Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 March 2020*

(Reference for a preliminary ruling — Area of freedom, security and justice — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Article 5(1) — Jurisdiction in matters relating to a contract — Articles 15 to 17 — Jurisdiction over consumer contracts — Regulation (EC) No 261/2004 — Articles 6 and 7 — Right to compensation in the case where a flight is subject to a long delay — Contract for carriage combining travel and accommodation concluded between the passenger and a travel agency — Action for compensation brought against the air carrier which is not a party to that contract — Directive 90/314/EEC — Package travel)

In Case C-215/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Obvodní soud pro Prahu 8 (Prague 8 District Court, Czech Republic), made by decision of 25 January 2018, received at the Court on 26 March 2018, in the proceedings

Libuše Králová

v

Primera Air Scandinavia A/S,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan (Rapporteur), L. Bay Larsen, C. Toader and N. Jääskinen, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

– the European Commission, by M. Šimerdová and M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 November 2019,

gives the following

* Language of the case: Czech.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5(1) and Articles 15 to 17 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) and 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 the context of proceedings between Ms Libuše Králová and Primera Air Scandinavia A/S, a commercial air transport company established in Denmark ('Primera'), concerning an action for compensation under Regulation No 261/2004 by reason of a long delay on a flight from Prague (Czech Republic) to Keflavík (Iceland) operated by Primera.

Legal context

Regulation No 44/2001

3 Regulation No 44/2001 was repealed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1). However, Regulation No 1215/2012 has been applicable, by virtue of Article 81 thereof, only since 10 January 2015. Consequently, in view of the date of the facts of the dispute in the main proceedings, those proceedings remain governed by Regulation No 44/2001.

4 Recitals 11 to 13 of Regulation No 44/2001 stated:

'(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.

(13) In relation to insurance, consumer contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.'

5 Article 2(1) of that regulation provided as follows:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

6 Article 5 of that regulation formed part of Chapter II, Section 2 thereof, entitled 'Special jurisdiction'. paragraph 1 of that article provided:

'A person domiciled in a Member State may, in another Member State, be sued:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
   (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

   – in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

   – in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;
   (c) if subparagraph (b) does not apply then subparagraph (a) applies.'

7 Article 15 of that regulation, which formed part of Chapter II, Section 4 thereof, entitled 'Jurisdiction over consumer contracts', provided:

'1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5, if:

…

(c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in the Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.'

8 Article 16(1) of Regulation No 44/2001, which featured in that Section 4, was worded as follows:

'A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.'

9 Under Article 17 of that regulation:

'The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or

2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or

3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.'

Regulation No 261/2004

10 Article 1 of Regulation No 261/2004, entitled 'Subject', provides, in its paragraph 1:

'This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:

(a) they are denied boarding against their will;

(b) their flight is cancelled;

(c) their flight is delayed.'

11 Article 2 of that regulation, entitled 'Definitions', provides:

'For the purposes of this Regulation:

…

(b) "operating air carrier" means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;

…'

12 Article 3 of Regulation No 261/2004, headed 'Scope', provides:

'1. This Regulation shall apply:

(a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;

…

2. Paragraph 1 shall apply on the condition that passengers:

(a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,

– as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,

or, if no time is indicated,

– not later than 45 minutes before the published departure time; or

…

5. This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.

6. This Regulation shall not affect the rights of passengers under [Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59)]. This Regulation shall not apply in cases where a package tour is cancelled for reasons other than cancellation of the flight.'

13 Article 6 of that regulation, headed 'Delay', provides:

'1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

(a) for two hours or more in the case of flights of 1 500 kilometres or less; or

(b) for three hours or more in the case of all intra-Community flights of more than 1 500 kilometres and of all other flights between 1 500 and 3 500 kilometres; or

(c) for four hours or more in the case of all flights not falling under (a) or (b),

passengers shall be offered by the operating air carrier:

(i) the assistance specified in Article 9(1)(a) and 9(2); and

(ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and

(iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).

2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.'

14 Article 7 of Regulation No 261/2004, entitled 'Right to compensation' provides, in its paragraph 1(b):

'Where reference is made to this Article, passengers shall receive compensation amounting to:

…

(b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres'.

15 Article 8 of that regulation, entitled 'Right to reimbursement or re-routing', provides, in its paragraph 2:

'Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC.'

