Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

16 January 2025 *

(Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Article 8(1)(a) – Right to reimbursement of the cost of the airline ticket in the event of cancellation of a flight – Choice between reimbursement in money or in travel vouchers – Article 7(3) – Concept of the 'signed agreement of the passenger' – Loyalty account set up by the passenger on the air carrier's website)

In Case C-642/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany), made by decision of 16 October 2023, received at the Court on 26 October 2023, in the proceedings

Flightright GmbH

v

Etihad Airways P.J.S.C.,

THE COURT (Seventh Chamber),

composed of M. Gavalec (Rapporteur), President of the Chamber, Z. Csehi and F. Schalin, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Flightright GmbH, by M. Michel and R. Weist, Rechtsanwälte,

– the European Commission, by G. von Rintelen and N. Yerrell, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7(3) and Article 8(1)(a) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

2 The request has been made in proceedings between Flightright GmbH, the assignee of the rights of a passenger ('the assignor'), and Etihad Airways P.J.S.C. ('Etihad Airways'), an air carrier, concerning reimbursement of the cost of the ticket of the assignor, whose flight was cancelled.

Legal context

3 Recitals 1, 2, 4 and 20 of Regulation No 261/2004 state:

'(1) Action by the [European] Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.

(2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.

…

(4) The Community should therefore raise the standards of protection set by [Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport (OJ 1991 L 36, p. 5)] both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.

…

(20) Passengers should be fully informed of their rights in the event of denied boarding and of cancellation or long delay of flights, so that they can effectively exercise their rights.'

4 Article 5(1) of Regulation No 261/2004 provides:

'In case of cancellation of a flight, the passengers concerned shall:

(a) be offered assistance by the operating air carrier in accordance with Article 8; …

…'

5 Article 7 of that regulation, entitled 'Right to compensation', provides, in paragraphs 1 and 3:

'1. Where reference is made to this Article, passengers shall receive compensation …

…

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.'

6 Article 8 of that regulation, entitled 'Right to reimbursement or re-routing', provides, in paragraph 1:

'Where reference is made to this Article, passengers shall be offered the choice between:

(a) – reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan …

…'

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

7 The assignor had a confirmed reservation on a flight that was to be operated by Etihad Airways on 7 September 2020 from Düsseldorf (Germany) to Brisbane (Australia), via Abu Dhabi (United Arab Emirates). The reservation was for an 'open' return ticket, that is to say, the date of the return flight was not fixed. The total price paid for the outward and return flights was EUR 1 189 per passenger. The assignor paid that sum to a tour operator.

8 The flight from Düsseldorf to Abu Dhabi was cancelled, however. After the tour operator declared insolvency in July 2020 without having reimbursed the cost of the ticket, the assignor's father contacted Etihad Airways on the assignor's behalf. Etihad Airways offered formally to change the reservation, to which the assignor's father agreed.

9 During a further telephone call with an agent of Etihad Airways' service centre, the assignor's father received confirmation that the assignor and the passenger who was to have accompanied her would be credited, first, with redeemable 'miles' for an Etihad Airways flight to the value of the payment made for the purchase of their ticket, which would be valid for two years; secondly, with additional miles to the value of 400 US dollars (approximately EUR 380); and, thirdly, with a further 5 000 'Etihad Guest Miles'. For this purpose, each passenger was required to set up a loyalty account on the Etihad Airways website, which both of them did.

10 While the passenger who was to have accompanied the assignor was credited with the promised miles, the assignor was not.

11 By letter of 16 March 2021, Flightright informed Etihad Airways that it was, on behalf of the assignor's father and of the passenger who was to have accompanied the assignor, exercising their right of option under Article 8(1)(a) of Regulation No 261/2004, and claimed reimbursement within seven days of the full cost of the ticket, for all parts of the journey not made.

12 By letter of 13 August 2021, the assignor declared 'as a precautionary measure' that she '[wished] to be reimbursed … in accordance with the first indent of Article 8(1)(a) of Regulation No 261/2004' and that she was 'reassigning her claims for reimbursement to [Flightright]'.

