Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 September 2013*

(Regulation (EC) No 1371/2007 — Rail passengers' rights and obligations — Article 17 — Compensation in the event of a delay — Excluded in the event of force majeure — Whether permissible — First subparagraph of Article 30(1) — Powers of the national body responsible for the enforcement of the regulation — Whether it is possible to require the rail carrier to amend its conditions governing passenger compensation)

In Case C-509/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Austria), made by decision of 8 September 2011, received at the Court on 30 September 2011, in the proceedings brought by

ÖBB-Personenverkehr AG,

intervening parties:

Schienen-Control Kommission,

Bundesministerin für Verkehr, Innovation und Technologie,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Berger, A. Borg Barthet (Rapporteur), E. Levits and J.-J. Kasel, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 22 November 2012,

after considering the observations submitted on behalf of:

— ÖBB-Personenverkehr AG, by A. Egger, Rechtsanwalt,

— the Schienen-Control Kommission, by G. Hellwagner, N. Schadler, and G. Redl, acting as Agents,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

* Language of the case: German.

— the Italian Government, by G. Palmieri, acting as Agent, and W. Ferrante, avvocato dello Stato,

— the Swedish Government, by A. Falk, acting as Agent,

— the European Commission, by G. Braun and H. Støvlbæk, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 March 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 17 and 30 of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ 2007 L 315, p. 14).

2 The request has been made in an action brought by ÖBB-Personenverkehr AG ('ÖBB-Personenverkehr') against the decision of the Schienen-Control Kommission (Rail Network Control Commission) (the 'Kommission') of 6 December 2010 relating to the terms governing compensation payable to rail passengers by ÖBB-Personenverkehr.

Legal context

International law

3 The Agreement between the European Union and the Intergovernmental Organisation for International Carriage by Rail on the Accession of the European Union to the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999 (the 'COTIF') signed in Bern (Switzerland) on 23 June 2011, entered into force on 1 July 2011, in accordance with Article 9 of that agreement.

4 Article 2 of the agreement states as follows:

'Without prejudice to the object and the purpose of the Convention to promote, improve and facilitate international traffic by rail and without prejudice to its full application with respect to other Parties to the Convention, in their mutual relations, Parties to the Convention which are Member States of the Union shall apply Union rules and shall therefore not apply the rules arising from that Convention except in so far as there is no Union rule governing the particular subject concerned.'

European Union law

5 Recitals 1 to 3 in the preamble to Regulation No 1371/2007 state as follows:

'(1) In the framework of the common transport policy, it is important to safeguard users' rights for rail passengers and to improve the quality and effectiveness of rail passenger services in order to help increase the share of rail transport in relation to other modes of transport.

(2) The Commission's communication "Consumer Policy Strategy 2002-2006" … sets the aim of achieving a high level of consumer protection in the field of transport in accordance with Article 153(2) of the [EC] Treaty.

(3) Since the rail passenger is the weaker party to the transport contract, passengers' rights in this respect should be safeguarded.'

6 Recitals 6, 13 and 14 in the preamble to that regulation state as follows:

'(6) Strengthening of the rights of rail passengers should build on the existing system of international law on this subject contained in Appendix A – Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the [COTIF] [(the "CIV Uniform Rules")]. However, it is desirable to extend the scope of this Regulation and protect not only international passengers but domestic passengers too.

…

(13) Strengthened rights of compensation and assistance in the event of delay, missed connection or cancellation of a service should lead to greater incentives for the rail passenger market, to the benefit of passengers.

(14) It is desirable that this Regulation create a system of compensation for passengers in the case of delay which is linked to the liability of the railway undertaking, on the same basis as the international system provided by the COTIF and in particular appendix CIV thereto relating to passengers' rights.'

7 Recitals 22 and 23 in the preamble to Regulation No 1371/2007 are worded as follows:

'(22) Member States should lay down penalties applicable to infringements of this Regulation and ensure that these penalties are applied. The penalties, which might include the payment of compensation to the person in question, should be effective, proportionate and dissuasive.

(23) Since the objectives of this Regulation, namely the development of the Community's railways and the introduction of passenger rights, cannot be sufficiently achieved by the Member States, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the [EC] Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.'

