Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

30 April 2020*

(Reference for a preliminary ruling – Area of freedom, security and justice – Border controls, asylum and immigration – Decision No 565/2014/EU – Simplified regime for the control of persons at the external borders – Third-country national in possession of a temporary residence permit issued by a Member State – Article 3 – Recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas – Ability to rely on a decision against a State – Direct effect – Body governed by private law regarded as an emanation of the State – Conditions – Regulation (EC) No 562/2006 – Schengen Borders Code – Article 13 – Refusal of entry into the territory of a Member State – Obligation to state reasons – Regulation (EC) No 261/2004 – Compensation and assistance to air passengers in the event of denied boarding – Article 2(j) – Denied boarding based on the allegedly inadequate nature of travel documentation – Article 15 – Obligations of air carriers towards passengers – Inadmissibility of the derogations provided for in the contract of carriage or other documents)

In Case C-584/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Eparchiako Dikastirio Larnakas (District Court, Larnaca, Cyprus), made by decision of 3 September 2018, received at the Court on 19 September 2018 in the proceedings

**D. Z.**

v

**Blue Air – Airline Management Solutions SRL,**

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Third Chamber, L.S. Rossi, J. Malenovský (Rapporteur) and F. Biltgen, Judges,

Advocate General: G. Pitruzzella,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 12 September 2019,

after considering the observations submitted on behalf of

* Language of the case: Greek.

– D. Z., by K. Papantoniou, dikigoros,

– Blue Air – Airline Management Solutions SRL, by N. Damianou, dikigoros,

– the Cypriot Government, by E. Neofytou and D. Lysandrou, acting as Agents,

– the German Government, initially by J. Möller, T. Henze and R. Kanitz, and subsequently by J. Möller and R. Kanitz, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,

– the European Commission, by M. Condou-Durande, C. Cattabriga and N. Yerrell and by G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 November 2019,

gives the following

## Judgment

1 The request for a preliminary ruling concerns the interpretation of Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ 2014 L 157, p. 23), of Articles 4 and 13 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p. 1) ('the Schengen Borders Code'), and of Article 4(3) and Articles 14 and 15 of Regulation (EC) No 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 This request was made in proceedings between D. Z. and Blue Air – Airline Management Solutions SRL ('Blue Air') concerning the latter's refusal to allow D. Z. to board a flight from Larnaca (Cyprus) to Bucharest (Romania).

## Legal framework

### *The CISA*

3 The Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990, which entered into force on 26 March 1995 (OJ 2000 L 239, p. 19) ('the CISA'), forms part of the Schengen acquis.

4 Article 26(1) and (2) of the CISA provide:

‘1. The Contracting Parties undertake, subject to the obligations resulting from their accession to the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, to incorporate the following rules into their national law:

(a) If aliens are refused entry into the territory of one of the Contracting Parties, the carrier which brought them to the external border by air, sea or land shall be obliged immediately to assume responsibility for them again. At the request of the border surveillance authorities the carrier shall be obliged to return the aliens to the third State from which they were transported or to the third State which issued the travel document on which they travelled or to any other third State to which they are certain to be admitted.

(b) The carrier shall be obliged to take all the necessary measures to ensure that an alien carried by air or sea is in possession of the travel documents required for entry into the territories of the Contracting Parties.

2. The Contracting Parties undertake, subject to the obligations resulting from their accession to the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, and in accordance with their constitutional law, to impose penalties on carriers which transport aliens who do not possess the necessary travel documents by air or sea from a Third State to their territories.’

### *Directive 2001/51/EC*

5 Under Article 1 of Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ 2001 L 187, p. 45):

‘The aim of this Directive is to supplement the provisions of Article 26 of the [CISA] and to define certain conditions with respect to their implementation.’

6 According to Article 4(1) of Directive 2001/51:

‘Member States shall take the necessary measures to ensure that the penalties applicable to carriers under the provisions of Article 26(2) and (3) of the [CISA] are dissuasive, effective and proportionate …’

### *The Schengen Borders Code*

7 Article 2 of the Schengen Borders Code provided:

‘For the purposes of this Regulation the following definitions apply:

…

(13) “border guard” means any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border who carries out, in accordance with this Regulation and national law, border control tasks;

…’

8 According to Article 5(1) of that code:

‘For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period …, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document entitling the holder to cross the border …

(b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [(OJ 2001 L 81, p. 1)], except where they hold a valid residence permit or a valid long-stay visa;

(c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;

(d) they are not persons for whom an alert has been issued in the [Schengen Information System (SIS)] for the purposes of refusing entry;

(e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.’

