



Press and Information

General Court of the European Union  
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Judgment in Case T-319/05  
Swiss Confederation v Commission

## **The General Court upholds the Commission decision approving German measures relating to the approaches to Zurich airport**

*Those measures do not constitute a prohibition of the exercise of traffic rights but merely a modification of the flight path of the flights concerned*

Zurich airport is situated at Kloten (Switzerland), north-east of the city of Zurich and approximately 15 km south-east of the border between Switzerland and Germany. Given the proximity of the German border, most flights landing at, or taking off from, Zurich in the early morning and late evening must use German airspace.

The use of that airspace was governed, between 1984 and 2001, by a bilateral agreement, followed by negotiations, between Switzerland and Germany. In 2003, the German Federal Aviation Authority adopted national rules on air traffic. Those rules laid down measures which were designed, essentially, to prevent, under normal weather conditions, low-altitude overflight of the German territory close to the Swiss border between 21.00 hours and 7.00 hours on weekdays and between 20.00 hours and 9.00 hours on weekends and public holidays, in order to reduce the noise to which the local population was exposed.

On the basis of the Agreement between the Community and Switzerland on Air Transport<sup>1</sup>, which applies, for the purposes of the Agreement, Regulation No 2408/92 on access for Community air carriers to intra-Community air routes<sup>2</sup>, Switzerland submitted a complaint to the Commission on 10 June 2003, requesting the Commission to take a decision to ensure that Germany would cease to apply the measures introduced by the national rules.

On 5 December 2003, the Commission decided<sup>3</sup> that Germany could continue to apply its national rules. Switzerland brought an action against that decision, arguing, in particular, that the Commission ought to have examined the German measures in the light of Article 9 of Regulation No 2408/92, which refers to operational rules which impose conditions on, limit or refuse the exercise of traffic rights, and alleging infringement of the principles of equal treatment, proportionality and freedom to provide services in the air transport sector.

In its judgment delivered today, **the General Court upholds the Commission decision.**

The Court holds, first, that the Commission did not commit any error of law in finding that the German measures do not impose conditions on, limit or refuse the exercise of traffic rights. The German measures do not in any way involve a prohibition, even a conditional or partial prohibition, of passage through German airspace for flights leaving from or arriving at Zurich airport, but merely

<sup>1</sup> Agreement between the European Community and the Swiss Confederation on Air Transport, signed in Luxembourg on 21 June 1999 (OJ 2002 L 114, p. 73), 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).

<sup>2</sup> Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ 1992 L 240, p. 8).

<sup>3</sup> 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 and Regulation No 2408/92 (Case TREN/AMA/11/03 — German measures relating to the approaches to Zurich airport) (OJ 2004 L 4, p. 13).

modify the flight path of the flights concerned, after take-off from, or before landing at, Zurich airport.

With regard to the infringement of the principle of equal treatment to the detriment of Swiss carriers using Zurich airport as a hub, the Court considers that the proximity to a tourist area, which, as such, is particularly sensitive to noise, constitutes an objective consideration justifying the adoption of the measures in question in regard to Zurich airport alone. The Court also holds that the German measures are proportionate to the objective pursued, namely, a reduction in aircraft noise, at night and during weekends, in that part of German territory which borders on Switzerland, since Germany had no other means at its disposal to bring about a reduction in noise levels.

So far as concerns the breach of freedom to provide services in the air transport sector, the Court takes the view that the objective of reducing noise levels constitutes a specific aspect of environmental protection, which is one of the overriding reasons in the public interest capable of justifying restrictions on the fundamental freedoms guaranteed by the EC Treaty, including the freedom to provide services, and that the measures in question are proportionate to that objective.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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

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