JUDGMENT OF THE COURT (Grand Chamber)

10 January 2006 *

In Case C-344/04,

REFERENCE for a preliminary ruling under Article 234 EC from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), made by decision of 14 July 2004, received at the Court on 12 August 2004, in the proceedings

The Queen on the application of:

International Air Transport Association,

European Low Fares Airline Association

v

Department for Transport,

* Language of the case: English.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Schiemann and J. Malenovský (Rapporteur), Presidents of Chambers, C. Gulmann, R. Silva de Lapuerta, K. Lenaerts, P. Kūris, E. Juhász, G. Arestis and A. Borg Barthet, Judges,

Advocate General: L.A. Geelhoed,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 June 2005,

after considering the observations submitted on behalf of:

— the International Air Transport Association, by M. Brealey QC and M. Demetriou, Barrister, instructed by J. Balfour, Solicitor,

— the European Low Fares Airline Association, by G. Berrisch, Rechtsanwalt, and C. Garcia Molyneux, abogado,

— the United Kingdom Government, by M. Bethell, acting as Agent, and C. Lewis, Barrister,

— the European Parliament, by K. Bradley and M. Gómez Leal, acting as Agents,

— the Council of the European Union, by E. Karlsson, K. Michoel and R. Szostak, acting as Agents,

— the Commission of the European Communities, by F. Benyon and M. Huttunen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns, first, the validity of Articles 5, 6 and 7 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). It concerns, secondly, the interpretation of the second paragraph of Article 234 EC.

2 The reference was made in proceedings brought by the International Air Transport Association ('IATA') and the European Low Fares Airline Association ('ELFAA') against the Department for Transport concerning the implementation of Regulation No 261/2004.

Legal context

International rules

3 The Convention for the Unification of Certain Rules for International Carriage by Air ('the Montreal Convention') was approved by decision of the Council of 5 April 2001 (OJ 2001 L 194, p. 38).

4 Chapter III of the Montreal Convention, headed 'Liability of the carrier and extent of compensation for damage', is comprised by Articles 17 to 37.

5 Article 19 of the Convention, headed 'Delay', provides:

'The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.'

6 Article 22(1) of the Convention limits the liability of the carrier for delay to 4 150 Special Drawing Rights (SDRs) for each passenger. Article 22(5) essentially provides that this limit is not to apply if the damage results from an act or omission of the carrier, done with intent to cause damage or recklessly and with knowledge that damage would probably result.

7 Article 29 of the Convention, headed 'Basis of claims', reads as follows:

'In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.'

Community rules

Regulation (EC) No 2027/97

8 Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents (OJ 1997 L 285, p. 1) was amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ 2002 L 140, p. 2) ('Regulation No 2027/97').

9 Article 3(1) of Regulation No 2027/97 provides:

'The liability of a Community air carrier in respect of passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability.'

10 The annex to Regulation No 2027/97 contains inter alia the following provisions, under the heading 'Passenger delays':

'In case of passenger delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for passenger delay is limited to 4 150 SDRs (approximate amount in local currency).'

Regulation No 261/2004

11 The first and second recitals in the preamble to Regulation No 261/2004 are worded as follows:

'(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.'

12 The 12th recital in the preamble states:

'The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced. This should be achieved by inducing carriers to inform passengers of cancellations before the scheduled time of departure and in addition to offer them reasonable re-routing, so that the passengers can make other arrangements. Air carriers should compensate passengers if they fail to do this, except when the cancellation occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.'

13 The 14th recital states:

'As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.'

14 Article 5 of Regulation No 261/2004, headed 'Cancellation', states:

'1. 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

(b) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c); and

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:

(i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

(ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

2. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

4. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.'

15 Article 6 of Regulation No 261/2004, headed 'Delay', is worded as follows:

'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.'

16 Article 7 of Regulation No 261/2004, headed 'Right to compensation', provides:

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

(a) EUR 250 for all flights of 1 500 kilometres or less;

(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;

(c) EUR 600 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

(a) by two hours, in respect of all flights of 1 500 kilometres or less; or

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

(c) by four hours, in respect of all flights not falling under (a) or (b),

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50%.

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.

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.'

17 Article 8 of Regulation No 261/2004, headed 'Right to reimbursement or re-routing', states:

'1. 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, together with, when relevant,

— a return flight to the first point of departure, at the earliest opportunity;

(b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or

(c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.

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.

3. When, in the case where a town, city or region is served by several airports, an operating air carrier offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.'

18 Article 9 of Regulation No 261/2004, headed 'Right to care', provides:

'1. Where reference is made to this Article, passengers shall be offered free of charge:

(a) meals and refreshments in a reasonable relation to the waiting time;

(b) hotel accommodation in cases:

— where a stay of one or more nights becomes necessary, or

— where a stay additional to that intended by the passenger becomes necessary;

(c) transport between the airport and place of accommodation (hotel or other).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.