9 Article 7 of the code provided:

‘1. Cross-border movement at external borders shall be subject to checks by border guards. Checks shall be carried out in accordance with this chapter.

…

3. On entry and exit, third-country nationals shall be subject to thorough checks as follows:

(a) thorough checks on entry shall comprise verification of the conditions governing entry laid down in Article 5(1) and, where applicable, of documents authorising residence and the pursuit of a professional activity. This shall include a detailed examination covering the following aspects:
   (i) verification that the third-country national is in possession of a document which is valid for crossing the border and which has not expired, and that the document is accompanied, where applicable, by the requisite visa or residence permit;
   (ii) thorough scrutiny of the travel document for signs of falsification or counterfeiting;
   (iii) examination of the entry and exit stamps on the travel document of the third-country national concerned, in order to verify, by comparing the dates of entry and exit, that the person has not already exceeded the maximum duration of authorised stay in the territory of the Member States;

(iv) verification regarding the point of departure and the destination of the third-country national concerned and the purpose of the intended stay, checking, if necessary, the corresponding supporting documents;

(v) verification that the third-country national concerned has sufficient means of subsistence for the duration and purpose of the intended stay, for his or her return to the country of origin or transit to a third country into which he or she is certain to be admitted, or that he or she is in a position to acquire such means lawfully;

(vi) verification that the third-country national concerned, his or her means of transport and the objects he or she is transporting are not likely to jeopardise the public policy, internal security, public health or international relations of any of the Member States. Such verification shall include direct consultation of the data and alerts on persons and, where necessary, objects included in the SIS and in national data files and the action to be performed, if any, as a result of an alert;

…'

10 According to Article 13(2) and (3) of that code:

'2. Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall take effect immediately.

The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse entry by means of that form.

3. Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national.

…'

11 Article 15(1) and (2) of the Schengen Borders Code provided:

'1. The border control provided for by Articles 7 to 14 shall be carried out by border guards in accordance with the provisions of this Regulation and with national law.

When carrying out that border control, the powers to instigate criminal proceedings conferred on border guards by national law and falling outside the scope of this Regulation shall remain unaffected.

Member States shall ensure that the border guards are specialised and properly trained professionals, taking into account common core curricula for border guards established and developed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States established by Council Regulation (EC) No 2007/2004 [of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2004 L 349, p. 1)].

…

2. Member States shall notify to the Commission the list of national services responsible for border control under their national law in accordance with Article 34.'

### *Regulation No 539/2001*

12 Under Article 1 of Regulation No 539/2001:

'Nationals of third countries on the list in Annex I shall be required to be in possession of a visa when crossing the external borders of the Member States.'

13 Kazakhstan is included on the list of third countries referred to in that annex.

### *Decision No 565/2014*

14 Recitals 5 and 7 of Decision No 565/2014 state:

'5. … With regard to Cyprus, which has implemented the common regime established by Decision No 895/2006/EC [of the European Parliament and of the Council of 14 June 2006 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia of certain documents as equivalent to their national visas for the purposes of transit through their territories (OJ 2006 L 167, p. 1)] since 10 July 2006, and to Bulgaria and Romania, which have implemented the common regime established by Decision No 582/2008/EC [of the European Parliament and of the Council of 17 June 2008 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Cyprus and Romania of certain documents as equivalent to their national visas for the purposes of transit through their territories (OJ 2008 L 161, p. 30),] since 18 July 2008, common rules should be adopted authorising Bulgaria, Cyprus and Romania, like Croatia, unilaterally to recognise certain documents issued by Member States fully implementing the Schengen acquis as well as similar documents issued by Croatia, as equivalent to its national visas and to establish a simplified regime for the control of persons at their external borders based on that unilateral equivalence. …

…

(7) Participation in the simplified regime should be optional, without imposing on the Member States obligations additional to those laid down by the 2003 Act of Accession, the 2005 Act of Accession or the 2011 Act of Accession.'

