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TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA  
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE  
SÚDNY DVOR EURÓPSKEJ ÚNIE  
SODIŠČE EVROPSKE UNIJE  
EUROOPAN UNIONIN TUOMIOISTUIN  
EUROPEISKA UNIONENS DOMSTOL

## JUDGMENT OF THE COURT (Fourth Chamber)

15 January 2026 \*

(Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Article 8(1) – Reimbursement of the price of a ticket in the event of cancellation of a flight – Commission collected by a person acting as an intermediary between the passenger and the air carrier when the ticket was bought – Conditions for inclusion – Amount of commission allegedly fixed without the air carrier’s knowledge – Burden of proof)

In Case C-45/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 13 December 2023, received at the Court on 24 January 2024, in the proceedings

**Verein für Konsumenteninformation**

v

**Koninklijke Luchtvaart Maatschappij NV,**

THE COURT (Fourth Chamber),

composed of I. Jarukaitis, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Fourth Chamber, M. Condanzi, N. Jääskinen (Rapporteur) and R. Frendo, Judges,

Advocate General: R. Norkus,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

\* Language of the case: German.

- the Verein für Konsumenteninformation, by M. Strohmayer, Rechtsanwalt,
- Koninklijke Luchtvaart Maatschappij NV, by M. Flitsch and D. Weiß, Rechtsanwälte,
- the European Commission, by G. von Rintelen and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 June 2025,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 8(1)(a) 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).
- 2 The request has been made in proceedings between the Verein für Konsumenteninformation (Association for Consumer Information, Austria) (‘the VKI’) and Koninklijke Luchtvaart Maatschappij NV, an airline established in the Netherlands (‘KLM’), concerning the reimbursement, following the cancellation of the air passengers’ flight, of the commission paid to the booking portal of the Opodo travel agency (‘Opodo’) by those passengers when purchasing their airline tickets on that travel agency’s website.

### **Legal context**

- 3 According to recital 1 of Regulation No 261/2004:  
‘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 Article 1 of that regulation, entitled ‘Subject’, provides, in paragraph 1(b) thereof:  
‘This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:  
...  
(b) their flight is cancelled;’
- 5 Article 2 of that regulation, entitled ‘Definitions’, is worded as follows:

‘For the purposes of this Regulation:

...

- (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;

...’

- 6 Article 5 of that regulation, entitled ‘Cancellation’, provides, in paragraph 1(a) thereof:

‘In case of cancellation of a flight, the passengers concerned shall:

- (a) be offered assistance by the operating air carrier in accordance with Article 8; and’

- 7 Article 8 of Regulation No 261/2004, entitled ‘Right to reimbursement or re-routing’, provides, in paragraph 1(a) thereof:

‘Where reference is made to this Article, passengers shall be offered the choice between:

- (a) – reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, ... together with, when relevant,  
– a return flight to the first point of departure, at the earliest opportunity;’

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

- 8 Air passengers purchased airline tickets for flights from Vienna (Austria) to Lima (Peru), via Amsterdam (Netherlands), and for flights from Lima to Vienna via Amsterdam, operated respectively on 19 August 2020 and 28 September 2020 by KLM, on the Opodo booking portal, a travel agency certified by the International Air Transport Association (IATA) and authorised to issue airline tickets for KLM. Those passengers paid Opodo the total sum of EUR 2 053.48, including the price of the tickets corresponding to EUR 1 958.34 and an agency commission corresponding to the purchase of those tickets on its booking portal for an amount of EUR 95.14.

- 9 As a result of the cancellation of those flights, those passengers obtained reimbursement of the price of the tickets from KLM, although that agency commission of EUR 95.14 remained to be borne by them.

