hard to demonstrate that an airport poses a high risk of exceeding limit values without the very data that that monitoring would provide. However, this may be addressed through independent expert testing and air quality modelling commissioned by NGOs or affected communities. Legal advice should be taken on the admissibility and weight of such evidence in the relevant domestic jurisdiction.
- **Nitrogen levels at airport hubs:** The revised Ambient Air Quality Directive will require Member States to comply with more stringent pollutant values with respect to local air quality. Nitrogen oxides are significant pollutants at airports ([representing 14% of all European transport emissions in 2022](#)) and so should be monitored against the pollutant limits. Campaigning on this point may provide a lever to advocate for airport capacity reduction.
- **Ultrafine particles (UFP):** Campaign for EU air quality limits to include ultrafine particles, or to be recognised at the domestic level, to ensure Member States are required to take action on the entire scope of aviation pollutants ([where EU air quality limits exist for coarse and fine particulate matter, UFP is not regulated under the Directive and Member States are only required to monitor UFP levels as an “emerging concern”](#)). The EU and Member States should apply the precautionary principle in

doing the utmost to monitor and reduce the levels of UFP given the emerging scientific data on the adverse health impacts of UFP. [Ongoing scientific research](#) on the levels of UFP around Munich airport exemplifies where Member States can take unilateral action on this issue.

- **PFAS:** Often touted as ‘forever chemicals’ with carcinogenic properties, PFAS are most commonly found in fire-fighting foam. A number of residential areas around airports across the Netherlands, Germany, UK and France have been identifying PFAS hotspots owing to the use of the foam at airports during training exercises. For residents around [EuroAirport Basel-Mulhouse](#), this led to a ban on drinking water after high levels were found in the drinking water and in the blood samples of local residents. 60,000 residents are estimated to be impacted by the exposure to PFAS.
- **Occupational exposure to kerosene exhaust:** Airport worker groups could draw on the recommendation by regulatory bodies in the Netherlands and the four Nordic countries that kerosene engine exhaust be classified as a category 1B carcinogen under the Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (the ‘CLP’ Regulation) — meaning presumed carcinogenic based on available evidence. A two-stage campaign strategy would be to firstly advocate for formal EU adoption of this classification, and then secondly use it as the basis for demanding binding occupational exposure limits under the Carcinogens and Mutagens Directive (2004/37/EC), as well as rules requiring reduction of harmful constituents such as PAHs and aromatic compounds in aviation fuel composition.

Case studies

At the time of writing, Opportunity Green is not aware of a challenge against an airport solely on the basis of air quality standards. The following case study is an example of using independent expert testing to bolster legal interventions:

- **Communities Against Gatwick Noise Emissions (CAGNE)** CAGNE is an umbrella of concerned residents and community-environment groups covering areas of the Southeast of England, in and around Gatwick airport. During the consultation phase of the expansion of the second runway at Gatwick, CAGNE provided responses which included [scientific data on UFP concentrations around the airport](#). CAGNE has since challenged the development consent decision, citing failures in the assessment of air quality, as well as GHG emissions, and reliance on exaggerated fuel technology assumptions among other things. While the [High Court dismissed the claims](#), the claimants are considering taking the decision to appeal.

Accounting for the variance of US and EU law on class actions, concerned groups and individuals in Europe can take these lessons from the following case study: (i) group litigation in environmental damage claims, while complex, is increasingly prevalent in the EU and has the potential to galvanise wide press coverage to aid campaigning efforts and (ii) making claims on a collective basis can mitigate costs of litigation and provide a more efficient litigation process in hearing multiple claimants at once:

- **[Codoni v. Port of Seattle, U.S. District Court for the Western District of Washington, No. 23-cv-295](#)** (Seattle mass claim against Sea-Tac airport and two airlines): The applicants in this lawsuit are 300,000 residents spanning six towns

within a five mile radius of the Seattle-Tacoma International Airport who argue their health is being adversely impacted by the airport operation's '[unique chemical fingerprints](#)' (referring to aircraft pollutants such as carbon monoxide, lead and particulate matter). While the applicants are asserting claims under Washington state law for negligence, battery, continuing intentional trespass, and public nuisance, the presiding judge has since [rejected](#) the airlines' arguments that federal law pre-empts state law claims made in the application regarding the law governing airline routes and clean air standards.

Case studies on the breach of air pollution standards under the preceding EU Ambient Air Quality Directive:

