

JUDGMENT OF THE COURT (Eighth Chamber)

6 October 2022 (*)

(Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Article 3(1)(a) – Scope – Article 2(f) to (h) – Concept of ‘ticket’ – Concept of ‘reservation’ – Concept of ‘connecting flight’ – Reservation through a travel agency – Article 7 – Compensation for air passengers in the event of a long delay to a flight – Transport operation consisting of a number of flights operated by separate operating air carriers – Connecting flight departing from an airport located in a Member State with a stop in Switzerland and final destination in a third country)

In Case C-436/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 22 June 2021, received at the Court on 15 July 2021, in the proceedings

flightright GmbH

v

American Airlines Inc.,

THE COURT (Eighth Chamber),

composed of N. Jääskinen, President of the Chamber, M. Safjan and N. Piçarra (Rapporteur), Judges,

Advocate General: T. Čapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- flightright GmbH, by M. Michel and R. Weist, Rechtsanwälte,
- the European Commission, by G. Braun, G. Wilms and N. Yerrell, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 2, 3 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), as well as of

Article 2 of and the annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, signed in Luxembourg on 21 June 1999 and approved on behalf of the European Union by Decision 2002/309/EC, Euratom of the Council, and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation (OJ 2002 L 114, p. 73), as modified by Decision No 1/2017 of the Joint European Union/Switzerland Air Transport Committee set up under that agreement of 29 November 2017 (OJ 2017 L 348, p. 46) ('the EC-Switzerland Agreement').

- 2 The request has been made in proceedings between flightright GmbH, a company providing legal assistance for air passengers, and American Airlines Inc., an air carrier, concerning compensation under Regulation No 261/2004, requested due to a long delay to a flight's arrival at its final destination.

Legal context

- 3 Recital 1 of Regulation No 261/2004 states:

'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.'

- 4 Under the heading 'Definitions', Article 2 of that regulation provides:

'For the purposes of this Regulation:

...

- (b) "operating air carrier" means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;

...

- (d) "tour operator" means, with the exception of an air carrier, an organiser within the meaning of Article 2, point 2, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours [(OJ 1990 L 158, p. 59)];

...

- (f) "ticket" means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or its authorised agent;

- (g) "reservation" means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator;

- (h) "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; ...

...'

- 5 Article 3 of that regulation, entitled 'Scope', states in paragraph 1:

'This Regulation shall apply:

(a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;

...’

6 Article 7 of that regulation, entitled ‘Right to compensation’, provides in its paragraph 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).

...’

7 Article 13 of Regulation No 261/2004, entitled ‘Right of redress’, provides:

‘In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier’s right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. ...’

The dispute in the main proceedings and the questions referred for a preliminary ruling

8 In order to travel from Stuttgart (Germany) to Kansas City (United States) on 25 July 2018, a passenger concluded an agency contract with a travel agency in the form of a single electronic ticket for, first, a flight from Stuttgart to Zurich (Switzerland) operated by Swiss International Air Lines AG and, second, two flights connecting Zurich to Philadelphia (United States) and Philadelphia to Kansas City respectively, operated by American Airlines. The number of that ticket appeared on the boarding passes for those flights. It is also apparent from the file before the Court that that ticket indicated that American Airlines was providing services and it contained a single ‘Filekey’ reservation number relating to the entire journey. The travel agency issued an invoice showing a single ‘user price’ for the entire journey and for the return from Kansas City to Stuttgart, passing via Chicago (United States) and London (United Kingdom).

9 While the flights from Stuttgart to Zurich and from Zurich to Philadelphia respectively, ran to schedule, the arrival of the flight from Philadelphia to Kansas City was delayed by more than four hours.

10 Before the German courts, flightright, to which the rights arising from that delay had been assigned, is claiming compensation of EUR 600 from American Airlines, pursuant to Article 7(1)(c) of Regulation No 261/2004.

11 The dismissal of the action at first instance was upheld on appeal by the Landgericht Stuttgart (Regional Court, Stuttgart, Germany), which held that American Airlines was not the operating air carrier having operated a flight departing from the territory of a Member State, so that Regulation No 261/2004 did not apply to it and, therefore, no compensation would be payable under that regulation. According to that court, there was nothing to indicate that the defendant in the main proceedings had undertaken to transport the passenger concerned from Stuttgart to Kansas City, or that it had assumed responsibility for that transportation under a code sharing agreement.

12 Flightright then appealed on a point of law (*Revision*) to the referring court, the Bundesgerichtshof (Federal Court of Justice, Germany), which takes the view that the outcome of the dispute is dependent on

the interpretation of Articles 2, 3 and 7 of Regulation No 261/2004 as well as, possibly, the interpretation of the EC-Switzerland Agreement.