13 The Amtsgericht Düsseldorf (Local Court, Düsseldorf, Germany), before which Flightright brought an action at first instance for reimbursement of the full cost of the ticket, dismissed the action on the ground that Flightright could, at most, claim compensation for the costs incurred in respect of the outward flight, which Flightright had not however quantified, even after being requested to do so by that court.

14 Flightright lodged an appeal against that judgment before the Landgericht Düsseldorf (Regional Court, Düsseldorf), which is the referring court, and requested that court to order Etihad Airways to pay the sum of EUR 1 189, together with interest from 24 March 2021.

15 The referring court is uncertain on two counts. First, it queries whether Article 8(1)(a) of Regulation No 261/2004, read in conjunction with Article 7(3) of that regulation, must be interpreted as meaning that, by accepting reimbursement in the form of miles and by opening a loyalty account on Etihad Airways' website, to which those miles were to be credited, the assignor gave her 'signed agreement', within the meaning of Article 7(3), to that form of reimbursement, even though she did not confirm her agreement to that effect with a handwritten signature.

16 Secondly, in the event of an affirmative answer, the referring court is uncertain whether the assignor can revoke the option which she took of accepting reimbursement in the form of miles, and again claim reimbursement of the cost of the ticket in the form of a sum of money, if the operating air carrier fails to credit her loyalty account with miles, notwithstanding the agreement reached to that effect.

17 In those circumstances, the Landgericht Düsseldorf (Regional Court, Düsseldorf) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 8(1)(a) [of Regulation No 261/2004,] in conjunction with Article 7(3) [of that regulation,] to be interpreted as meaning that an effective signed agreement of the passenger to the reimbursement of ticket costs in the form of travel vouchers and credit notes exists where the passenger has set up an electronic customer account him or herself via the airline's website to which the travel vouchers and credit notes are to be transferred without having confirmed his or her agreement to this type of reimbursement with a handwritten signature?

(2) If Question 1 is answered in the affirmative: Can a passenger revoke his or her agreement, once effectively given, to reimbursement of the ticket costs in the form of travel vouchers and credit notes and again demand performance to be effected by payment in cash if the airline does not subsequently credit the promised travel vouchers and credit notes to the customer account?'

Consideration of the questions referred

The first question

18 By its first question, the referring court asks, in essence, whether Article 8(1)(a) of Regulation No 261/2004, read in conjunction with Article 7(3) of that regulation, must be interpreted as meaning that, in the event of cancellation of a flight by the operating air carrier, a passenger is to

be deemed to have given his or her 'signed agreement' to reimbursement of the cost of the ticket in the form of travel vouchers where he or she has set up, on that air carrier's website, a loyalty account to which those vouchers were to be transferred, without having confirmed his or her agreement to that form of reimbursement with a handwritten signature.

19 Under Article 8(1)(a) of Regulation No 261/2004, read in conjunction with Article 5(1)(a) of that regulation, in the case of cancellation of a flight, the passenger has the right to reimbursement within seven days, by the means provided for in Article 7(3) of that regulation, of the full cost of the ticket at the price at which it was bought.

20 Under the latter provision, the reimbursement is to be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

21 It is apparent from Article 7(3), read in conjunction with Article 8(1)(a) of Regulation No 261/2004 that, in those provisions, the EU legislature provided a framework for the procedure for reimbursement of the cost of a ticket in the event of a flight cancellation. In this respect, the structure of Article 7(3) of that regulation shows that the reimbursement of the cost of the ticket is to be made, primarily, by a sum of money. By contrast, reimbursement in travel vouchers is presented as a subsidiary means of reimbursement, since it is subject to the supplementary condition of the 'signed agreement of the passenger' (judgment of 21 March 2024, *Cobult*, C-76/23, EU:C:2024:253, paragraph 20).

