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Case C-188/20

Request for a preliminary ruling

Date lodged:

30 April 2020

Referring court:

Landgericht Düsseldorf (Germany)

Date of the decision to refer:

6 April 2020

Applicants and appellants:

JG

LH

MI

NJ

Defendant and respondent:

Azurair GmbH i.L.

Intervener:

alltours flugreisen gmbh

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[…]

I.

[…]

Landgericht Düsseldorf

(Regional Court, Düsseldorf ,Germany)

Order

In the case between

1. the child JG, represented for legal purposes by LH and MI,

2. LH,

3. MI,

4. the child NJ, represented for legal purposes by LH and MI,

applicants and appellants,

[…]

and

Azurair GmbH i.L. (in liquidation), represented by the liquidator OP,

defendant and respondent,

[…] […] **[Or. 2]**

Intervener:

alltours flugreisen gmbh, […] Düsseldorf,

[…]

The 22nd Civil Chamber of the Landgericht Düsseldorf (Regional Court, Düsseldorf),

further to the hearing of 28 February 2020, makes the following

[…]

order:

The proceedings are stayed.

The following questions on the interpretation of EU law are referred to the Court of Justice of the European Union pursuant to Article 267 TFEU:

1. Does a passenger have a ‘confirmed reservation’ within the meaning of Article 3(2)(a) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation

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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 et seq.) if he has received, from a tour operator with which he has a contract, 'other proof' within the meaning of Article 2(g) of Regulation No 261/2004, by which he is assured transport on a particular flight, individualised by points of departure and destination, times of departure and arrival and flight number, without the tour operator having made a seat reservation for that flight with the air carrier concerned and having received confirmation from the latter?

2. Is an air carrier to be regarded as an operating air carrier within the meaning of Article 2(b) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 in relation to a passenger if, despite the fact that that passenger has a contract with a tour operator which has promised him carriage on a particular flight, individualised by points of departure and destination, times of departure and arrival and flight number, the tour operator has not, however, reserved a seat for the passenger and has therefore not established a contractual relationship with the air carrier in respect of that flight?

3. Can the 'scheduled time of arrival' of a flight within the meaning of Article 2(h), **[Or. 3]** Article 5(1)(c), the second sentence of Article 7(1) and Article 7(2) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 be determined, for the purposes of compensation for cancellation or long delay in arrival, from 'other proof' issued to a passenger by a tour operator, or must the ticket pursuant to Article 2(f) of Regulation (EC) No 261/2004 be taken into account for that purpose?

4. Has there been a cancellation of a flight within the meaning of Article 2(l) and Article 5(1) of Regulation (EC) No 261/2004 of the European Parliament and of the Council if the operating air carrier brings a flight booked as part of a package tour forward by at least two hours and ten minutes within the same day?

5. Can the operating air carrier reduce the compensation under Article 7(1) of Regulation (EC) No 261/2004 in accordance with Article 7(2) of that regulation if the amount of time by which a flight has been brought forward is within the periods specified in that provision?

6. Does it constitute an offer of re-routing within the meaning of Article 5(1)(a) and Article 8(1)(b) of Regulation (EC) No 261/2004 if a passenger is informed, before the beginning of his journey, that his flight has been brought forward?

7. Does Article 14(2) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 oblige the operating air carrier to inform the passenger of the exact company name and address from which he can request a sum on a sliding scale based on distance, the amount of that sum, and, if applicable, the documents that he should attach to his request?

Grounds:

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I.

The applicants request that the defendant pay compensation pursuant to Article 7(1)(b) of Regulation (EC) No 261/2004 of the European Parliament and of the Council 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 ('the Air Passenger Rights Regulation') owing to a long delay in arrival or cancellation of flights. **[Or. 4]**

On 15 January 2018, the second applicant booked for herself and the other applicants a package tour with a travel agency to Side (Turkey), which the intervener in support of the defendant ('the intervener') offered in its capacity as a tour operator. This journey included carriage by air to Antalya (Turkey) and back. The second applicant received a document […] called a 'travel registration' document, in which the defendant's flights were listed. The outbound flight listed was flight number ARZ 8711 from Düsseldorf to Antalya on 15 July 2018, for which the time of departure was specified as 6:00 a.m. and the time of arrival as 10:30 a.m. (all times in local time). The return flight listed was flight number ARZ 8712 on 5 August 2018 from Antalya to Düsseldorf with a time of departure of 12:00 noon and a time of arrival of 2:45 p.m. Below that, the 'travel registration' document contained the following notice: 'VORAUSSICHTLICHE FLUGZEITEN — BITTE UEBE SIE ZU IHRER EIGENEN SICHERHEIT DIE FLUG IN IHREN TICKETS' [expected flight times — for your own safety, please check the flight on your tickets].