- 10 It is apparent from the order for reference that, although KLM had been collaborating with Opodo for at least a decade and although, at the time of the purchase of the tickets at issue in the main proceedings, there was a contract between KLM and Opodo, known as ‘*Global Incentive*’, which provided for certain bonuses for Opodo based on the number of KLM tickets sold, neither that contract nor the IATA contracts settled the question whether an agency commission could be charged by Opodo to passengers and what the amount of that commission was.
- 11 The VKI, to which the passengers in the main proceedings assigned their claims for reimbursement of the cost of the airline tickets, brought an action before the Bezirksgericht Schwechat (District Court, Schwechat, Austria) seeking payment by KLM of the sum of EUR 95.14, together with interest, on the basis of Article 8(1) of Regulation No 261/2004, taking the view that the reimbursement of the cost of those tickets should include that of the agency commission. According to the VKI, since KLM was aware that such a commission is generally set by Opodo, it would be unfair not to require KLM to reimburse it, particularly since KLM benefits from Opodo acting as an intermediary. Furthermore, in VKI’s view, it is not apparent from the case-law of the Court that the inclusion of that commission in the total price of the airline ticket to be reimbursed under that provision requires KLM to approve the precise amount of that commission.
- 12 KLM contends that the VKI’s action should be dismissed and submits that it was unaware of the existence of an agency commission invoiced by Opodo and, a fortiori, of the amount of that commission. In any event, KLM contends that it had not authorised a variation in the price of the airline tickets at issue in the main proceedings. KLM argues that, according to the Court’s case-law, authorisation on its part was necessary in order for the passengers at issue in the main proceedings to be able to claim from it also reimbursement of the amount of that commission in the event of cancellation of the flights concerned.
- 13 By judgment of 17 November 2022, the Bezirksgericht Schwechat (District Court, Schwechat) upheld the action brought by the VKI.
- 14 KLM brought an appeal against that judgment before the Landesgericht Korneuburg (Regional Court, Korneuburg, Austria), which, by judgment of 21 March 2023, set aside that judgment and dismissed that action.
- 15 The VKI brought an appeal on a point of law (Revision) against that judgment before the Oberster Gerichtshof (Supreme Court, Austria), which is the referring court.
- 16 That court states that, in the judgment of 12 September 2018, *Harms* (C-601/17, EU:C:2018:702), the Court held that Article 8(1) of Regulation No 261/2004 must be interpreted as meaning that the agency commission must be included in the amount of the reimbursement made under that provision, unless that commission was set without the knowledge of the air carrier. According to the referring court,

that exception, relating to whether or not the air carrier is aware of the commission, could be interpreted in different ways.

- 17 In that regard, that court wonders how the air carrier must be informed of the existence and amount of the agency commission, and who bears the burden of proving awareness of the existence of that commission.
- 18 However, that court considers that an air carrier cannot be unaware that an authorised agent, within the meaning of Article 2(f) of Regulation No 261/2004, necessarily carries out its activity in order to collect a commission, with the result that that air carrier cannot claim that it was not aware of the specific amount of the intermediation commission, unless that amount is abnormally high, which it would be for the air carrier to prove.
- 19 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Is [Regulation No 261/2004] and in particular Article 8(1)(a) thereof to be interpreted as meaning that the price of the ticket to be taken into consideration for the purpose of determining the reimbursement owed by the air carrier to a passenger in the event of cancellation of a flight also includes the difference between the amount paid by the passenger and the amount received by the air carrier, which corresponds to a commission collected by a person acting as an intermediary between those two parties, if the air carrier, although aware that the other person regularly charges a commission (arrangement fee) for an intermediary service, does not know the amount of that commission in the specific case?
- (2) Does the burden of proving that the air carrier had the necessary knowledge lie with the passenger seeking reimbursement, or is it for the air carrier to prove that it lacked the necessary knowledge of the commission?’

### **Procedure before the Court**

- 20 By a decision of 5 November 2024, the Court referred the present case to the Ninth Chamber and decided, by application of Article 76(2) of its Rules of Procedure, not to hold a hearing. Furthermore, it decided that the case would be determined without an Advocate General’s Opinion.
- 21 At the request of the Ninth Chamber, submitted pursuant to Article 60(3) of those rules, the Court reassigned the present case to the Fourth Chamber on 1 April 2025 and decided, pursuant to Article 76(2) of those rules, not to hold a hearing. It decided that the case would be determined with the benefit of an Advocate General’s Opinion.