- **[Court of Justice of the European Union Case C664/18 European Commission v United Kingdom of Great Britain and Northern Ireland \[2021\]](#)** The CJEU found that the UK and Northern Ireland systematically and persistently exceeded the limit values for nitrogen dioxide and failed to adopt appropriate measures to ensure compliance with the limit values as contrary to Articles 13(1) and 23(1) of the Air Quality Directive respectively. This judgment shortly followed an [inquest](#) into nine-year-old Ella Adoo-Kissi-Debrah's death, who was the first person in the UK to have air pollution listed as a cause of death, underpinning the saliency of safe air quality standards. The narrative verdict found that 'levels of nitrogen dioxide (NO₂) near Ella's home exceeded World Health Organization and European Union guidelines.' This ruling could be used to support a campaign where excessive nitrogen levels were found around a UK airport, as the court ordered the UK Government to 'ensure that the period of exceedance of limit values is kept as short as possible'.
- **[Court of Justice of the European Union Case C-723/17 Craeynest and Others v Brussels Hoofdstedelijk Gewest and Brussels Instituut voor Milieubeheer \[2019\]](#)** A request for a preliminary ruling on the interpretation of the Ambient Air Quality Directive (2008/50/EC) notably clarified that it is within the role of a national court to verify whether the sampling points located in a particular zone have been established in accordance with the Directive and, if they were not, 'to take all necessary measures in respect of the competent national authority, such as an order, with a view to ensuring that the sampling points are located in accordance with those criteria [set out in the Directive, including where highest concentrations of pollutants occur]' (*para 30*). This has implications for the proper implementation of the revised Directive, where Member States must now provide sampling points at the most heavily polluted airports as part of their air quality plans. The applicants in the main proceedings were residents of Brussels and a non-profit-making association governed by English law with a centre of activities in Belgium.¹⁰

¹⁰ Noted in the preliminary ruling was that the non-profit-making association was that one of the objects of the association is to protect the environment, and thus meeting the requirements of an interested party (Paragraph 21).

2. Biodiversity

Introduction

The biodiversity impacts of airport expansion are both immediately felt and cause degradation over time. Site clearance to expand runways and airport infrastructure destroys natural ecosystems for wildlife and will release emissions to varying degrees of severity dependent on the type of land cleared. Scope 1, 2 and 3 emissions from an airport expansion project also cause biodiversity loss; scope 3 GHG emissions from airport expansions are predominantly those emitted by additional aircraft flights.

Operational safety measures also destroy biodiversity, for example through deliberate ‘habitat elimination’ to deter ‘hazardous’ wildlife and the killing of animals (i.e., the killing of birds where, in some instances, licences are afforded to airports to ensure air safety).

81% of all EU habitats are in poor status according to European biodiversity levels. Owing to the inextricable link between health, climate and biodiversity, restoring nature levels can also positively benefit human health while reducing GHG emissions in line with the Paris Agreement’s 1.5°C temperature target.

Legal framework

International level

- The **ICAO** scarcely incorporates biodiversity effects from aviation into its regulatory framework. The **2025 ICAO environmental report** suggests that under the ICAO’s Annex 16 (which establishes international Standards and Recommended Practices) airports now ‘integrate biodiversity considerations into their sustainability strategies’ as part of their duty to balance operational safety with conservation efforts. However, without target-based commitments, this affords great discretion to the interpretation of Annex 16 by Member States. The **ICAO’s Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)** aims at some level of biodiversity protection under the sustainability criterion for alternative aviation fuel deployment. CORSIA’s eligible fuels list does not recognise biomass¹¹ sourced from State-protected nature areas as a compliant fuel, ‘unless evidence is provided that shows the activity does not interfere with the protection purposes.’ That said, the list permits problematic feedstocks such as palm oil (which have well-known links to deforestation and human rights abuses) and cannot be relied upon to achieve meaningful biodiversity protection in the aviation sector.
- The **2022 Kunming-Montreal Global Biodiversity Framework (GBF)** operationalises the **United Nations Convention on Biological Diversity (Biodiversity Convention)** and provides a global framework that aims to halt and reverse biodiversity loss by

¹¹ Biomass is an alternative aviation fuel feedstock made of organic material, e.g., forestry and wood, animal waste and agricultural crop residues. Biomass from energy crop-origins have highly competing uses with food supply and can be linked to deforestation risks. Therefore, this category of alternative aviation fuel has been excluded by some, but not all, fuel mandates and lists. See WRI, ‘Under New Guidance, ‘Sustainable’ Aviation Fuel in the US Could Be Anything But’ (9 May 2024).

2030. Adopted by 196 Parties, including the European Union, the GBF includes four long-term goals to 2050 and 23 action-oriented targets towards 2030. Parties to the convention must submit national targets and action plans. The [EU's action plan](#) cites the European Green Deal and the Nature Restoration Law, among other instruments, in place to achieve the GBF targets. The Biodiversity Convention and GBF have no direct enforcement mechanisms. Instead, the framework relies on a combination of state-led obligations, international cooperation and a formal review process.

EU level

Numerous policy instruments and laws comprise the EU framework for the protection of biodiversity. The most relevant to airport expansions are the Habitats Directive, the Natura 2000 network, and the Nature Restoration Regulation.

