



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

18 September 2014*

(Reference for a preliminary ruling — Air Transport — Common rules for the operation of air services in the European Union — Regulation (EC) No 1008/2008 — Pricing freedom — Checking in baggage — Price supplement — Concept of ‘air fares’ — Consumer protection — Imposition of a fine on an air carrier for an unfair contract term — National law requiring the carriage of passenger and checked-in baggage to be included in the base price of a plane ticket — Whether compatible with EU law)

In Case C-487/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Contencioso-Administrativo No 1 de Ourense (Spain), made by decision of 23 October 2012, received at the Court on 2 November 2012, in the proceedings

Vueling Airlines SA

v

Instituto Galego de Consumo de la Xunta de Galicia,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, A. Rosas (Rapporteur), D. Šváby and C. Vajda, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 January 2014,

after considering the observations submitted on behalf of:

- Vueling Airlines SA, by J.M. Rodríguez Cárcamo and B. García Gómez, abogados,
- the Instituto Galego de Consumo de la Xunta de Galicia, by O. Peñas González and I. Torralba Mena,
- the Spanish Government, by A. Rubio González and S. Centeno Huerta, acting as Agents,
- the European Commission, by J. Rius and N. Yerrell, acting as Agents,

* Language of the case: Spanish.

after hearing the Opinion of the Advocate General at the sitting on 23 January 2014,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 22(1) of Regulation (EC) 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).
- 2 The request has been made in proceedings between Vueling Airlines SA ('Vueling Airlines') and the Instituto Galego de Consumo de la Xunta de Galicia (Galician Consumer's Institution, established by the Autonomous Community of Galicia, the 'Instituto Galego de Consumo') concerning the imposition on Vueling Airlines by that body of a fine penalising the content of its contracts of carriage by air.

Legal context

International law

- 3 The Convention for the Unification of Certain Rules for International Carriage by Air ('the Montreal Convention'), concluded in Montreal on 28 May 1999, was signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001 (OJ 1999 L 194, p. 38).
- 4 Articles 17 to 37 of the Montreal Convention constitute Chapter III thereof, entitled 'Liability of the carrier and extent of compensation for damage'.
- 5 Article 17 of that convention, entitled '...damage to baggage', provides:

'...

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of 21 days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.'

EU law

- 6 Regulation No 1008/2008 was adopted on the basis of Article 80(2) EC, which corresponds to Article 100(2) TFEU, falling within Chapter VI of the FEU Treaty, entitled ‘Transport’, and which enables the appropriate provisions to be laid down for, inter alia, air transport. That regulation constitutes a recasting of several regulations, including Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services (OJ 1992 L 240, p. 15).

- 7 Recital 16 in the preamble to Regulation No 1008/2008 states:

‘Customers should be able to compare effectively the prices for air services of different airlines. Therefore the final price to be paid by the customer for air services originating in the Community should at all times be indicated, inclusive of all taxes, charges and fees. ...’

- 8 Under Chapter I of the regulation, entitled ‘General Provisions’, Article 1, entitled ‘Subject matter’, provides at paragraph (1):

‘This Regulation regulates ... the pricing of intra-Community air services.’

- 9 Under the same Chapter, Article 2, entitled ‘Definitions’, provides:

‘For the purposes of this Regulation:

...

4. “air service” means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire;

...

13. “intra-Community air service” means an air service operated within the Community;

...

15. “seat only sales” means the sale of seats, without any other service bundled, such as accommodation, directly to the public by the air carrier or its authorised agent or charterer;

...

18. “air fares” means the prices expressed in euro or in local currency to be paid to air carriers or their agents or other ticket sellers for the carriage of passengers on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;

19. “air rates” means the prices expressed in euro or in local currency to be paid for the carriage of cargo and the conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services;

...’

- 10 Under Chapter IV of Regulation No 1008/2008, entitled ‘Provisions on pricing’, Article 22 entitled ‘Pricing freedom’ provides at paragraph (1):

‘Without prejudice to [paragraph (1) of Article 16, which is entitled “General principles for public service obligations”], 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.’

- 11 Under the same Chapter, Article 23 of the regulation, entitled ‘information and non-discrimination’, provides at paragraph (1):

‘Air fares and air rates available to the general public shall include the applicable conditions when offered or published in any form, including on the Internet, for air services from an airport located in the territory of a Member State to which the Treaty applies. The final price to be paid shall at all times be indicated and shall include the applicable air fare or air rate as well as all applicable taxes, and charges, surcharges and fees which are unavoidable and foreseeable at the time of publication. In addition to the indication of the final price, at least the following shall be specified:

- (a) air fare or air rate;
- (b) taxes;
- (c) airport charges; and
- (d) other charges, surcharges or fees, such as those related to security or fuel;

where the items listed under (b), (c) and (d) have been added to the air fare or air rate. Optional price supplements shall 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.

