

Ban on building the third runway

Flughafen Wien AG has filed an appeal with the highest courts in the land.

A complaint lodged with the Austrian Constitutional Court due to violation of constitutionally guaranteed rights.

An extraordinary appeal was filed with the Austrian Supreme Administrative Court on grounds of unlawfulness of content, serious procedural violations, inconsistency in the reasoning underlying the court decision and an inconceivable interpretation of the law.

Flughafen Wien AG has filed an appeal within the legally permissible deadlines against the ruling handed down by the Austrian Federal Administrative Court banning construction of the third runway. On the one hand, the basis for the appeal is the violation of essential constitutionally anchored rights such as freedom of ownership, freedom to carry on a business and the principle of equality. On the other hand, the legal provisions used to justify the court decision were arbitrarily and inconceivably interpreted. Above all, the decision is materially unlawful, contradictory in its reasoning and involved a serious violation of significant procedural principles such as the right to be heard.

Major damage to Austria as a business location

“In the light of numerous illegalities, the inconceivable interpretation of laws and the massive violation of procedural rules, especially the right to be heard, we have confidence in the proper functioning of the rule of law in Austria, and have grounds for optimism with respect to the decisions to be handed down by the highest courts in the country”, explains Günther Ofner, Member of the Management Board of Flughafen Wien AG.

“It is a regrettable fact that the findings and the underlying inconceivable legal interpretations on the part of project opponents are used above and beyond the third runway case to raise objections in a large number of current approval proceedings taking place throughout Austria”, he adds. “This shows that there is an urgent need, also by legislators, to take appropriate action to avoid putting a stop to investments and thus potentially doing serious damage to Austria as a business location and creating jobs”. The third runway project alone involves up to 30,000 additional jobs as well as the threat of the economy and tourism being unable to expand in the future.

Indecisive, contradictory, arbitrary

“In terms of its contents, the court decision is indecisive and contradictory”, states Julian Jäger, Member of the Management Board of Flughafen Wien AG. “On the one hand, the court found that there would be further passenger growth at Vienna Airport, and that there is a need for an additional runway for aircraft to take off and land. However, it does not deal with the issue of where this need will be diverted if the runway is not built.” It is a fact that such a scenario would lead passengers to use neighbouring airports, and thus **not a single gram of CO₂ would be saved**. “CO₂ emissions in aviation must be seen on a global scale and can only be regulated by international agreements. These precise regulations already exist. However, as a result of the court decision, about 30,000 jobs will not be created, extensive damage will be done to Austria as a business location and the environment will not benefit at all”, Julian Jäger adds.

There is absolutely no legal or objective basis underlying the argument of soil protection for 661 hectares of land used as a rationale for rejecting the third runway. In this regard, there is

even no connection made to international agreements or (inapplicable) national regulations. Factually speaking, the court also contradicts the conclusions made by the agricultural expert. The grounds for rejecting the third runway seem to be absurd considering the fact that agricultural production on 50,000 hectares of agricultural land was revoked at the time of the court decision thanks to millions of euros of set-aside premiums.

Inconsistent with EU law

The court coarsely ignored EU law. Commission Regulation (EU) No 1031 / 2010 stipulates that CO₂ emissions from aircraft are not to be assigned to the CO₂ emissions of the airport. Consequently, aircraft operators and not the airports have to present the certificates required under the European emission trading system. The fact that CO₂ emissions from flight traffic are not to be calculated as part of Austria's track record in achieving CO₂ targets is clearly entrenched in existing regulations. Moreover, when the court refers to Austria's climate protection law, this explicitly documents an inconceivable and arbitrary interpretation of the law. The Austrian Climate Protection Act is only valid until the year 2020, whereas the third runway would be put into operation after 2025. But above all, the Austrian Climate Protection Act is not to be called upon as the basis for project approvals, but is a programme act without an external impact. In this case, the court has overtaken lawmakers and is trying to create a body of law on its own, which is diametrically opposed to valid legal regulations passed by legislators. In this regard, it should be noted that the Austrian Climate Protection Act explicitly excludes the CO₂ emissions caused by flight traffic, considering that this is not assigned to Austria but is legally regulated on a European level.

The airport is only responsible for its own CO₂ emissions – flight traffic is not part of Austria's CO₂ emission targets

The court also ignores the fact that the airport can only be responsible for the CO₂ emissions it itself causes and that intensive measures have already been implemented in this connection. In recent years, CO₂ emissions have been reduced by about 30%, which corresponds to about 14,000 tonnes of CO₂. In addition, Vienna Airport has declared its intention to further reduce CO₂ emissions by 30,000 tonnes over the next few years by making relevant investments. In particular, the court fails to recognise that climate change and CO₂ emissions comprise a global phenomenon. For this reason, the global climate cannot be influenced by preventing a third runway from being built in Vienna. This is already underlined by the fact that at present about 400 airports across the globe are either being newly built or expanding. The biggest one is nearby in Istanbul, which has six take-off and landing runways.

Furthermore, the court fails to understand that obligations arising from international climate protection agreements relate to individual countries and the EU Commission and cannot be directly applied to individual projects without the corresponding legal underpinnings.

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