3. In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.'

The main proceedings and the questions referred for a preliminary ruling

19 IATA is an association comprising 270 airlines from 130 countries, which carry 98% of scheduled international air passengers worldwide. ELFAA was established as an unincorporated association in January 2004 and represents the interests of 10 low-fare airlines from 9 European countries. These two associations each brought before the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), judicial review proceedings against the Department for Transport relating to the implementation of Regulation No 261/2004.

20 The High Court of Justice, satisfied that the claimants' arguments were not without substance, decided to refer to the Court of Justice the seven questions put forward by them contesting the validity of Regulation No 261/2004. Since the Department for Transport doubted that a reference on six of those questions was necessary as they did not, in its view, raise any real doubt as to the validity of the regulation, the High Court of Justice wished to ascertain what test had to be satisfied, or what threshold passed, before a question concerning the validity of a Community instrument had to be referred to the Court of Justice on the basis of the second paragraph of Article 234 EC. In those circumstances, the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Whether Article 6 of Regulation No 261/2004 is invalid on grounds that it is inconsistent with the ... Montreal Convention ..., and in particular Articles 19,

22 and 29 [thereof], and whether this (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?

(2) Whether the amendment of Article 5 of the Regulation during consideration of the draft text by the Conciliation Committee was done in a manner that is inconsistent with the procedural requirements provided for in Article 251 EC and, if so, whether Article 5 of the Regulation is invalid and, if so, whether this (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?

(3) Whether Articles 5 and 6 of Regulation No 261/2004 (or part thereof) are invalid on grounds that they are inconsistent with the principle of legal certainty, and if so whether this invalidity (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?

(4) Whether Articles 5 and 6 of Regulation No 261/2004 (or part thereof) are invalid on grounds that they are not supported by any or any adequate reasoning, and if so whether this invalidity (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?

(5) Whether Articles 5 and 6 of Regulation No 261/2004 (or part thereof) are invalid on grounds that they are inconsistent with the principle of proportionality required of any Community measure, and if so whether this invalidity (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?

(6) Whether Articles 5 and 6 of Regulation No 261/2004 (or part thereof) are invalid on grounds that they discriminate, in particular, against the members of the second Claimant organisation in a manner that is arbitrary or not objectively justified, and if so whether this invalidity (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?

(7) Is Article 7 of the Regulation (or part thereof) void or invalid on grounds that the imposition of a fixed liability in the event of flight cancellation for reasons that are not covered by the extraordinary circumstances defence is discriminatory, fails to meet the standards of proportionality required of any Community measure, or is not based on any adequate reasoning, and if so whether this invalidity (in conjunction with any other relevant factors) affects the validity of the Regulation as a whole?

(8) In circumstances where a national court has granted permission to bring a claim in that national court, which raises questions as to the validity of provisions of a Community instrument and which it considers is arguable and not unfounded, are there any principles of Community law in connection with any test or threshold which the national court should apply when deciding under [the second paragraph of Article 234] EC whether to refer those questions of validity to the [Court of Justice of the European Communities]?'

21 By order of the President of the Court of 24 September 2004, the referring court's request that the accelerated procedure provided for in the first paragraph of Article 104a of the Rules of Procedure be applied to the present case was rejected.

The questions

Question 8

22 By its eighth question, which it is appropriate to examine first, the referring court asks, in essence, whether the second paragraph of Article 234 EC is to be interpreted as requiring a national court to refer a question as to the validity of a Community act to the Court of Justice for a preliminary ruling only if there is more than a certain degree of doubt concerning its validity.

Admissibility

23 The European Parliament contends that the question is inadmissible since no answer which the Court might provide to the question would be of any assistance for the decision in the case before the referring court, which relates to the validity of Regulation No 261/2004.

24 It is settled case-law that a reference from a national court may be refused only if it is quite obvious that the interpretation of Community law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical or the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 61; Case C-105/94 *Celestini* [1997] ECR I-2971, paragraph 22; and Case C-355/97 *Beck and Bergdorf* [1999] ECR I-4977, paragraph 22). Save for such cases, the Court is, in principle, bound to give a preliminary ruling on questions concerning the interpretation of Community law (see *Bosman*, paragraph 59).

25 In the main proceedings, when the claimants contested the validity of Regulation No 261/2004 before the referring court the question arose for the latter as to whether that challenge to the regulation's validity warranted a reference to the Court for a preliminary ruling as provided in Article 234 EC. Accordingly, the interpretation of that article which the referring court seeks by means of the present question cannot be considered to bear no relation to the purpose of the main action. The fact that the referring court has at the same time also referred to the Court questions concerning the validity of Regulation No 261/2004 and that the answers which will be provided to them may dispose of the main proceedings cannot call into question the relevance which the question on the interpretation of Article 234 EC possesses in itself.