The applicants were in fact transported on flights of the defendant with flight numbers ARZ 8711 and 8712 over a distance of 2 482 km from Düsseldorf to Antalya and back, but they did not reach their final destination on the outbound flight until 1:19 a.m. on 16 July 2018. The return flight was operated at 5:10 a.m. on 5 August 2018. The applicants were not provided with a written notice pursuant to Article 14(2) of the Air Passenger Rights Regulation, for either the outbound flight or the return flight.

For this reason, the applicants are taking action against the defendant for payment of a total of EUR 400.00 per person in compensation pursuant to the Air Passenger Rights Regulation, for both the outward flight and the return flight. They take the view that, on the basis of the information in the 'travel registration' document, the outbound flight was operated with a delay in arrival of more than three hours. The return flight had, in their submission, been cancelled, since bringing it forward constituted a cancellation within the meaning of Article 5(1) of the Air Passenger Rights Regulation. The applicants had confirmed bookings for flights for which the scheduled flight times were 6:00 a.m. to 10:30 a.m. (outbound flight) and 12:00 noon to 2:45 p.m. (return flight). In addition, the applicants request that they be released from their obligation to satisfy their representative's claim to remuneration, which arose from the pre-litigation recovery of the compensation, whereby the representative was instructed before the applicants had formally requested payment from the defendant.

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At first instance before the Amtsgericht Düsseldorf (Local Court, Düsseldorf), the defendant defended itself by arguing that it had not scheduled the flights using the flight times stated in the 'travel registration' document. Its planning corresponded to the details in the 'travel confirmation/invoice' of 22 January 2018 issued by Anex Tour GmbH to the intervener. According to that document, the outbound flight was to be operated from 8:05 p.m. on 15 July 2018 to 12:40 a.m. the following day and the return flight from 8:00 a.m. to 10:50 a.m. on 5 August 2018. Accordingly, flight ARZ 8711 was not operated on 15 [July] 2018 with a **[Or. 5]** delay in arrival of three hours or more. With regard to flight ARZ 8712, the defendant takes the view that bringing a flight forward does not constitute a cancellation within the meaning of Article 2(l) of the Air Passenger Rights Regulation. It also invokes a right of reduction under Article 7(2)(b) of the regulation, because the applicants arrived at their final destination (Düsseldorf) only two hours and fifty minutes earlier than scheduled.

The Amtsgericht dismissed the action and ruled that the 'travel registration' document issued by the travel agency and submitted by the applicants did not constitute a booking confirmation within the meaning of Article 2(g) of the Air Passenger Rights Regulation. Based solely on the wording of the provision, it did not constitute confirmation of a reservation issued by the defendant or a tour operator. It also contained a clear notice stating that the flight times were only expected times. It was clear from the context that the flight times specified in the document had not been accepted and registered, at least not yet at that point. It therefore lacked the binding nature required of the flight data.

II.

This stands up to legal review — as regards the outbound flight on 15 [July] 2018 — only if the defendant is not to be regarded as the operating air carrier of a flight with the scheduled time of arrival specified in the 'travel confirmation', 10:30 a.m., and the applicants did not have confirmed reservations for such a flight.

The applicants take the view that this is the case, and have therefore brought an appeal against the judgment of the Amtsgericht Düsseldorf. The defendant and the intervener, on the other hand, defend the contested decision.

As regards the return flight, the flight data specified in the 'travel registration' document are not of decisive significance, because it has since become common ground between the parties to the dispute that flight ARZ 8712 was brought forward from 8:00 a.m. to 5:10 a.m., if not earlier. However, the parties are in dispute as to whether bringing a flight forward constitutes cancellation within the meaning of Article 5(1), in conjunction with Article 2(l), of the Air Passenger Rights Regulation.

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As regards the outbound flight and the claims for compensation due to a long delay asserted in relation to that flight, the success of the applicants' appeal depends crucially on whether a booking confirmation from a tour operator, which was not itself based on an identical booking with the air carrier against which a claim for compensation has been made under Article 7(1) of the Air Passenger Rights Regulation ('cover booking'), can be regarded as a 'confirmed reservation' within the meaning of Article 3(2)(a) **[Or. 6]** of the regulation, and whether, in such a case, the air carrier against which a claim has been made is to be regarded as the 'operating air carrier' within the meaning of Article 2(b) of the Air Passenger Rights Regulation, and whether the 'scheduled time of arrival' of a flight can be determined on the basis of such a booking confirmation from a tour operator.