- [EU Directive 92/43/EEC \(Habitats Directive\)](#) requires a Member State to establish a strict protection regime within its territory, including: (i) to protect the species listed in Annex IV to the Habitats Directive (ii) to designate, protect and manage areas and species listed in Annexes I and II to the Habitats Directive (iii) establish with the Commission, EAA and scientific experts Sites of Community Importance (SCIs) to become part of the [Natura 2000 Network](#) (iv) designate the SCIs as [Special Areas of Conservation](#) (SAC) and establish measure to maintain or restore the areas to a good condition. Regarding point (iv), Member States must report on the conservation status of the protected species and habitats under Article 17 of the Directive. The results from the reporting cycle for the period of [2013 – 2018](#) found only 15% of habitats have a 'good' status. The findings from the current reporting series (2019–2024) is not yet published at the time of writing. Under Articles 15 and 16 derogations are permitted to the capture or killing of species, in particular where required 'in the interest of air safety'.¹²
- There are over 27,000 nature sites that form the **Natura 2000 network**. If a project is likely to have a significant negative effect on a Natura 2000 site, then Member States must follow the procedure of appropriate assessment pursuant to Articles 6(3) and 6(4) of the Habitats Directive. Further guidance on the permitting procedure can be found [here](#).¹³ The six-year reporting cycle allows the Commission to identify non-compliance and potentially initiate legal action. *(See below 'Case Studies: Amsterdam Schiphol' for a successful example of this in practice.)*¹⁴
- [EU Regulation 2024/1991 \(Nature Restoration Regulation\)](#) combines binding restoration targets for specific habitat and species and long-term objectives for the recovery of nature. By September 2026, Member States must submit National Restoration Plans pursuant to the Regulation, demonstrating how they will deliver on the targets; the contents of the plan are detailed in Article 15.

¹² See a ranking of EU Member States invoking this provision on the basis of air safety, where Poland, the UK, the Netherlands, Slovakia and Denmark comprise the top five countries with the highest number of reported derogations: [here](#).

¹³ The latest Commission [summary report](#) on the implementation of Article 6(4) for the period of 2012 – 2019 cited that a notification of concerning projects contained one "Airport improvement and expansion".

¹⁴ However, it should be noted that [the Dutch Council of Ministers has granted Schiphol Airport a two year long temporary nature permit](#) following this decision.

Domestic level

As above, it is beyond the scope of this toolkit to address domestic legal frameworks. Please see below, ‘case studies’ in this section for an example of the Natura 2000 nature permits being utilised to challenge airport expansion.

Can biodiversity be used as a justification for capping flights?

- Yes, risk to biodiversity could lead to caps or limits (see further *Section B: Caps and Limits*, p. 7 above). Taking into consideration: (i) the comprehensive, user-friendly and interactive Natura 2000 network website (ii) the ability for public participation monitoring of special areas of conservation (iii) the significant number of sites falling within the Natura 2000 framework and (iv) the discretion afforded to Member States in accepting or rejecting a Nature Permit on the grounds of ‘likeliness’ to cause ‘significant harm’ to a Natura 2000 site, there exists strong potential routes to enforce an airport cap on biodiversity grounds.

Are there any legal avenues to challenge new or existing airports on the basis of biodiversity?

- [Article 6\(3\) of the Habitats Directive](#) (as transposed into national law) could potentially lead to the rejection of airport expansion projects on the basis of the impact of the airport:

Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

A challenge may therefore be brought in the context of a planning application where (i) an appropriate assessment of the implications for a conservation site has not been carried out and/or (ii) an expansion plan has been agreed to where it has not been properly ascertained that it will not adversely affect the integrity of the site concerned. In *Holohan and Others v An Bord Pleanála* [2018], the ECJ held that such assessments should be capable of removing all reasonable scientific doubts and the project’s impact on the protected area.

Potential campaigning avenues to challenge airport expansion

- **Biodiversity Convention and GBF:** Adopted in 2022, the international biodiversity legal framework represents a new forum to campaign for greater action on airports affecting biodiversity at the EU level. As a high-emitting, developed region, the EU should take the lead in adopting legislation and policy instruments, including on aviation, to restore nature.
- **Habitats Directive:** The six-year reporting period cycle on the effectiveness of the Habitats Directive will culminate in an updated '[State of Nature in the European Union](#)' report. The report's findings may continue to expose Member States' poor implementation assuring the protection and restoration of habitats.
- **Nature Restoration Regulation:** By September 2026, Member States must submit their first National Restoration Plans, demonstrating how they will deliver on the Nature Restoration Regulation targets. NGOs or concerned citizens could complain to the Commission if a Member State fails to do this.

Case studies

- **[The Netherlands: Amsterdam Schiphol Nature Permit case \(4 June 2025\)](#)** On the basis of excessive nitrogen emission impacting Natura 2000 sites in the Netherlands, the NGO Mobilisation for the Environment (MOB) along with other organisations formally requested an investigation into Amsterdam Schiphol airport in 2022 (which did not have a nature permit at the time). After a ministerial decision to grant a Nature Permit for the growth of Schiphol, this decision was challenged by MOB before the District Court of The Hague in 2025. The court ruled that the granted nature permit was not sufficiently substantiated or prepared and so concluded that the permit was annulled. In this case the court took a wide view of The Netherlands' biodiversity obligations when considering the impact of flight emissions, finding that offsets could not be used to permit an increase in capacity but should be used to reduce nitrogen levels overall. Since the ruling, [the Dutch Council of Ministers has granted Schiphol Airport a two year long temporary nature permit](#), meaning the airport can operate while it seeks to obtain a new permit.

3. Climate change mitigation

Introduction

Aviation's significant impact on the climate crisis is well established in science and law. Aviation is estimated to be responsible for as much as 6-9% of global heating to date when taking into account both CO₂ and non-CO₂ emissions. The European Parliament's Committee on Environment ('ENVI') has recorded that 'sustained multi-decade growth' of the sector is projected to continue and that 'air travel and emissions are projected to more than double up to 2050'.