26 The question asked should therefore be answered.

Substance

27 It is settled case-law that national courts do not have the power to declare acts of the Community institutions invalid. The main purpose of the jurisdiction conferred on the Court by Article 234 EC is to ensure that Community law is applied uniformly by national courts. That requirement of uniformity is particularly vital where the validity of a Community act is in question. Differences between courts of the Member States as to the validity of Community acts would be liable to jeopardise the very unity of the Community legal order and undermine the fundamental requirement of legal certainty (Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 15; Case C-27/95 *Bakers of Nailsea* [1997] ECR I-1847, paragraph 20; and Case C-461/03 *Gaston Schul Douane-expediteur* [2005] ECR I-10513, paragraph 21). The Court of Justice alone therefore has jurisdiction to declare a Community act invalid (Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraph 17; and Case C-6/99 *Greenpeace France and Others* [2000] ECR I-1651, paragraph 54).

28 Article 234 EC does not constitute a means of redress available to the parties to a case pending before a national court and therefore the mere fact that a party contends that the dispute gives rise to a question concerning the validity of Community law does not mean that the court concerned is compelled to consider that a question has been raised within the meaning of Article 234 EC (see, to this effect, Case 283/81 *Cilfit* [1982] ECR 3415, paragraph 9). Accordingly, the fact that the validity of a Community act is contested before a national court is not in itself sufficient to warrant referral of a question to the Court for a preliminary ruling.

29 The Court has held that courts against whose decisions there is a judicial remedy under national law may examine the validity of a Community act and, if they consider that the arguments put forward before them by the parties in support of invalidity are unfounded, they may reject them, concluding that the act is completely valid. In so doing, they are not calling into question the existence of the Community act (*Foto-Frost*, paragraph 14).

30 On the other hand, where such a court considers that one or more arguments for invalidity, put forward by the parties or, as the case may be, raised by it of its own motion (see, to this effect, Case 126/80 *Salonia* [1981] ECR 1563, paragraph 7), are well founded, it is incumbent upon it to stay proceedings and to make a reference to the Court for a preliminary ruling on the act's validity.

31 In addition, the spirit of cooperation which must prevail in the operation of the preliminary reference procedure means that the national court is to set out in its order for reference the reasons why it considers such a reference to be necessary.

32 Consequently, the answer to the eighth question must be that, where a court against whose decisions there is a judicial remedy under national law considers that one or

more arguments for invalidity of a Community act which have been put forward by the parties or, as the case may be, raised by it of its own motion are well founded, it must stay proceedings and make a reference to the Court for a preliminary ruling on the act's validity .

The other questions

33 By its first seven questions, the referring court asks, in essence, whether Articles 5, 6 and 7 of Regulation No 261/2004 are invalid and, if relevant, whether their invalidity is liable to result in invalidity of that regulation as a whole.

The consistency of Article 6 of Regulation No 261/2004 with the Montreal Convention

34 By its first question, the referring court essentially asks whether Article 6 of Regulation No 261/2004 is inconsistent with Articles 19, 22 and 29 of the Montreal Convention.

35 Article 300(7) EC provides that 'agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States'. In accordance with the Court's case-law, those agreements prevail over provisions of secondary Community legislation (Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 52; and Case C-286/02 *Bellio F.lli* [2004] ECR I-3465, paragraph 33).

36 The Montreal Convention, signed by the Community on 9 December 1999 on the basis of Article 300(2) EC, was approved by Council decision of 5 April 2001 and entered into force, so far as concerns the Community, on 28 June 2004. Therefore from that last date the provisions of that Convention have, in accordance with settled case-law, been an integral part of the Community legal order (Case 181/73 *Haegeman* [1974] ECR 449, paragraph 5; and Case 12/86 *Demirel* [1987] ECR 3719, paragraph 7). It was after that date that, by decision of 14 July 2004, the High Court of Justice made the present order for reference in the judicial review proceedings before it.

37 Article 6 of Regulation No 261/2004 provides that, in the event of a long delay to a flight, the operating air carrier must offer to assist and take care of the passengers concerned. It does not provide that the carrier may escape such obligations in the event of extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

38 IATA and ELFAA submitted in their applications to the referring court and submit before this Court that Article 6 of Regulation No 261/2004 is accordingly incompatible with the Montreal Convention which contains, in Articles 19 and 22(1), clauses excluding and limiting the air carrier's liability in the event of delay in the carriage of passengers and which provides, in Article 29, that any action for damages, however founded, can only be brought subject to the conditions and limits set out in the Convention.

39 As to those submissions, Articles 19, 22 and 29 of the Montreal Convention are among the rules in the light of which the Court reviews the legality of acts of the Community institutions since, first, neither the nature nor the broad logic of the Convention precludes this and, second, those three articles appear, as regards their content, to be unconditional and sufficiently precise.

