



Spanish law requiring airlines to carry checked-in baggage without a surcharge, infringes EU law.

The price in respect of carriage of checked-in baggage is not an unavoidable and foreseeable item in the fare for air travel, but may be an optional price supplement

Spanish legislation prohibits air carriers from making checking in passengers' baggage subject to an optional price supplement.

In August 2010, the airline Vueling Airlines ('Vueling') added €40 to the base price of 4 plane tickets for a return journey between La Coruña (Spain) and Amsterdam (the Netherlands) purchased by Ms Arias Villegas (€241.48) when she checked in two pieces of baggage online. Ms Villegas therefore lodged a complaint against Vueling, claiming that the contract of carriage by air concluded with that airline contained an unfair term. The Instituto Galego de Consumo de la Xunta de Galicia (Galician Consumer's Institution, established by the Autonomous Community of Galicia) subsequently imposed an administrative penalty of €3,000 on Vueling.

The Juzgado de lo Contencioso-Administrativo no 1 de Ourense (Court for Contentious Administrative Proceedings No 1, Ourense, Spain), which is seised of the case, asks the Court of Justice whether the Spanish legislation is compatible with the principle of pricing freedom laid down in EU law.¹ In short, the question is whether EU law is liable to call into question the economic model adopted by certain airlines since the liberalisation of the sector and, in particular, by the 'low cost' airlines.

In today's judgment, the Court of Justice replies that **EU law precludes legislation, such as the 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, without any price supplement.**

The Court holds that **the price to be paid for the carriage of baggage checked-in by air passengers is not an unavoidable and foreseeable item of the price of the air service, but may be, within the meaning of EU law, an optional price supplement in respect of a complementary service.**

The Court notes in this regard that, with the increasingly popular use of air transport, airlines' business models have evolved considerably. Many airlines now follow a business model of offering air services at the lowest price. Within the framework of that business model, the cost relating to carrying baggage is, as a component of the price of the service, a significant element. Consequently, the airlines concerned may wish to charge a price supplement for that service. The Court also indicates that it cannot be excluded that some air passengers prefer to travel without checking in baggage on the basis that doing so reduces the cost of their plane ticket. **Having regard to those considerations, the service of carriage of checked-in baggage cannot be considered to be compulsory or necessary for the carriage of passengers.**

¹ Article 22(1) of Regulation 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).

By contrast, the Court considers that baggage that is not checked in, namely hand baggage must be considered, in principle, as a necessary item for the carriage of passengers. Consequently, the carriage of hand baggage cannot be made subject to a price supplement, provided that it meets reasonable requirements in terms of its weight and dimensions and complies with applicable security requirements. In that regard, the Court observes that there are differences between the service of carrying checked-in baggage and that of carrying hand baggage. The processing and storing of checked-in baggage is likely to lead to additional costs for the airline, which is not the case for carrying hand baggage. Furthermore, the extent of the liability of the carrier for damage to baggage is greater when baggage is checked in than when it is not.

The Court notes that **the Spanish law clearly does not allow air carriers separately to charge a supplement for the carriage of checked-in baggage and, therefore, freely to set a price for the carriage of passengers.** In that respect, the Court indicates that EU law does not preclude Member States from regulating aspects of the contract of carriage by air, in order, in particular, to protect consumers against unfair practices. It notes, however, that such national legislation cannot be contrary to the pricing provisions established by EU law.

The Court points out that the Spanish law prohibits the setting of a price differently according to whether it is possible or not to check-in baggage on the basis of the plane ticket. In so doing, that law (i) contravenes the right of air carriers freely to set fares payable for the carriage of air passengers and the condition under which those fares apply, and (ii) is likely to call into question the objective of enabling the effective comparison of fares, as is laid down by EU law; air carriers affected by such a national law are not permitted to apply separate charges for the service of carrying checked-in baggage, while airlines subject to the legislation of another Member State may do so.

Furthermore, it is for the national authorities to check, if necessary, whether Vueling complied with the information and transparency obligations to which it was subject as regards price supplements (namely, that they must be communicated in a clear, transparent and unambiguous way at the start of any booking process and their acceptance by the customer shall be on an 'opt-in' basis).²

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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² Article 23(1) of Regulation No 1008/2008.