



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

26 October 2023*

(Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Article 2(j) – Article 3 – Article 4(3) – Compensation of air passengers in the event of denied boarding – Passenger informed in advance that boarding would be denied – No obligation for the passenger to present him or herself for boarding – Article 5(1)(c) – Exceptions to the right to compensation in the event of a flight cancellation – Inapplicability of those exceptions in the event of a pre-emptive denial of boarding)

In Case C-238/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany), made by decision of 21 February 2022, received at the Court on 5 April 2022, in the proceedings

FW

v

LATAM Airlines Group SA,

THE COURT (Eighth Chamber),

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

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- FW, by H. Hopperdietzel, Rechtsanwalt,
- LATAM Airlines Group SA, by S. Wassmer, Rechtsanwalt,
- the German Government, by J. Möller, P. Busche and M. Hellmann, acting as Agents,

* Language of the case: German

– 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 Article 2(j), Article 3(2), Article 4(3), Article 5(1)(c)(i) and Article 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).
- 2 The request has been made in proceedings between FW and LATAM Airlines Group SA ('Latam Airlines') concerning a claim for compensation made by FW on the basis of Regulation No 261/2004 after Latam Airlines barred her from a flight which was due to be operated between Madrid (Spain) and Frankfurt am Main (Germany).

Legal context

- 3 Recitals 1 to 4 and 9 of Regulation No 261/2004 are worded as follows:
 - '(1) 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.
 - (2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.
 - (3) While Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport [(OJ 1991 L 36, p. 5)] created basic protection for passengers, the number of passengers denied boarding against their will remains too high, as does that affected by cancellations without prior warning and that affected by long delays.
 - (4) The Community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market....
- (9) The number of passengers denied boarding against their will should be reduced by requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, instead of denying passengers boarding, and by fully compensating those finally denied boarding.'

4 Article 2 of Regulation No 261/2004, entitled ‘Definitions’, provides, under points (j) and (l):

‘For the purposes of this Regulation:

...

(j) “denied boarding” means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;

...

(l) “cancellation” means the non-operation of a flight which was previously planned and on which at least one place was reserved.’

5 Paragraphs (1) and (2) of Article 3 of that regulation, entitled ‘Scope’, are worded as follows:

‘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;

...

2. Paragraph 1 shall apply on the condition that passengers:

(a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,

– as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,

or, if no time is indicated,

– not later than 45 minutes before the published departure time; or

(b) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.’

6 Under Article 4 of that regulation, entitled ‘Denied boarding’:

‘1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.

2. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.'

7 Article 5 of Regulation No 261/2004, entitled 'Cancellation', provides in paragraph 1(c) thereof:

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

...

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:

- (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or
- (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
- (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.'

8 Article 7 of that regulation, entitled 'Right to compensation', provides:

'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).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

...

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.'

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

9 FW booked a return flight with Latam Airlines between Frankfurt am Main and Madrid. The outward flight was scheduled for 22 December 2017 and the return flight for 7 January 2018.