8 Article 3 of Regulation No 1371/2007 provides as follows:

'For the purposes of this Regulation the following definitions shall apply:

1. "railway undertaking" means a railway undertaking as defined in Article 2 of Directive 2001/14/EC …, and any other public or private undertaking the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must ensure traction; this also includes undertakings which provide traction only;

…

8. "transport contract" means a contract of carriage for reward or free of charge between a railway undertaking or a ticket vendor and the passenger for the provision of one or more transport services;

…

16. “General Conditions of Carriage” means the conditions of the carrier in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract of carriage, an integral part of it;

…’

9 Article 6 of that regulation provides as follows:

‘1. Obligations towards passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the transport contract.

2. Railway undertakings may offer contract conditions more favourable for the passenger than the conditions laid down in this Regulation.’

10 Article 11 of the regulation states as follows:

‘Subject to the provisions of this Chapter, and without prejudice to applicable national law granting passengers further compensation for damages, the liability of railway undertakings in respect of passengers and their luggage shall be governed by Chapters I, III and IV of Title IV, Title VI and Title VII of Annex I.’

11 Article 15 of that regulation provides as follows:

‘Subject to the provisions of this Chapter, the liability of railway undertakings in respect of delays, missed connections and cancellations shall be governed by Chapter II of Title IV of Annex I.’

12 Article 17 of Regulation No 1371/2007 states as follows:

‘1. Without losing the right of transport, a passenger may request compensation for delays from the railway undertaking if he or she is facing a delay between the places of departure and destination stated on the ticket for which the ticket has not been reimbursed in accordance with Article 16. The minimum compensations for delays shall be as follows:

(a) 25% of the ticket price for a delay of 60 to 119 minutes,

(b) 50% of the ticket price for a delay of 120 minutes or more.

Passengers who hold a travel pass or season ticket and who encounter recurrent delays or cancellations during its period of validity may request adequate compensation in accordance with the railway undertaking’s compensation arrangements. These arrangements shall state the criteria for determining delay and for the calculation of the compensation.

Compensation for delay shall be calculated in relation to the price which the passenger actually paid for the delayed service.

Where the transport contract is for a return journey, compensation for delay on either the outward or the return leg shall be calculated in relation to half of the price paid for the ticket. In the same way the price for a delayed service under any other form of transport contract allowing travelling several subsequent legs shall be calculated in proportion to the full price.

The calculation of the period of delay shall not take into account any delay that the railway undertaking can demonstrate as having occurred outside the territories in which the Treaty establishing the European Community is applied.

2. The compensation of the ticket price shall be paid within one month after the submission of the request for compensation. The compensation may be paid in vouchers and/or other services if the terms are flexible (in particular regarding the validity period and destination). The compensation shall be paid in money at the request of the passenger.

3. The compensation of the ticket price shall not be reduced by financial transaction costs such as fees, telephone costs or stamps. Railway undertakings may introduce a minimum threshold under which payments for compensation will not be paid. This threshold shall not exceed EUR 4.

4. The passenger shall not have any right to compensation if he is informed of a delay before he buys a ticket, or if a delay due to continuation on a different service or re-routing remains below 60 minutes.'

13 Article 18(1) to (3) of that regulation provides as follows:

'1. In the case of a delay in arrival or departure, passengers shall be kept informed of the situation and of the estimated departure time and estimated arrival time by the railway undertaking or by the station manager as soon as such information is available.

2. In the case of any delay as referred to in paragraph 1 of more than 60 minutes, passengers shall also be offered free of charge:

(a) meals and refreshments in reasonable relation to the waiting time, if they are available on the train or in the station, or can reasonably be supplied;

(b) hotel or other accommodation, and transport between the railway station and place of accommodation, in cases where a stay of one or more nights becomes necessary or an additional stay becomes necessary, where and when physically possible;

(c) if the train is blocked on the track, transport from the train to the railway station, to the alternative departure point or to the final destination of the service, where and when physically possible.

3. If the railway service cannot be continued anymore, railway undertakings shall organise as soon as possible alternative transport services for passengers.

…'

14 Article 30 of that regulation provides as follows:

'1. Each Member State shall designate a body or bodies responsible for the enforcement of this Regulation. Each body shall take the measures necessary to ensure that the rights of passengers are respected.

Each body shall be independent in its organisation, funding decisions, legal structure and decision-making of any infrastructure manager, charging body, allocation body or railway undertaking.

Member States shall inform the Commission of the body or bodies designated in accordance with this paragraph and of its or their respective responsibilities.