- 22 By order of 28 April 2025, *Verein für Konsumenteninformation (Commission collected by an intermediary)* (C-45/24, EU:C:2025:287), the Court, after hearing the Advocate General, ordered the opening of the oral part of the procedure, in accordance with Article 83 of the Rules of Procedure of the Court of Justice.
- 23 On 19 June 2025, the Advocate General delivered his Opinion.

## **Consideration of the questions referred**

### ***The first question***

- 24 By its first question, the referring court asks, in essence, whether Article 8(1)(a) of Regulation No 261/2004, read in conjunction with Article 5(1)(a) thereof, must be interpreted as meaning that the price of the airline ticket to be taken into consideration for the purpose of determining the amount of the reimbursement owed by the air carrier to a passenger in the event of cancellation of a flight includes the difference between the amount paid by that passenger and the amount received by that air carrier, corresponding to a commission received by a company, which has acted as an intermediary, without that air carrier being required to know the exact amount of that commission.
- 25 As a preliminary point, it should be noted that, without formally calling into question the admissibility of the first question, KLM contends, in its written observations, that a distinction must be drawn between the concepts of ‘arrangement fees’ and ‘agency commissions’, which are used synonymously by the referring court in the wording of the first question referred for a preliminary ruling. While ‘arrangement fees’ correspond to the remuneration that travel agencies receive from their customers for the services they offer, ‘agency commissions’ refer to the remuneration that those agencies receive from air carriers.
- 26 In that regard, it should be borne in mind that, in accordance with settled case-law, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. The Court must take account, under the division of jurisdiction between the Court and the national courts, of the factual and legislative context, as described in the order for reference, in which the questions put to it are set (judgment of 17 October 2024, *NFŠ*, C-28/23, EU:C:2024:893, paragraph 31 and the case-law cited).
- 27 In the present case, it is apparent from the information provided by the referring court that, first, an amount of EUR 95.14 corresponding, according to the wording used by that court, to ‘arrangement fees (agency commission)’ was collected from the passengers at issue in the main proceedings by Opodo, when they purchased the tickets at issue in the main proceedings from that travel agency’s website.
- 28 Second, that court recalls that the Court of Justice has already ruled on agency commissions in the context of the interpretation of the scope of the right to

reimbursement of air passengers under the combined provisions of Articles 5 and 8 of Regulation No 261/2004, in the judgment of 12 September 2018, *Harms* (C-601/17, EU:C:2018:702).

- 29 In that regard, it should be noted that the distinction drawn by KLM between an ‘agency commission’ and ‘arrangement fees’, the former borne by the air carrier and the latter by the air passenger, is in any event devoid of any legal significance in so far as both the case in the main proceedings and the judgment of 12 September 2018, *Harms* (C-601/17, EU:C:2018:702) mentioned by the referring court concern the reimbursement of the amount collected by the intermediary from an air passenger, that is to say, the difference between the amount paid by that passenger for the airline ticket and the amount received by that air carrier.
- 30 As regards the substance of the question referred, it should be recalled that, in accordance with Article 8(1)(a) of Regulation No 261/2004, read in conjunction with Article 5(1)(a) of that regulation, the onus is on the air carrier, in the event of cancellation of a flight, to offer assistance to the air passengers concerned in the form of offering them, inter alia, reimbursement of their ticket, at the price at which it was bought, and, when relevant, a return flight to their first point of departure (judgment of 12 September 2018, *Harms*, C-601/17, EU:C:2018:702, paragraph 12).
- 31 The Court has thus held that the wording of Article 8(1)(a) of Regulation No 261/2004 establishes a direct link between the concept of ‘ticket’ and the expression ‘price at which it was bought’, it being possible for the passengers concerned to buy such a ticket either directly from the air carrier or through an intermediary such as, inter alia, the authorised agent of that air carrier, referred to in Article 2(f) of that regulation (see, to that effect, judgment of 12 September 2018, *Harms*, C-601/17, EU:C:2018:702, paragraph 13).
- 32 In that regard, it follows from the wording of Article 2(f) of Regulation No 261/2004 that a ‘ticket’ constitutes a document or an equivalent in paperless form, including electronic form, issued or authorised by an air carrier or an agent authorised by such an air carrier. It follows from that definition that the various elements of such a ticket, including its price, must, if that ticket is not issued by the air carrier itself, in any event be authorised by it.
- 33 In that regard, an agency commission, as a component of the price of the airline ticket, must be regarded as necessary and, therefore, ‘unavoidable’ in order to avail of the services offered by that air carrier (see, to that effect, judgments of 22 June 2016, *Mennens*, C-255/15, EU:C:2016:472, paragraph 36, and of 12 September 2018, *Harms*, C-601/17, EU:C:2018:702, paragraph 18).
- 34 As is apparent from points 19 and 27 of the Advocate General’s Opinion, the purchase of the airline ticket through an intermediary constitutes a ‘single transaction’ in so far as the agency commission forms part of the ticket price,