...’

Spanish law

- 12 Article 97 of Law 48/1960 on air navigation (Ley 48/1960 sobre Navegación Aérea) of 21 July 1960 (BOE No 176, of 23 July 1960, p. 10291), as amended by Law 1/2011 establishing the security programme of the State as regards civil aviation and amending Law 21/2003 of 7 July on air security (Ley 1/2011 por la que se establece el Programa Estatal de Seguridad Operacional para la Aviación Civil y se modifica la Ley 21/2003, de 7 de julio, de Seguridad Aérea) of 4 March 2011 (BOE No 55, of 5 March 2011, p. 24995, ‘the LNA’) provides:

‘As part of the price of the ticket, the carrier is required to carry passengers and their baggage, subject to weight limits established by regulation, irrespective of the number of items and their size.

Separate provisions shall govern excess baggage.

For these purposes, baggage does not include objects and items of hand baggage carried by passengers themselves. The carrier is required to carry free of charge in the cabin, as hand baggage, objects and items carried by passengers themselves, including items purchased in airport shops. The carrier may refuse to allow such objects and items on board only on grounds of security, weight or size of the object in relation to the characteristics of the aircraft.’

- 13 According to Article 82, entitled ‘The concept of unfair contract terms’, of the consolidated version of the general law concerning the protection of consumers and users and other related laws (Real Decreto Legislativo 1/2007 por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias) of 16 November 2007 (BOE No 287, of 30 November 2007, p. 49181, ‘the law on consumer protection’):

‘1. All terms not individually negotiated and all practices not expressly agreed to 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.

...

4. Notwithstanding the provisions of the foregoing paragraphs, in accordance with the provisions of Article 85 to 90 inclusive, the following shall in any event be unfair:

...

b. terms that restrict the rights of the consumer and user,

c. terms that result in a lack of reciprocity in the contract,

...’

- 14 Article 86 of the law on consumer protection, entitled ‘Terms that are unfair because they restrict the basic rights of the consumer and user’, provides:

‘In any event, terms that restrict or deprive the consumer and user of rights granted under non-mandatory or mandatory legal provisions or under provisions that apply in default of agreement between the parties are unfair and, in particular, those that:

...

7. impose any other waiver or restriction on the rights of the consumer and user.’

- 15 Article 87 of that law, entitled ‘Terms that are unfair by reason of lack of reciprocity’, provides:

‘Terms that result in a lack of reciprocity in the contract, contrary to good faith and to the detriment of the consumer and user are unfair and, in particular, those that:

...

6. impose onerous or disproportionate conditions on the exercise of rights granted to the consumer and user under the contract, particularly in the case of contracts for the supply of goods or services on an ongoing or continuous basis, or impose excessively long durations, waive or restrict the right of the consumer and user to terminate such contracts by excluding such right or interfering with it or making it difficult to exercise such right using the agreed procedures, as is the case where terms introduce formalities that are different from those required for entering into a contract or stipulate that amounts paid in advance are to be forfeited or that services not actually provided are to be paid for, or which confer on the undertaking the unilateral right to apply any contractual penalties or specify compensation that does not correspond to the losses actually suffered.’

- 16 Article 89 of the law on consumer protection entitled ‘Unfair terms affecting the conclusion and performance of the contract’, provides:

‘The following shall, in any event, be regarded as unfair terms:

...

5. 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.’

