



Court of Justice of the European Union

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Judgment in Case C-290/16

Air Berlin plc & Co. Luftverkehrs KG v Bundesverband der
Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale
Bundesverband eV

Press and Information

Cancellation fees charged by airline companies may be assessed for unfairness

In addition, the various items which make up the final price to be paid to the airline companies must be indicated separately

The German airline company Air Berlin included a term in its general terms and conditions stating that, when a passenger cancels a flight booking at an economy rate or does not take the flight, a sum of €25 is to be charged as a handling fee on the amount due to be reimbursed. The Bundesverband der Verbraucherzentralen (Federal Union of Consumer Organisations) considers that that term is invalid under German law, since it unduly disadvantages customers. Moreover, as it is the performance of a legal obligation, Air Berlin cannot charge separate fees. The Bundesverband accordingly brought an action before the German courts for an order prohibiting Air Berlin's practices.

In the context of the same action, the Bundesverband also challenges Air Berlin's practices concerning the display of prices on its website. During an online booking simulation in 2010, the Bundesverband noted that the taxes and charges indicated were much lower than those actually collected by the airports concerned. The Bundesverband considers that that practice may mislead the consumer and that it is contrary to the rules on price transparency laid down by the EU regulation on the operation of air services.¹

It is in that context that the Bundesgerichtshof (Federal Court of Justice, Germany) asked the Court of Justice for an interpretation of that regulation. The Bundesgerichtshof considers, in the same way as the Bundesverband, that the term relating to the handling fees of €25 in the event of cancelling a flight booking or not taking a flight unduly disadvantages customers and is accordingly invalid in accordance with the provisions of German law transposing the EU directive on unfair terms.² The Bundesgerichtshof asks, however, whether the pricing freedom recognised for air carriers by the regulation on the operation of air services precludes a national law transposing EU law on consumer protection from applying to such a term.

In today's judgment, the Court replies that the **pricing freedom recognised for air carriers** by the regulation on the operation of air services **does not preclude the application of a national law transposing the directive on unfair terms from leading to a declaration of invalidity of a term in the general terms and conditions and which allows separate flat-rate handling fees to be billed to customers who cancelled their booking or did not take a flight.**

The Court finds in that regard that **the general rules protecting consumers against unfair terms also apply to contracts of carriage by air.**

As regards the price transparency required by the regulation on the operation of air services, the Court finds that **when publishing their air fares, air carriers must specify separately the amounts payable by customers in respect of taxes, airport charges and other charges,**

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

² Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

surcharges or fees and may not, as a consequence, even partially, include those items in the air fare.

The Court finds that the air fare, taxes, airport charges and other charges, surcharges and fees, which make up the final price to be paid must always be brought to the customer's attention in terms of the amounts that they represent in that final price. If air carriers were able to choose between including those taxes, charges, surcharges and fees in the air fare and indicating those different items separately, the objective of that regulation to ensure information and transparency with regard to prices would not be achieved.

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

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

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