

Case C-413/20

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

2 September 2020

Referring court:

Tribunal de première instance francophone de Bruxelles (Belgium)

Date of the decision to refer:

12 February 2020

Applicant:

Belgian State

Defendants:

LO

OG

SH

MB

JD

OP

Bluetail Flight School S.A.

1. Subject matter of the main proceedings

- 1 The Direction générale Transport Aérien (Directorate-General for Air Transport) ('the DGTA') is the administration of the Belgian State that, inter alia, supervises pilot training and issues aircraft pilot licences.
- 2 The defendants are former students of the duly authorised Bluetail Flight School, whose training programmes have been approved by the DGTA.

- 3 On completion of their training, and having passed the final skill test, they requested, at the end of 2018, the licence known as the CPL(A) (Commercial Pilot Licence (Airplane)).
- 4 On 15 January 2019, the DGTA refused to issue the licence, as it considered that their training had not included the requisite minimum 115 hours of ‘instrument time’.
- 5 On 11 February 2019, the Conseil d’État (Council of State) made an interim order suspending the enforcement of that refusal decision, on the ground that it failed to state the reasons on which it was based.¹
- 6 On 22 February 2019, the DGTA issued a new decision to the defendants refusing to grant the CPL(A) licence, in which it set out its reasons.
- 7 The Conseil d’État (Council of State) eventually declined jurisdiction and the former students made application, still seeking interim relief, to the civil court, which, by order of 18 April 2019, ordered the DGTA to issue the CPL(A) licences.
- 8 By judgment of 8 August 2019, the cour d’appel de Bruxelles (Court of Appeal, Brussels) upheld that interim order.
- 9 The Belgian State (DGTA) brought the dispute before the referring court for a decision on the substance.

2. The legislation at issue

Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (as amended before Commission Implementing Regulation (EU) 2018/1974 of 14 December 2018 amending Regulation (EU) No 1178/2011)

- 10 Annex I reads as follows, in the relevant passages:

‘SUBPART A

GENERAL REQUIREMENTS

...

FCL.010 Definitions

¹ See, in particular, judgment of the Conseil d’État (Council of State) No 653.659, published at <http://www.raadvst-consetat.be/arr.php?nr=243659&l=fr>.

For the purposes of this Part, the following definitions apply:

...

“Basic instrument training device (BITD)” means a ground-based training device which represents the student pilot’s station of a class of aeroplanes. It may use screen-based instrument panels and spring-loaded flight controls, providing a training platform for at least the procedural aspects of instrument flight.

...

“Dual instruction time” means flight time or instrument ground time during which a person is receiving flight instruction from a properly authorised instructor.

...

“Full Flight Simulator” (FFS) means a full size replica of a specific type or make, model and series aircraft flight deck, including the assemblage of all equipment and computer programmes necessary to represent the aircraft in ground and flight operations, a visual system providing an out-of-the-flight deck view, and a force cueing motion system.

...

“Flight Training Device” (FTD) means a full size replica of a specific aircraft type’s instruments, equipment, panels and controls in an open flight deck area or an enclosed aircraft flight deck, including the assemblage of equipment and computer software programmes necessary to represent the aircraft in ground and flight conditions to the extent of the systems installed in the device. It does not require a force cueing motion or visual system, except in the case of helicopter FTD levels 2 and 3, where visual systems are required.

“Flight and Navigation Procedures Trainer” (FNPT) means a training device which represents the flight deck or cockpit environment, including the assemblage of equipment and computer programmes necessary to represent an aircraft type or class in flight operations to the extent that the systems appear to function as in an aircraft.

...

“Instrument flight time” means the time during which a pilot is controlling an aircraft in flight solely by reference to instruments.

“Instrument ground time” means the time during which a pilot is receiving instruction in simulated instrument flight, in flight simulation training devices (FSTD).

“Instrument time” means instrument flight time or instrument ground time.

...

“Multi-crew cooperation” (MCC) means the functioning of the flight crew as a team of cooperating members led by the pilot-in-command.

...

“Pilot-in-Command” (PIC) means the pilot designated as being in command and charged with the safe conduct of the flight.

...

“Skill test” means the demonstration of skill for a licence or rating issue, including such oral examination as may be required.

...

“Student Pilot-in-Command” (SPIC) means a student pilot acting as pilot-in-command on a flight with an instructor where the latter will only observe the student pilot and shall not influence or control the flight of the aircraft.

...

Appendix 3

Training courses for the issue of a CPL and an ATPL

1. This Appendix describes the requirements for the different types of training courses for the issue of a CPL and an ATPL

...

4. The course shall comprise:

...

(b) visual and instrument flying training;

...

A. ATP integrated course – Aeroplanes

GENERAL

...

FLYING TRAINING *

* In the sense of ‘flight training’.

9. The flying training, not including type rating training, shall comprise a total of at least 195 hours, to include all progress tests, of which up to 55 hours for the entire course may be instrument ground time. Within the total of 195 hours, applicants shall complete at least:

- (a) 95 hours of dual instruction, of which up to 55 hours may be instrument ground time;
- (b) 70 hours as PIC, including VFR [Visual Flight Rules] flight and instrument flight time as student pilot-in-command (SPIC). The instrument flight time as SPIC shall only be counted as PIC flight time up to a maximum of 20 hours;
- (c) 50 hours of cross-country flight as PIC, including a VFR cross-country flight of at least 540 km (300 NM), in the course of which full stop landings at two aerodromes different from the aerodrome of departure shall be made;
- (d) 5 hours flight time shall be completed at night, comprising 3 hours of dual instruction, which will include at least 1 hour of cross-country navigation and 5 solo take-offs and 5 solo full stop landings; and
- (e) 115 hours of instrument time comprising, at least:
 - (1) 20 hours as SPIC;
 - (2) 15 hours MCC, for which an FFS or FNPT II may be used;
 - (3) 50 hours of instrument flight instruction, of which up to:
 - (i) 2 SPIC 5 hours may be instrument ground time in a FNPT I; or
 - (ii) 40 hours may be instrument ground time in a FNPT II, FTD 2 or FFS, of which up to 10 hours may be conducted in an FNPT I.