Passengers are entitled to compensation from the operating air carrier as a result of a long delay in the arrival of a flight where they reach their final destination three hours or more after the arrival time originally scheduled by the operating air carrier (CJEU, judgment of 19 November 2009 — C-402/07, C-432/07, *Sturgeon v Condor and Others*, paragraph 69; confirmed by judgment of 23 October 2012 — C-581/10, C-629/10, *Nelson v Lufthansa and Others*; and also by judgment of 26 February 2013 — C-11/11, *Air France v Folkerts*, paragraph 33).

1.

Pursuant to Article 3(2)(a) of the Air Passenger Rights Regulation, the applicability of that regulation firstly depends on whether the passengers had a 'confirmed reservation on the flight concerned'. The term 'reservation' is defined in Article 2(g) of the regulation. Pursuant to that provision, 'proof' other than a 'ticket' within the meaning of Article 2(f) of the regulation constitutes a 'reservation' if it indicates that the reservation has been accepted and registered by 'the tour operator'. According to the case-law of the Bundesgerichtshof (German Federal Court of Justice), a 'confirmed reservation' can also be derived from an item of proof relating thereto issued by the tour operator, that is to say, the travel company, which bindingly indicates the intended carriage by air on a specific flight, typically individualised by flight number and time […]. The Chamber also takes the view that it follows from the interplay between Article 3(2)(a) and 3(2)(g) of the regulation that such proof must be sufficient for the applicability of the Air Passenger Rights Regulation. It does not require that the proof of booking issued by the tour operator also be based on an identical 'cover booking' with the air carrier concerned.

2.

However, the Chamber takes the view that the decisive factor for the applicants' entitlement to seek compensation in respect of the outbound flight from the defendant is whether the latter had assured the intervener that it would transport the assignors on flight ARZ 8711 on 15 July 2018 with a scheduled time of arrival of 10:30 a.m., because only then would it have intended to operate the thus

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individualised flight also on behalf of the tour operator which has a contract with the applicants, the intervener (Article 2(b) of the Air Passenger Rights Regulation), and would therefore have legal capacity to be sued as the operating air carrier of that **[Or. 7]** flight. However, such an intention on the part of the air carrier necessarily requires that the tour operator had previously notified the passenger concerned of its wish to have him transported on a flight offered to interested parties by the air carrier. However, such a notification constitutes a reservation by the tour operator. The Chamber takes the view that it is therefore also always necessary for the tour operator to have made an identical 'cover booking' and, without such a booking, 'proof' within the meaning of Article 2(g) of the Air Passenger Rights Regulation issued by the tour operator is not sufficient for the purposes of compensation for denied boarding, cancellation or long delay.

3.

In the Chamber's view, the 'arrival time originally scheduled' within the meaning of the aforementioned case-law of the Court of Justice cannot be derived from an item of proof issued by a tour operator without having consulted the air carrier concerned.

Article 2(h), Article 5(1)(c), Article 6(1), the second sentence of Article 7(1), and Article 7(2) of the Air Passenger Rights Regulation also refer to the 'scheduled time of arrival'. In the judgment in *Air France v Folkerts*, the Court of Justice stated that a delay must be assessed, for the purposes of the compensation provided for in Article 7 of Regulation No 261/2004, in relation to the scheduled arrival time at that destination; regarding the concept of 'final destination', it referred, in paragraph 34, to the definition in Article 2(h) of the Air Passenger Rights Regulation. Pursuant to that provision, 'final destination' means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight. In this respect, the Court of Justice has therefore based the determination of the final destination on the ticket pursuant to Article 2(f), that is to say, the paper document giving entitlement to transport, or something equivalent in paperless form, issued or authorised by the air carrier or its authorised agent, that is to say, the physical or electronic document embodying the passenger's entitlement to transport. It has not relied on 'other proof' within the meaning of Article 2(g) of the Air Passenger Rights Regulation ('reservation').