- 10 Finding it impossible to check-in online for the outward flight on 21 December 2017, FW contacted Latam Airlines. The latter then informed her that it had, unilaterally and without informing her in advance, amended her reservation to transfer her to an earlier flight, which was to be operated on 20 December 2017. In the course of that communication, Latam Airlines also informed FW that she had been barred from the return flight on 7 January 2018, on the ground that she had not taken the outward flight.
- 11 As a result, FW reserved both an outward flight and a return flight with another air carrier and paid EUR 528.23 for the corresponding tickets. Prior to the initiation of the action in the main proceedings, Latam Airlines had nevertheless refunded her EUR 101.55.
- 12 By a judgment of 2 September 2021, the Amtsgericht Frankfurt am Main (Local Court, Frankfurt am Main, Germany) ordered Latam Airlines to pay FW a sum of EUR 426.68 by way of damages, corresponding to the remainder of the price of those tickets plus EUR 250 compensation under Articles 5 and 7 of Regulation No 261/2004. That court held that the amendment of the reservation of the outward flight to be operated by Latam Airlines was to be deemed a cancellation. That judgment is final in that regard.
- 13 On the other hand, that court dismissed FW's claim seeking additional compensation of EUR 250 on account of the denied boarding of the return flight which she had reserved with that air carrier. According to that court, FW was denied boarding, within the meaning of Article 4 of Regulation No 261/2004, even though she did not present herself for check-in or boarding, as required by Article 2(j), and Article 3(2)(a) of that regulation. However, since it is irrelevant for the passenger whether the refusal of the carrier is based on the cancellation of a flight or, where the flight is maintained, denied boarding, the first-instance court applied Article 5(1)(c)(i) of that regulation by analogy. Accordingly, it refused to grant that additional compensation to FW since she had been informed on 21 December 2017 that she would be denied boarding, that is to say, more than two weeks prior to the scheduled time of departure of the return flight she had originally reserved.
- 14 FW brought an appeal against the judgment of 2 September 2021 before the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany), which is the referring court. FW challenges the application by analogy of Article 5(1)(c)(i) of Regulation No 261/2004 to cases of denied boarding.
- 15 The referring court takes the view that the present case raises two issues with regard to the interpretation of Regulation No 261/2004. First, that court asks whether denied boarding within the meaning of Article 4 of that regulation may be established where an operating air carrier informs, in advance, a passenger that it will refuse to allow him or her to board a flight for which that passenger has a confirmed reservation. In the affirmative, the issue then arises of whether Article 5(1)(c)(i) of that regulation, which relates to cancellation of a flight, may apply by analogy to a case of denied boarding.
- 16 On the first point, the referring court observes that, in a judgment of 17 March 2015, the Bundesgerichtshof (Federal Court of Justice, Germany) held, *inter alia*, that a passenger cannot be required to present him or herself for check-in or boarding in the event of 'pre-emptive' denial of boarding, that is to say, in the event of the amendment, with prior notification to the passenger, of the reservation by transferring it to another flight or, as in the present case, in the event of the removal of that passenger's name from the list of passengers authorised to board. Having regard to the high level of protection of passenger rights sought by Regulation No 261/2004, a passenger

should not be required to go to the airport and request to be carried on a flight if it is already established that he or she will be denied boarding. While concurring with the interpretation adopted by the Bundesgerichtshof (Federal Court of Justice), the referring court considers, in essence that it is necessary to refer a question to the Court of Justice on that point.

- 17 On the second point and should the Court accept that, in the event of a pre-emptive denial of boarding, the passenger may be compensated without having to present him or herself for check-in or boarding, the referring court takes the view that, even if the EU legislature has not expressly provided for the case of a passenger who has been pre-emptively denied boarding, such a passenger is in the same situation as a passenger whose flight has been cancelled. Consequently, the principle of equal treatment requires Article 5(1)(c)(i) of Regulation No 261/2004 to be applied by analogy to passengers who are denied boarding, within the meaning of Article 4 of that regulation.
- 18 Nevertheless, the referring court points out that, in the event of a flight cancellation, the right to compensation is not applicable where the passenger was informed of that cancellation at least two weeks in advance. Such a period is deemed to enable the passenger to adapt to the new situation, so that the trouble and inconvenience which the right to compensation provided for in Article 7 of Regulation No 261/2004 is intended to make up for do not materialise. In the same way, in the event of a pre-emptive denial of boarding communicated more than two weeks before the scheduled time of the flight's departure, the passenger thus informed would have sufficient time in which to adapt to that denial and to take other measures. From the point of view of a passenger, it is irrelevant whether he or she is not carried on flight that he or she has reserved because the flight is cancelled in its entirety or because that flight is operated but he or she is denied boarding on other grounds, such as overbooking. The consequences of the inconvenience caused by the denial of boarding would be identical to those of a flight cancellation. If the legislature's intention were to exclude the right to compensation when a flight is cancelled in the event of the passenger being notified in advance, the same solution should apply in the event of pre-emptively denied boarding, since otherwise passengers affected by a flight cancellation would find themselves in a much less favourable situation than passengers denied boarding, even though the situations of both those categories of passengers are comparable.
- 19 In those circumstances, the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main) 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] to be interpreted as meaning that, even where an operating air carrier has already given prior notification that it does not intend to carry a passenger, that passenger must still have presented himself [or herself] for check-in or boarding at the time indicated or no later than 45 minutes before the published departure time – as provided for by Article 3(2) and/or Article 2(j) [of that regulation] – in order for the regulation to become applicable and to establish an instance of denied boarding subject to compensation under to Article 4(3) in conjunction with Article 7 of [that regulation]?’

