JUDGMENT OF THE COURT (First Chamber)

8 September 2011 *

In Case C-120/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Belgium), made by decision of 26 February 2010, received at the Court on 5 March 2010, in the proceedings

European Air Transport SA

v

Collège d'environnement de la Région de Bruxelles-Capitale,

Région de Bruxelles-Capitale,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel, E. Levits, M. Safjan and M. Berger (Rapporteur), Judges,

* Language of the case: French.

Advocate General: P. Cruz Villalón,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 30 November 2010,

after considering the observations submitted on behalf of:

— European Air Transport SA, by P. Malherbe and T. Leidgens, avocats,

— le Collège d'environnement de la Région de Brussels-Capitale and la Région de Brussels-Capitale, by F. Tulkens and N. Bonbled, avocats,

— the Danish Government, by C. Vang, acting as Agent,

— the French Government, by G. de Bergues and M. Perrot, acting as Agents,

— the European Commission, by C. Vrignon and K. Simonsson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 February 2011

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 2(e), 4(4) and 6(2) of 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).

2 The reference has been made in proceedings between European Air Transport SA ('EAT'), an air transport company, the applicant in the main proceedings, and the Collège d'environnement de la Région de Bruxelles-Capitale and the Région de Bruxelles-Capitale (Brussels-capital region) concerning a penalty of EUR 56 113 imposed on EAT by the Institut bruxellois pour la gestion de l'environnement ('IBGE') for infringement of national legislation on noise abatement in the urban environment.

Legal context

European Union Law

3 Recitals 7 and 10 in the preamble to Directive 2002/30 state:

'(7) A common framework of rules and procedures for the introduction of operating restrictions at Community airports, as part of a balanced approach on noise management, will help safeguard internal market requirements by introducing similar operating restrictions at airports with broadly comparable noise

problems. This includes assessment of the noise impact at an airport and evaluation of the measures available to alleviate that impact, and selection of the appropriate mitigation measures with the goal of achieving the maximum environmental benefit most cost effectively.

…

(10) The 33rd ICAO Assembly has adopted Resolution A33/7 introducing the concept of a "balanced approach" to noise management, thereby establishing a policy approach to address aeroplane noise, including international guidance for the introduction of operating restrictions on an airport-by-airport basis. The "balanced approach" concept of aircraft noise management 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, without prejudice to relevant legal obligations, existing agreements, current laws and established policies.'

4 Article 1 of Directive 2002/30, entitled 'Objectives', provides:

'The objectives of this Directive are:

(a) to lay down rules for the Community to facilitate the introduction of operating restrictions in a consistent manner at airport level so as to limit or reduce the number of people significantly affected by the harmful effects of noise;

…'

5 Article 2(e) of Directive 2002/30 states:

'For the purpose of this Directive:

…

(e) "Operating restrictions" shall mean noise related action that limits or reduces access of civil subsonic jet aeroplanes to an airport. It includes operating restrictions aimed at the withdrawal from operations of marginally compliant aircraft at specific airports as well as operating restrictions of a partial nature, affecting the operation of civil subsonic aeroplanes according to time.'

6 In the words of Article 4(4) of that Directive, entitled 'General rules on aircraft noise management':

'Performance-based operating restrictions shall be based on the noise performance of the aircraft as determined by the certification procedure conducted in accordance with Volume 1 of Annex 16 to the Convention on International Civil Aviation, third edition (July 1993) [concluded on 7 December 1944 in Chicago ("ICAO Convention")].'

7 Article 5 of Directive 2002/30, entitled 'Rules on assessment', provides:

'(1) When a decision on operating restrictions is being considered, the information as specified in Annex II shall, as far as appropriate and possible, for the operating restrictions concerned and for the characteristics of the airport, be taken into account.

(2) Where airport projects are subject to an environmental impact assessment pursuant to Directive 85/337/EEC [Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40)], the assessment carried out in accordance with that Directive shall be considered as meeting the requirements of paragraph 1, provided that the assessment has taken into account as far as possible the information as specified in Annex II to this Directive.'

8 Article 6 of Directive 2002/30, entitled 'Rules on the introduction of operating restrictions aimed at the withdrawal of marginally compliant aircraft', states:

'(1) If the assessment of all available measures, including operating restrictions of a partial nature, carried out in conformity with the requirements of Article 5 demonstrates that the achievement of the objectives of this Directive requires the introduction of restrictions aimed at the withdrawal of marginally compliant aircraft, the following rules shall apply …

(2) Subject to the rules on assessment of Article 5, city airports listed in Annex I may introduce measures that are more stringent, in terms of the definition of marginally compliant aircraft provided that these measures do not affect civil subsonic jet aeroplanes that comply, through either original certification or recertification, with the noise standards in Volume 1, Part II, Chapter 4 of Annex 16 to the Convention on International Civil Aviation.'

National law

9 At federal level, Directive 2002/30 was transposed by Royal Decree of 25 September 2003, laying down the rules and procedures for the introduction of operating restrictions at Brussels-National Airport (*Moniteur belge*, 26 September 2003, p. 47538).