15 Under Article 1 of Decision No 565/2014:

'This Decision introduces a simplified regime for the control of persons at the external borders whereby Bulgaria, Croatia, Cyprus and Romania may recognise unilaterally as equivalent to their national visas for transit through or intended stays on their territory not exceeding 90 days in any 180-day period the documents referred to in Article 2(1) and Article 3 of this Decision issued to third-country nationals subject to a visa obligation pursuant to Regulation [No 539/2001].

The implementation of this Decision shall not affect the checks to be carried out on persons at the external borders in accordance with Articles 5 to 13 and 18 and 19 of [the Schengen Borders Code].'

16 Article 2 of that decision provides:

‘1. Bulgaria, Croatia, Cyprus and Romania may consider as equivalent to their national visas, for transit through or intended stays on their territory not exceeding 90 days in any 180-day period, the following documents issued by the Member States fully implementing the Schengen acquis, irrespective of the nationality of the holders:

(a) a “uniform visa” as defined in point (3) of Article 2 of the Visa Code, valid for two or multiple entries;

(b) a “long-stay visa” as referred to in Article 18 of the [CISA];

(c) a “residence permit” as defined in point (15) of Article 2 of [the Schengen Borders Code].

2. Bulgaria, Croatia, Cyprus and Romania may also consider as equivalent to their national visas, for transit through or intended stays on their territory not exceeding 90 days in any 180-day period visas with limited territorial validity issued in accordance with the first sentence of Article 25(3) of the Visa Code.

3. If Bulgaria, Croatia, Cyprus or Romania decide to apply this Decision, they shall recognise all the documents referred to in paragraphs 1 and 2, regardless of which Member State issued the document, unless they are affixed to travel documents that they do not recognise or to travel documents issued by a third country with which they do not have diplomatic relations.’

17 Under Article 3(1) of that decision:

‘If Bulgaria, Croatia, Cyprus or Romania decide to apply Article 2, they may, in addition to the documents referred to in that Article, recognise as equivalent to their national visas for transit through or intended stays on their territory not exceeding 90 days in any 180-day period:

(a) national short-stay visas and national long-stay visas issued by Bulgaria, Croatia, Cyprus, or Romania in the uniform format laid down by Council Regulation (EC) No 1683/95 [of 29 May 1995 laying down a uniform format for visas (OJ 1995 L 164, p. 1)];

(b) residence permits issued by Bulgaria, Croatia, Cyprus or Romania in accordance with the uniform format laid down by Council Regulation (EC) No 1030/2002 [of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ 2002 L 157, p. 1)];

unless such visas and residence permits are affixed to travel documents that those Member States do not recognise or to travel documents issued by a third country with which they do not have diplomatic relations.’

18 Article 5 of Decision No 565/2014 provides:

‘Bulgaria, Croatia, Cyprus and Romania shall notify the Commission within 20 working days of the entry into force of this Decision, if they decide to apply this Decision. The Commission shall publish the information communicated by those Member States in the *Official Journal of the European Union*.

Those notifications shall, where relevant, specify the third countries with regard to which Bulgaria, Croatia, Cyprus and Romania do not, in the absence of diplomatic relations, apply this Decision pursuant to Article 2(3) and Article 3(1).'

19 Under Article 8 of that decision:

'This Decision is addressed to Bulgaria, Croatia, Cyprus and Romania.'

20 Section II of the Information from the Commission about notifications by the Member States of decisions concerning the application of Decision No 565/2014/EU (OJ 2014 C 302, p. 1, 'Section II of the Information from the Commission'), contains the following passage:

'The Commission has received the following notifications.

…

ROMANIA implements Decision [No 565/2014], and in accordance with Article 3 of the Decision recognises national visas and residence permits issued by Bulgaria, Cyprus and Croatia listed, respectively, in Annex I, II and III of the Decision, as equivalent to Romanian visas.'

***Regulation No 261/2004***

21 Recitals 1 and 2 of Regulation No 261/2004 state:

'(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.'