Notwithstanding the impacts of aviation's non-CO₂ short-lived climate forcers, CO₂ emissions from aircraft need to peak between 2025–2030 in order to align with the Paris Agreement. However, the reality is the current trajectory of international aviation is consistent with a 4°C+ pathway by 2050. The International Court of Justice (ICJ) recently confirmed that the 1.5°C temperature target as set by the Paris Agreement and best available science is the primary goal to ensure a safe and liveable future for all. Any incremental heating above this level subjects the planet to multiple devastating tipping points. At the same time, 2024 marked the first year to exceed 1.5°C above pre-industrial levels.

Despite this, the aviation industry generally continues to operate in a business-as-usual fashion, prioritising growth of the sector including in some instances planning for airport expansion. It becomes essential that demand reduction is prioritized to ensure the aviation sector is fairly, lawfully and rapidly reducing its significant contribution to climate change.

Legal framework

International level

All States, including the EU and its Member States, have distinct and interrelated obligations to prevent significant climate harm under international law. These obligations apply to all sectors, including aviation.

On 23 July 2025, ICJ handed down its highly anticipated *advisory opinion on state obligations with respect to climate change*.¹⁵ The advisory opinion has significant implications for aviation and airport expansion:

- Every country must use 'all the means at its disposal' to adopt measures to prevent domestic and transboundary harm from aviation GHG emissions under customary international law.
- States must exercise due diligence in regulating private actor's emissions, including airlines.

¹⁵ For the full ICJ Advisory Opinion, please see here: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>.

- In exercising due diligence to prevent significant harm to the environment, all countries must, among other things, conduct an adequate Environmental Impact Assessment (including taking into account the possible downstream effects of GHG emissions) for *any proposed activity* which may cause harm in a transboundary context.
- The customary principle of co-operation requires all countries to adopt policies and measures to limit global warming to 1.5°C.
- Under the Paris Agreement, each Party must exercise due diligence so that its climate plan ('NDC') reflects its 'highest possible ambition' and is capable, when taken together with other NDCs, of meeting the 1.5°C temperature goal. It may be inferred that climate plans must necessarily include international aviation emissions to achieve this obligation.¹⁶
- Under the UN Convention on the Law of the Sea, Parties to the Convention must 'take all necessary measures to prevent, reduce and control marine pollution from any source'¹⁷ including 'future or potential pollution',¹⁸ including taking action on aviation.
- All countries must reduce aviation emissions in line with the highest possible ambition aligned with international human rights law.

Where a breach of any of these obligations occurs, the ICJ found this constitutes an internationally wrongful act under the law of State responsibility, which may give rise to remedies such as reparations, cessation of the act and a declaration of non-repetition. The court noted that whether harm has occurred requires a case-sensitive enquiry to establish causation. But the court was clear that fossil fuel consumption (*para 427*), along with an inadequate environmental risk assessment of the possible downstream effects of a project (*paras 295 – 298*), qualify as two failures to exercise due diligence in preventing significant harm to the environment.

EU level

A suite of legislation and policy instruments has been adopted by the European Union with regards to climate change in order to address, mitigate and reduce the impact of aviation emissions. These will be briefly considered below to the extent relevant:

- **EU Climate Law:** Regulation 2021/119 (the '**European Climate Law**') sets out the legally binding goal within the European Green Deal for Europe's economy and society to become climate-neutral by 2050. The law also enshrines an intermediate target of reducing GHG emissions by at least 55% by 2030 and a 2040 target of 90%

¹⁶ Opportunity Green, 'States Must Address Climate Impacts from International Aviation and Shipping' (Opportunity Green, 21 March 2024) <https://opportunitygreen.org/climate-law/press-releases/submission-to-the-international-court-of-justice> accessed 22 April 2026

¹⁷ At paragraph 346.

¹⁸ For the full ITLOS Advisory Opinion, please see here: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf paragraph 198, and as clarified by the ICJ AO at paragraph 343 and 346.

reduction in net GHG emissions compared to 1990 levels. These targets apply to all sectors, including aviation.