40 It is to be noted with regard to the interpretation of those articles that, in accordance with settled case-law, an international treaty must be interpreted by reference to the terms in which it is worded and in the light of its objectives. Article 31 of the Vienna Convention of 23 May 1969 on the Law of Treaties and Article 31 of the Vienna Convention of 21 March 1986 on the Law of Treaties between States and International Organisations or between International Organisations, which express, to this effect, general customary international law, state that a treaty is to be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose (see, to this effect, Case C-268/99 *Jany and Others* [2001] ECR I-8615, paragraph 35).

41 It is clear from the preamble to the Montreal Convention that the States party thereto recognised 'the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution'. It is therefore in the light of this objective that the scope which the authors of the Convention intended to give to Articles 19, 22 and 29 is to be assessed.

42 It is apparent from those provisions of the Montreal Convention, which are contained in Chapter III headed 'Liability of the carrier and extent of compensation for damage', that they lay down the conditions under which any actions for damages against air carriers may be brought by passengers who invoke damage sustained because of delay. They limit the carrier's liability to 4 150 SDRs for each passenger.

43 Any delay in the carriage of passengers by air, and in particular a long delay, may, generally speaking, cause two types of damage. First, excessive delay will cause damage that is almost identical for every passenger, redress for which may take the form of standardised and immediate assistance or care for everybody concerned, through the provision, for example, of refreshments, meals and accommodation and

of the opportunity to make telephone calls. Second, passengers are liable to suffer individual damage, inherent in the reason for travelling, redress for which requires a case-by-case assessment of the extent of the damage caused and can consequently only be the subject of compensation granted subsequently on an individual basis.

44 It is clear from Articles 19, 22 and 29 of the Montreal Convention that they merely govern the conditions under which, after a flight has been delayed, the passengers concerned may bring actions for damages by way of redress on an individual basis, that is to say for compensation, from the carriers liable for damage resulting from that delay.

45 It does not follow from these provisions, or from any other provision of the Montreal Convention, that the authors of the Convention intended to shield those carriers from any other form of intervention, in particular action which could be envisaged by the public authorities to redress, in a standardised and immediate manner, the damage that is constituted by the inconvenience that delay in the carriage of passengers by air causes, without the passengers having to suffer the inconvenience inherent in the bringing of actions for damages before the courts.

46 The Montreal Convention could not therefore prevent the action taken by the Community legislature to lay down, in exercise of the powers conferred on the Community in the fields of transport and consumer protection, the conditions under which damage linked to the abovementioned inconvenience should be redressed. Since the assistance and taking care of passengers envisaged by Article 6 of Regulation No 261/2004 in the event of a long delay to a flight constitute such standardised and immediate compensatory measures, they are not among those whose institution is regulated by the Convention. The system prescribed in Article 6 simply operates at an earlier stage than the system which results from the Montreal Convention.

47 The standardised and immediate assistance and care measures do not themselves prevent the passengers concerned, should the same delay also cause them damage conferring entitlement to compensation, from being able to bring in addition actions to redress that damage under the conditions laid down by the Montreal Convention.

48 Those measures, which enhance the protection afforded to passengers' interests and improve the conditions under which the principle of restitution is applicable to passengers, cannot therefore be considered inconsistent with the Montreal Convention.

The validity of Article 5 of Regulation No 261/2004 in the light of Article 251 EC

49 By its second question, the referring court essentially asks whether, in amending Article 5 of the draft at the origin of Regulation No 261/2004, as resulting from Common Position (EC) No 27/2003 of 18 March 2003 (OJ 2003 C 125 E, p. 63) ('the draft regulation'), the Conciliation Committee provided for in Article 251 EC complied with the procedural requirements which that article entails.

50 It is necessary, first of all, to set out the context in which the Conciliation Committee acted in the procedure for adoption of Regulation No 261/2004, having regard in particular to the concerns of the Community legislature relating to whether or not account was to be taken of circumstances allowing air carriers to be exempted from their obligations to take care of and assist passengers in the event of cancellation of, or a long delay to, a flight.

51 In Common Position No 27/2003, the Council decided that air carriers could be exempted from their compensation and care obligations imposed, in the event of cancellation of flights, by Article 5 of the draft regulation and from their care obligations imposed, in the event of a long delay, by Article 6 of that draft, if they could prove that the cancellation or delay was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

52 When the Parliament considered that common position on 3 July 2003, at second reading, it did not propose any amendment to Article 5 of the draft regulation. On the other hand, it adopted, inter alia, Amendment 11 on Article 6 of the draft, in particular removing all reference to the exemption clause relating to extraordinary circumstances ('the extraordinary circumstances defence').

53 By letter of 22 September 2003 the Council gave notice that it was unable to approve all the Parliament's amendments, and the President of the Council, in agreement with the President of the Parliament, convened a meeting of the Conciliation Committee.

