Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

21 March 2024*

(Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Article 7(3) – Article 8(1)(a) – Right to reimbursement of the cost of the airline ticket in the event of cancellation of a flight – Reimbursement in travel vouchers – Concept of the 'signed agreement of the passenger' – Reimbursement procedure through a form available on the website of the operating air carrier)

In Case C-76/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany), made by decision of 2 January 2023, received at the Court on 13 February 2023, in the proceedings

Cobult UG

v

TAP Air Portugal SA,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Piçarra, N. Jääskinen and M. Gavalec (Rapporteur), Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the French Government, by J.-L. Carré, B. Herbaut and B. Travard, acting as Agents,

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

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

* Language of the case: German.

gives the following

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 Cobult UG, the assignee of the rights of a passenger, and TAP Air Portugal SA, an air carrier, concerning the reimbursement of the cost of the ticket of that passenger, whose flight was cancelled.

Legal context

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

‘(1) Action by the 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 that Regulation 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)(a) and (c) of that regulation 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; and

…

(c) have the right to compensation by the operating air carrier in accordance with Article 7 …’

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

'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(a) thereof:

'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 question referred for a preliminary ruling

7 A passenger reserved, for the price of EUR 1 447.02, with TAP Air Portugal, a connecting flight which was due to take place on 1 July 2020 from Fortaleza (Brazil) to Frankfurt am Main (Germany), via Lisbon (Portugal). That flight was cancelled by that operating air carrier.

8 Since 19 May 2020, that operating air carrier has made available on the homepage of its website a procedure for initiating reimbursements for, inter alia, flights it has cancelled. Passengers thus have the choice between immediate reimbursement in travel vouchers by filling in an online form, and reimbursement by another means, for example by a sum of money, provided they contact that air carrier's customer service department beforehand, so that the latter can examine the facts.

9 The conditions of acceptance, which are only available in English, which the passenger must accept after providing the information required (ticket number, surname, email address and telephone number), provide that, if that passenger chooses reimbursement by a travel voucher, reimbursement of the cost of the ticket in monetary form is precluded.

10 According to TAP Air Portugal, the passenger concerned, on 4 June 2020, requested to be reimbursed by a travel voucher, and received by email a travel voucher for EUR 1 732.52, corresponding to the price of the original ticket together with a supplement.

11 On 30 July 2020, that passenger assigned her rights with regard to TAP Air Portugal to Cobult, which, the same day, requested that operating air carrier to reimburse the price of the cancelled flight in monetary form within a period of 14 days.

12 Faced with TAP Air Portugal's refusal to make the reimbursement requested, Cobult brought proceedings before the competent first-instance court, which dismissed its application, holding that the rights of the assigning passenger had been extinguished by the reimbursement by the travel voucher.

13 Cobult brought an appeal against that judgment before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany), which is the referring court.

14 That court has doubts as regards the interpretation of Article 7(3) of Regulation No 261/2004, under which the ticket can only be reimbursed by a travel voucher 'with the signed agreement of the passenger'. It specifically raises the issue of the scope of the concept of 'signed agreement of the passenger' ('*mit schriftlichem Einverständnis*' in the German version of that regulation) in order to assess whether the procedure for reimbursement laid down by TAP Air Portugal through its website complies with that provision. In that regard, that court states that it might, according to one approach, be held that the requirement of the passenger's signed agreement constitutes a supplementary procedural condition which is intended to warn the passenger against choosing a voucher rashly and without due consideration, the EU legislature considering the latter method of reimbursement to be less favourable for that passenger. In those circumstances, Article 7(3) of Regulation No 261/2004 precludes a procedure for reimbursement of the cost of the ticket by a travel voucher such as practised by TAP Air Portugal.

15 According to another approach, the fact of requiring the signed agreement of the passenger, in the form of an agreement sent by postal or by electronic means, is liable to extend the reimbursement period while increasing the burden on air carriers linked to the administrative management of those reimbursements. Therefore, an online reimbursement procedure in multiple stages, such as that at issue in the main proceedings, could be regarded as in compliance with the requirements of Article 7(3) of Regulation No 261/2004.

