



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-112/11  
ebookers.com Deutschland v Bundesverband der Verbraucherzentralen und  
Verbraucherverbände – Verbraucherzentrale Bundesverband eV

## **In Advocate General Mazák's view, a travel agent may not automatically include travel insurance when selling airline tickets**

*Such "optional extras" may only be offered on an "opt-in" basis*

Regulation No 1008/2008<sup>1</sup> aims to provide greater transparency on air fares for flights departing from within the EU. The Regulation requires those selling tickets to always indicate the 'final price' which includes the air fare and all applicable taxes, and charges, surcharges and fees which are unavoidable and foreseeable at the time of publication. Extra services, known as 'optional price supplements' must be clearly identified at the start of any booking process and accepted by the customer on an "opt-in" basis.

ebookers.com Deutschland operates an online travel portal, where it offers airline tickets. When the customer selects a specific flight during the booking process, the costs are listed in the top right-hand corner of the page, under the heading 'your current travel costs'. In addition to the air fare, the list also contains an amount for 'taxes and fees' and a further heading 'travel cancellation insurance'. The 'total price of travel' is then indicated. There is a notice at the bottom of the page indicating how the customer can opt-out of the insurance. When the customer pays upon completing the booking, ebookers.com then pays the flight costs to the airline, the taxes and fees to the appropriate authorities and the insurance premium to the insurance company. The insurance company is legally and economically distinct from the airline company.

A German consumer protection association has taken ebookers.com before the German courts for this practice of automatically including travel insurance with the air fare. In this context, the Oberlandesgericht Köln (Higher Regional Court, Cologne) has asked the Court of Justice whether such services provided by third parties, and which are charged to the customer by the company selling the flight together with the air fare as part of a total price, constitute 'optional price supplements' with the result that they must be offered on an 'opt-in' basis.

In his Opinion today, Advocate General Ján Mazák notes that, if the purpose of the Regulation of enabling customers to compare air fares effectively is to be achieved, the final price which the customer sees must relate to a similar service and comprise, as far as possible, similar price-components. By requiring those charges and fees which are unavoidable and foreseeable to be included in the final price, a customer is accurately informed of the actual cost of flying from A to B and able to compare prices of various airlines or ticket sellers.

By contrast, 'price supplements' cannot be regarded as forming part of the final price for the purposes of comparison. They are, by definition, optional; 'extras' that the customer can choose to accept or not. If such optional extras were to be regarded as part of the final price, the principle of allowing such prices to be compared would be undermined as the prices could refer to widely differing services.

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<sup>1</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 establishing common rules for the operation of air services in the Community (Recast), OJ 2008 L 293, p. 3.

However, the Advocate General considers that the requirement that optional price supplements must be on an 'opt-in' as opposed to 'opt-out' basis serves a different purpose than ensuring price comparison, namely that of consumer protection. It prevents customers from being induced when booking a flight to pay for unnecessary extra services, unless they actively and expressly choose to accept such additional offers and the prices to be paid for them.

In order to achieve this goal, Mr Mazák concludes that the price for a service, such as travel insurance, that it is offered and booked in connection with a flight needs to be included in the concept of 'optional price supplements'. As such, it should be presented on an 'opt-in' basis.

Finally, Advocate General Mazák maintains that the fact that services were provided by third parties is irrelevant. It would be at odds with the purpose of protecting the customer if that protection were to depend on whether the optional service originated from an airline company or from a legally distinct company, or on whether or not that service strictly forms part of an air services contract. In his view, the decisive point is not the fact that the price supplement concerned originates from an airline company or an agency related to it or that it is paid, strictly speaking, in consideration for air services, but rather the fact that the optional service and its price are offered in connection with an air service/flight and can be booked in the same process.

The Advocate General therefore concludes that services such as travel insurance offered when booking a flight have to be presented to the customer on an "opt-in" basis, irrespective of whether that service is offered by a third party.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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