

Air Carriers may apply surcharges on baggage

In the framework of a preliminary ruling procedure the Court of Justice of the European Union in its judgement of 18 September 2014 has established that surcharges or supplements applied on baggage by air carriers are compliant with EU law – informed Origo the legal expert of Kovács Réti Szegheő Attorneys at Law. The Court precluded domestic laws that prescribe air carriers to carry, in all circumstances, not only the passenger, but also baggage checked in by him or her, for non-compliance with EU law – pointed out dr. Beáta Szegi attorney.

The question has been referred for a preliminary ruling in the framework of the procedure between the Spanish air carrier Vueling Airlines SA and Instituto Galego de Consumo de la Xunta de Galicia, the institute for consumer protection of the Autonomous Community of Galicia.

The subject of the case was the fine of EUR 3 000 imposed on Vueling Airlines by the consumer protection body for the injurious terms included in the air carrier's contract of carriage by air – outlines the main case at issue the expert of Kovács Réti Szegheő Attorneys at Law.

The court referring the question for a preliminary ruling asks, in essence, whether Article 22(1) of Regulation No 1008/2008 precludes a national (Spanish) law that requires air carriers to carry, in all circumstances, not only the passenger, but also baggage checked in by him, for the price of the plane ticket.

Legal context

EC Regulation No 1008/2008 sets out the provisions on pricing freedom, i.e. '...Community air carriers and, on the basis of reciprocity, air carriers of third countries shall freely set air fares and air rates for intra-Community air services.'

The Spanish national law of 2007 on the protection of consumers and users lays down inter alia: 'All terms not individually negotiated and all practices not expressly agreed which, contrary to the requirement of good faith, cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer and user, shall be regarded as unfair terms'.

'Furthermore, price increases in respect of additional services, financing, time extensions, surcharges, compensation or penalties that do not correspond to additional services that can be accepted or rejected in each instance and that are separately and clearly expressed shall, in any event, be regarded as unfair terms.'



The facts established by the Court

The Court established that such domestic law, as for instance the above Spanish consumer protection act in issue, clearly does not allow air carriers to separately charge a price supplement for carrying checked-in baggage – pointed out dr. Beáta Szegi.

The Court observes that such domestic – in the present case Spanish – law may not be contradictory to EU law and cannot be contrary to the provisions of pricing freedom of Regulation No 1008/2008.

On the above grounds, the Court ruled the that any such law is incompatible with EU regulations as that at issue in the main proceeding, i.e. those requiring air carriers to carry, in all circumstances, not only the passenger, but also baggage checked in by him or her, provided that the baggage complies with certain requirements as regards, in particular, its weight, for the price of the plane ticket and without it being possible to charge any price supplement to carry such baggage – concluded the expert of Kovács Réti Szegheő Attorneys at Law.