2. Each passenger may complain to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.'

15 Article 32 of that regulation provides as follows:

‘Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by 3 June 2010 and shall notify it without delay of any subsequent amendment affecting them.’

16 Annex I to Regulation No 1371/2007 contains an extract from the CIV Uniform Rules.

17 Chapter II of Title IV of those rules, entitled ‘Liability in case of failure to keep to the timetable’, includes Article 32, sole article of that chapter, which is worded as follows:

‘1. The carrier shall be liable to the passenger for loss or damage resulting from the fact that, by reason of cancellation, the late running of a train or a missed connection, his journey cannot be continued the same day, or that a continuation of the journey the same day could not reasonably be required because of given circumstances. The damages shall comprise the reasonable costs of accommodation as well as the reasonable costs occasioned by having to notify persons expecting the passenger.

2. The carrier shall be relieved of this liability, when the cancellation, late running or missed connection is attributable to one of the following causes:

(a) circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which it was unable to prevent;

(b) fault on the part of the passenger;

(c) the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which it was unable to prevent; another undertaking using the same railway infrastructure shall not be considered as a third party; the right of recourse shall not be affected.

3. National law shall determine whether and to what extent the carrier must pay damages for harm other than that provided for in paragraph 1. This provision shall be without prejudice to Article 44.’

Austrian law

18 Paragraph 22a(1) of the federal Law on railways, railway rolling stock and railway traffic (Bundesgesetz über Eisenbahnen, Schienenfahrzeuge auf Eisenbahnen und den Verkehr auf Eisenbahnen, BGBl. 60/1957), as amended (BGBl. I, 25/2010, the ‘Law on the railways’), provides as follows:

‘Tariffs for the provision of rail services on main routes and connected ancillary routes shall include compensation terms in accordance with the provisions on compensation of the ticket price established in Article 2 of the federal Law relating to [Regulation No 1371/2007] and Article 17 of [Regulation No 1371/2007].’

19 Paragraph 78b(2) of the Law on the railways is worded as follows:

‘The [Kommission] shall of its own motion:

…

2. declare null and void either in full or in part compensation terms adopted pursuant to [Regulation No 1371/2007] where the railway undertaking does not adopt terms in accordance with the requirements of Article 17 of [Regulation No 1371/2007].'

20 Paragraph 167(1) of the Law on the railways provides that an administrative offence is to be deemed to have been committed and sanctioned by the district administrative authority by a fine of up to EUR 2 180 where the person responsible does not publish compensation terms in accordance with Article 22a(1) of that legislation.

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

21 ÖBB-Personenverkehr is a railway undertaking within the meaning of Article 3(1) of Regulation No 1371/2007.

22 The Kommission regarded the terms of ticket price compensation which ÖBB-Personenverkehr applied to passenger transport contracts as not complying with Article 17 of Regulation No 1371/2007 and, by decision of 6 December 2010, it ordered that undertaking to amend them.

23 In particular, the Kommission ordered the undertaking to delete a provision under which there was no right to compensation or reimbursement of costs incurred where the cause of the delay could be attributed to one of the following:

— fault on the part of the passenger;

— the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which it was unable to prevent;

— circumstances not connected with the operation of the railway which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which it was unable to prevent;

— where services are restricted as a result of strikes, provided that passengers were adequately informed of these; and

— if the delay results from transport services not included in the transport contract.

24 ÖBB-Personenverkehr brought proceedings before the Verwaltungsgerichtshof (Administrative Court) against that decision.

25 ÖBB-Personenverkehr argues, first, that the Kommission does not have the power to order an amendment to the terms and conditions of sale, and, secondly, that it flows from Regulation No 1371/2007 that railway undertakings are exempt from the requirement to pay compensation to passengers where the delay is attributable to force majeure. In that regard ÖBB-Personenverkehr submits in particular that Article 15 of that regulation refers to Article 32 of the CIV Uniform Rules, so that the exemptions from liability laid down in the latter provision are also applicable in the context of Article 17 of that regulation.

26 On the other hand, the Kommission submits that directions given to a railway undertaking to apply certain compensation terms or to refrain from applying terms of transport which restrict the passenger rights set out in Regulation No 1371/2007 may be based directly on Article 30(1) of that regulation. It also maintains that Article 17 of that regulation is exhaustive. Consequently, a railway

undertaking which, in accordance with Article 6(1) of that regulation, may not limit or waive its obligations towards passengers cannot do so either under Article 17, including in cases of force majeure.