Were this to be applied to the determination of the scheduled time of arrival for the purposes of compensation, it would be concluded that the 'ticket' issued to the passenger must be decisive in this respect also, meaning that any diverging information in the 'reservation' is irrelevant. Thus, in the present case, the applicants' 'travel registration' document of 15 January 2018 […] is excluded from the outset as the basis for determining the scheduled time of arrival, irrespective of whether it can be regarded as a 'confirmed reservation' within the meaning of Article 3(2)(a) of the Air Passenger Rights Regulation in the first place. Furthermore, it also does not fulfil the requirements for a 'ticket' pursuant

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to Article 2(f) of the Regulation either, because it cannot be assumed that it is the means by which an agent authorised by the defendant **[Or. 8]** has issued 'entitlement' to transport on the flights specified. The 'travel registration' document only allows the assumption that it is intended to document the registration to a package tour organised by the intervener. There is no document that can be identified clearly as a 'ticket' in the present case.

In any event, however, the Chamber considers that the 'scheduled time of arrival' cannot be derived from 'other proof' issued by a tour operator that does not have a contract with the air carrier in respect of the flight concerned. Flight planning is a matter solely for the air carrier. An air carrier has planned a flight if it has included it in its flight plan and therefore defined it by points of departure and destination and times of departure and arrival, assigned a flight number to it and released it for booking […]. As long as there is no reservation, that is to say, a booking for a seat on such a flight, the air carrier can change or cancel the planning without passengers being able to derive any claims for compensation from it; this is evident from Article 2(l) of the regulation. It follows that 'other proof' within the meaning of Article 2(g) of the Air Passenger Rights Regulation that has been issued by a tour operator prior to such a reservation is not capable, at least in such a case, of substantiating claims for compensation. This militates against the assumption that such 'other proof' is sufficient in any event to substantiate claims for compensation if the air carrier concerned does not operate the flight referred to in the proof or operates it at different times.

4.

Nor can Article 13 of the Air Passenger Rights Regulation do anything to change this outcome, because the Chamber is unable to see how the air carrier against which a claim has been made could seek compensation from the tour operator if they do not have a contractual relationship but the air carrier must meet claims for compensation under the Air Passenger Rights Regulation that are asserted against it for failure to comply with a flight schedule that it did not even draw up itself. In this respect, the Chamber takes the view that the requirement of ensuring a high level of protection for passengers (recital 1 of the Air Passenger Rights Regulation) cannot justify a different outcome either. In the tour operator with which the passenger concerned is contractually bound, the latter has a party against which he can seek compensation for individual damage suffered as a result of having relied on incorrect flight planning information provided by the tour operator. **[Or. 9]**

IV.

Regarding the claims for compensation asserted by the applicants on the basis of the return flight pursuant to Article 5(1), in conjunction with Article 7(1)(b), of the Air Passenger Rights Regulation, the decisive question is whether bringing a flight forward by at least two hours and fifty minutes, from 8:00 a.m. to 5:10 a.m., constitutes a cancellation within the meaning of Article 2(l) of the regulation.

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1.

According to the legal definition in Article 2(l) of the Air Passenger Rights Regulation, a 'cancellation' is the non-operation of a flight which was previously planned and on which at least one place was reserved. The 'non-operation' of a flight which was previously planned must be distinguished from a 'delay' and is characterised by the planning for the original flight being abandoned (see CJEU, judgment of 19 November 2009 — C-402/07, C-432/07, *Sturgeon and Others v Condor* and *Böck and Others v Air France*, paragraph 33 et seq.). The Court of Justice has not yet clarified whether abandonment of the flight planning must also be assumed if the flight is brought forward by two hours and fifty minutes.

According to the case-law of the Bundesgerichtshof (Federal Court of Justice; 'BGH') […], if an air carrier brings a flight which was previously planned forward by a more than insignificant amount of time, this constitutes a cancellation — connected with the offer of re-routing — of the flight, which can substantiate a right to compensation under Article 7(1) of the Air Passenger Rights Regulation. According to the BGH […], a cancellation is characterised by the fact that the air carrier definitively abandoned its original flight planning, even if the passengers were transferred to another flight. This has been clarified by the case-law of the Court of Justice (judgment of 19 November 2009 in *Sturgeon v Condor*; judgment of 13 October 2011 — C-83/10 in *Sousa Rodriguez v Air France*), which was developed to distinguish the event of cancellation from the event of long delay. The original flight planning is abandoned even if a flight is brought forward by several hours.

However, the Chamber has doubts as to the correctness of this interpretation of EU law by the BGH.