16 In those circumstances, the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 7(3) of [Regulation No 261/2004] be interpreted as meaning that a signed agreement of the passenger on the reimbursement of the cost of the ticket with a travel voucher within the meaning of the first indent of Article 8(1)(a) of [that regulation] exists where the passenger selects a voucher of this type on the website of the operating air carrier to the exclusion of a subsequent refund of the cost of the ticket in monetary form and receives it by email, while reimbursement of the cost of the ticket in monetary form is only possible after first contacting the operating air carrier?'

Consideration of the question referred

17 By its question, the referring court asks, in essence, whether Article 7(3) of Regulation No 261/2004, read in conjunction with Article 8(1)(a) of that regulation, must be interpreted as meaning that in the event of the 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, whereas that latter method of reimbursement was subject to complying with a procedure including supplementary steps to be carried out with the customer service department of that air carrier.

18 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.

19 The latter provision stipulates that 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.

20 It is apparent from a reading of Article 7(3) of Regulation No 261/2004 in conjunction with Article 8(1)(a) thereof 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 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'.

21 Regulation No 261/2004 does not define what is to be understood by that concept of the 'signed agreement of the passenger'.

22 In this connection, first, it must be observed that the concept of 'agreement' is to be understood, in accordance with its usual meaning, as free and informed consent. In the context of Article 7(3) of that regulation, that concept therefore requires the passenger's free and informed consent to obtaining reimbursement of the cost of his or her ticket by a travel voucher.

23 Secondly, inasmuch as Article 7(3) of that regulation requires the 'signed' agreement of the passenger, it must be stated that the various language versions of that provisions differ from each other.

24 While the requirement for the 'signed agreement of the passenger', in the English version of that provision, corresponds in meaning to its version in Bulgarian ('*с подписано съгласие на пътника*'), Spanish ('*previo acuerdo firmado por el pasajero*'), Czech ('*v případě dohody podepsané cestujícím*'), Greek ('*εφόσον συμφωνήσει εννπογράφως ο επιβάτης*'), French ('*avec l'accord signé du passager*'), Italian ('*previo accordo firmato dal passeggero*'), Latvian ('*saņemot pasažiera parakstītu piekrišanu*'), Lithuanian ('*keleiviui savo parašu patvirtinus, kad jis su tuo sutinka*'), Maltese ('*bil-ftehim iffirmat tal-passiġġier*') and Finnish ('*matkustajan allekirjoitetulla suostumuksella*'), by contrast, it is apparent from the versions of that provision in Danish ('*med passagerens skriftlige billigelse*'), German ('*mit schriftlichem Einverständnis des Fluggasts*'), Estonian ('*kirjalikul kokkuleppel reisijaga*'), Croatian ('*uz pisanu suglasnost putnika*'), Hungarian ('*az utas írásos beleegyezése esetén*'), Dutch ('*met de schriftelijke toestemming van de passagier*'), Polish ('*za pisemną zgodą pasażera*'), Portuguese ('*com o acordo escrito do passageiro*'), Romanian ('*cu acordul scris al pasagerului*'), Slovak ('*s písomným súhlasom cestujúceho*'), Slovenian ('*s pisnim soglasjem potnika*') and Swedish ('*med passagerarens skriftliga samtycke*') that, under that provision, reimbursement in travel vouchers is subject not to the signed agreement, but to the 'written agreement of the passenger'.

25 In accordance with settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all languages of the European Union. Where there is a divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the general scheme and purpose of the rules of which it forms part (see, to that effect, order of 2 December 2022, *Compania Națională de Transporturi Aeriene Tarom*, C-229/22, EU:C:2022:978, paragraph 21 and the case-law cited).