(2) In the event that the answer to Question 1 is in the affirmative:

Is Regulation [No 261/2004] to be interpreted as meaning that rights to compensation for denied boarding under Articles 4 and 7 applied by analogy with Article 5(1)(c)(i) of [that regulation] are excluded where the passenger has been informed of the denial of boarding at least two weeks before the scheduled time of departure?’

Consideration of the questions referred

The first question

- 20 By its first question, the referring court asks, in essence, whether Article 4(3) of Regulation No 261/2004, read in conjunction with Article 2(j) thereof, must be interpreted as meaning that an operating air carrier which has informed a passenger in advance that, against that passenger's will, it is going to deny him or her boarding in respect of a flight for which he or she has a confirmed reservation, need not compensate that passenger where he or she did not present him or herself for boarding under the conditions set in Article 3(2) of that regulation.
- 21 As is clear from the Court's settled case-law, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard not only to its wording but also to the context of the provision and the objective pursued by the legislation in question (judgments of 18 January 1984, *Ekro*, 327/82, EU:C:1984:11, paragraph 11, and of 25 June 2020, *Ministerio Fiscal (Authority likely to receive an application for international protection)*, C-36/20 PPU, EU:C:2020:495 paragraph 53).
- 22 It must be observed at the outset that, under Article 4(3) of Regulation No 261/2004, 'if boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 [of that regulation] and assist them in accordance with Articles 8 and 9 [thereof]'.
- 23 In the light of the wording of Article 4(3), a passenger can be granted the compensation provided for by that provision only if he or she has been 'denied boarding' within the meaning of Article 2(j) of that regulation. Under the latter provision, 'denied boarding' means 'a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2) [of that regulation], except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation'.
- 24 Having regard to the reference made in Article 2(j) of Regulation No 261/2004 to Article 3(2) of that regulation, it must be observed that it is apparent from Article 3(1)(a) and Article 3(2) thereof that, in a situation where, as in the present case, a passenger has a confirmed reservation for a flight departing from an airport located in the territory of a Member State to which the Treaty applies, the concept of 'denied boarding' means that that passenger, except in the case of cancellation as provided for in Article 5 of that regulation, presented him or herself for check-in as stipulated and at the time indicated in advance and in writing by the air carrier, the tour operator or an authorised travel agent, or, if no time is indicated, not later than 45 minutes before the published departure time, or that that passenger has been transferred by an air carrier or tour operator from the flight for which he or she held a reservation to another flight, irrespective of the reason.
- 25 Having regard to the provisions referred to in paragraphs 22 to 24 above, it must be determined, first, whether the concept of 'denied boarding' includes pre-emptively denied boarding, that is to say, the situation in which an operating air carrier informs, in advance, a passenger that it is going

deny him or her boarding, against that passenger's will, on a flight for which he or she has a confirmed reservation and, second, whether the requirement that the passenger present him or herself for check-in also applies in the event of such pre-emptively denied boarding.