The Chamber also takes the view that the fact that the Air Passenger Rights Regulation makes no mention whatsoever of bringing a flight forward and does not provide for any rules for doing so does not constitute a robust impediment to an interpretation of Article 2(l) that is in line with the case-law of the BGH. According to the case-law of the Court of Justice, it is possible, as a rule, to conclude that there is a cancellation where the delayed flight for which the booking was made is 'rolled over' onto another flight, that is to say, where the planning for the original flight is abandoned and the passengers from that flight join passengers on a flight which was also planned but independently of the flight for which the passengers so transferred **[Or. 10]** had made their bookings; all that matters in each case is the individual situation of each passenger so transported, that is to say, the fact that, in relation to the passenger in question, the original planning of the flight has been abandoned (CJEU, judgment in *Sousa v Rodriguez*, paragraphs 30 and 31). However, the Court of Justice has also clarified that a mere delay in the actual departure time in relation to the scheduled departure time does not constitute a cancellation; a flight which is delayed, irrespective of the duration of the delay, cannot be regarded as cancelled where there is a departure in accordance with the original planning (judgment in the *Sturgeon v Condor* case,

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paragraphs 32 and 34). Consequently, the Chamber does not doubt that bringing a flight forward does have the effect of changing the original flight planning within the meaning of the case-law of the Court of Justice.

The doubts surrounding the correct interpretation of Article 2(l) of the Air Passenger Rights Regulation arise for the Chamber because the abandonment of the flight planning by the operating air carrier, which is undoubtedly what bringing a flight forward entails, does not necessarily cause inconvenience — such as that caused by short-term cancellations without an offer of re-routing pursuant to Article 5(1)(c)(iii) of the regulation or long delays — which must be compensated or reduced in a standardised manner by measures of compensation, assistance and care. This is because even if passengers do not receive an offer of re-routing to be subsumed under the aforementioned provision of the regulation, but are informed in sufficiently good time of the fact that a flight has been brought forward, they will not be caused comparable trouble or inconvenience within the meaning of recitals 12 and 13 of the regulation, because they will be able to adapt to the new flight planning in good time and therefore arrive at the airport at the new time of departure. They therefore do not need any assistance and care during time spent waiting at the airport. As they do not spend any time waiting, they are not caused any trouble or inconvenience requiring material compensation either. Such trouble or inconvenience can therefore arise only if the passengers concerned are not informed in advance of the fact that the flight has been brought forward and do not present themselves for check-in until the originally planned time of departure. This is not the case here, however, because the applicants were transported on the return flight that had been brought forward. Therefore, in cases such as the present one, the only possible cause of any trouble and inconvenience could reside in the fact that the passengers were forced to change their travel plans in the first place as a result of the return flight being brought forward. However, this did not cause them a loss of time in the sense that they had to spend time waiting.

If, in cases such as the present one, the mere fact of bringing a flight forward is deemed to cause damage requiring compensation, the question arises as to the extent to which this is necessary to justify compensation under Article 7(1) of the Air Passenger Rights Regulation. The Chamber takes the view that **[Or. 11]** the trouble and inconvenience generally associated with bringing a flight forward by several hours is not comparable to that caused by a short-term cancellation or long delay of a flight.

2.

The case-law of the Court of Justice has also not clarified the question of whether, in the event that bringing a flight forward can constitute a cancellation within the meaning of Article 2(l) of the regulation, the operating air carrier may be entitled to a right of reduction under Article 7(2) of the regulation if the amount of time between the actual time of arrival and the scheduled time of arrival falls within the periods specified in Article 7(2) of the regulation. The Chamber has doubts as to

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the application of this provision to cases in which a flight is brought forward, simply because, although the latter involves informing passengers of re-routing, if it is actually connected with a cancellation, it does not constitute an offer pursuant to Article 8 of the Air Passenger Rights Regulation, as required by Article 7(2). This is because passengers enjoy a right to choose pursuant to Article 8 of the regulation and must be fully informed of their rights pursuant to recital 20. This means that the air carrier which cancels a flight is to offer the passengers a choice, subject to the conditions laid down, respectively, in points (a), (b) and (c) of Article 8(1) of the regulation. (CJEU, judgment of 29 July 2019 — C-354/18, *Rusu v Blue Air*, paragraph 53, regarding cases involving denial of boarding). The Court of Justice also held (idem, paragraph 54) that it follows that such an offer must provide the passengers with the information needed to enable them to make an effective choice, and in so doing either to cancel their flight and be reimbursed for the cost of their ticket, or to continue their transport to their final destination, under comparable transport conditions, at the earliest opportunity or at a later date. These requirements for an offer of re-routing are not met if an air carrier merely informs the passenger that his flight has been brought forward.

3.