10 Under Article 9 of the order of the Région de Bruxelles-Capitale of 17 July 1997 on noise abatement in the urban environment (*Moniteur belge*, 23 October 1997, p. 28215, 'the Order of 17 July 1997'):

'The Government shall take all measures with the aim of:

(1) limiting pollution emitted by certain sources by defining emissions standards or maximum immission limits;

(2) establishing, for noise sources, acceptable thresholds on the basis of source, of urban location, of acoustical characteristics and of the need to protect the occupants of buildings in specified areas;

(3) regulating the use of equipment, devices or objects on the basis of the circumstances where the noise or vibrations produced or likely to be produced are a real nuisance;

…'

11 Article 32 of an order of the Région de Bruxelles-Capitale of 25 March 1999 on the investigation, establishment, prosecution and punishment of offences relating to the environment (*Moniteur belge*, 24 June 1999, p. 23850, 'the Order of 25 March 1999'), provides:

'Any person who commits the following infringements shall be liable to an administrative fine of between EUR 62.50 and 625:

…

(8) in accordance with the Order of 17 July 1997 on noise abatement in the urban environment:

(a) causes noise or disturbance on public thoroughfares of a kind to disturb the peace or health of residents without need or by lack of foresight or care;

(b) causes noise or disturbance of a kind to disturb the peace or health of residents between 22.00 hrs and 07.00 hrs;

(c) behaves in an abnormally noisy way or does not prevent behaviour of such kind by people or animals under his responsibility.'

12 Under Article 33 of that order:

'Any person who commits the following infringements shall be liable to an administrative fine of between EUR 625 and 62 500:

…

(7) in accordance with the Order of 17 July 1997 on noise abatement in the urban environment:

(a) causes, on public roads or in a public place, noise requiring prior authorisation but without having obtained such authorisation or without respecting the relevant conditions;

(b) in his capacity as owner, holder or user of a noise source, creates directly or indirectly, or allows noise disturbance to continue that exceeds the limits set by the Government;

…'

13 Article 35 of that order provides:

'The infringements listed in Articles 32 and 33 are subject either to administrative action or to criminal proceedings.

…'

14 Article 2 of the Decree of the Région de Bruxelles-Capitale of 27 May 1999 on combating noise pollution generated by air traffic (*Moniteur belge*, 11 August 1999, p. 30002, 'the Decree of 27 May 1999'), provides limit values that noise levels may not exceed.

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 It is apparent from the order for reference that IBGE found that, during the course of October 2006, EAT committed 62 infringements of the Order of 17 July 1997, the Order of 25 March 1999 and of the Decree of 27 May 1999. It was claimed that EAT was responsible for night-time aircraft noise in excess of the limit values provided for in those regulations.

16 A report establishing those infringements was drawn up on 24 November 2006 by IBGE and sent to EAT on 4 December 2006.

17 On 24 August 2007, IBGE initiated proceedings against EAT with a view to imposing an administrative penalty of EUR 56 113, to be borne by EAT, for 48 of the 62 infringements committed during the course of October 2006 between 02.00 hrs and 05.00 hrs.

18 EAT lodged an appeal against that decision before the Collège d'environnement de la Région de Bruxelles-Capitale, which confirmed, by decision of 24 January 2008, the penalty imposed by IBGE.

19 On 20 March 2008, EAT then initiated proceedings before the Conseil d'État against the Collège d'environnement de la Région de Bruxelles-Capitale seeking annulment of the decision of 24 January 2008. It submitted, in that regard, that the Decree of 27 May 1999 infringes Articles 4 and 6 of Directive 2002/30/EC, under which, first, any measure restricting operations adopted by the competent authorities, that is to

say, in this case, IBGE, is to be based on the noise performance of the aircraft as determined by the certification procedure conducted in accordance with Volume 1 of Annex 16 to the ICAO Convention, and, second, the competent authorities of the Member States may not withdraw from operations or restrict the operation of aircraft that meet the standards set out in Chapter 3 of that Volume, except where the aircraft are marginally compliant with Chapter 3.

20 Furthermore, the applicant in the main proceedings argued that that Decree infringes Article 6 of Directive 2002/30, which provides that the competent authorities of the Member States may not, in any circumstances, introduce operating restrictions in connection with aeroplanes that comply with the noise standards in Volume 1, Part II, Chapter 4 of Annex 16 to the ICAO Convention.

21 It was in those circumstances that the Conseil d'État decided to stay its proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Must the concept of "operating restriction" in Article 2(e) of Directive 2002/30/EC … be interpreted as including rules imposing limits on noise levels, as measured on the ground, to be complied with by aircraft overflying areas located near the airport and providing that any person responsible for exceeding those limits may incur a penalty, it being understood that aircraft are required to keep to the designated routes and comply with the landing and take-off procedures laid down by other administrative authorities without taking account of the need to comply with those noise limitations?