within the meaning of Article 8(1)(a) of that regulation, since that commission cannot be avoided by the passenger when purchasing the ticket.

- 35 Accordingly, the collection of that agency commission, as an ‘unavoidable’ component of the price of the airline ticket, must be regarded as being authorised by the air carrier and, therefore, as having to be reimbursed under Article 8(1)(a) of Regulation No 261/2004.
- 36 Where that air carrier accepts that the intermediary issues airline tickets in its name and on its behalf, it may be assumed that that air carrier is necessarily aware of that intermediary’s commercial practice of collecting an agency commission from the air passenger when purchasing an airline ticket, even in the absence of any express contractual clause to that effect, particularly since that commission is inseparable from the price of the airline ticket in question.
- 37 However, it is not necessary for the air carrier to know the exact amount of the agency commission in order for the air passenger whose flight has been cancelled to be able to obtain reimbursement of that commission, pursuant to Article 8(1)(a) of Regulation No 261/2004.
- 38 An interpretation whereby reimbursement of the amount paid by the air passenger is subject to prior knowledge, by the air carrier, of the exact amount of the agency commission could lead that carrier to attempt to refuse reimbursement on the ground that it was not informed of the precise amount of the agency commission. In such a situation, that passenger could be forced to take action against the intermediary in order to obtain reimbursement of the ticket price including the amount of the agency commission, under Article 8(1)(a) of Regulation No 261/2004, with the risk that such a procedure might delay that reimbursement and give rise to additional, or even disproportionate, costs for that passenger.
- 39 Such an outcome would be contrary to the objective of ensuring a high level of protection for air passengers, as set out in recital 1 of Regulation No 261/2004, and to the simplification of the procedures for reimbursement put in place by that regulation.
- 40 In the same vein, that interpretation could lead the air passenger to forego the option of using an intermediary and to favour booking directly with the air carrier, although the price of the airline ticket issued by such an intermediary may prove to be financially more attractive to that passenger.
- 41 In the light of all the foregoing considerations, the answer to the first question is that Article 8(1)(a) of Regulation No 261/2004, read in conjunction with Article 5(1)(a) thereof, must be interpreted as meaning that the price of the airline ticket to be taken into consideration for the purpose of determining the amount of the reimbursement owed by the air carrier to a passenger in the event of cancellation of a flight includes the difference between the amount paid by that passenger and the amount received by that air carrier, which corresponds to a

commission collected by a company acting as an intermediary, without that air carrier being required to know the exact amount of that commission.

*The second question*

- 42 Having regard to the answer given to the first question, there is no need to answer the second question.

**Costs**

- 43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

**Article 8(1)(a) 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, read in conjunction with Article 5(1)(a) thereof,**

**must be interpreted as meaning that the price of the airline ticket to be taken into consideration for the purpose of determining the amount of the reimbursement owed by the air carrier to a passenger in the event of cancellation of a flight includes the difference between the amount paid by that passenger and the amount received by that air carrier, which corresponds to a commission collected by a company acting as an intermediary, without that air carrier being required to know the exact amount of that commission.**

[Signatures]