- **Environmental Impact Assessment Directive:** Directive 2011/92/EU, as amended by Directive 2014/52/EU (the ‘**EIA Directive**’) specifies projects which require an EIA to be undertaken (Articles 4 and 5) where Article 3(1) requires an EIA to ‘identify, describe and assess’ the ‘direct and indirect effects of a project’ on, amongst other things, the ‘soil, water, air, climate and landscape’. A growing body of case law¹⁹ has dealt with the meaning of ‘indirect effects of the project’, typically assessing the validity of an impact assessment of a fossil fuel extraction project. The European Court of Human Rights judgment in *Greenpeace Nordic and Others v Norway* built on previous precedents set by UK courts and the European Free Trade Association (EFTA) Court to conclude that a EIA must provide a, ‘comprehensive assessment of the effects of the anticipated petroleum production on climate change, comprising, among other things, the assessment of combustion emissions’ (para 335) while citing the ICJ AO that such EIAs ‘should assess the possible downstream effects of activities contributing to GHG emissions, based on the best available science’ (para 324).²⁰ This shows that likely downstream emissions, wherever they occur geographically and whether or not also assessed for another project, should be included in an EIA. Whilst these findings were in respect of fossil fuel extraction projects they arguably apply by analogy to airport expansion projects, particularly when taken with the ICJ’s wide interpretation of States procedural obligations to conduct an EIA assessment for any proposed activity which poses a risk of significant transboundary harm.
- **EU Slots Regulation and Air Services Regulation:** As considered above in *Section B: Caps and Limits* these instruments provide Member States and the relevant competent authority with a legal route to reduce airline slots at airports in response to climate change or risk of environmental harm.²¹
- **EU Emissions Trading System:** The legislation implementing the European Green Deal includes, inter alia, Directive 2003/87/EC (as amended by Regulation 2018/842), which establishes the EU ETS. This works as a cap-and-trade system to reduce emissions on a sector-basis. International flights are excluded from the ETS (although this may be expanded in 2027) and so a significant proportion of European flights (and emissions) are not governed by the emissions reduction framework.

¹⁹ Inter alia: *R (Finch) v Surrey County Council* (UKSC); *The Norwegian State v Greenpeace Nordic, Nature and Youth Norway* and; *Greenpeace Nordic and Others v Norway*, Application no 34068/21, Judgment of 28 October 2025 (ECtHR)

²⁰ The court also referred to the Nordic Supreme Court Judgment which concluded an EIA “had to take into consideration both the risk of traditional environmental harm and that of the damaging effects of downstream GHG emissions from the extraction and subsequent combustion of petroleum (also referred to as “scope 3 emissions” or “combustion emissions”), including emissions abroad (“exported emissions”).”

²¹ EU Slot Regulation, Article 6(1) and 8. Please see, ‘*Opportunity Green Reducing airport capacity on climate grounds under the EU Slot Regulation*’ (October 2025) for full legal analysis.

Domestic level

It is beyond the scope of this toolkit to consider both domestic climate legislation and the effectiveness of each Member State's implementation of EU law.

Can climate grounds be used as a justification for capping flights?

- Yes, climate change mitigation could lead to caps or limits (see further *Section B: Caps and Limits*, p. 7 above). Large projects that facilitate fossil-fuel based activities such as airports are likely to engage international, EU and domestic climate obligations. To meet such obligations, states should consider adopting caps as outlined in *Section B (Caps and limits)* above.

Are there any legal avenues to challenge new or existing airports on the basis of climate mitigation?

Yes, there are potential routes to legally challenge airport capacity and expansion projects with respect to the climate impacts of aviation.

New opportunity

Recent case law on the EIA Directive (including the UK's Supreme Court ruling in *Finch*, the EFTA Court's advisory opinion in *The Norwegian State v Greenpeace Nordic, Nature and Youth Norway*, and the European Court of Human Rights' ruling in *Greenpeace Nordic and Others v Norway*) has shown that EIAs need to include the likely downstream emissions of projects, irrespective of where those emissions occur (and regardless of whether those emissions are considered in respect of any other projects).

Applying this case law to airports, EIAs for new airports and airport expansions should be including all emissions from arriving and departing flights in the assessment. We consider there is the potential to challenge any EIA which fails to do so.

- **EIA challenge**

As noted in the box above, a challenge could potentially be brought against an EIA which failed to properly account for the scope 3 emissions and for non-CO₂ emissions of the additional departing and arriving flights from a new airport or an airport expansion. Other arguments could also be raised in such a challenge, including in respect of any overreliance on alternative aviation fuels in an EIA for an airport expansion project.

- **Internationally wrongful acts, a challenge under international law.**

In theory, following the ICJ's reasoning in its advisory opinion on climate change, a State could bring a challenge against another State for failing to prevent significant harm to the environment, and this could include inaction on the aviation sector and international aviation.

In addition, the ICJ's findings can be used to support and bolster other legal challenges to airport expansions, and applications to domestic and regional courts citing the ICJ advisory opinion findings are becoming increasingly prevalent.

Potential campaigning avenues to challenge airport expansion

Climate change mitigation can be used to campaign for capacity caps at airports. Leveraging the above legal arguments in campaigning (for example, a public-facing campaign or consultation response) can help provide governments with the legal basis to engage on aviation / specific demands related to airports.

- **CO₂, non-CO₂, and specific flight caps at airports:** Taking learnings from the climate impact reduction of Schiphol's general flight cap,²² airports have the means to impose specific GHG emissions 'ceilings' in order to ensure they are working towards the multiple climate, environmental and health obligations under EU and international law discussed in this toolkit. One study on the effectiveness of airport slot reductions as a strategy for mitigating GHG emissions, focusing on Amsterdam Schiphol Airport, concluded the importance of targeting long-haul flights and adopting comprehensive policies to achieve substantial emissions reductions rather than imposing general caps. It is argued by scholars and NGOs that the imposition of GHG emission caps and targeted flight caps, rather than general flight caps, is preferable from a climate perspective as it directly targets emissions instead of leaving discretion to the types of flights being restricted (i.e., only short-haul which have less emissions impact).²³
- **EU ETS expansion:** where the EU Commission is set to expand the ETS on aviation to include international flights departing and landing in EU airports, it would be prudent for concerned groups to work to ensure that this position is not resiled from in the current political environment and in the context of 'simplification' efforts when it comes to EU environmental legislation. If the expansion of scope is implemented, EU

²² For a full analysis of the cap, please see Pere Suau-Sanchez, Frédéric Dobruszkes and Giulio Mattioli, '[Does cutting airport slots reduce climate impact? The case of Amsterdam airport](#)' (2025) 143 Transport and Environment.