54 At its meeting of 14 October 2003, the Conciliation Committee reached agreement on a joint text, approved on 1 December 2003, under which, in particular, all reference in Article 5 of the draft regulation to the extraordinary circumstances defence allowing air carriers to be exempted from their care obligations in the event of flight cancellations was removed. The regulation was adopted, in accordance with the joint text of the Conciliation Committee, by the Parliament at third reading, on 18 December 2003, and by the Council, on 26 January 2004.

55 The claimants in the main proceedings contend that, in amending Article 5 of the draft regulation when no amendment had been made to that article by the Parliament at second reading, the Conciliation Committee exceeded the powers conferred upon it by Article 251 EC.

56 In the co-decision procedure, the Conciliation Committee is convened if the Council does not agree to the amendments proposed by the Parliament at second reading. It is common ground that there was such a disagreement in the procedure for adoption of Regulation No 261/2004, justifying the convening of the Conciliation Committee.

57 Contrary to IATA's submissions, once the Conciliation Committee has been convened, it has the task not of coming to an agreement on the amendments proposed by the Parliament but, as is clear from the very wording of Article 251 EC, 'of reaching agreement on a joint text', by addressing, on the basis of the amendments proposed by the Parliament, the common position adopted by the Council. The wording of Article 251 EC does not therefore itself include any restriction as to the content of the measures chosen that enable agreement to be reached on a joint text.

58 In using the term 'conciliation', the authors of the Treaty intended to make the procedure adopted effective and to confer a wide discretion on the Conciliation Committee. In adopting such a method for resolving disagreements, their very aim was that the points of view of the Parliament and the Council should be reconciled on the basis of examination of all the aspects of the disagreement, and with the active participation in the Conciliation Committee's proceedings of the Commission of the European Communities, which has the task of taking 'all the necessary initiatives with a view to reconciling the positions of the ... Parliament and the Council'.

59 In this light, taking account of the power to mediate thus conferred on the Commission and of the freedom which the Parliament and the Council finally have as to whether or not to accept the joint text approved by the Conciliation Committee, Article 251 EC cannot be read as limiting on principle the power of that committee. The mere fact that, in the present case, Article 5 of the draft regulation was not amended by the Parliament at second reading does not show that the committee exceeded the powers conferred upon it by Article 251 EC.

60 The claimants in the main proceedings further contend that, since meetings of the Conciliation Committee are not public in nature, the principles of representative democracy are undermined.

61 It is true that genuine participation of the Parliament in the legislative process of the Community, in accordance with the procedures laid down by the Treaty, represents an essential factor in the institutional balance intended by the Treaty. However, it is not in dispute that the Parliament is itself represented on the Conciliation Committee and that this representation is indeed made up in accordance with the relative size of each political group in the Parliament. Furthermore, under Article 251(5) EC the joint text adopted by the Conciliation Committee must still be examined by the Parliament itself with a view to its approval. This examination, which necessarily takes place in the conditions of transparency normal for the proceedings of that assembly, thus ensures in any event the genuine participation of the Parliament in the legislative process in compliance with the principles of representative democracy.

62 It should be noted, having regard to the documents before the Court, that in the present case the disagreement brought before the Conciliation Committee related in particular to whether or not air carriers could rely on the extraordinary circumstances defence in order to be exempted from their obligations to assist and take care of passengers, imposed by Article 6 of the draft regulation, in the event of a long delay to a flight. The Conciliation Committee reached an agreement under

which all reference to the extraordinary circumstances defence was removed from Article 6 of the draft, in order to ensure that passengers were taken care of and assisted immediately whatever the cause of the flight delay. The committee then also agreed, in order to ensure a coherent and symmetrical approach, to remove from Article 5 of the draft the same reference, with regard to obligations to take care of passengers in the event of cancellation of a flight.

63 Accordingly, the Conciliation Committee did not exceed the limits of its powers in amending Article 5 of the draft regulation.

The obligation to state reasons and observance of the principle of legal certainty

64 By its third and fourth questions, the referring court essentially asks whether Articles 5 and 6 of Regulation No 261/2004 are invalid in that they are inconsistent with the principle of legal certainty or do not satisfy the obligation to state reasons. By its seventh question, it also enquires whether Article 7 of the regulation complies with that obligation.

65 The claimants in the main proceedings plead that the contested regulation contains ambiguities, gaps and contradictions which affect its legality having regard to both the obligation to state reasons and observance of the principle of legal certainty.

66 It is to be remembered that, while the statement of reasons required by Article 253 EC must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure, so as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court to exercise its powers

of review, it is not required to go into every relevant point of fact and law (see, inter alia, Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 29; Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 63; and Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I-6451, paragraph 133).

67 In addition, the question whether a statement of reasons satisfies the requirements must be assessed with reference not only to the wording of the measure but also to its context and to the whole body of legal rules governing the matter in question. In the case of a measure intended to have general application, as in the main proceedings, the preamble may be limited to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other (see, inter alia, Case C-342/03 *Spain* v *Council* [2005] ECR I-1975, paragraph 55). If the contested measure clearly discloses the essential objective pursued by the institutions, it would be excessive to require a specific statement of reasons for each of the technical choices made by them (see, inter alia, Case C-100/99 *Italy* v *Council and Commission* [2001] ECR I-5217, paragraph 64, and *Alliance for Natural Health*, paragraph 134).

