



Press and Information

Court of Justice of the European Union
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Judgment in Case C-547/10 P
Switzerland v European Commission

The Court of Justice dismisses the appeal brought by Switzerland challenging the German measures of 2003 relating to the approaches to Zurich airport

Zurich airport is situated 15 kilometres from the German border. All flights landing in Zurich from the north or north-west must use German airspace while landing.

In order to reduce the noise to which the local population was exposed, in 2003 Germany adopted measures prohibiting flight 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. As a result, the landing approaches to the airport from the north and north-west, previously used as the main approaches, were no longer possible during those periods. Moreover, aeroplanes taking off to the north during those periods had to make a detour until they had reached the prescribed minimum flight altitude before entering German territory.

Switzerland lodged a complaint with the Commission on 10 June 2003 requesting it to prohibit Germany from applying those measures. In Switzerland's view, those measures were contrary to the Air Transport Agreement¹ which it had entered into with the EU. However, on 5 December 2003, the Commission decided that Germany could continue to apply the measures².

By judgment of 9 September 2010³ the General Court dismissed the action brought by Switzerland against the Commission's decision. Consequently, Switzerland brought an appeal before the Court of Justice seeking to have the judgment of the General Court set aside and the Commission's decision annulled.

In today's judgment, the Court of Justice dismisses Switzerland's appeal.

The Court of Justice confirms, *inter alia*, that the German measures do not entail a prohibition of passage through German airspace for flights leaving or arriving at Zurich airport, but a mere change in the flight path of the flights concerned. Moreover, it confirms that the Commission's decision did not infringe the principle of the freedom to provide services, since that principle does not apply in the context of the EU-Switzerland Air Transport Agreement. Furthermore, the Court of Justice shares the view of the Commission and of the General Court that it was not necessary to take account, during the examination of the German measures, of the rights of the operator of Zurich airport and of persons living near that airport.

¹ Agreement between the European Community and the Swiss Confederation on Air Transport, signed in Luxembourg on 21 June 1999, 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).

² Commission Decision 2004/12/EC of 5 December 2003 on a procedure relating to the application of the first sentence of Article 18(2) of the Agreement between the European Community and the Swiss Confederation on Air Transport and Council 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](#) *Switzerland v Commission*, see also Press Release [No 82/10](#).

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 judgment is published on the CURIA website on the day of delivery.

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