- 13 In the first place, that court notes that, in the present case, that regulation applies, in accordance with Article 3(1)(a) thereof, if the three flights at issue which comprise the transportation from Stuttgart to Kansas City must be regarded as a ‘unit’ in accordance with the Court’s case-law, in particular the judgments of 31 May 2018, *Wegener* (C-537/17, EU:C:2018:361), and of 11 July 2019, *České aerolinie* (C-502/18, EU:C:2019:604).
- 14 According to the referring court, even though it is apparent from that case-law that two or more flights which have been booked on a single reservation must, as a connecting flight, be regarded as a whole for the purposes of the right to compensation provided for by Regulation No 261/2004, the question nevertheless arises whether, in order to find that there is a single reservation, it is sufficient that a travel agency combines flights operated by different air carriers into one and the same transport operation, charges the passenger in that regard an overall price and issues a single electronic ticket, or whether, for that purpose, it is also necessary for there to be a specific legal relationship between those carriers.
- 15 That court is inclined to take the view, first, that a reservation at a single price which results in a single ticket being issued for all the flights in question is sufficient to make a finding that those flights form a ‘single reservation’, within the meaning of the case-law cited in paragraph 13 of the present judgment, and, second, that it follows from Article 2(f) and (g) of Regulation No 261/2004 that a passenger is entitled to obtain compensation from an operating air carrier where that carrier permitted an agent or a tour operator, without having been involved in the reservation or its confirmation, to accept and to confirm such a reservation. That court considers that that interpretation is consistent with the objective of ensuring a high level of protection for passengers, referred to in recital 1 of that regulation, thereby encouraging the confidence of those who, when buying tickets, transact with an agent authorised by the air carrier.
- 16 In the second place, if an opposing interpretation of those provisions were to prevail, the referring court states that if, at the very least, the two flights at issue operated by American Airlines, namely those connecting Zurich to Philadelphia and Philadelphia to Kansas City respectively, had to be regarded as a connecting flight, the question would arise whether Regulation No 261/2004 would apply to a flight from Switzerland to a third country.
- 17 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings before it and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) If a travel agency combines connecting flights from different air carriers into one transport operation, charges the passenger an overall price and issues a single electronic ticket for the journey, do these qualify as direct connecting flights within the meaning of Article 2(h) of [Regulation No 261/2004], or does there also need to be a specific legal relationship between the operating air carriers?
- (2) If there needs to be a specific legal relationship between the operating air carriers: is it sufficient if two successive connecting flights, to be operated by the same air carrier, are combined in a reservation of the kind described in Question 1?
- (3) If Question 2 is answered in the affirmative: are Article 2 of the [EC-Switzerland Agreement] and the reference to [Regulation No 261/2004] in the Annex to [that agreement] to be interpreted as meaning that [that] regulation also applies to passengers boarding a flight to a third country at an airport in Switzerland?’

Consideration of the questions referred

The first question

- 18 By its first question, the referring court asks, in essence, whether Article 2(h) of Regulation No 261/2004 must be interpreted as meaning that the concept of a ‘connecting flight’ covers a transport operation made up of a number of flights operated by separate operating air carriers which do not have a specific legal relationship, where those flights have been combined by a travel agency which has charged an overall price and issued a single ticket for that operation, with the result that a passenger departing from an airport located in the territory of a Member State who suffers a long delay to the arrival at the destination of the last flight may rely on the right to compensation pursuant to Article 7 of that regulation.
- 19 Article 2(h) of that regulation defines the concept of ‘final destination’ as 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 taken by the passenger concerned (see, to that effect, judgments of 26 February 2013, *Folkerts*, C-11/11, EU:C:2013:106, paragraphs 34 and 35, and of 31 May 2018, *Wegener*, C-537/17, EU:C:2018:361, paragraph 17).
- 20 The concept of ‘connecting flight’, within the meaning of that provision, must be understood as referring to two or more flights constituting a whole for the purposes of the right to compensation for passengers provided for in Regulation No 261/2004. That is the case when two or more flights were booked as a single unit (judgment of 31 May 2018, *Wegener*, C-537/17, EU:C:2018:361, paragraphs 18 and 19).
- 21 The concept of a ‘reservation’ is defined in Article 2(g) of Regulation No 261/2004 as ‘the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered’. Such acceptance and registration may be undertaken by both the air carrier and a tour operator, within the meaning of point (d) of that article. The concept of a ‘ticket’, within the meaning of Article 2(f) of that regulation, includes each tangible or intangible element conferring a right to transport on the passenger (order of 11 October 2021, *Vueling Airlines*, C-686/20, not published, EU:C:2021:859, paragraph 28), which is issued or authorised either by an air carrier or by an agent authorised by it.
- 22 Those concepts must, in the interest of the high level of protection for passengers referred to in recital 1 of Regulation No 261/2004, be interpreted broadly (see, to that effect, judgments of 19 November 2009, *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716, paragraph 45, and of 4 October 2012, *Finnair*, C-22/11, EU:C:2012:604, paragraph 23).
- 23 Accordingly, as regards a connecting flight, within the meaning of Article 2(h) of Regulation No 261/2004, the applicability of that regulation must be assessed with regard to the place of a flight’s initial departure and the place of its final destination. As Article 3(1)(a) of that regulation provides that that regulation is applicable to, in particular, passengers departing from an airport located in the territory of a Member State, a connecting flight departing from such an airport falls within the scope of that regulation (see, to that effect, judgment of 11 July 2019, *České aerolinie*, C-502/18, EU:C:2019:604, paragraphs 16 to 18).
- 24 In the present case, it is apparent from the order for reference that the passenger in question in the main proceedings had a single electronic ticket, issued by a travel agency, which permitted that passenger to travel from Stuttgart to Kansas City via three successive flights, and that the number of that ticket was displayed on the boarding passes relating to those flights. Furthermore, it is apparent from the documents before the Court that that ticket showed a single service provider, namely American Airlines, and a single ‘Filekey’ reservation number relating to the entire journey, for which an overall price was charged.
- 25 It is common ground that only the last flight, which was operated entirely outside the territory of the European Union, was affected by a delay in arrival of more than four hours. In order to establish whether a passenger, such as the passenger in question in the main proceedings, may be compensated in respect of that delay, pursuant to Regulation No 261/2004, it is therefore necessary to ascertain, in accordance with the case-law referred to in paragraph 20 of the present judgment, whether that last flight must be regarded as forming part of a connecting flight, within the meaning of Article 2(h) of that regulation, having an airport located in the territory of a Member State as its point of departure.