Directive 90/314

16 Directive 90/314, which was applicable at the time of the facts in the main proceedings, provided in Article 2(1):

'For the purposes of this Directive:

1. "package" means the pre-arranged combination of not fewer than two of the following when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation:
   (a) transport;
   (b) accommodation;
   (c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package.

The separate billing of various components of the same package shall not absolve the organiser or retailer from the obligations under this Directive'.

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

17 Ms Králová, who is domiciled in Prague, entered into a package travel contract with the travel agency FIRO-tour a.s. including, first, carriage by air between Prague and Keflavík, operated by Primera, and, second, accommodation in Iceland.

18 The flight from Prague to Keflavík on 25 April 2013, for which Ms Králová had a confirmed reservation, was delayed for more than four hours. Accordingly, Ms Králová brought an action for compensation against Primera before the Obvodní soud pro Prahu 8 (Prague 8 District Court, Czech Republic) in the amount of EUR 400, pursuant to Article 6(1) and Article 7 of Regulation No 261/2004.

19 By order of 1 April 2014, the Obvodní soud pro Prahu 8 (Prague 8 District Court) ruled that it had no jurisdiction to hear that action on the ground that Regulation No 44/2001 did not apply to the Kingdom of Denmark, the Member State in which Primera has its seat. That court added that its jurisdiction did not arise from Section 4 of Chapter II of that regulation either, since Ms Králová had concluded the contract for carriage not with Primera but with the travel agency FIRO-tour. If it were found that there was a contract between the parties to the dispute, that contract would not, in any event, relate to a contract combining travel and accommodation, as required by Article 15(3) of that regulation.

20 Ms Králová appealed against that order to the Městský soud v Praze (Municipal Court, Prague, Czech Republic), which dismissed the appeal by order of 4 August 2014. That latter court held that Regulation No 44/2001 had applied to the Kingdom of Denmark since 1 July 2007, but that it could not serve as a basis for jurisdiction of the Czech courts in the main proceedings.

21 Following an appeal on a point of law brought by Ms Králová before the Nejvyšší soud (Supreme Court, Czech Republic), that court, by decision of 15 September 2015, set aside the orders of the Obvodní soud pro Prahu 8 (Prague 8 District Court) and of the Městský soud v Praze (Municipal Court, Prague) and referred the case back to the Obvodní soud pro Prahu 8 (Prague 8 District Court), ruling that that court should examine Primera's legal capacity to be sued in an action in the light of Article 5(1) and Articles 15 and 16 of Regulation No 44/2001.

22 The referring court states that it cannot automatically infer from that regulation whether, in relations between an air carrier and a consumer, in situations where air transport is arranged as part of a package tour, the courts having jurisdiction are those for the place of performance of the contractual obligation in question pursuant to Article 5(1)(b) of that regulation, or the courts for the place where the consumer is domiciled pursuant to Article 16(1) of that regulation.

23 In addition, the referring court has doubts as to whether Primera, which was required to comply with the obligations laid down by Regulation No 261/2004, has capacity to be sued in an action seeking satisfaction of the claims arising from that regulation, and as regards the relationship between the liability arising from that regulation and that arising from Directive 90/314.

24 In those circumstances, the Obvodní soud pro Prahu 8 (Prague 8 District Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Did a contractual relationship exist between the applicant and the defendant for the purposes of Article 5(1) of [Regulation No 44/2001] even though no contract had been concluded between the applicant and the defendant and the flight was part of a package of services provided on the basis of a contract between the applicant and a third party (travel agency)?

(2) Can that relationship be qualified as a consumer relationship in accordance with … Articles 15 to 17 of [Regulation No 44/2001]?

(3) Does the defendant have legal capacity to be sued in an action seeking satisfaction of the claims arising from [Regulation No 261/2004]?’

Consideration of the questions referred

The third question

25 By its third question, which it is appropriate to examine first, the referring court asks, in essence, whether Regulation No 261/2004 must be interpreted as meaning that a passenger on a flight which is delayed for three hours or more may bring an action for compensation under Articles 6 and 7 of that regulation against the operating air carrier, even if that passenger and that air carrier have not entered into a contract between them and the flight in question forms part of a package tour covered by Directive 90/314.

26 In this regard, first, that question concerns whether Regulation No 261/2004 applies to an air carrier which performed the delayed flight on behalf of the person who concluded the contract with the passenger and without itself having concluded a contract with that passenger.

27 Article 2(b) of that regulation contains a definition of the concept of ‘operating air carrier’, which provides that this is an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger.