22 Article 1(1) of that regulation provides:

'This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:

(a) they are denied boarding against their will;

…'

23 Article 2(j) of that regulation defines 'denied boarding' as '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'.

24 Under Article 3 of that regulation, entitled 'Scope':

'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

…'

25 According to 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 and assist them in accordance with Articles 8 and 9.'

26 Article 15 of that regulation, entitled 'Exclusion of waiver', provides:

'1. Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.

2. If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.'

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

27 On 6 September 2015, D. Z., a national of the Republic of Kazakhstan, went to Larnaca airport to board a flight operated by the Romanian air carrier Blue Air to Bucharest, where he had planned to stay until 12 September 2015, in order to sit some examinations of the Association of Chartered Certified Accountants.

28 At check-in, D. Z. presented his travel documentation, his passport and a temporary residence permit issued by the Republic of Cyprus with an expiry date of 6 April 2016 to the employees of the company acting as Blue Air's agent at Larnaca airport. He also presented the application for an entry visa into Romanian territory that he had previously submitted online to the Romanian

Ministry of Foreign Affairs along with the Ministry's reply, provided via its automated online system, stating that such a visa was not necessary for a stay not exceeding 90 days in any 180-day period, since the concerned party was already in possession of a temporary residence permit issued by the Republic of Cyprus.

29 Contacted by the employees of the abovementioned company, Blue Air's ground control staff at Bucharest airport replied, by phone and e-mail, that without a visa or a family member residence permit issued by the Romanian authorities, D. Z. could not enter Romania. Those employees therefore denied boarding to D. Z. because his carriage would result in his being returned to Cyprus immediately, on the aircraft's return flight, and would expose Blue Air to penalties.

30 D. Z. requested that the reasons for his denied boarding be given to him in writing, but his request was unsuccessful. Moreover, no decision refusing entry into Romanian territory was communicated to him.

31 Taking the view that his denied boarding was unjustified and infringed the provisions of Decision No 565/2014, D. Z. brought an action before the Eparchiako Dikastirio Larnakas (District Court, Larnaca, Cyprus) against Blue Air, seeking compensation for the lost cost of his return ticket, the cancellation fee for the hotel reservation in Bucharest, the entry fees for the examinations which he had not been able to sit, the sum of wages not paid to him because his employer had allowed him to take study leave in order to prepare for the examinations and for the non-material damage which he claims to have suffered.

32 Before the referring court, Blue Air contends, inter alia, that D. Z. was wrong to bring an action against it. According to its terms of carriage, Blue Air accepts no liability for a decision by the authorities of the Member State of destination to refuse a passenger entry into the territory of that State, or for the documentation which the passenger is required to have, nor is it responsible for ensuring compliance with the rules of the Member State of destination.

33 According to the referring court, in the first place, the dispute in the main proceedings raises the question whether D. Z. is entitled to rely on the provisions of Decision No 565/214 against Blue Air. That court considers that, had the applicant been allowed to board the flight at issue, he would have been able to rely, before a Romanian court, on his right to enter Romania under that decision.

34 However, the only harmful act against D. Z. was being denied boarding by Blue Air. The referring court concludes that it is necessary to determine to what extent that denied boarding created a right for D.Z on which he could rely in legal proceedings against Blue Air.

35 In the second place, the referring court considers that it is required to determine whether denied boarding, in circumstances such as those in the main proceedings, falls within the scope of Regulation No 261/2004 and, if so, whether a clause in the contract of carriage can nonetheless limit, or even exclude, the air carrier's liability in the event of inadequate travel documentation.

36 Taking the view, in those circumstances, that the dispute in the main proceedings raises questions regarding the interpretation of EU law, the Eparchiako Dikastirio Larnakas (District Court, Larnaca) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Should Decision [No 565/2014] be interpreted as producing direct legal effect in the form, on the one hand, of the right of a third-country national without requiring to have a visa to enter the Member State of destination and, on the other hand, an obligation on that Member State of destination not to require him or her to have such a visa where that national is in possession of a visa or residence permit included in the list of visas and residence permits recognised on the basis of Decision [No 565/2014], which the Member State of destination has undertaken to apply?