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

- 17 In August 2010, Ms Arias Villegas bought, on the Internet, plane tickets from the airline Vueling Airlines. She purchased four return tickets in order to fly with three other persons from La Coruña (Spain) to Amsterdam (the Netherlands) on 18 October 2010, returning on 23 October 2010. Ms Arias Villegas checked in a total of two suitcases for the four passengers, as a result of which Vueling added a surcharge of EUR 40, namely EUR 10 per suitcase per flight, to the base price of the tickets, which amounted to EUR 241.48.
- 18 After the journey in question, Ms Arias Villegas lodged a complaint against Vueling with the Ourense municipal council, claiming that the airline had included an unfair term in the contract of carriage by air concerned. According to Ms Arias Villegas, that term is incompatible with the applicable Spanish legislation, under which air passengers are entitled to check in a suitcase without incurring an additional charge. That complaint was referred to the Instituto Galego de Consumo, which set in motion proceedings for imposing a penalty on Vueling Airlines at the end of which a fine of EUR 3 000 was imposed on that company. The grounds given for the penalty were the breach of Article 97 of the LNA and of a certain number of other provisions of Spanish legislation on consumer protection, in particular Articles 82, 86, 87 and 89 of the law on consumer protection.
- 19 Having first brought an unsuccessful appeal against that penalty, Vueling Airlines then brought an action before the Juzgado de lo Contencioso-Administrativo No 1 de Ourense (Court for Contentious Administrative Proceedings No 1, Ourense). Before that court, it submitted that EU law, in particular Article 22 of Regulation No 1008/2008, lays down a principle of freedom to set prices, according to which air carriers may set a base price for tickets that does not include checking in baggage and add to that price, subsequently, if the customer wishes to check in baggage. The Instituto Galego de Consumo contended, by contrast, that EU legislation on freedom to set air fares does not preclude the provisions of Spanish law which, by regulating the content of contracts of carriage by air, entitles passengers, automatically, as part of the air carriage service, to check in baggage of a specific description.
- 20 According to the referring court, Spanish law clearly entitles the consumer always to check in a suitcase of a specific description at no extra cost over and above the base price of the plane ticket. Such a right constitutes a logical and reasonable measure for the protection of the consumer, concerning the very dignity of the passenger. Given that this right forms part of the legal definition of a contract of carriage by air, being one of the standard services that all companies engaged in such activity must provide, it is not contrary to the principle of freedom to set air fares.
- 21 In this respect, the referring court observes that it is up to the passenger to decide whether or not to check in baggage and that carrying checked-in baggage also affects the fuel and administration costs of the flight. However, so does the specific weight of a passenger or the use of the aircraft’s toilets

during the flight, but that does not mean that a surcharge can be imposed as a consequence, because that would, in the opinion of the referring court, affect the dignity of the passenger and his or her basic rights as a consumer.

- 22 The referring court explains that, in the present case, Ms Arias Villegas was attracted by the low price of the ticket advertised on Vueling Airlines' website. During the process of buying the ticket, she discovered that the advertised price did not include the possibility of checking in baggage, even though the trip planned would obviously require her to do so. Thus, according to the referring court, the consumer was obliged to relinquish not only the right recognised in Spanish law for each passenger to check in a suitcase, but that consumer was also required to pay a surcharge, which was not advertised at the outset on the website of the airline concerned, in order to check in baggage.
- 23 It is against that background that the Juzgado de lo Contencioso-Administrativo No 1 de Ourense decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 22(1) of [Regulation No 1008/2008] to be interpreted as precluding a national rule (Article 97 of [the LNA]) that requires passenger airlines to grant passengers the right always to check in a suitcase without paying a supplement or surcharge on top of the base price of the ticket purchased?'

The question referred for a preliminary ruling

- 24 By its question, the referring court asks, in essence, whether Article 22(1) of Regulation No 1008/2008 precludes a national law that requires air carriers to carry, in all circumstances, not only the passenger, but also baggage checked in by him, 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.
- 25 It should be noted, at the outset, that the Spanish Government submitted, both in its written observations and at the hearing before the Court, that the referring court interprets incorrectly the national law at issue in the main proceedings. According to that government, the legislation concerns the content of the contract of carriage by air and refers in particular to the obligation, on the part of the airlines, to ensure the carriage of passengers' baggage. Thus, the provision does not regulate the price of the plane ticket nor does it in any way oblige the airlines to carry checked-in baggage free of charge.
- 26 In that regard, it should be noted that it is not for the Court, in the context of a reference for a preliminary ruling, to give a ruling on the interpretation of provisions of national law or to decide whether the interpretation given by the national court of those provisions is correct (see, in particular, judgments in *Corsten*, C-58/98, EU:C:2000:527, paragraph 24; *Dynamic Medien*, C-244/06, EU:C:2008:85, paragraph 19; *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 48; and *Samba Diouf*, C-69/10, EU:C:2011:524, paragraph 59).
- 27 In those circumstances, the question for a preliminary ruling must be considered on the understanding, which is that of the referring court, that the law at issue in the main proceedings requires air carriers to carry, in all circumstances, baggage checked in by passengers, 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 in that respect.
- 28 It must be observed that Regulation No 1008/2008 governs, in particular, the pricing of air services operated within the European Union. In this respect, under Article 22(1) of the regulation, air carriers may freely set 'air fares', which are defined at Article 2(18) as meaning, in particular, the price to be

paid to air carriers for the carriage of passengers on air services and the conditions under which those prices apply. Regulation No 1008/2008 therefore provides, expressly, for the freedom to set prices for the carriage of passengers, without, however, dealing, expressly, with prices charged for the carriage of baggage checked in by those passengers.