27 In those circumstances, the Verwaltungsgerichtshof decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is the first subparagraph of Article 30(1) of [Regulation No 1371/2007] to be interpreted as meaning that the national body responsible for the enforcement of that regulation may prescribe, with binding effect on a railway undertaking whose compensation terms do not comply with the criteria laid down in Article 17 of that regulation, the specific content of the compensation scheme to be used by that railway undertaking even where national law permits that body only to declare such compensation terms null and void?

(2) Is Article 17 of Regulation No 1371/2007 to be interpreted as meaning that a railway undertaking may exclude its obligation to pay compensation in cases of force majeure, either through application by analogy of the grounds for exclusion laid down in [Regulations (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), (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ 2010 L 334, p. 1) and (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ 2011 L 55, p. 1)] or by taking into account the exclusions from liability laid down in Article 32(2) of the [CIV Uniform Rules] also for cases requiring compensation for the ticket price?’

The questions referred

The second question

28 By its second question, which it is appropriate to answer first, the referring court asks, in essence, whether Article 17 of Regulation No 1371/2007 must be interpreted as meaning that a railway undertaking is entitled to include in its general terms and conditions of carriage a clause under which it is exempt from its obligation to pay compensation as a result of a delay, where the delay is attributable to force majeure or one of the reasons listed at Article 32(2) of the CIV Uniform Rules.

29 As a preliminary point, it should be noted that Article 17(1) of Regulation No 1371/2007 lays down minimum compensation, determined by reference to the ticket price, which passengers are entitled to claim from railway undertakings in the event of delay.

30 Under Article 17(4) of that regulation, however, passengers have no right to compensation if they are informed of the delay before they buy a ticket or if the delay is under 60 minutes. In addition, the last subparagraph of Article 17(1) of that regulation states that the calculation of the period of delay is not to take into account any delay that the railway undertaking can demonstrate as having occurred outside the territories in which the EC Treaty is applicable.

31 On the other hand, nothing in Regulation No 1371/2007 provides that railway undertakings are exempt from the obligation to pay compensation laid down in Article 17(1) of that regulation where the delay is attributable to force majeure.

32 Article 15 of Regulation No 1371/2007 nonetheless provides that the liability of railway undertakings in respect of delays, missed connections and cancellations is, subject to Articles 16 to 18 of that regulation, governed by Article 32 of the CIV Uniform Rules.

33 As is apparent from recital 14 of Regulation No 1371/2007, the EU legislature took the view that it was desirable for the system of compensation for passengers in the case of delay to use the same basis as the international system established by the COTIF, of which the CIV Uniform Rules form part.

34 Under Article 32(1) of the CIV Uniform Rules, the railway carrier is liable to the passenger for loss or damage resulting from the fact that, due to the cancellation or late running of a train or a missed connection, his journey cannot be continued the same day. The damages to which the railway passenger is entitled in those circumstances include the reasonable costs of accommodation as well as the reasonable costs incurred in having to notify persons expecting the passenger.

35 Reasons exempting the carrier from the liability referred to in that provision are set out in Article 32(2) of the CIV Uniform Rules.

36 In that context, the referring court asks first whether, in the circumstances referred to in Article 32(2) of the CIV Uniform Rules, a railway carrier may be exempted from its obligation to pay compensation to passengers under Article 17 of Regulation No 1371/2007.

37 In that regard, it should be noted that Article 32 of the CIV Uniform Rules relates to the right of railway passengers to receive compensation for damage or loss resulting from the delay or cancellation of a train.

38 On the other hand, the purpose of the compensation provided for in Article 17 of Regulation No 1371/2007, in so far as it is calculated on the basis of the ticket price, is to compensate the passenger for the consideration provided for a service which was not ultimately supplied in accordance with the transport contract. It is also a fixed-rate standard form of financial compensation, unlike that provided for under the system of liability established at Article 32(1) of the CIV Uniform Rules, which requires an individual assessment of the damage suffered.

39 Therefore, as the purpose of the above provisions and the procedures for their implementation are different, the compensation system provided for by the EU legislature in Article 17 of Regulation No 1371/2007 cannot be treated in the same way as the railway carrier's liability system under Article 32(1) of the CIV Uniform Rules.

