



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 116/12
Luxembourg, 13 September 2012

Advocate General's Opinion in Case C-547/10 P
Swiss Confederation v Commission

Advocate General Jääskinen proposes that Switzerland's appeal in the 'Zurich Airport case' should be dismissed

Zurich Airport is situated 15 kilometres from the German border. All flights landing from the north or north-west use German air space.

In order to reduce the noise to which the local population was exposed, Germany adopted measures in 2003 prohibiting overflight at low altitude over the German territory close to the Swiss border between 21.00 and 07.00 on weekdays and between 20.00 and 09.00 on weekends and public holidays. During those periods the two landing approaches from the north were thus no longer possible. In addition, during those periods, the measures laid down minimum altitudes for flights taking off from Zurich Airport.

On 10 June 2003 Switzerland submitted a complaint to the Commission, asking it to take a decision that Germany should cease applying those measures. According to Switzerland, the measures were contrary to the Agreement on Air Transport concluded between the European Union and Switzerland.¹ On 5 December 2003 the Commission decided² that Germany could continue to apply the measures.

The General Court, by judgment of 9 September 2010,³ dismissed the action brought by Switzerland against the Commission's decision. Switzerland thereupon appealed to the Court of Justice, seeking to have the General Court's judgment quashed and the Commission's decision annulled.

In his Opinion delivered today, Advocate General Jääskinen proposes that the Court should dismiss the appeal.

Before discussing the grounds of appeal put forward by Switzerland, Mr Jääskinen first examines the admissibility of the action. On the question whether a third State may bring proceedings before the European Union judicature to contest a decision of the Commission, he states that the fact that it is a contracting party to the Agreement on Air Transport is not sufficient for Switzerland to be treated in the same way as the Member States, which enjoy certain procedural privileges. Switzerland, which has chosen an 'à la carte' method of cooperation, must satisfy the same criteria as a natural or legal person wishing to challenge a decision of a European Union institution. Since the Commission's decision was addressed to Germany and not to Switzerland, Switzerland can

¹ Agreement between the European Community and the Swiss Confederation on air transport, signed on 21 June 1999 in Luxembourg and approved on behalf of the Community by Decision 2002/309/EC, Euratom of the Council and of the Commission as regards the Agreement on Scientific and Technological Cooperation of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation (OJ 2002 L 114, p. 1). The agreement applies, for the purposes of the agreement, Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes.

² Commission Decision 2004/12/EC of 5 December 2003 on a procedure relating to the application of Article 18(2), first sentence, of the Agreement between the European Community and the Swiss Confederation on air transport and Regulation (EEC) No 2408/92 (Case TREN/AMA/11/03 — German measures relating to the approaches to Zurich airport) (OJ 2004 L 4, p. 13).

³ Case [T-319/05](#); see also Press Release [No 82/10](#).

thus challenge it before the European Union judicature only if it is directly and individually concerned by the decision. In the Advocate General's view, that is the case in the particular circumstances of the present dispute, so that the action brought by Switzerland must be regarded as admissible.

The Advocate General then rejects Switzerland's arguments relating to the classification of the German measures. In his view, the General Court was right to find that those measures did not involve a prohibition of the exercise of traffic rights in German air space, but entailed merely a change in the flight paths of flights departing from or landing at Zurich Airport. They were confined to preventing for specified periods overflights at low altitude over the part of German territory close to the Swiss border, while permitting overflights over that territory at a higher altitude.

The Advocate General likewise rejects Switzerland's arguments alleging that the General Court erred with respect to the Commission's powers of review of the German measures. The Commission was only required to verify that the measures had been taken for reasons relating to safety, the protection of the environment or the allocation of slots, and that they applied, so far as the exercise of traffic rights was concerned, to air carriers in a non-discriminatory way. The interests of the airport operator and of persons living nearby are not therefore taken into account in such an examination.

Mr Jääskinen further considers that neither the freedom to provide services nor the principle of proportionality applies in connection with the Agreement on Air Transport, so that the Commission was not obliged to ascertain whether the German measures complied with them.

Finally, according to the Advocate General, the General Court cannot be accused of erring in law as regards the application of the principle of non-discrimination with respect to air carriers, in particular Swiss, the airline which uses Zurich Airport as a hub. The General Court's conclusions that the German measures were justified and proportionate constitute a finding of fact and are therefore, in principle, not subject to review by the Court of Justice on appeal.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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