- 26 On the first point, it should be noted that Regulation No 261/2004 repealed Regulation No 295/91, which had introduced protection against denied boarding. However, by adopting the latter regulation, the EU legislature had intended exclusively to react against the practice of overbooking, in which air carriers were excessively engaged. Thus, Regulation No 295/91 merely established, pursuant to Article 1 thereof, 'common minimum rules applicable where passengers are denied access to an overbooked scheduled flight' (see, to that effect, judgments of 4 October 2012, *Finnair*, C-22/11, EU:C:2012:604, paragraph 20, and of 4 October 2012, *Rodríguez Cachafeiro and Martínez-Reboredo Varela-Villamor*, C-321/11, EU:C:2012:609, paragraph 22).
- 27 By contrast, in the concept of 'denied boarding', within the meaning of Article 2(j) of Regulation No 261/2004, no reference can be made out to the reason for which a carrier refuses to carry a passenger on a flight. Thus, the wording of that provision no longer links such a denial to a situation of 'overbooking' of the flight concerned caused by the air carrier for economic reasons. In so doing, the EU legislature expanded the scope of the concept of 'denied boarding' in order to cover all situations in which an air carrier might refuse to carry a passenger (see, to that effect, judgments of 4 October 2012, *Finnair*, C-22/11, EU:C:2012:604, paragraph 19, 21 and 22, and of 4 October 2012, *Rodríguez Cachafeiro and Martínez-Reboredo Varela-Villamor*, C-321/11, EU:C:2012:609, paragraphs 21, 23 and 24).
- 28 It follows that, as a matter of principle, the concept of 'denied boarding' includes pre-emptively denied boarding, provided that the passenger has presented him or herself in due time for boarding, in accordance with Article 2(j) of that regulation.
- 29 That interpretation is supported by teleological considerations. To exclude from the concept of 'denied boarding', within the meaning of Article 2(j) of Regulation No 261/2004, pre-emptively denied boarding would substantially reduce the protection granted to passengers under that regulation. Consequently, such an exclusion would run contrary to that regulation's objective, referred to in recital 1 thereof, which is to ensure a high level of protection for passengers and which justifies a broad interpretation of the rights granted to those passengers. It would, moreover, result in depriving of all protection passengers who are in a situation which, like that of overbooking for economic reasons, is not imputable to them, preventing them from relying on Article 4 of that regulation (see, to that effect, judgment of 4 October 2012, *Finnair*, C-22/11, EU:C:2012:604, paragraphs 23 and 24).
- 30 On the second point referred to in paragraph 25 above, a literal interpretation of Article 2(j) of Regulation No 261/2004, read in conjunction with Article 3(1)(a) and (2) of that regulation, suggests that a passenger can only be established to have been 'denied boarding' if that passenger presented him or herself for check-in.
- 31 That interpretation cannot, however, be accepted in a situation of pre-emptively denied boarding.
- 32 First, as the Commission stated in its written observations, it is apparent from a contextual analysis of Article 3(2)(b), read in conjunction with Article 2(j), of Regulation No 261/2004 that the requirement that passengers must present themselves for boarding does not, in view of the fact also that boarding may be denied pre-emptively, necessarily need to be fulfilled where they

have been transferred by the air carrier or tour operator from the flight for which they held a reservation to another flight. Such a situation is not distinguishable, in essence, from that in which the passenger is informed in advance that the air carrier will deny him or her boarding with respect to the flight for which he or she has a confirmed reservation, which thus renders it necessary for that passenger to reserve another flight in the same way as if he or she had been transferred in advance by the air carrier to a different flight.