40 It follows, in the light of Article 15 of Regulation No 1371/2007, that where railway passengers receive compensation under Article 17 of that regulation, that does not prevent such passengers from bringing, in addition, a claim for compensation pursuant to Article 32(1) of the CIV Uniform Rules or, pursuant to Article 32(3) thereof, on the basis of the applicable national law.

41 That interpretation is, moreover, compatible with the Explanatory Report on the Uniform Rules concerning the Contract for International Carriage of Passengers by Rail (CIV), which appears in the document entitled 'Central Office Report on the Revision of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 and the Explanatory Reports on the texts adopted by the Fifth General Assembly' of 1 January 2011, which states that 'passenger traffic delays represent a typical case of improper performance of the contract of carriage [which,] in numerous legal systems, … justifies reduced remuneration, namely [in the present case] reduction of the cost of transport'.

42 It follows from the foregoing considerations that the carrier's grounds of exemption from liability provided for in Article 32(2) of the CIV Uniform Rules cannot be considered applicable in the context of Article 17 of Regulation No 1371/2007.

43 That interpretation is supported by the *travaux préparatoires* for Regulation No 1371/2007, from which it is apparent that, whilst the EU legislature has chosen to bring the provisions relating to the liability of railway undertakings in the case of delays, missed connections and cancellations into line with the corresponding chapters of the CIV Uniform Rules, it has, in addition, considered it necessary to include in that regulation specific provisions governing reimbursement and re-routing, compensation and the obligation to provide passengers with assistance in the event of delay.

44 As shown by the Council of the European Union's rejection of an amendment, adopted by the European Parliament at second reading, specifying that Article 32(2) of the CIV Uniform Rules is also applicable to the provisions set out in Articles 16 and 17 of Regulation No 1371/2007, the EU legislature deliberately chose not to provide that railway undertakings are to be exempt from their obligation to pay compensation in the event of delay in the circumstances referred to at Article 32(2).

45 In so doing, the EU legislature considered that the railway carrier is under an obligation to pay compensation on the basis of the price paid by way of consideration for transport services which are not supplied in accordance with the transport contract, including where the delay is attributable to one of the reasons listed at Article 32(2) of the CIV Uniform Rules.

46 Secondly, the referring court asks whether the grounds for excluding the carrier's liability under Regulations Nos 261/2004, 1177/2010 and 181/2011, relating to the transport of passengers by plane, by boat, and by bus and coach, respectively, may be applied by analogy to carriage by rail.

47 In that regard, it should be noted that the situation of undertakings operating in different transport sectors is not comparable since the different modes of transport – having regard to the manner in which they operate, the conditions governing their accessibility and the distribution of their networks – are not interchangeable as regards the conditions of their use. In those circumstances, the EU legislature was entitled to establish rules for providing a level of customer protection that varied according to the transport sector concerned (Case C-12/11 *McDonagh* [2013] ECR, paragraphs 56 and 57).

48 Accordingly, the grounds for exemption provided for by EU legislation applicable to other modes of transport cannot be applied by analogy to carriage by rail.

49 Similarly the Court cannot uphold the argument that the general principle of EU law relating to force majeure must be applied in circumstances such as those in the main proceedings, as a consequence of which a railway carrier is entitled to refuse to pay the relevant passengers compensation in the event of delay attributable to force majeure.

50 Indeed, neither force majeure nor any circumstances that are equivalent to it are mentioned in Article 17 of Regulation No 1371/2007 or in any other provision of that regulation relevant to the interpretation of that article.

51 In those circumstances, any other interpretation of Article 17 of Regulation No 1371/2007 would have the effect of calling into question the essential purpose of protecting the rights of railway passengers pursued by that regulation, as set out at recitals 1 to 3 thereof.

52 It follows from all of the preceding considerations that the answer to the second question is that Article 17 of Regulation No 1371/2007 must be interpreted as meaning that a railway undertaking is not entitled to include in its general terms and conditions of carriage a clause under which it is exempt from its obligation to pay compensation in the event of a delay where the delay is attributable to force majeure or to one of the reasons set out at Article 32(2) of the CIV Uniform Rules.