68 The principle of legal certainty is a fundamental principle of Community law which requires, in particular, that rules should be clear and precise, so that individuals may ascertain unequivocally what their rights and obligations are and may take steps accordingly (see Case 169/80 *Gondrand Frères and Garancini* [1981] ECR 1931; Case C-143/93 *Van Es Douane Agenten* [1996] ECR I-431, paragraph 27; and Case C-110/03 *Belgium* v *Commission* [2005] ECR I-2801, paragraph 30).

69 In light of the case-law cited above, it must be stated, first, that Articles 5 and 6 of Regulation No 261/2004 lay down precisely and clearly the obligations owed by an operating air carrier in the event of cancellation of, or a long delay to, a flight. The objective of those provisions is apparent, with equal clarity, from the first and second recitals in the preamble to the regulation, according to which action by the

Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers and take account of the requirements of consumer protection in general, inasmuch as cancellation of, or long delay to, flights causes serious inconvenience to passengers.

70 Furthermore, the 12th and 13th recitals in the preamble to the regulation state that passengers whose flights are cancelled should be able to obtain compensation if they are not informed in good time of the cancellation, be able either to obtain reimbursement of their tickets or to obtain re-routing under satisfactory conditions, and be adequately cared for while awaiting a later flight. The 17th recital states that passengers whose flights are delayed for a specified time should be adequately cared for and should be able to cancel their flights with reimbursement of their tickets or to continue them under satisfactory conditions. These details thus clearly disclose the essential objective pursued.

71 It is also not in dispute that the various kinds of damage suffered by passengers in the event of cancellation of, or a long delay to, a flight exist. It has not been established, nor indeed has it been asserted, that incidents of this nature amount to no more than an insignificant phenomenon. Neither Article 253 EC nor any other provision indicates that, in order for the Community measure at issue to be valid, it would have to contain precise figures justifying the need for action on the part of the Community legislature.

72 Nor can Regulation No 261/2004 be required to contain a specific statement of reasons for each of the technical choices made. Since the objective of protecting passengers required acceptance of standardised and effective compensatory measures which could not give rise to discussion at the very moment when they were to be applied, a situation which, quite evidently, the extraordinary circumstances defence would not have failed to bring about, the Community legislature was able, without breaching its obligation to state reasons, to refrain from setting out the reasons why it considered that operating air carriers could not rely on such a defence in order to be exempted from their obligations laid down in Articles

5 and 6 of the regulation. Likewise, contrary to ELFAA's submissions, the Community legislature was able, without rendering the act in question unlawful, to lay down in Article 7 the principle that fixed compensation was payable in the event of cancellation of a flight and the amount of the compensation without setting out the reasons why it had chosen that measure and that amount.

73 Second, the standardised and immediate measures laid down in Article 6 of Regulation No 261/2004 are not among those whose institution is regulated by the Montreal Convention, and are not inconsistent with that Convention. It follows that the provisions of Regulation No 261/2004 governing in this way certain rights of passengers in the event of long delays to flights were capable of being made subject to conditions different from those laid down by the Convention with regard to other rights. Accordingly, they are not in any way contrary to the provisions which are contained in Regulation No 2027/97 and were adopted, in accordance with Article 1 thereof, in order to implement the relevant provisions of the Montreal Convention.

74 In those circumstances, the claimants in the main proceedings cannot maintain that, by not referring to Regulation No 2027/97, Regulation No 261/2004 was adopted in breach of the obligation to state reasons. Nor can Article 6 of Regulation No 261/2004 be read as having, in breach of the principle of legal certainty, denied the undertakings represented by the claimants in the main proceedings the ability to ascertain unequivocally the obligations owed by them as a consequence of the system resulting from Regulation No 2027/97.

75 Third, the claimants in the main proceedings submit that Regulation No 261/2004 envisages, in an inconsistent manner in the 14th and 15th recitals in its preamble, that extraordinary circumstances may limit or exclude an operating air carrier's liability in the event of cancellation of, or long delays to, flights whereas Articles 5 and 6 of the regulation, which govern its obligations in such a case, do not accept such a defence to liability except with regard to the obligation to pay compensation.

76 However, it must be stated with regard to those submissions, first, that while the preamble to a Community measure may explain the latter's content (see *Alliance for Natural Health*, paragraph 91), it cannot be relied upon as a ground for derogating from the actual provisions of the measure in question (Case C-162/97 *Nilsson and Others* [1998] ECR I-7477, paragraph 54; and Case C-136/04 *Deutsches Milch-Kontor* [2005] ECR I-10095, paragraph 32). Second, the wording of those recitals indeed gives the impression that, generally, operating air carriers should be released from all their obligations in the event of extraordinary circumstances, and it accordingly gives rise to a certain ambiguity between the intention thus expressed by the Community legislature and the actual content of Articles 5 and 6 of Regulation No 261/2004 which do not make this defence to liability so general in character. However, such an ambiguity does not extend so far as to render incoherent the system set up by those two articles, which are themselves entirely unambiguous.