- 33 Secondly, the objective pursued by Regulation No 295/91, recalled in paragraph 26 above, indicates that, in subsequently adopting Article 2(j) and Article 4 of Regulation No 261/2004, the EU legislature essentially envisaged cases of denied boarding which, like those arising from the use of overbooking, occur *in extremis*, that is to say, at the very moment when the passengers arrive at the airport. In that context, it is understandable that the EU legislature maintained in Regulation No 261/2004 the requirement that the passenger must present him or herself for check-in, since the reality of such situations can, in principle, be established only at the time of check-in.
- 34 It is thus apparent that, when drawing up Regulation No 261/2004, the EU legislature did not envisage the situation in which an operating air carrier informs passengers, prior to the scheduled flight for which they have a confirmed reservation, that it will refuse to allow them to board the aircraft which is to carry out that flight.
- 35 However, Article 4(3) of Regulation No 261/2004, read in conjunction with Article 2(j) and Article 3(2) thereof, cannot be interpreted as expressing a deliberate intention on the part of the EU legislature to automatically exclude all compensation to a passenger who has been pre-emptively denied boarding on the ground that he or she did not present him or herself for check-in. It must therefore be held that those provisions do not, in all circumstances, make compensation for denied boarding subject to the condition that the passengers concerned must have presented themselves for check-in.
- 36 On the contrary, an interpretation of Regulation No 261/2004 which, for the purpose of enabling passengers denied boarding to be compensated, relieves them of the obligation to present themselves for check-in, thereby sparing them an unnecessary formality, contributes to the attainment of that regulation's objective, that being to ensure a high level of protection for passengers.
- 37 It is apparent from recitals 1 to 4 of that regulation, and in particular from recital 2 thereof, that that regulation seeks to ensure a high level of protection for air passengers irrespective of whether they are denied boarding or whether their flight is cancelled or delayed, since they are all caused similar serious trouble and inconvenience connected with air transport (judgments of 19 November 2009, *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716, paragraph 44, and of 29 July 2019, *Rusu*, C-354/18, EU:C:2019:637, paragraph 26). It follows that the provisions conferring rights on air passengers, including those conferring a right to compensation, must be interpreted broadly (see, to that effect, judgment of 19 November 2009, *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716, paragraph 45).
- 38 It thus follows from a contextual and teleological interpretation of Article 4(3) of Regulation No 261/2004, read in conjunction with Article 2(j) and Article 3(2) of that regulation, that a passenger is not required to present him or herself for check-in where an operating air carrier has informed him or her in advance that, against that passenger's will, it is going deny him or her boarding in respect of a flight for which that passenger has a confirmed reservation.

39 It follows from the foregoing considerations that Article 4(3) of Regulation No 261/2004, read in conjunction with Article 2(j) thereof, must be interpreted as meaning that an operating air carrier which has informed a passenger in advance that, against that passenger's will, it is going to deny him or her boarding in respect of a flight for which he or she has a confirmed reservation, must compensate that passenger, even if he or she did not present him or herself for boarding under the conditions set in Article 3(2) of that regulation.

The second question

40 Although the second question was raised only in the event of the first question being answered in the affirmative, the Court considers it necessary to answer it in the light of the explanations of the referring court summarised in paragraph 17 above. The referring court states that an answer to the second question is necessary in the event that the Court considers, in answer to the first question, that a passenger who has been informed that boarding has been denied pre-emptively may be compensated without having to present him or herself for check-in.

41 By its second question, the referring court asks, in essence, whether Article 5(1)(c)(i) of Regulation No 261/2004 must be interpreted as meaning that that provision establishing an exception to the right to compensation of passengers in the event of cancellation of a flight also governs the situation in which a passenger has been informed, at least two weeks before the scheduled time of departure of the flight, that, against that passenger's will, the operating air carrier is going to refuse to carry him or her, so that the passenger concerned is not granted the right to compensation for denied boarding provided for in Article 4 of that regulation.

42 It should be recalled that, under Article 5(1)(c)(i) of Regulation No 261/2004, passengers affected by the cancellation of a flight have the right to compensation by the operating air carrier in accordance with Article 7 of that regulation, unless they are informed of the flight cancellation at least two weeks before the scheduled time of departure. In addition, Article 4(3) of that regulation provides that 'if boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 [of that regulation] and assist them in accordance with Articles 8 and 9 [of that regulation]'.

43 As the Court has held, the objective of Regulation No 261/2004, referred to in recital 1 thereof and consisting of ensuring a high level of protection for passengers, justifies a broad interpretation of the rights granted to passengers (see, to that effect, judgment of 4 October 2012, *Finnair*, C-22/11, EU:C:2012:604, paragraph 23). Conversely, an exception to the provisions granting rights to passengers must be interpreted strictly (see, to that effect, judgments of 22 December 2008, *Wallentin-Hermann*, C-549/07, EU:C:2008:771, paragraph 17, and of 4 October 2012, *Finnair*, C-22/11, EU:C:2012:604, paragraph 38).