The first question

53 By its first question, the referring court asks, in essence, whether the first subparagraph of Article 30(1) of Regulation No 1371/2007 must be interpreted as meaning that the national body responsible for the enforcement of that regulation may, in the absence of any national provision to that effect, impose upon a railway undertaking whose compensation terms do not meet the criteria set out at Article 17 of that regulation the specific content of those terms.

54 That court is of the view that Article 78b(2) of the Law on the railways, under which the Kommission is required to declare null and void compensation terms which do not comply with the requirements of Article 17 of Regulation No 1371/2007, does not ensure that railway passenger rights will be respected in all cases.

55 In particular, since it is not followed by the necessary amendments required for compliance with the second subparagraph of Article 17(1) of Regulation No 1371/2007, any declaration that the relevant clauses are null and void will not ensure that railway passengers benefit from the compensation terms set out under that provision.

56 In those circumstances, the referring court's first question must be understood as relating in essence to whether, given the limited powers available to it under Austrian law, the Kommission is entitled to rely directly on Article 30(1) of Regulation No 1371/2007 to adopt the measures necessary to ensure that the rights of railway passengers are respected.

57 In that regard, it must be borne in mind that, by virtue of the very nature of regulations and of their function in the system of sources of EU law, the provisions of a regulation, as a general rule, have immediate effect in the national legal systems without its being necessary for the national authorities to adopt measures of application (see Case C-367/09 *SGS Belgium and Others* [2010] ECR I-10761, paragraph 32 and the case-law cited).

58 However some of the provisions of a regulation may necessitate, for their implementation, the adoption of measures of application by the Member States (*SGS Belgium and Others*, paragraph 33).

59 In the present case, Article 30(1) of Regulation No 1371/2007 provides that the national body responsible for the enforcement of that regulation must take the necessary measures to ensure that passengers' rights are respected.

60 None the less, it is clear that the specific measures which that body must be able to adopt have not been identified by the EU legislature.

61 It must in addition be noted that, under the third subparagraph of Article 30(1) of Regulation No 1371/2007, Member States are required to inform the Commission of that body's responsibilities.

62 It follows from the preceding considerations that Article 30(1) of Regulation No 1371/2007 requires for its implementation that Member States adopt measures defining the powers available to the national supervisory body.

63 Therefore, contrary to what the Kommission submits, the first subparagraph of Article 30(1) of Regulation No 1371/2007 cannot be interpreted as constituting a legal basis authorising national bodies to impose on railway undertakings the specific content of their contractual terms relating to the circumstances in which they are to pay compensation.

64 The fact remains that, in accordance with Article 4(3) TEU, it is for all the authorities of Member States, including, for matters within their jurisdiction, the courts, to take the steps necessary to ensure that the obligations arising under Regulation No 1371/2007 are fulfilled. In order to ensure the full

effect of that regulation and to ensure that the rights which it confers upon individuals are protected, those authorities are required to interpret and apply national law, in so far as possible, in the light of the wording and purpose of that regulation in order to achieve the result envisaged by it.

65 In the present case, taking into account the objectives set out at recitals 1 to 3 of Regulation No 1371/2007, the relevant provisions of Austrian law, including those governing the penalties applicable in the event of a breach of that regulation, must be interpreted and applied in a manner consistent with the requirement of a high level of protection for railway passengers, in such a way as to ensure that the rights conferred upon them are guaranteed.

66 Having regard to all the foregoing, the answer to the first question is that the first subparagraph of Article 30(1) of Regulation No 1371/2007 must be interpreted as meaning that the national body responsible for the enforcement of that regulation may not, in the absence of any national provision to that effect, impose upon a railway undertaking whose compensation terms do not meet the criteria set out at Article 17 of that regulation the specific content of those terms.

Costs

67 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. **The first subparagraph of Article 30(1) of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations must be interpreted as meaning that the national body responsible for the enforcement of that regulation may not, in the absence of any national provision to that effect, impose upon a railway undertaking whose compensation terms do not meet the criteria set out at Article 17 of that regulation the specific content of those terms.**

2. **Article 17 of Regulation No 1371/2007 must be interpreted as meaning that a railway undertaking is not entitled to include in its general terms and conditions of carriage a clause under which it is exempt from its obligation to pay compensation in the event of a delay where the delay is attributable to force majeure or to one of the reasons set out at Article 32(2) of the Uniform Rules concerning the Contract for International Carriage of Passengers and Luggage by Rail of the Convention concerning International Carriage by Rail of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999.**

[Signatures]