- 29 As regards the expression ‘air fares’, which appears at Article 2(18) of Regulation No 1008/2008, it must be noted that there is some disparity between the different language versions. While, as in the French language version, the expression ‘passenger fares’ (‘tarifs des passagers’) is used in, amongst others, the Swedish language version (‘passagerarpriser’), ‘air fares’ is the expression used in the English and Spanish (‘tarifas aéreas’) language versions and ‘flight prices’ is the expression used in the German (‘Flugpreise’) and Finnish (‘lentohinnat’) language versions; meanwhile, ‘ticket prices’ is the expression used in the Danish (‘flybilletpriser’) and Estonian (‘piletihinnad’) language versions of the regulation.
- 30 In that respect, it must be observed that according to the Court’s settled case-law, the need for a uniform interpretation of the provisions of EU law makes it impossible for the text of a provision to be considered in isolation, but requires, on the contrary, that it be interpreted and applied in the light of the versions existing in the other official languages (see, inter alia, judgments in *Stauder*, 29/69, EU:C:1969:57, paragraph 3; *EMU Tabac and Others*, C-296/95, EU:C:1998:152, paragraph 36; and *Profisa*, C-63/06, EU:C:2007:233, paragraph 13).
- 31 Where there is divergence between the various language versions of a European Union legal text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, in particular, judgments in *Bouchereau*, 30/77, EU:C:1977:172, paragraph 14; *Italy v Commission*, C-482/98, EU:C:2000:672, paragraph 49; and *Eleftheri tileorasi and Giannikos*, C-52/10, EU:C:2011:374, paragraph 24).
- 32 In those circumstances, it must be held that, in Chapter IV of Regulation No 1008/2008, which contains provisions on pricing, Article 22(1) relating to pricing freedom is complemented by Article 23(1), which seeks to ensure, in particular, that there is information and transparency with regard to prices for air services from an airport located in a Member State and which thereby contributes to safeguarding protection of customers having recourse to those services (see, to that effect, judgment in *ebookers.com Deutschland*, C-112/11, EU:C:2012:487, paragraph 13). In that respect, Article 23(1) lays down information and transparency obligations as regards, in particular, the conditions applicable to air fares, the final price to be paid, the air fare and the unavoidable and foreseeable items that are added to the fare, and the optional price supplements relating to services that supplement the air service itself.
- 33 Notwithstanding the fact that Article 23(1) of Regulation No 1008/2008 does not expressly refer to the prices to be paid for carrying baggage, it must be held that the obligations laid down in that provision also cover such prices, having regard, in particular, to the objective that it should be possible effectively to compare prices for air services, set out at recital 16 in the preamble to the regulation.
- 34 Furthermore, as the Advocate General has emphasised in particular at point 46 of his Opinion, it must be held that the price supplement linked to checking in baggage constitutes a condition of application of the price to be paid to the air carrier for the carriage of passengers on air services, within the meaning of Article 2(18) of Regulation No 1008/2008.
- 35 Consequently, it must be held that Regulation No 1008/2008 applies to the setting of prices relating to the carriage of baggage.
- 36 As regards the manner in which those prices must be set, Article 23(1) of Regulation No 1008/2008 requires, in particular, on the one hand, that the unavoidable and foreseeable items included in the price of the air service are always specified as elements of the final price to be paid, and, on the other

hand, that the price supplements, which relate to services that are neither compulsory nor necessary for the air service itself, are communicated in a clear, transparent and unambiguous way at the start of any booking process, and that their acceptance by the customer must be on an opt-in basis (see, to that effect, *ebookers.com Deutschland*, EU:C:2012:487, paragraph 14).