- 26 In that regard, subject to the verifications which it is for the referring court to carry out, it appears that the passenger in question in the main proceedings had a ticket, within the meaning of Article 2(f) of Regulation No 261/2004, constituting proof that the reservation for that passenger's entire journey from Stuttgart to Kansas City had been accepted and registered by a tour operator, as provided for in point (g) of that article. Such a transport operation must be regarded as being based on a single reservation and, therefore, as a 'connecting flight', within the meaning of the case-law referred to in paragraph 20 of the present judgment.
- 27 It is true that the referring court states that the flights comprising the transport operation at issue in the main proceedings were operated by separate operating air carriers, namely Swiss International Air Lines and American Airlines, there being no specific legal relationship between them.
- 28 However, no provision of Regulation No 261/2004 renders the classification as a connecting flight subject to the condition that there is a specific legal relationship between the operating air carriers operating, where relevant, the flights which make up the connecting flight (see, by analogy, judgment of 31 May 2018, *Wegener*, C-537/17, EU:C:2018:361, paragraph 22).
- 29 Such an additional condition would also be contrary to the objective of ensuring a high level of protection for passengers pursued by that regulation, as set out in recital 1 thereof, in that it would be capable of limiting the rights granted to passengers by that regulation, including, in particular, the right to compensation on the basis of Article 7 of Regulation No 261/2004, where they suffer a long delay to the arrival of their flight, that is to say, a period of three hours or more (see, to that effect, judgments of 19 November 2009, *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716, paragraphs 60 and 61, and of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraphs 34 and 40).
- 30 Finally, it should be recalled that, in accordance with Article 13 of Regulation No 261/2004, the operating air carriers which operated the flights comprising the connecting flight in question may seek compensation from a tour operator or from another person with whom they have concluded a contract, in accordance with the applicable national law. Accordingly, that regulation does not preclude the operating air carrier which has had to pay the compensation provided for by that regulation from being able to seek compensation in respect of that financial burden, in particular from the person through whom the tickets were issued, in the event of a failure by the latter to fulfil its obligations (see, to that effect, judgment of 21 December 2021, *Azurair and Others*, C-146/20, C-188/20, C-196/20 and C-270/20, EU:C:2021:1038, paragraph 61 and the case-law cited).
- 31 Consequently, the answer to the first question is that Article 2(h) of Regulation No 261/2004 must be interpreted as meaning that the concept of a 'connecting flight' covers a transport operation made up of a number of flights operated by separate operating air carriers which do not have a specific legal relationship, where those flights have been combined by a travel agency which has charged an overall price and issued a single ticket for that operation, with the result that a passenger departing from an airport located in the territory of a Member State who suffers a long delay to the arrival at the destination of the last flight may rely on the right to compensation pursuant to Article 7 of that regulation.

The second and third questions

- 32 In view of the answer to the first question, there is no need to answer the second or third question.

Costs

- 33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Eighth Chamber) hereby rules:

Article 2(h) 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

must be interpreted as meaning that the concept of a ‘connecting flight’ covers a transport operation made up of a number of flights operated by separate operating air carriers which do not have a specific legal relationship, where those flights have been combined by a travel agency which has charged an overall price and issued a single ticket for that operation, with the result that a passenger departing from an airport located in the territory of a Member State who suffers a long delay to the arrival at the destination of the last flight may rely on the right to compensation pursuant to Article 7 of that regulation.

[Signatures]

* Language of the case: German.