



In the view of Advocate General Bot, the Spanish legislation which prohibits air carriers from charging for checking in passengers' baggage in the form of an optional price supplement is incompatible with EU law

The carriers must nevertheless inform customers of the charges for that service in a clear, transparent and unambiguous way, at the start of the booking process, on an opt-in basis

Spanish legislation prohibits air carriers from charging for checking in passengers' baggage in the form of an optional price supplement.

In August 2010, the air carrier Vueling added a surcharge of €40 to the base price of airline tickets (€241.48) purchased by Ms Arias Villegas when she checked in two pieces of baggage online. Ms Villegas therefore lodged a complaint against Vueling, claiming that the contract of carriage by air concluded with that undertaking contained an unfair term. The Instituto Galego de Consumo de la Xunta de Galicia (consumer body established by the Autonomous Community of Galicia) imposed an administrative fine of €3 000 on Vueling.

In that context, the Juzgado de lo Contencioso-Administrativo no 1 de Ourense (Court for Contentious Administrative Proceedings, Ourense) (Spain), which is seised of the case, asks the Court of Justice whether that Spanish legislation is compatible with the principle of pricing freedom laid down in EU law¹. In short, the question is whether EU law is liable to call the economic model adopted by certain airlines since the liberalisation of the sector and, in particular, by the 'low cost' airlines, into question.

In his Opinion delivered today, Advocate General Yves Bot, proposes that the Court answer that **EU law allows air carriers pricing freedom in respect of all commercial services associated with the performance of the contract of carriage by air, including services such as checking in baggage.**

Accordingly, with regard to the pricing of checked-in baggage, the air carriers have the option of including the service in the base price of the airline ticket or to offer the service in return for an optional price supplement.

The Advocate General states that this type of interpretation is not applicable to hand baggage, as the airline must keep those free. First, unlike checked-in baggage, hand baggage remains the sole responsibility of the passenger. Moreover, it is not part of the commercial services provided by the airline because there are no costs for checking it in, tracing it and storing it, as there is with checked-in baggage. Secondly, the passengers' ability to have their personal effects and objects they consider most precious or indispensable with them under their own care forms part of their personal dignity.

In consequence, the Advocate General considers that the Spanish legislation is not compatible with EU law. He takes the view that it reintroduces State regulation which the EU legislature took great care to abolish through deregulation and liberalisation of the sector. Except

¹ Article 22(1) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ 2008 L 293, p. 3).

with respect to airlines accomplishing a public service mission and the charges imposed by public authorities or airport managers², Member States no longer have the right to be involved in air carriers' pricing practices, the applicable pricing conditions and the types of services included in the basic price of the airline ticket.

Furthermore, the Spanish legislation calls into question the objective pursued by the EU legislature in seeking to achieve a more efficient, consistent and homogenous application of Community legislation for the internal aviation market. EU law thus seeks, on the one hand, to avoid a distortion of competition arising from the different application of the rules at national level whilst, on the other, enabling consumers to compare effectively the prices for air services. Given that air transport is, by its very nature, an international market on which similarly-sized airline companies are present through completely borderless booking tools, it is essential that their activity actually be regulated by rules which are common to all Member States of the EU. The Spanish legislation clearly runs counter to that objective.

It is nevertheless for the competent national authorities to ensure that, in applying a surcharge for such a service, air carriers comply with consumer protection requirements³. Thus, **air carriers must communicate in a clear, transparent and unambiguous way, at the start of the booking process undertaken by the customer, the detailed rules for pricing relating to checking in of baggage and allow the customer to accept or refuse the service in question on an opt-in basis**⁴.

In the present case, therefore, it is for the national court to ascertain whether Vueling has complied with those requirements with regard to Ms Arias Villegas.

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.

Unofficial document for media use, not binding on the Court of Justice.

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106

² Taxes and airport charges and also other charges, surcharges or fees, such as those related to security or fuel which, by their very nature, cannot be left to the discretion of economic operators and which the European Union legislature addresses specifically and separately in the regulation referred to above.

³ Article 23(1) of the regulation referred to above.

⁴ See, in that regard [Case C-112/11 ebookers.com Deutschland GmbH](#) (Press Release [No 105/12](#)).