- 37 Thus, in order to answer the question whether Regulation No 1008/2008 permits a separate price to be charged for the service of carrying checked-in baggage, it is necessary to determine whether the price to be paid for the carrying of such baggage constitutes an unavoidable and foreseeable item included in the price of the air service or whether it is an optional price supplement in respect of a complementary service.
- 38 In that respect, airlines' commercial practices have traditionally consisted of allowing passengers to check in baggage without incurring supplementary charges. However, given that airlines' business models have evolved considerably with the increasingly popular use of air transport, it must be observed that certain companies now follow a business model that consists of offering air services at the lowest price. In those circumstances, the costs relating to carrying baggage, as a component of the price of those services, has, in relative terms, greater significance than before and the airlines concerned may accordingly wish to require a price supplement to be paid for that service. Furthermore, it cannot be ruled out that some air passengers prefer to travel without checking in baggage, on the basis that doing so will reduce the price of their plane ticket.
- 39 Having regard to those considerations, it must be held that the price to be paid for the carriage of air passengers' checked-in baggage constitutes an optional price supplement, within the meaning of Article 23(1) of Regulation 1008/2008, given that such a service cannot be considered to be compulsory or necessary for the carriage of those passengers.
- 40 By contrast, as regards baggage that is not checked in, namely hand baggage, it must be observed, in order to give a complete response to the referring court, that such baggage must be considered, in principle, as constituting a necessary aspect of the carriage of passengers and that its carriage cannot, therefore, be made subject to a price supplement, on condition that such hand baggage meets reasonable requirements in terms of its weight and dimensions, and complies with applicable security requirements.
- 41 It is appropriate to have regard, as the Advocate General did at points 54 and 55 of his Opinion, to the differences that exist between the nature of the service of carrying checked-in baggage, on the one hand, and the service of carrying hand baggage, on the other hand. In that respect, when checked-in baggage is entrusted to the airline, the latter takes responsibility for processing and storing it, which is likely to lead to additional costs for the airline. That is not the case with the carriage of baggage that is not checked in, such as, in particular, personal items that a passenger keeps with him.
- 42 This distinction between the carriage of checked-in baggage and that of hand baggage is also reflected in the legislation on airlines' liability for damage caused to baggage, as may be seen in the obligations set out in the Montreal Convention, to which the European Union is a contracting party. In accordance with Article 17(2) of that Convention, the air carrier is liable for damage to checked-in baggage, if the event causing the damage took place on board the aircraft or during any period within which the checked-in baggage was in the charge of the carrier, whereas as regards unchecked baggage, the carrier is liable only if the damage resulted from its fault or that of its servants or agents.
- 43 As regards a national law, such as that at issue in the main proceedings, that requires air carriers to carry, in all circumstances, not only the passenger, but also baggage checked in by him, 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 for the carriage of such

baggage, it must be observed that such a law clearly does not allow air carriers separately to charge a price supplement for carrying checked-in baggage and, therefore, freely to set a price for the carriage of passengers.

- 44 In this respect, it should be observed that EU law does not preclude, without prejudice to the application, in particular, of rules enacted in the field of consumer protection (see, to that effect, judgment in *ebookers.com Deutschland*, EU:C:2012:487, paragraph 17), Member States from regulating aspects of the contract of carriage by air, in order, in particular, to protect consumers against unfair practices. Nevertheless, such a national law cannot be contrary to the pricing provisions of Regulation No 1008/2008.
- 45 A national law that requires the price to be paid for the carriage of checked-in baggage to be included, in all circumstances, in the base price of the plane ticket, prohibits any means of setting a price differently for a ticket to travel that includes the right to check in baggage and for a ticket that does not offer that possibility. Consequently, that law contravenes not only the right of air carriers freely to set fares payable for the carriage of passengers on air services and the conditions under which those fares apply, in accordance with Articles 2(18) and 22(1) of Regulation No 1008/2008, but is also likely to call into question, in particular, the objective pursued by that regulation, which is to enable the effective comparison of such fares, in that 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 are permitted to do so.
- 46 Furthermore, given that the achievement of the objective of enabling effective comparison of fares for air services presupposes strict observance of the requirements laid down in Article 23(1) of Regulation No 1008/2008, it should be noted that, as regards the compliance in practice with the information and transparency obligations to which Vueling Airlines was subject under that provision, it is for the national authorities to check, if necessary, whether those obligations were complied with.
- 47 Finally, when applying domestic law the national court must, as far as is at all possible, interpret it in a way which accords with the requirements of EU law (judgments in *Engelbrecht*, C-262/97, EU:C:2000:492, paragraph 39; *ČEZ*, C-115/08, EU:C:2009:660, paragraph 138; and *Wall*, C-91/08, EU:C:2010:182, paragraph 70).
- 48 If the result required under EU law cannot be achieved by adopting a consistent interpretation of the domestic law, the national court is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation (see, to that effect, judgments in *Simmmenthal*, 106/77, EU:C:1978:49, paragraph 24; *Berlusconi and Others*, C-387/02, C-391/02 and C-403/02, EU:C:2005:270, paragraph 72; *Pupino*, C-105/03, EU:C:2005:386, paragraph 43; and *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 43).
- 49 In the light of all the foregoing considerations, the answer to the question referred is that Article 22(1) of Regulation No 1008/2008 must be interpreted as precluding a national law that requires air carriers to carry, in all circumstances, not only the passenger, but also baggage checked in by him, 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.

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 (Fifth Chamber) hereby rules:

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 must be interpreted as precluding a national law that requires air carriers to carry, in all circumstances, not only the passenger, but also baggage checked in by him, 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.

[Signatures]