28 Under Article 3(5) of that regulation, the latter applies to any operating air carrier providing transport to passengers to or from an airport located in the territory of a Member State. That same provision states that, where an operating air carrier which has no contract with the passenger performs obligations under that regulation, it is to be regarded as doing so on behalf of the person having a contract with that passenger (judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 62).

29 It follows from those provisions that a passenger whose flight has been delayed may rely on Regulation No 261/2004 against the operating air carrier, even if the passenger and the operating air carrier have not concluded a contract between them.

30 Second, the third question concerns whether the fact that the contract at issue in the main proceedings constitutes a package tour within the meaning of Article 2(1) of Directive 90/314 has any bearing on the issue of whether the passenger may rely on the rights derived from Articles 6 and 7 of Regulation No 261/2004 by reason of a delayed flight.

31 With regard to the relationship between Regulation No 261/2004 and Directive 90/314, it should be noted, first of all, that it follows from Article 3(6) of that regulation that the latter does not affect the rights which passengers who have purchased a package tour derive from that directive.

32 In that regard, Article 8(2) of that regulation states that the right to reimbursement of the cost of the ticket also applies to passengers whose flights form part of a package tour, except where such a right arises under Directive 90/314.

33 In that context, the Court has held that it follows from the clear wording of that Article 8(2) that the mere existence of a right to reimbursement, arising under Directive 90/314, is sufficient to exclude the possibility for a passenger, whose flight forms part of a package tour, to be able to claim reimbursement of the cost of his ticket, pursuant to Regulation No 261/2004, from the operating air carrier (judgment of 10 July 2019, *Aegean Airlines*, C-163/18, EU:C:2019:585, paragraph 31).

34 However, Articles 6 and 7 of Regulation No 261/2004, under which the passenger at issue in the main proceedings brought her action for compensation, do not provide for a derogation equivalent to that which is provided for the reimbursement of the cost of the ticket in Article 8(2) of that regulation, at issue in the case which gave rise to the judgment of 10 July 2019, *Aegean Airlines* (C-163/18, EU:C:2019:585).

35 Thus, it appears that the right to compensation provided for in Article 7 of that regulation is applicable in a situation where the flight purchased by a passenger is part of a package tour, without affecting any rights which may arise under Directive 90/314.

36 This interpretation is supported by the *travaux préparatoires* relating to Regulation No 261/2004. As the Advocate General observed in point 72 of his Opinion, it is clear from those *travaux préparatoires* that the EU legislature intended not to exclude from the scope of that regulation passengers whose flight forms part of a package tour but to allow them to benefit from the rights granted by that regulation, without prejudice to the protection conferred on them by Directive 90/314.

37 In that regard, the right to compensation calculated on a flat-rate basis, which arises from Article 7 of Regulation No 261/2004, features among the essential rights conferred on air passengers by that regulation, to be borne by the operating air carrier, and has no equivalent in the scheme established by Directive 90/314, which is to be borne by the tour organiser.

38 In the light of the foregoing considerations, the answer to the third question is that Regulation No 261/2004 must be interpreted as meaning that a passenger on a flight which has been delayed for three hours or more may bring an action for compensation under Articles 6 and 7 of that regulation against the operating air carrier, even if that passenger and that air carrier have not entered into a contract between them and the flight in question forms part of a package tour covered by Directive 90/314.

The first question

39 By its first question, the referring court asks, in essence, whether Article 5(1) of Regulation No 44/2001 must be interpreted as meaning that an action for compensation brought under Regulation No 261/2004 by a passenger against the operating air carrier comes within the concept of 'matters relating to a contract', within the meaning of that provision, even if no contract was concluded between those parties and the flight operated by that air carrier was provided for by a package travel contract, also including accommodation, concluded with a third party.

40 It should be noted, as a preliminary point, that Article 5(1) of Regulation No 44/2001 provided that a person domiciled in a Member State may, in another Member State, be sued, in matters relating to a contract, in the courts for the place of performance of the obligation in question.

41 It is apparent from the Court's case-law that the concept of 'matters relating to a contract' must be interpreted independently in order to ensure that it is applied uniformly in all the Member States (see, to that effect, judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 58 and the case-law cited).

42 In that connection, the Court has previously held that the conclusion of a contract is not a condition for the application of Article 5(1) of Regulation No 44/2001 (judgment of 21 April 2016, *Austro-Mechana*, C-572/14, EU:C:2016:286, paragraph 34 and the case-law cited).