77 It follows from the foregoing considerations that Articles 5, 6 and 7 of Regulation No 261/2004 are not invalid by reason of breach of the principle of legal certainty or of the obligation to state reasons.

Observance of the principle of proportionality

78 By its fifth and seventh questions, the referring court asks, in essence, whether Articles 5, 6 and 7 of Regulation No 261/2004 are invalid by reason of an infringement of the principle of proportionality.

79 The principle of proportionality, which is one of the general principles of Community law, requires that measures implemented through Community provisions should be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (see, inter alia, Case C-210/00 *Käserei Champignon Hofmeister* [2002] ECR I-6453, paragraph 59; Case C-491/01 *British*

American Tobacco (Investments) and Imperial Tobacco [2002] ECR I-11453, paragraph 122; and *Swedish Match*, paragraph 47).

80 With regard to judicial review of the conditions referred to in the previous paragraph, the Community legislature must be allowed a broad discretion in areas which involve political, economic and social choices on its part, and in which it is called upon to undertake complex assessments. Consequently, the legality of a measure adopted in those fields can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see, to this effect, Case C-84/94 *United Kingdom* v *Council* [1996] ECR I-5755, paragraph 58; Case C-233/94 *Germany* v *Parliament and Council* [1997] ECR I-2405, paragraphs 55 and 56; Case C-157/96 *National Farmers' Union and Others* [1998] ECR I-2211, paragraph 61; and *British American Tobacco (Investments) and Imperial Tobacco*, paragraph 123). That is so, in particular, in the field of the common transport policy (see, to this effect, in particular, Joined Cases C-248/95 and C-249/95 *SAM Schiffahrt and Stapf* [1997] ECR I-4475, paragraph 23; and Joined Cases C-27/00 and C-122/00 *Omega Air and Others* [2002] ECR I-2569, paragraph 63).

81 The claimants in the main proceedings submit that the measures to assist, care for and compensate passengers that are prescribed by Articles 5, 6 and 7 of Regulation No 261/2004 in the event of cancellation of, or a long delay to, a flight do not enable the objective of reducing such instances of cancellation or delay to be achieved and are in any event, by reason of the considerable financial charges which they will impose on Community air carriers, totally disproportionate to the objective pursued.

82 In assessing whether the measures in question are necessary, it should be noted that the immediate objective pursued by the Community legislature, as apparent from the first four recitals in the preamble to Regulation No 261/2004, is to strengthen protection for passengers who suffer cancellation of, or long delays to, flights, by redressing, in an immediate and standardised manner, certain damage caused to passengers placed in such circumstances.

83 Admittedly, in addition to this direct objective explicitly set out by the Community legislature, the regulation, like any other generally applicable legislation, may implicitly involve other, secondary, objectives such as, as the claimants in the main proceedings submit, that of reducing, through preventive action, the number of flights that are cancelled or subject to a long delay. The Court has the task of assessing first of all whether the measures adopted are manifestly inappropriate in the light of the regulation's explicit objective, that relating to strengthening protection for passengers, the legitimacy of which is not in itself contested.

84 It must be stated, first, that the measures prescribed by Articles 5 and 6 of Regulation No 261/2004 are in themselves capable of immediately redressing some of the damage suffered by passengers in the event of cancellation of, or a long delay to, a flight and therefore enable a high level of passenger protection, sought by the regulation, to be ensured.

85 Second, it is not in dispute that the extent of the various measures chosen by the Community legislature varies according to the significance of the damage suffered by the passengers, its significance being assessed by reference either to the length of the delay and the wait for the next flight or to the time taken to inform them of the flight's cancellation. The criteria thus adopted for determining the passengers' entitlement to those measures do not therefore appear in any way unrelated to the requirement for proportionality.

86 Third, the standardised and immediate compensatory measures such as the re-routing of passengers, the supply of refreshments, meals or accommodation or the making available of means of communication with third parties are designed to cater for passengers' immediate needs on the spot, whatever the cause of the flight's cancellation or delay. Given that these measures vary, as stated in the previous paragraph of this judgment, according to the significance of the damage suffered by the passengers, they likewise do not appear to be manifestly inappropriate merely because carriers cannot rely on the extraordinary circumstances defence.

87 Fourth, it has not been established that if, as advocated by ELFAA, passengers were to take out voluntary insurance to cover the risks inherent in flight delays and cancellations, that would in any event make it possible to remedy the damage suffered by passengers on the spot. Such a measure cannot, therefore, be regarded as being more appropriate to the objective pursued than those chosen by the Community legislature.