26 In that regard, it is apparent, first, from recitals 1, 2 and 4 of Regulation No 261/2004 that that regulation seeks to ensure a high level of protection for passengers and consumers, by strengthening their rights in a number of situations involving serious trouble and inconvenience, and also redressing those situations in a standardised and immediate manner (see, to that effect, judgment of 22 April 2021, *Austrian Airlines*, C-826/19, EU:C:2021:318, paragraph 26).

27 Finally, it is apparent from recital 20 of that regulation that passengers whose flight is cancelled should be fully informed of their rights so that they can effectively exercise those rights.

28 The Court has thus held, referring to recital 20 of Regulation No 261/2004, that the operating air carrier must provide passengers with the information needed to enable them to make an effective and informed choice as regards the exercise of the right to assistance provided for in Article 8(1) of that regulation, without the enjoyment of that right to reimbursement requiring an active contribution on the part of the passenger (see, to that effect, judgment of 29 July 2019, *Rusu*, C-354/18, EU:C:2019:637, paragraphs 50 to 55).

29 In that context, in the light of the objective of ensuring a high level of protection of air passengers and of the duty to provide information borne by the operating air carrier, it must be held that the concept of the 'signed agreement of the passenger', as provided for in Article 7(3) of that regulation, presupposes, in the first place, that that passenger 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 by a travel voucher rather than by a sum of money.

30 To that end, it is for that air carrier to provide, in a fair manner, to the passenger whose flight has been cancelled, clear and full information on the various means of reimbursement of the cost of his or her ticket which are available under Article 7(3) of that regulation.

31 By contrast, where the passenger does not have such information, he or she cannot be regarded as being in a position to make an effective and informed choice and, accordingly, to give free and informed consent to reimbursement by a travel voucher.

32 Thus, a passenger cannot be deemed to have given his or her 'agreement' within the meaning of Article 7(3) of Regulation No 261/2004 where the operating air carrier presents, inter alia on its website, information relating to the procedure for reimbursement of the cost of a ticket in an ambiguous manner or in part or in a language in which the passenger cannot reasonably be expected to be proficient, or even in an unfair manner, in particular by making reimbursement of the cost of that ticket by a sum of money subject to a procedure containing steps supplementary to the procedure for reimbursement by a travel voucher.

33 That applies a fortiori since the addition of such supplementary steps is liable to render reimbursement by a sum of money more difficult to obtain, and thus to upset the relationship between the two means of reimbursement which the EU legislature, as is apparent from paragraph 20 above, has established. That would conflict with the objective pursued by Regulation No 261/2004 consisting in ensuring a high level of protection for air passengers.

34 In the second place, as regards the form of the passenger's agreement, it must be added 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 that regulation may, as is apparent in essence from the observations of the French Government, cover, inter alia, his or her express, definitive and unequivocal acceptance of the reimbursement of the cost of the ticket by a travel voucher, by the sending of a form filled in by that passenger on the website of the operating air carrier without that form including the handwritten or digital signature of that passenger.

35 The interpretation thus accepted of Article 7(3) of Regulation No 261/2004 respects the balancing of the interests of air passengers with those of operating air carriers, which the EU legislature sought to ensure by the adoption of Regulation No 261/2004 (see, to that effect, judgments of 19 November 2009, *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716, paragraph 67, and of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 39).

36 It seems not only excessive but also inappropriate to exclude the possibility that the 'signed agreement of the passenger' for reimbursement of the cost of the ticket by a travel voucher may be made by means of a form which the passenger must fill in on the website of the operating air carrier, since such an exclusion would increase the burden associated with the administrative management of those reimbursements for that air carrier and could delay the reimbursement process for the passenger, which, ultimately, could be contrary to the latter's interests.

37 Having regard to the foregoing considerations, the answer to the question referred is that Article 7(3) of Regulation No 261/2004, read in conjunction with Article 8(1)(a) of that regulation and in the light of recital 20 thereof, must be interpreted as meaning 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.

Costs

38 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 (Third Chamber) hereby rules:

Article 7(3) 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 8(1)(a) of that regulation and in the light of recital 20 of that regulation,

must be interpreted as meaning 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.

[Signatures]