An applicant holding a course completion certificate for the Basic Instrument Flight Module shall be credited with up to 10 hours towards the required instrument instruction time. Hours done in a BITD shall not be credited.

- (f) 5 hours to be carried out in an aeroplane certificated for the carriage of at least 4 persons that has a variable pitch propeller and retractable landing gear.

SKILL TEST

10. Upon completion of the related flying training, the applicant shall take the CPL(A) skill test on either a single-engine or a multi-engine aeroplane and the IR skill test on a multi-engine aeroplane.'

3. Positions of the parties

1. The Belgian State (the DGTA)

- 11 In the Belgian State’s submission, the defendants did not complete the minimum 115 hours of instrument time during their training. The hours completed on an FNPT II simulator in excess of the ‘up to 55 hours’ of instrument ground time provided for in the first sentence of point 9 of Appendix 3 cannot be taken into consideration in the calculation of the instrument time required by point 9(e) of Appendix 3 to that regulation.
- 12 It refers, in particular, to the analysis which the European Union Aviation Security Agency (‘the EASA’) sent to it on 15 February 2019: ‘Whatever combination may be chosen, the total hours completed on an FNPT II can be only a maximum of 40 hours. With the 15 hours of MCC, the 55 hours referred to in point 9 are achieved and no further instrument ground hours can be taken into account for the issue of a licence’. The EASA confirmed the terms of that analysis on 12 June 2019.
- 13 The Belgian State therefore requests the court, first of all, to refer to the Court of Justice the first three questions for a preliminary ruling set out below and, as regards the substance, to order the former students to return their CPL(A) pilot licences and declare that those licences cannot be issued to the defendants until after they have completed their training by undergoing hours of instrument training in an aircraft and resat the instrument part of the skill test.

2. The former students

- 14 The former students dispute the way in which the DGTA counts the instrument hours. They contend that the DGTA is relying on a new interpretation of the regulation since, before the refusal at issue, it did not call into question the time devoted to instrument training in the Bluetail Flight School and its new interpretation fluctuates.
- 15 In their submission, the maximum of 40 hours’ instrument ground time, set in point 9(e)(3)(ii), applies only to the 50 hours of instrument flight *instruction* and not to the entire 115 hours of instrument *time*.
- 16 They request the court, in essence, to confirm the grant of the licences ordered by way of interim measure and, in the alternative, to refer the fourth question set out below to the Court of Justice.

4. Findings of the court

- 17 The conditions for issuing ‘CPL (A)’ commercial aircraft pilot licences are defined in Regulation (EU) No 1178/2011.

- 18 Appendix 3 to Subpart A of Annex I to that regulation determines the content of the course for obtaining that licence. Point 9 of that appendix none the less gives rise to doubts as to the calculation of instrument time.
- 19 The court recalls in that regard that, in its judgment of 8 August 2019, the cour d'appel (Court of Appeal) pointed to a number of grey areas in point 9(e) of Appendix 3. First to all, to which training must the 10 hours remaining from the 50 hours of instrument flight instruction, after deduction of the maximum 40 hours permitted in a simulator (point 9(e)(3)) be attributed? Furthermore, in the 115 hours of instrument time, to what must the 30 hours remaining after deduction of the 20, 15 and 15 hours referred to in point 9(e)(1), (2) and (3) be allocated?
- 20 The court considers that the EASA's letters of 15 February 2019 and 12 June 2019 are relatively succinct and did not allow the issues between the parties to be resolved.
- 21 It observes that the European Commission considered that it was unable to express its view on the interpretation of point 9 of Appendix 3 other than in its observations on a request for a preliminary ruling addressed to the Court of Justice.

5. Questions for a preliminary ruling

- 22 The court decides to refer the following four questions for a preliminary ruling suggested by the parties:
1. Does point 9 of Appendix 3 to Subpart A of Annex I to Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council allow hours of training completed on an FNPT II flight simulator (instrument ground time) in excess of the number of 15 hours of MCC referred to in point 9(e)(2) and in excess of the maximum of 40 hours of instrument flight instruction in an FNPT II, referred to in point 9(e)(3)(ii), that is to say more than 55 hours of instrument ground time, to be taken into account for the purpose of calculating the 115 hours of instrument time referred to in point 9(e)?
 2. Does the answer to the first question vary depending on whether the hours completed in excess of the 15 hours and 40 hours referred to above consist of hours of MCC or of a different type of simulator training?
 3. If the answer to the two preceding questions is in the negative, does point 10 of Appendix 3 to Subpart A of Annex I to that regulation permit the CPL(A) licence to be granted after the candidate pilots have completed their training by a sufficient number of hours in an aircraft, without the skill test relating to instrument flight being retaken?

4. If the answer to the three preceding questions is in the negative, does the general principle of legal certainty require that the interpretation of the legal rule in question provided by the Court of Justice be limited in time, so that, for example, it will apply only to candidate pilots who request the grant of a CPL(A) licence, or even to those who have commenced their training in order to obtain such a licence, after the date of the judgment of the Court of Justice?

WORKING DOCUMENT