²³ Chris Lyle, 'COMMENTARY: Capping aviation emissions – a pressing necessity with a potential solution' (Green Air News, 27 June 2024); Transport & Environment, '[Above the clouds: European aviation emissions in 2023](#)' (3 April 2024).

Member States will be required to reduce the emissions from international flights, increasing the need to impose caps.

- **Aligning airports with climate obligations:** There is an increased pressure on States to align airports with climate targets following the judgment in [Greenpeace Netherlands and 8 citizens of Bonaire v The Netherlands \(2026\)](#) which found that the reduction standards within the Dutch Climate Law (as well as European targets) is not in line with the Paris Agreement and UN Convention as it does not fully account for emissions from international aviation.

Case studies

- **Luton airport expansion Development Consent Order Challenge** Luton and District Association for the Control of Aircraft Noise (“LADACAN”) brought a judicial review claim to the UK High Court regarding the Secretary of State’s decision to grant a Development Consent Order for the expansion of London Luton Airport. Grounds under consideration included the failure to fully account for the effects of the proposed expansion on the climate, as contrary to the judgment in *Finch*, **Error! Bookmark not defined.** in particular the emissions from inbound international flights and the likely significant effects of non-CO₂ emissions on the climate. The judge dismissed the claim, finding that the Airport’s National Policy Statement limited the consideration of what constitutes scope 3 emissions to outbound flights only, in line with the Government’s carbon budget which does not account for the full scope of international aviation emissions. We understand that LADACAN may be preparing to appeal the decision.
- **UK Jet Zero Strategy Judicial Review Challenge** Group for Action on Leeds Bradford Airport (GALBA) and NGO, Possible, brought judicial reviews to the UK High Court against the ‘Jet Zero Strategy’, the UK government’s policy for achieving net zero aviation by 2050. Among other grounds considered was whether the government’s consultation process was legal, including new evidence showing that the then-Minister had already decided against demand management before consulting. The judge dismissed the claim, ruling that the Minister was entitled to decide against demand management and to rule it out from the Jet Zero Strategy consultation process. For other UK groups wishing to challenge the Government’s approach to aviation, this ruling should be taken as a demonstration regarding the Court’s unhelpful reluctance to rule against ministerial decisions. In other words, it may be argued that aviation demand management must be written into UK legislation for a legal obligation to exist, and the UK government is currently heading in the wrong direction for this.

4. Noise

Introduction

Prolonged exposure to high levels of noise from aircraft traffic can cause a variety of significant impacts to physical and mental health and well-being.²⁴ While one in five people of all age groups in the EU live in areas where noise levels harm health, people from marginalised communities are especially vulnerable to noise exposure and are less likely to have the means and capabilities to adapt to the adverse effects of excessive noise.²⁵

As a result of aircraft noise, it is estimated that 12,500 schoolchildren suffer learning impairment in school and long-term exposure to noise is estimated to cause 12,000 premature deaths and to contribute to 48,000 new cases of ischemic heart disease per year in the European territory. However, EU objectives to reduce noise pollution, as well as mandatory reporting thresholds for Member States, are not currently aligned with the recommended levels set by the World Health Organization (**WHO**), and so even these severe effects of noise are likely to be underestimated.

Noise pollution is also a threat to biodiversity and wildlife, with 19% of protected area under Natura 2000 exposed to noise resulting in, amongst other issues, a decrease in population densities of species sensitive to noise. *(Please see further section C.2 (Biodiversity) of this toolkit)*

Within the EU, noise exposure has generally not decreased despite the implementation of EU noise framework over 20 years ago. As with the other constraints considered in this toolkit, taking action on one of the above can have a positive outcome on the reduction of noise levels.

Legal framework

International level

At the international level, no single global law exists on the management and reduction of noise pollution but rather is addressed by multiple specialised agencies.²⁶ The international framework on noise pollution generally provides non-binding ‘best practice’ and guidance with limited meaningful recourse to tackle airport noise pollution on a local level in Europe.

²⁴ For example, high blood pressure, cardiovascular disease and premature mortality as well as chronic disturbance and stress.

²⁵ Although we note that active mitigation produces better outcomes for people and planet compared to adaption.

²⁶ For example: the International Labour Organization, Working Environment (Air Pollution, Noise and Vibration) Convention 1977, Articles 7 and 8. It is outside the scope of this toolkit to conduct a full analysis of the international legal framework regarding noise pollution.