(2) Must Articles 2(e) and 4(4) of Directive 2002/30 be interpreted as meaning that all "operating restrictions" must be "performance-based", or do those provisions allow other provisions, relating to environmental protection, to restrict access to the airport on the basis of the noise level, as measured on the ground, to be

observed by aircraft overflying areas located near the airport, it being provided that any person responsible for exceeding that level may incur a penalty?

(3) Must Article 4(4) of Directive 2002/30 be interpreted as precluding the existence, in addition to performance-based operating restrictions based on the noise emitted by aircraft, of rules on environmental protection which impose limits on noise levels, as measured on the ground, to be complied with by aircraft overflying areas located near the airport?

(4) Must Article 6(2) of Directive 2002/30 be interpreted as precluding rules which impose limits on noise levels, as measured on the ground, to be complied with by aircraft overflying territories located near the airport, and which provide that any person exceeding those limits may incur a penalty, where those rules are capable of being infringed by aircraft which comply with the standards in Volume 1, Part II, Chapter 4 of Annex 16 of the Convention on International Civil Aviation?'

Consideration of the questions referred

The first question

22 By its first question the referring court asks, in essence, whether the concept of 'operating restriction' in Article 2(e) of Directive 2002/30/EC must be interpreted as including rules imposing limits on noise levels, as measured on the ground, to be complied with by aircraft overflying areas located near the airport and providing that any person responsible for exceeding those limits may incur a penalty.

23 In order to answer that question, it must be borne in mind that, according to recital 7 in the preamble to Directive 2002/30, the latter refers to 'a common framework of rules and procedures for the introduction of operating restrictions at Community airports, as part of a balanced approach on noise management'.

24 In that regard, recital 10 in the preamble to that Directive states that the balanced approach constitutes a policy approach to address aeroplane noise, including international guidance for the introduction of operating restrictions on an airport-by-airport basis. The 'balanced approach' to aircraft noise management, defined in Resolution A33-7, adopted by the 33rd ICAO Assembly, 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, without prejudice to relevant legal obligations, existing agreements, current laws and established policies (see, in particular, Case C-442/05 *Commission* v *Belgium* [2007] ECR I-4749, paragraph 38).

25 It follows that operating restrictions are applicable only when any other noise management measures have failed to achieve the aims of Directive 2002/30, as laid down in Article 1.

26 In that respect, Article 2(e) of Directive 2002/30, which defines 'operating restrictions' as noise-related action that limits or reduces access of civil subsonic jet aeroplanes to an airport, specifies that they could either be operating restrictions of a partial nature, affecting the operation of civil subsonic aeroplanes according to time, or operating

restrictions aimed at the withdrawal from operations of marginally compliant aircraft at specific airports.

27 That level-based approach is, moreover, confirmed by Article 6(1) of that directive, which allows for the adoption of operating restrictions aimed at the withdrawal of aircraft only when all available measures, including operating restrictions of a partial nature, have failed to achieve the aims of Directive 2002/30.

28 Consequently, as the Advocate General observes in point 48 of his Opinion, an operating restriction within the meaning of Article 2(e) of that directive concerns a prohibition on access to the airport in question, whether the prohibition is absolute or restricted.

29 However, environmental legislation, such as that at issue in the main proceedings, 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 a prohibition on access to the airport in question.

30 In any event, the adoption of a method consisting of measuring on the ground the noise produced by an aircraft in flight constitutes an element of a balanced approach, as described in paragraphs 23 and 24 of this judgment, in that it is capable of providing more data to help reconcile the competing interests of people affected by noise nuisance, of economic undertakings that operate aircraft and of society as a whole.

31 It cannot, however, be ruled out that such legislation, in view of the relevant economic, technical and legal contexts to which it belongs, can have the same effect as a prohibition on access.

32 If, indeed, the limits imposed by that legislation are so restrictive as to oblige aircraft operators to forgo their business operation, such legislation would amount to prohibitions of access and would constitute, therefore, 'operating restrictions' within the meaning of Article 2(e) of that directive.

33 In the main proceedings, it is for the referring court to determine whether the measures adopted by the Région de Bruxelles-Capitale have such effects.

34 In those circumstances, the reply to the first question must be that Article 2(e) of Directive 2002/30 must be interpreted as meaning that an 'operating restriction' is a prohibition, absolute or temporary, that prevents the access of a civil subsonic jet aeroplane to a European Union airport. Consequently, national environmental legislation 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' within the meaning of that provision, unless, in view of the relevant economic, technical and legal contexts, it can have the same effect as prohibitions of access to the airport in question.

The second, third and fourth questions

35 In view of the answer given to the first question, there is no need to answer the other questions referred.

Costs

36 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 2(e) of 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 must be interpreted as meaning that an 'operating restriction' is a prohibition, absolute or temporary, that prevents the access of a civil subsonic jet aeroplane to a European Union airport. Consequently, national environmental legislation 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' within the meaning of that provision, unless, in view of the relevant economic, technical and legal contexts, it can have the same effect as prohibitions of access to the airport in question.

[Signatures]