



Press and Information

Court of Justice of the European Union

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Judgment in Case C-120/10

European Air Transport SA v Collège d'environnement de la Région de Bruxelles-Capitale and Région de Bruxelles-Capitale

**Member States can, theoretically, establish maximum noise levels, as measured on the ground, to be complied with by airlines overflying areas located near an airport**

*However, if such legislation has the effect of forcing airlines to forgo business operation, it can only be adopted in accordance with conditions laid down by EU law*

In order to reduce noise pollution generated by aircraft using EU airports, Directive 2002/30<sup>1</sup> permits Member States to adopt restrictive measures known as 'operating restrictions'. Operating restrictions can be adopted only where certificated noise levels measured at source<sup>2</sup> – that is the aircraft itself – are exceeded.

Brussels-National Airport (Belgium) is located in the Région flamande (Flanders Region), although the flights operating from it also overfly the Région de Bruxelles-Capitale (Brussels-capital region) at a low height.

This case stems from a dispute between the airline European Air Transport (EAT) – specialising in operating cargo flights (DHL group) – and the Région de Bruxelles-Capitale (Belgium) and the Collège d'environnement de la Région de Bruxelles-Capitale.

On 19 October 2007, the competent regional authorities imposed an administrative penalty of €56 113 on EAT for exceeding, during the night, the limit values laid down in the rules of the Région de Bruxelles-Capitale. According to those rules, the limit values are measured on the ground.

The Conseil d'État (Belgium), which has to decide the dispute, decided to refer several questions to the Court of Justice for a preliminary ruling. The Belgian court asked the Court of Justice to clarify whether the rules of the Région de Bruxelles-Capitale, which sanction noise pollution caused by air traffic, may be regarded as an 'operating restriction' subject to the requirements of Directive 2002/30 and, in particular, to the policy of measuring noise pollution at source.

In its judgment delivered today, the Court observes at the outset that, to address aeroplane noise, the European Union adopts a **balanced approach**. The latter – defined by the International Civil Aviation Organisation (ICAO) – comprises four principal elements and requires careful assessment of all different options to mitigate noise, including reduction of aeroplane noise at source, land-use planning and management measures, noise abatement operational procedures and operating restrictions.

That balanced approach presupposes that operating restrictions are applicable only when any other noise management measures have failed to achieve the aims of Directive 2002/30.

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<sup>1</sup> Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (OJ 2002 L 85, p. 40).

<sup>2</sup> More specifically, Directive 2002/30 takes into account, in essence, the certificated noise levels of an aircraft. That noise certification is carried out according to a theoretical reference system of meteorological, geophysical and operational conditions. That reference system takes into account the following parameters: sea level, ambient temperature, moisture content, approved soil characteristics and microphone height as well as flight path and flight data recorders.

In that regard, the Court holds that an ‘operating restriction’ within the meaning of Directive 2002/30 is a prohibition, absolute or temporary, that prevents the access of an aeroplane to an EU airport.

**Consequently, environmental legislation, such as that at issue in the present case, imposing limits on maximum noise levels, as measured on the ground, to be complied with by aircraft overflying areas located near the airport, does not itself constitute an operating restriction as long as it does not prohibit access to the airport in question.**

In any event, the Court states that although the adoption a method consisting of measuring on the ground the noise produced by an aircraft in flight may constitute an element of a balanced approach, **it cannot, however, be ruled out that environmental legislation, such as that at issue in the present case, can in view of the relevant economic, technical and legal contexts, have the same effect as prohibitions on access to an airport.** However, **where it finds that the limits imposed by national legislation are so restrictive as very clearly to force aircraft operators to forgo business operation, such legislation would amount to a prohibition of access and would constitute, therefore, an ‘operating restriction’** within the meaning of Directive 2002/30. Such legislation must therefore be adopted in accordance with the conditions laid down by the directive.

**It is for the Belgian court to determine whether the measures adopted by the Région de Bruxelles-Capitale have such effects.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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