- Most pertinent to aircraft noise is the ICAO's Resolution A41-20²⁷ (**Balanced Approach to Aircraft Noise Management**). The balanced approach consists of an analysis of a range of available measures, namely (i) the reduction of aircraft noise at source, (ii) land-use planning and management, (iii) noise abatement operational procedures and (iv) operating restrictions. Under Article 2, Member States must consider these four elements on an airport-by-airport basis, in a way that prioritises cost-effectiveness. This methodology has been adopted by the EU (see below) and sets out that operating restrictions should only be pursued as a last resort after other noise-mitigation measures have been fully considered and found insufficient where a noise problem has been identified by the Competent Authority.
- The **WHO** recommends specific [EU aircraft noise level limits](#) for average daytime and nighttime exposure to protect public health which have not been adopted into EU legislation (see below).

EU level

At the **EU level**, aircraft noise at major airports is regulated by the **Environmental Noise Directive (END)** (2002/49/EC) and the **Balanced Approach Regulation (BAR)** (598/2014). Together these provide a general framework for the assessment and management of noise.

- The **END** does not set binding limit values for noise but reporting thresholds which require each Member State to submit periodic action plans on noise levels within its territory and its '*priorities...identified by the exceeding of any relevant limit value or by other criteria*' (Article 8) as chosen by the Member States. There is no direct enforcement mechanism if the action plans are weak, delayed or ineffective.²⁸
- The **BAR** provides a procedural framework approach to the management of noise-related operating restrictions at Union airports, in line with the ICAO's balanced approach (see above). It sets out that, where a noise problem has been identified by the 'Competent Authority', operating restrictions should only be pursued as a last resort after other noise-mitigation measures have been fully considered and found insufficient (Article 5(3)(d)). Therefore, discretion is left to national legislation with regards to the level at which noise becomes a problem and how the balanced approach is applied in result (as long as the approach taken in a given case can be reasonably justified). In addition, the right of appeal (Article 4) only provides recourse to challenge a decision against operating restrictions (i.e., where operating restrictions have actually been invoked due to noise).

A 2022 study on EU Airport Noise Reduction, commissioned by the European Commission, concluded after an analysis of the implementation of the END and BAR by Member States, '[there is no evidence of established and clear noise abatement](#)

²⁷ Subsequent guidance documents on the application of the Balanced Approach can be found [here](#): Balanced Approach, including guidance on the Balanced Approach (Doc 9829), land use and environmental control (Doc 9184), recommended method for computing noise contours around airports (Doc 9911), policies for charges for airports (Doc 9082), airport economics (Doc 9562) and manual for airport and air navigation tariffs (Doc 7100), amongst others.

²⁸ The END only invites Competent Authorities to "consider or enforce mitigation measures" if self-determined limit values are exceeded, see: END, Definitions, Article 3(s).

objective statements which include a quantifiable outcome or defined goal’ which has led to fragmented implementation of the legislation across the EU.

The adverse health impacts from noise may also engage a range of fundamental human rights; under Article 2 (the right to life) and Article 8 (the right to private and family life) of the **European Convention on Human Rights (ECHR)**, as well as the right to a healthy environment. Governments must take practical measures to safeguard individuals from the health and environmental risks of noise.

Domestic level

At the **domestic level**, national legislators set the actual level of noise limits and the measures to deal with noise. It is beyond the scope of this toolkit to consider national legislation across the EU, however, we set out below some general observations derived from conclusions from Member State stakeholder interviews conducted by the European Commission in its 2022 study. These may be helpful in identifying potential legal avenues to challenge airports on the basis of noise domestically (but please note we recommend seeking expert local legal advice in relation to any legal action).

- A noise problem is “mostly” defined within the context of a specific Environmental Permit or Planning Condition (per national legislation) and are considered outside of the END or BAR process.²⁹ *(Please see further section C.2 (Biodiversity) of this toolkit).*
- Because the END does not set measurable desired outcomes, this hinders the effectiveness of the legislation in reducing airport noise. Notwithstanding EU limits, Competent Authorities should aspire to set SMART noise abatement objectives, in line with the recommendations of the 2022 study. If set with an enforcement mechanism, this may give a domestic route to challenge excessive noise from airports.

Can noise be used as a justification for capping flights?

- In the EU, the balanced approach under BAR must be followed in order to introduce operating restrictions (and so such restrictions can only be implemented as a last resort). For illustrative purposes, if a Competent Authority in a Member State wants to introduce night flight restrictions for noise reasons, it must follow the procedure and assessment criteria set out in Articles 4 and 8 to demonstrate this restriction was taken as a last resort. Authorities must justify this decision to the European Commission with six months’ notice and the decision is subject to appeal procedures. It is generally an unfavourable ground for introducing a cap.

²⁹ See BAR Recital 20: “*This Regulation does not require the review of noise-related operating restrictions already in place at the date of its entry into force, including those resulting from court decisions or local mediation processes.*”

Are there any legal avenues to challenge new or existing airports on the basis of noise?

- **Consultation requirements:** Member States are obliged to consult the public during the process of applying the balanced approach to deal with a noise problem (BAR, Articles 3 and 6(2)) and during the development of action plans for the END (Article 8(7)). Such consultations provide an opportunity to highlight noise issues and any non-compliance with legal levels.³⁰
- **Environmental permitting and Environmental Impact Assessments:** Noise may also be covered in environmental permits and/or development planning conditions (please see section C.2 (*Biodiversity*) C.3 (*Climate change*) of this toolkit).

