



Reports of Cases

Case C-547/10 P

Swiss Confederation v European Commission

(Appeal — External relations — Agreement between the European Community and the Swiss Confederation on air transport — Regulation (EEC) No 2408/92 — Access of Community air carriers to intra-Community air routes — Articles 8 and 9 — Scope — Exercise of traffic rights — Decision 2004/12/EC — German measures relating to the approaches to Zurich Airport — Duty to state reasons — Non-discrimination — Proportionality — Burden of proof)

Summary — Judgment of the Court (Third Chamber), 7 March 2013

1. *Transport — Air transport — Access of Community air carriers to intra-Community air routes — Measures adopted by a Member State to limit or refuse the exercise of traffic rights — Conditions under which applicable*

(Council Regulation No 2408/92, Art. 8(2) and 9(1))

2. *Acts of the institutions — Statement of reasons — Obligation — Scope*

(Art. 296 TFEU)

3. *International agreements — EC-Switzerland Air Transport Agreement — Interpretation — Transposition to that agreement of the interpretation given to the provisions of European Union law relating to the freedom to provide services — Not included*

(EC-Switzerland Air Transport Agreement)

4. *Transport — Air transport — Access of Community air carriers to intra-Community air routes — Operational rules relating to the exercise of traffic rights — Examination by the Commission of a measure adopted by a Member State to ensure the application of those rules — Purpose of that examination in the context of the EC-Switzerland Air Transport Agreement*

(EC-Switzerland Air Transport Agreement, Art. 15(1); Council Regulation No 2408/92, Art. 8(1) to (3))

5. *Appeals — Grounds — Incorrect assessment of the facts and evidence — Inadmissibility — Review by the Court of the assessment of the facts and evidence — Possible only where the clear sense of the evidence has been distorted*

(Art. 256(1), second para., TFEU; Statute of the Court of Justice, Art. 58, first para.)

1. The fact that a Member State makes the exercise of air traffic rights subject to published national, regional or local operational rules, in particular those relating to protection of the environment, does not amount to the imposition of a condition, for the purposes of Article 9(1) of Regulation No 2408/92 on access for Community air carriers to intra-Community air routes, governing the exercise of those rights. If that were the case, Article 8(2) of that regulation would be rendered meaningless.

Article 9 of that regulation covers a more specific category of operational rules applicable to the exercise of traffic rights, namely, pursuant to Article 9(1), operational rules which impose conditions on, limit or refuse the exercise of traffic rights. In that regard, the measures referred to in Article 9 contain, in essence, at least a conditional or partial prohibition of that exercise.

(see paras 54-58)

2. See the text of the decision.

(see para. 67)

3. Given that the Swiss Confederation did not join the internal market of the European Union, the aim of which is the removal of all obstacles to create an area of total freedom of movement analogous to that provided by a national market, which includes inter alia the freedom to provide services, the interpretation given to the provisions of European Union law concerning the internal market cannot be automatically applied by analogy to the interpretation of the Agreement between the European Community and the Swiss Confederation on Air Transport, unless there are express provisions to that effect laid down in the agreement itself. In that regard, since that agreement does not contain any specific provision such as to enable the air carriers concerned to benefit from the provisions of European Union law on the freedom to provide services, the interpretation given to those provisions cannot be transposed to that agreement.

(see paras 79-81)

4. The possible rights of airport operators and of persons living near airports cannot be taken into account in the Commission's examination, provided for in Article 8(3) of Regulation No 2408/92 on access for Community air carriers to intra-Community air routes, of a measure adopted by a Member State to ensure the application of the rules.

Pursuant to Article 15(1) of the Agreement between the European Community and the Swiss Confederation on Air Transport, the grant of traffic rights to European Union and Swiss air carriers between any point in Switzerland and any point in the European Union is subject to Regulation No 2408/92. In that context, Article 8(2) of the regulation makes the exercise of those rights subject to operational rules, in particular, published national, regional or local operational rules relating to safety, the protection of the environment and the allocation of slots. Therefore, the examination provided for in Article 8(3) of the regulation, which concerns the application of Article 8(1) and (2), can relate only, in the light of the application of those rules or the measures referred to in Article 8(1), to the conditions for exercising those same rights over the air routes at issue.

(see paras 85, 87, 88)

5. See the text of the decision.

(see paras 99, 100)