43 Although Article 5(1) of Regulation No 44/2001 does not require the conclusion of a contract, it is settled case-law that it is nevertheless essential, in order for that provision to apply, to identify an obligation, since the jurisdiction of the national court under that provision is determined by the place of performance of the obligation in question. Thus, the concept of 'matters relating to a contract', within the meaning of that provision, cannot be understood as covering a situation in which there is no obligation freely assumed by one party towards another (judgment of 14 March 2013, *Česká spořitelna*, C-419/11, EU:C:2013:165, paragraph 46 and the case-law cited).

44 It follows that the rule of special jurisdiction in matters relating to a contract set out in Article 5(1) of Regulation No 44/2001 is based on the cause of action, not the identity of the parties (see, to that effect, judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 61 and the case-law cited).

45 In the present case, it is therefore necessary to examine, in the light of the case-law referred to in paragraph 43 above, whether the view can be taken that an air carrier which has not concluded a contract for carriage with a passenger, and which has operated a flight provided for by a package travel contract concluded by a third party, fulfils an obligation freely consented to vis-à-vis another party, and on which the applicant bases her action.

46 In the first place, the view must be taken that an air carrier, such as that at issue in the main proceedings, may be classified as an 'operating air carrier' within the meaning of Article 2(b) of Regulation No 261/2004, given that it has operated a flight on behalf of a person, legal or natural, having a contract with the passenger concerned, namely, in the present case, the travel agency.

47 In the second place, it is apparent from the second sentence of Article 3(5) of Regulation No 261/2004 that, where an operating air carrier which has no contract with the passenger performs obligations under that regulation, it is to be regarded as doing so on behalf of the person having a contract with that passenger (order of 13 February 2020, *flightright*, C-606/19, EU:C:2020:101, paragraph 34).

48 Thus, that carrier must be regarded as fulfilling obligations freely consented to vis-à-vis the contracting partner of the passenger concerned. Those obligations arise under the package travel contract which the passenger concluded with the travel agency (see, to that effect, judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 63).

49 Consequently, an action for compensation in respect of a long flight delay brought by that passenger against that operating air carrier, which is not the contractual partner of that passenger, must nevertheless be regarded as being brought in a matter relating to a contract, within the meaning of Article 5(1) of Regulation No 44/2001.

50 The fact that a contract for carriage by air forms part of a package, within the meaning of Article 2(1) of Directive 90/314, including accommodation, is not such as to invalidate that finding.

51 That detail does not alter the contractual nature of the legal obligations on which the passenger relies or the cause of her action, which may therefore be brought before either court of the place of performance of the contractual obligations (see, to that effect, judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraphs 68 and 69, and order of 13 February 2020, *flightright*, C-606/19, EU:C:2020:101, paragraphs 26 and 27).

52 Regard being had to all of the foregoing considerations, the answer to the first question is that Article 5(1) of Regulation No 44/2001 must be interpreted as meaning that an action for compensation brought pursuant to Regulation No 261/2004 by a passenger against the operating air carrier comes within the concept of 'matters relating to a contract', within the meaning of that provision, even if no contract was concluded between those parties and the flight operated by that air carrier was provided for by a package travel contract, also including accommodation, concluded with a third party.

The second question

53 By its second question, the referring court asks, in essence, whether Articles 15 to 17 of Regulation No 44/2001 must be interpreted as meaning that an action for compensation brought by a passenger against the operating air carrier, with which that passenger has not concluded a contract, comes within the scope of those articles relating to special jurisdiction over consumer contracts.

54 As a preliminary point, it must be observed that the rules of jurisdiction set out in Section 4 of Chapter II of Regulation No 44/2001, which comprises Articles 15 to 17 of that regulation, allow a consumer to choose to bring proceedings either in the courts for the place where the consumer is domiciled or in the courts of the Member State in which the other party to the contract is domiciled.

55 Those rules constitute a derogation both from the general rule of jurisdiction laid down in Article 2(1) of Regulation No 44/2001, which confers jurisdiction on the courts of the Member State in which the defendant is domiciled, and from the rule of special jurisdiction in matters relating to a contract, set out in Article 5(1) of that regulation. Thus, those rules included in that Section 4 must necessarily be interpreted strictly (see, to that effect, judgment of 14 March 2013, *Česká spořitelna*, C-419/11, EU:C:2013:165, paragraph 26 and the case-law cited).