Potential campaigning avenues to challenge airport expansion

- **WHO-aligned noise limits:** Legally-binding and standardised noise abatement objectives that align with WHO guidelines would ensure that each Member State is working within or towards airport noise levels that do not endanger human health. Such legislative improvements could be sought at EU level and also at the national level (for example, through the adoption of SMART abatement objectives (see European Commission 2022 study above)). If successful, these improvements would in turn provide greater means to pursue airport restrictions on the grounds of noise.

Case studies

Schiphol Airport, Netherlands

The State of the Netherlands v Foundation for the Protection of Aircraft Nuisance (RBV) [2023] The Court of Appeal decision concerned the application of the balanced approach in accordance with the BAR regarding a “year-long experiment” reducing annual flights from 500,000 to 460,000³¹ to combat noise pollution. Overturning the decision of the District Court, the Court held that the European regulations do not apply to the proposed measure as the experimental regulation is a temporary, short-term experiment in preparation for possible future adjustments to the current noise regulations, for which the State is following the “balanced approach” procedure. This sets a positive precedent for implementing caps, albeit temporary, on the basis of noise.

RBV v The State of the Netherlands [2024] Following the interim judgment (above) this case dealt with the potential breach of Article 8 of the ECHR in relation to whether the State acted unlawfully by exposing a disproportionate number of people to serious annoyance and sleep disturbance caused by air traffic to and from Schiphol. Finding that the Netherlands acted unlawfully by failing to enforce the legal framework on noise

³⁰ If the public are being denied access to this process, the Aarhus Convention on access to information, public participation and access to justice may provide an additional avenue to explore.

³¹ At the time of writing, this cap is set to a maximum of 475,000 – 485,000 yearly flights, starting in late 2025. See: European Commission, ‘Commission adopts decision on Schiphol Airport noise reduction plan’ (5 March 2025).

regarding measurement points around Schiphol, the Court ruled there was a breach of Article 8, and, due to lack of adequate legal protection, the court also found a breach of Article 13. It should be noted that RBV requested the court to order the States to reduce the number of aircraft movements at Schiphol; the court did not grant this order, finding the legislature ‘after properly weighing all the interests involved in aviation’ must establish specific legislation and regulation (pointing to the balanced approach). However, the Dutch Government was ordered to enforce the applicable laws and regulations, and to create a form of practical and effective legal protection that is accessible to all those who are seriously inconvenienced and have their sleep-disturbed, within 12 months of the ruling.

In **March 2026**, the Dutch Council of State – the Netherlands’ highest administrative court – annulled the government’s decision to cap annual flights at Schiphol at 478,000 movements per year. The court found that the cap was not properly justified: critically, it failed to account for the fact that different aircraft types produce significantly different noise levels, meaning that a numeric flight limit does not itself establish or guarantee a maximum noise exposure level. Additional elements of the Airport Traffic Decree, including the treatment of fleet renewal, were also found to be insufficiently reasoned. A separate nighttime flight limit of 27,000 movements was upheld, as no party had contested it. The ruling will likely require more substantive changes to aviation practice at Schiphol to achieve the legally mandated noise reduction goals. One key lesson is that once a statutory noise reduction target is embedded in national law — such as the Dutch obligation to reduce noise pollution for neighbouring communities by 20% — this becomes a durable legal anchor for ongoing challenge and enforcement. See sections C.2 ‘biodiversity’ and C.3 ‘climate change’ for more Schiphol Airport case study examples.

Heathrow Airport, United Kingdom

In ***Hatton and Others v. the United Kingdom [2003]***, a challenge brought on behalf of individuals who all live or lived in the vicinity of Heathrow airport, the European Court of Human Rights (ECtHR) found no violation of Article 8, ECHR with respect to an alleged increase in noise pollution after the lifting of a flight cap. The Court ruled that the ‘State had to be allowed a wide margin of appreciation’ and that ‘it would not be appropriate for the Court to adopt a special approach in that respect by reference to a special status of environmental human rights’ when considering the substantive aspect of whether a fair balance had been struck between the competing interests of economic growth factors and the applicants quality of private life.³² While, this demonstrates the wide margin of discretion afforded to Member States on its approach to noise reduction efforts under the EU framework, the ECHR case related to Schiphol airport (above) provides an updated interpretation of the protection of human rights in relation to airports.

³² It should be noted this judgment precedes the precedent set in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* which found that Article 8 (respect for private and family life) includes a right to effective protection by State authorities from the serious adverse effects of the climate crisis on lives, health, well-being and quality of life.

Section D: Stay Grounded contacts and useful resources

- **EU Zero Pollution Dashboard** this interactive dashboard measures the efforts of 15 EU regions in relation to environmental targets (as well as noise levels) and could be used to research air quality in your local area.
- The CJEU has a **case law search tool** where you can explore rulings on the application and interpretation of EU laws, any case which deals with obligations relating to air quality standards provides important source of jurisprudence regarding the interpretation of various provisions relating to the impact of airports and aviation.
- The EEA provides various **Natura 2000 tools** for public use such as interactive maps and the latest air quality data on all sites.