The comparable transport conditions pursuant to Article 8(1)(b) and (c) of the Air Passenger Rights Regulation are linked to the flight originally booked and therefore to the contract of carriage by air. It has also not yet been clarified whether a flight brought forward by 2 hours and 50 minutes is comparable in that sense to the flight originally booked and constitutes the earliest possible carriage, such that, by informing passengers of the fact that the flight has been brought forward, the defendant air carrier fulfils its obligations imposed on it by the regulation. **[Or. 12]**

V.

In relation to the applicants' claim to be released from their obligation to satisfy their representative's right to remuneration, the decision to be taken by the Chamber depends on what content has to be in the notice to be provided to the passenger pursuant to Article 14(2) of the Air Passenger Rights Regulation.

[…] [no right to be released under national law on the ground of delay]

The Chamber takes the view that, in cases where there has not been a delay, the reimbursement of lawyers' fees incurred for the first-time assertion of claims for compensation under Article 7(1) of the Air Passenger Rights Regulation […] is not automatically possible simply because the operating air carrier has not fulfilled its obligation under Article 14(2) of the Air Passenger Rights Regulation. Such a failure to fulfil obligations can be assumed in the present case.

If the operating air carrier fails to fulfil its obligation to provide the passenger with written notice, the use of legal assistance for the out-of-court recovery of claims for compensation is not based on such a failure. The reason for this is that,

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pursuant to the first sentence of Article 14(2) of the regulation, the operating air carrier is not obliged to do more than provide a written notice setting out the rules for compensation and assistance in line with the regulation; the Chamber takes the view that recital 20 does not contain anything to the contrary. This means, in particular, that the air carrier is not obliged to subsume the specific case under one of the relevant provisions of the regulation. Therefore, passengers ned to be informed not of 'their' rights, but of 'the rules' in a general manner. However, the Chamber does not fail to recognise that the BGH […] has stated that the information to be provided to the passenger pursuant to Article 14(2) of the regulation must enable him to assert his claim effectively and without the assistance of a lawyer against the operating **[Or. 13]** air carrier, that is to say, it must inform him in a sufficiently clear manner of the exact company name and address from which he could request a sum on a sliding scale based on distance, the amount of that sum, and, if applicable, the documents that he should attach to his request. The spirit and purpose of the obligation to provide information is to enable passengers to claim compensation from the operating air carrier themselves, as is apparent from recital 20.

The Chamber does not share this view, since the recital of the regulation cited by the BGH in this connection does not mention that passengers should be spared the need to seek legal advice. Moreover, the Chamber considers that the legislature took the considerations set out in recital 20 into account and that those considerations led it to draft Article 14(2) of the regulation in the way that it did, meaning that it specifically did not intend to impose on the air carrier the obligation to inform the passenger of the rights to which he is entitled in the specific case, but rather only those which can be inferred from the wording of the provision. Language versions of the regulation other than German, such as French or English, also refer in Article 14(2) of the regulation only to an obligation to provide the passenger with a written notice of the rules ('*une notice écrite reprenant les règles d'indemnisation et d'assistance conformément aux dispositions du présent règlement*' or '*a written notice setting out the rules for compensation and assistance in line with this Regulation'*), meaning that these language versions also do not indicate that the obligation of the operating air carrier goes beyond providing general information on these rules.

For these reasons, the Chamber also does not share the […] BGH's view that a failure by the operating air carrier to fulfil the obligation to provide information pursuant to Article 14(2) of the Air Passenger Rights Regulation may give rise to a claim for reimbursement of the lawyer's remuneration which arose as a result of an instruction to represent the passenger in an out-of-court procedure when the compensation claim was first asserted. Nor are there any other reasons why the applicants could demand that they be released from their obligation to satisfy their representative's right to remuneration that arose at the pre-litigation stage. The question raised is therefore also relevant to the decision on the applicants' appeal, since if the defendant had complied adequately with its obligations under Article 14(2) of the regulation by providing general information on the rights arising in the case of cancellation or delay of a flight, a right of the applicants to

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reimbursement of the lawyers' fees incurred at the pre-litigation stage would not come into consideration. On the other hand, those fees would be reimbursable had the defendant been obliged to inform **[Or. 14]** the applicants of the specific rights to which they are entitled as a result of the disruption that occurred.

For the Chamber, the case-law of the BGH gives rise to doubts as to the correct application of EU law, with the result that it considers itself obliged, pursuant to the third paragraph of Article 267 TFEU, to request the Court of Justice of the European Union to interpret Article 14(2) of the Air Passenger Rights Regulation.

VI.

[…]

VII.

[…]

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