56 Jurisdiction is determined by that Section 4 if the three conditions set out in Article 15(1) of Regulation No 44/2001 are satisfied: first, a party to a contract is a consumer who is acting in a context which can be regarded as being outside his trade or profession; second, the contract between such a consumer and a professional has actually been concluded; and, third, such a contract comes within one of the categories referred to in Article 15(1)(a) to (c) of that regulation. All of those

conditions must be satisfied, with the result that, if one of the three conditions is not satisfied, jurisdiction cannot be determined under the rules relating to consumer contracts (see, to that effect, judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 23 and the case-law cited).

57 In the present case, the referring court's question relates to whether the three conditions mentioned in the preceding paragraph can be considered to be satisfied with regard to the legal relationship between a passenger and the air carrier, in the case where they have not entered into a contract between them.

58 In this respect, it should, first, be noted that, unlike the conditions required for the application of the rules of special jurisdiction which arise from Article 5(1) of Regulation No 44/2001, it is decisive for the application of the rules of jurisdiction in Section 4 of Chapter II of that regulation that the parties to the dispute are also the parties to the contract.

59 As the Advocate General observed in point 48 of his Opinion and the Czech Government in its written observations, the articles in that Section 4 refer to the 'contract concluded by … the consumer', to the 'party' with whom a 'consumer enters into a contract', to 'the other party to a contract' entered into by a consumer, or also to the agreements as to the court having jurisdiction entered into 'by the consumer and the other party to the contract'.

60 Those references argue strongly in favour of an interpretation to the effect that, for the application of Section 4, a consumer's action must be brought against the other party to the contract entered into by that consumer.

61 Thus, the Court has held that the rules on jurisdiction laid down, as regards consumer contracts, in Article 16(1) of Regulation No 44/2001 apply, in accordance with the wording of that provision, only to an action brought by a consumer against the other party to the contract, which necessarily implies that a contract has been concluded by the consumer with the trader or professional concerned (judgment of 25 January 2018, *Schrems*, C-498/16, EU:C:2018:37, paragraph 45 and the case-law cited).

62 Second, an interpretation according to which the rules of jurisdiction over consumer contracts, laid down in Section 4 of Chapter II of Regulation No 44/2001, do not apply in a situation in which there is no contract between the consumer and the trader is consistent with the objective, set out in recital 11 of that regulation, of ensuring a high degree of predictability as regards the attribution of jurisdiction.

63 As the Advocate General observed in point 57 of his Opinion, the possibility for the consumer to sue the professional before the courts for the place where the consumer is domiciled is counterbalanced by the requirement that a contract must have been concluded between them, this being the source of that predictability for the defendant.

64 In addition, the Court has, admittedly, held that the concept of 'other party to the contract' set out in Article 16(1) of Regulation No 44/2001 must be interpreted as also covering the contracting partner of the operator with which the consumer concluded that contract (see, to that effect, judgment of 14 November 2013, *Maletic*, C-478/12, EU:C:2013:735, paragraph 32). However, that interpretation rests on specific circumstances, in which the consumer was from the outset contractually linked, inseparably, to two contracting partners (judgment of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 33).

65 In the light of all the foregoing considerations, the answer to the second question is that Articles 15 to 17 of Regulation No 44/2001 must be interpreted as meaning that an action for compensation brought by a passenger against the operating air carrier, with which that passenger has not concluded a contract, does not come within the scope of those articles relating to special jurisdiction over consumer contracts.

Costs

66 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:

1. **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, must be interpreted as meaning that a passenger on a flight which has been delayed for three hours or more may bring an action for compensation under Articles 6 and 7 of that regulation against the operating air carrier, even if that passenger and that air carrier have not entered into a contract between them and the flight in question forms part of a package tour covered by Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.**

2. **Article 5(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for compensation brought pursuant to Regulation No 261/2004 by a passenger against the operating air carrier comes within the concept of 'matters relating to a contract', within the meaning of that provision, even if no contract was concluded between those parties and the flight operated by that air carrier was provided for by a package travel contract, also including accommodation, concluded with a third party.**

3. **Articles 15 to 17 of Regulation No 44/2001 must be interpreted as meaning that an action for compensation brought by a passenger against the operating air carrier, with which that passenger has not concluded a contract, does not come within the scope of those articles relating to special jurisdiction over consumer contracts.**

[Signatures]