44 Article 5(1)(c)(i) of that regulation must therefore be interpreted strictly, since that provision exempts the operating air carrier, in the event of cancellation of a flight, from the payment of compensation provided for in Article 7 of that regulation where it has informed passengers of the cancellation of the flight at least two weeks before the scheduled time of departure.

45 In that regard, it should be noted that Article 5(1)(c)(i) of Regulation No 261/2004 does not concern the situation of denied boarding but only the situation in which a flight is cancelled, namely, in accordance with Article 2(l) of that regulation, the non-operation of a flight which was previously planned and on which at least one place was reserved.

- 46 Furthermore, Article 4(3) of that regulation does not provide that an operating air carrier may be released from its obligation to compensate passengers under Article 7 of that regulation if it informs passengers, at least two weeks before the scheduled time of departure, that they will be denied boarding (see, by analogy, judgments of 10 January 2006, *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 37, and of 4 October 2012, *Finnair*, C-22/11, EU:C:2012:604, paragraph 36). Therefore, the principle of strict interpretation recalled in paragraph 44 above requires that the exception to the right to compensation, provided for in Article 5(1)(c)(i) of Regulation No 261/2004, must be confined solely to the cases of cancellation referred to in that provision and cannot be extended to the cases of denied boarding referred to in Article 4 of that regulation.
- 47 Therefore, having regard to that regulation's objective, referred to in recital 1 thereof, which is to ensure a high level of protection for passengers, Article 5(1)(c)(i) of that regulation cannot be applied by analogy, in the context of denied boarding, in order to reduce the scope of the right to compensation set out in Article 4(3) of that regulation.
- 48 That interpretation is not called into question by the principle of equal treatment referred to by the national court. As the Commission stated in its written observations, that principle, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgment of 14 July 2022, *Commission v VW and Others*, C-116/21 P to C-118/21 P, C-138/21 P and C-139/21 P, EU:C:2022:557, paragraph 95 and the case-law cited), cannot apply in the present case since, as is apparent from paragraphs 45 and 46 above, situations giving rise to denied boarding or cancellation of flights are not comparable in that they have been regulated separately by the EU legislature in Articles 4 and 5 of Regulation No 261/2004 with legal rules that are partly different, such as an exception to the right to compensation provided for in Article 5(1)(c)(i) and not in Article 4(3) of that regulation.
- 49 Having regard to the foregoing considerations, the answer to the second question is that Article 5(1)(c)(i) of Regulation No 261/2004 must be interpreted as meaning that that provision establishing an exception to the right to compensation of passengers in the event of cancellation of a flight does not govern the situation in which a passenger has been informed, at least two weeks before the scheduled time of departure of the flight, that, against that passenger's will, the operating air carrier is going to refuse to carry him or her, so that the passenger concerned must be granted the right to compensation for denied boarding provided for in Article 4 of that regulation.

Costs

- 50 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:

- 1. Article 4(3) 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 2(j) of Regulation No 261/2004,**

must be interpreted as meaning that an operating air carrier which has informed a passenger in advance that, against that passenger's will, it is going to deny him or her boarding in respect of a flight for which he or she has a confirmed reservation, must compensate that passenger, even if he or she did not present him or herself for boarding under the conditions set in Article 3(2) of that regulation.

- 2. Article 5(1)(c)(i) of Regulation No 261/2004**

must be interpreted as meaning that that provision establishing an exception to the right to compensation of passengers in the event of cancellation of a flight does not govern the situation in which a passenger has been informed, at least two weeks before the scheduled time of departure of the flight, that, against that passenger's will, the operating air carrier is going to refuse to carry him or her, so that the passenger concerned must be granted the right to compensation for denied boarding provided for in Article 4 of that regulation.

[Signatures]