22 While Regulation No 261/2004 does not define the concept of the 'signed agreement of the passenger', referred to in Article 7(3) thereof, the Court has nevertheless ruled that, in the light of the objective of that regulation, which is to ensure a high level of protection of passengers, and of the duty to provide information borne by the operating air carrier, as is apparent, in essence, from recitals 1, 2, 4 and 20 of that regulation, that concept presupposes that the passenger concerned has been able to make an effective and informed choice and, accordingly, to give free and informed consent to the reimbursement of the cost of his or her ticket in the form of a travel voucher rather than a sum of money (see, to that effect, judgment of 21 March 2024, *Cobult*, C-76/23, EU:C:2024:253, paragraphs 21 and 26 to 29).

23 Moreover, as regards the form of the passenger's agreement, the Court has stated that, provided that the passenger concerned has received clear and full information, his or her 'signed agreement' within the meaning of Article 7(3) of Regulation No 261/2004 may cover, inter alia, his or her express, definitive and unequivocal acceptance of the reimbursement of the cost of the ticket in the form of a travel voucher, by the sending of a form filled in by that passenger on the operating air carrier's website without that form including the handwritten or digital signature of that passenger (see, to that effect, judgment of 21 March 2024, *Cobult*, C-76/23, EU:C:2024:253, paragraph 34).

24 The Court has thus ruled that, in the event of cancellation of a flight by the operating air carrier, the passenger is deemed to have given his or her 'signed agreement' to reimbursement of the cost of the ticket by a travel voucher where he or she has filled in an online form on the website of that air carrier, by which he or she chose such a means of reimbursement to the exclusion of reimbursement by a sum of money, where that passenger has been able to make an effective and informed choice and, accordingly, to give informed consent to the reimbursement of the cost of his or her ticket by a travel voucher rather than by a sum of money, which presupposes that that

air carrier has provided to that passenger, in a fair manner, clear and full information as to the various means of reimbursement available to him or her (judgment of 21 March 2024, *Cobult*, C-76/23, EU:C:2024:253, paragraph 37).

25 Consequently, the concept of the 'signed agreement of the passenger', within the meaning of Article 7(3) of Regulation No 261/2004, cannot be interpreted narrowly as imposing a formal requirement such as the passenger's handwritten signature, in order for a passenger to be able properly to communicate his or her express, definitive and unequivocal acceptance of the reimbursement of the cost of his or her ticket in the form of a travel voucher.

26 In the present case, the referring court queries whether the fact that the passenger set up a loyalty account on Etihad Airways' website, with a view to having that account credited with the miles which Etihad Airways had promised to award her, is sufficient to establish that passenger's express, definitive and unequivocal acceptance of reimbursement of the cost of her ticket in that form.

27 However, the mere fact that such a loyalty account was set up on the air carrier's website cannot be considered sufficient, in itself, for a finding of that passenger's express, definitive and unequivocal acceptance, in so far as the setting up of that account may be merely indicative of a consumer's intention to participate generally in an air carrier's loyalty programme, which it is for the referring court to ascertain.

28 In the light of the foregoing reasons, the answer to the first question is that Article 8(1)(a) of Regulation No 261/2004, read in conjunction with Article 7(3) of that regulation, must be interpreted as meaning that, in the event of cancellation of a flight by the operating air carrier, a passenger is not to be deemed to have given his or her 'signed agreement' to reimbursement of the cost of the ticket in the form of travel vouchers where he or she has set up, on that carrier's website, a loyalty account to which those vouchers were to be transferred, without having confirmed, by his or her express, definitive and unequivocal acceptance, his or her agreement to that method of reimbursement.

The second question

29 In the light of the answer to the first question, there is no need to reply to the second.

Costs

30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Seventh Chamber) hereby rules:

Article 8(1)(a) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, read in conjunction with Article 7(3) of Regulation No 261/2004,

must be interpreted as meaning that, in the event of cancellation of a flight by the operating air carrier, a passenger is not to be deemed to have given his or her 'signed agreement' to reimbursement of the cost of the ticket in the form of travel vouchers where he or she has set up, on that carrier's website, a loyalty account to which those vouchers were to be transferred, without having confirmed, by his or her express, definitive and unequivocal acceptance, his or her agreement to that method of reimbursement.

[Signatures]