88 Fifth, the harmful consequences to which a delay gives rise and which Regulation No 261/2004 seeks to remedy are in no way related to the price paid for a ticket. Therefore, the argument that the measures chosen to alleviate those consequences should have been determined in proportion to the cost of the ticket cannot be upheld.

89 Sixth, while IATA and ELFAA contend that the abovementioned measures could well have significant consequences for carriers' financial burdens and are not appropriate to the regulation's secondary objective of reducing the number of flights that are cancelled or subject to a long delay, it must be stated that figures on the frequency of those delays and cancellations have not been given in the proceedings before the Court. Accordingly, the theoretical costs which those measures involve for airlines, as put forward by the parties concerned, do not in any event enable it to be regarded as established that those effects would be out of proportion to the interest in the measures.

90 Moreover, the discharge of obligations pursuant to Regulation No 261/2004 is without prejudice to air carrier's rights to seek compensation from any person, including third parties, in accordance with national law, as Article 13 of the regulation provides. Such compensation accordingly may reduce or even remove the financial burden borne by the carriers in consequence of those obligations. Nor does it appear unreasonable for those obligations initially to be borne, subject to the abovementioned right to compensation, by the air carriers with which the passengers concerned have a contract of carriage that entitles them to a flight that should be neither cancelled nor delayed.

91 Seventh, so far as concerns the compensation prescribed in Article 7 of Regulation No 261/2004, which passengers may claim by virtue of Article 5 when they have been informed of a flight cancellation too late, air carriers can be exempted from payment of that compensation if they prove that the cancellation was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Given the existence of such a ground for exemption and of the conditions restricting the application of this obligation to which air carriers are not subject if the information is provided sufficiently early or accompanied by offers of re-routing, the obligation does not appear manifestly inappropriate to the objective pursued. Furthermore, the amount of the compensation, set at EUR 250, 400 or 600 depending on the distance of the flights concerned, likewise does not appear excessive and indeed, as maintained by the Commission in its observations without being contradicted, essentially amounts to an update of the level of compensation laid down by Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport (OJ 1991 L 36, p. 5), taking account of inflation since its entry into force.

92 It follows from the foregoing considerations that Articles 5, 6 and 7 of Regulation No 261/2004 are not invalid by reason of infringement of the principle of proportionality.

Observance of the principle of equal treatment

93 By its sixth and seventh questions, the referring court asks, in essence, whether Articles 5, 6 and 7 of Regulation No 261/2004 are invalid by reason of an infringement of the principle of equal treatment.

94 ELFAA submits that the low-fare airlines which it represents suffer discriminatory treatment since the measures prescribed in those articles impose the same obligations on all air carriers without distinction on the basis of their pricing policies and the services that they offer. Furthermore, Community law does not impose the same obligations on other means of transport.

95 It is settled case-law that the principle of equal treatment or non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (*Swedish Match*, paragraph 70).

96 First, having regard in particular to the manner in which they operate, the conditions governing their accessibility and the distribution of their networks, different modes of transport are not interchangeable as regards the conditions of their use (see, to this effect, *SAM Schiffahrt and Stapf*, paragraph 34). The situation of undertakings operating in each of those different transport sectors is accordingly not comparable.

97 Second, with regard to air transport, passengers whose flights are cancelled or subject to a long delay are in an objectively different situation from that experienced by passengers on other means of transport in the event of incidents of the same nature. Because, in particular, of the location of airports, which are generally outside urban centres, and of the particular procedures for checking-in and reclaiming baggage, the inconvenience suffered by passengers when such incidents occur is not comparable.

98 Finally, the damage suffered by passengers of air carriers in the event of cancellation of, or a long delay to, a flight is similar whatever the airline with which they have a contract and is unrelated to the pricing policies operated by the airline. Accordingly, if the Community legislature was not to infringe the principle of equality, having regard to the aim pursued by Regulation No 261/2004 of increasing protection for all passengers of air carriers, it was incumbent upon it to treat all airlines identically.

99 It follows that Articles 5, 6 and 7 of Regulation No 261/2004 are not invalid by reason of a breach of the principle of equal treatment.

100 In view of all the foregoing considerations, the answer to the first seven questions referred to the Court must be that examination thereof has revealed no factor of such a kind as to affect the validity of Articles 5, 6 and 7 of Regulation No 261/2004.

Costs

101 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings 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 (Grand Chamber) hereby rules:

1. **Where a court against whose decisions there is a judicial remedy under national law considers that one or more arguments for invalidity of a Community act which have been put forward by the parties or, as the case may be, raised by it of its own motion are well founded, it must stay proceedings and make a reference to the Court of Justice for a preliminary ruling on the act's validity.**

2. **Examination of the questions referred to the Court has revealed no factor of such a kind as to affect the validity of Articles 5, 6 and 7 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.**

[Signatures]