



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 8/11**

Luxembourg, 17 February 2011

Advocate General's Opinion in Case C-120/10  
European Air Transport SA v Collège d'Environnement de la Région de  
Bruxelles-Capitale and Région de Bruxelles-Capitale

**In the view of Advocate General Cruz Villalón, the Member States may adopt measures under which penalties are imposed when maximum noise levels, measured on the ground, are exceeded in built-up areas near airports**

*The protection of fundamental rights – in particular the fundamental right to private and family life, and home, and the right to environmental protection – justifies the adoption of such measures*

With a view to countering noise pollution in European Union airports, Directive 2002/30<sup>1</sup> regulates the adoption and effects of what are known as “operating restrictions”. For the purpose of determining when such operating restrictions may be adopted, Directive 2002/30 refers to cases where certain maximum noise levels are exceeded, the levels being measured at source (i.e. in the aeroplane itself) rather than on the ground.

Brussels-National Airport is in the Flanders region, although flights operating from it also overfly the Brussels-Capital Region at a very low height. On 27 May 1999, the government of the Brussels-Capital Region adopted legislation which sets the maximum noise levels permitted for the passage of aircraft over the region. The legislation establishes, in particular, the noise levels which, if they are exceeded by the passage of an aeroplane, give grounds for imposing a fine. The fine is determined on the basis of various criteria. They include the noise level measured in decibels at destination rather than at source.

European Air Transport (EAT) is an airline forming part of the DHL group, which operates cargo flights using Brussels-National Airport as a point of departure, destination or stopover.

On 19 October 2007, the Institut Bruxellois de Gestion de l'Environnement, a regional body responsible for supervising environmental legislation, imposed an administrative penalty of €56 113 on EAT for breach of the regional legislation of 27 May 1999. Specifically, EAT was held liable for noise made by its aircraft, during the night-time period, in excess of the levels laid down in that legislation. EAT appealed against the decision, claiming that the regional legislation serving as a basis for the infringements for which it was held liable was unlawful, since the legislation required noise levels to be measured on the ground and not at source.

Against that background, the Conseil d'État (Council of State, Belgium), which will have to resolve the dispute, decided to make a reference for a preliminary ruling to the Court of Justice. In its reference, the Belgian court asks the Court of Justice to rule on the compatibility with Directive 2002/30 of the Brussels-Capital regional rules penalising noise pollution caused by aircraft using Brussels-National Airport.

**In his Opinion delivered today, Mr Cruz Villalón, in the first place, considers an “operating restriction” to be a prohibition, absolute or temporary, imposed in advance and on an objective basis, which specifically prevents – and does not merely impede – the access of a civil aircraft to a European Union airport.**

<sup>1</sup> Directive 2002/30 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).

**Mr Cruz Villalón also states that operating restrictions are specific prohibitions imposed in the transport-policy framework. Operating restrictions thus co-exist with other national environmental measures.**

Consequently, the Advocate General concludes that **the Belgian regional legislation providing for the imposition of penalties** – intended to act as a punishment when certain maximum noise levels, measured on the ground in areas near an airport, are exceeded – **does not fall within the scope of Directive 2002/30 since it is not an “operating restriction”**. In particular, the Brussels-Capital legislation at issue does not prohibit, *ex ante*, access, either at all times or at certain times, to Brussels-National Airport, but instead provides that certain emission levels must not be exceeded. Thus, under the regional legislation, there is nothing to prevent an aeroplane landing at that airport or taking off from it and, should the limits laid down in the legislation be exceeded, the legal consequence is a penalty and not a prohibition. Furthermore, the regional rules are not adopted in the framework of a transport policy and are not approved or applied by the authorities competent in that sphere, since they fall under the environmental powers which the Constitution confers on the Belgian regions.

**In the second place**, the Advocate General is of the view that **Directive 2002/30**, which refers to a criterion for measuring aircraft noise at source, **does not preclude a national measure such as the rules of the Brussels-capital region, which are not operating restrictions and which require noise to be measured on the ground**. In the Advocate General’s view, **Directive 2002/30 does not prevent the Member States from adopting environmental rules which indirectly affect the civil aviation provisions** harmonised by the directive.

In relation to that issue, the Advocate General considers, first, that **Directive 2002/30 is sectoral in nature and must therefore remain restricted exclusively to the adoption and regulation of, and exemptions from, “operating restrictions”**.

Second, **Mr Cruz Villalón recalls that the Charter of Fundamental Rights of the European Union includes the fundamental right to private and family life, and home, while at the same time expressly recognising a right to environmental protection**. The Advocate General also observes that the European Court of Human Rights has not only stated on several occasions that noise pollution forms part of the environment but has also recognised that aircraft noise gives States grounds for taking active protective measures and, at times, requires them to do so.

Thus, bearing in mind that the interpretation of the European Court of Human Rights binds the European Union and has to be taken into account by the Court of Justice of the European Union, the Advocate General concludes that **Directive 2002/30 allows measures for the abatement of airport noise to be adopted which are distinct from those expressly provided for in the directive. If that were not the case, State action against noise pollution would come to a virtual standstill, with States losing all latitude in the exercise of their environmental, planning and health policies**.

---

**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:** 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.

---

*Unofficial document for media use, not binding on the Court of Justice.*

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355