(2) Where an air carrier directly and/or through its authorised and designated representatives at the airport of the Member State of departure denies boarding to a passenger, giving as its reason that the authorities of the Member State of destination have refused him or her entry to that State because he or she allegedly has no entry visa, can the air carrier be considered as exercising powers and acting as an emanation of that State, such that Decision [No 565/2014] can be cited against it by the passenger concerned before the courts of the Member State of departure in order to prove that he or she had a right of entry without requiring an additional visa and to claim compensation for infringement of that right and, by extension, of his or her contract of carriage?

(3) Can an air carrier directly and/or through its authorised and designated representatives rely upon a decision by the authorities of the Member State refusing a third-country national entry to the territory of that State in order to deny that national boarding, without first issuing and/or giving him or her a written substantiated decision with respect to the refusal of entry (see Article 14(2) of Regulation (EC) No 2016/399 [of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1)], previously Article 13 of Regulation [No 562/2006], which requires a substantiated decision stating the reasons for refusal of entry), in order to safeguard respect for the fundamental rights and, in particular, legal protection of the rights of the passenger concerned (see Article 4 of that Regulation)?

(4) Does Article 2(j) of Regulation [No 261/2004] mean that cases of denied boarding are exempt from its scope whenever boarding is denied by decision of the air carrier due to alleged "inadequate travel documentation"? Should it be interpreted to mean that denied boarding does fall within the scope of the Regulation where a court finds, based on the particular circumstances of each specific case, that the travel documentation was adequate and that the denial of boarding was unsubstantiated or unlawful in that it infringed EU law?

(5) Can a passenger be deprived of the right to compensation granted under Article 4(3) of Regulation [No 261/2004] where the air carrier relies upon a clause precluding or limiting its liability in the event of allegedly inadequate travel documentation, where such a clause is included in the standard terms, published in advance, governing the operation of and/or provision of services by the air carrier? Does Article 15, read in combination with Article 14, of that Regulation prevent the application of such clauses precluding and/or refusing the air carrier's liability?'

## The questions referred for a preliminary ruling

### *Admissibility*

37 Blue Air contends, first of all, that the second and third questions referred for a preliminary ruling are inadmissible on the ground that the parties to the main proceedings were not heard on those questions prior to the submission of the present request for a preliminary ruling, in breach of the Cypriot rules of procedure.

38 In that regard, Article 267 TFEU gives national courts the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them. National courts thus have the power and, in certain cases, an obligation, to make a reference for a preliminary ruling once they find, either of their own motion or at the request of the parties, that the substance of the dispute involves a question to be resolved which falls within the scope of the first paragraph of that article (judgments of 16 January 1974, *Rheinmühlen-Düsseldorf*, 166/73, EU:C:1974:3, paragraph 3, and of 1 February 2017, *Tolley*, C-430/15, EU:C:2017:74, paragraph 30 and the case-law cited).

39 Furthermore, whilst it may well be in the interests of the proper administration of justice for a question not to be referred for a preliminary ruling until after both parties have been heard, the fact that they have been heard beforehand is not among the conditions required to set in motion the procedure under Article 267 TFEU (judgment of 1 February 2017, *Tolley*, C-430/15, EU:C:2017:74, paragraph 32 and the case-law cited). It is for the national court alone to assess whether it is necessary for both parties to be heard beforehand (judgment of 28 June 1978, *Simmenthal*, 70/77, EU:C:1978:139, paragraph 11).

40 Therefore, the fact that the parties to a dispute have not beforehand put argument before the national court on a question regarding EU law does not preclude that question from being referred to the Court (judgment of 1 February 2017, *Tolley*, C-430/15, EU:C:2017:74, paragraph 33).

41 In any event, it must be pointed out that it is not for the Court of Justice to determine whether the decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organisation of the courts and their procedure (judgment of 23 November 2017, *Benjumea Bravo de Laguna*, C-381/16, EU:C:2017:889, paragraph 26 and the case-law cited).

42 Blue Air contends, next, that the referring court failed to set out the content of the applicable national provisions, the relevant national case-law or any of the relevant matters of fact and of law that prompted it to consider that provisions of EU law may be applicable in the case.

43 In that regard, it should be observed that, according to settled case-law, which is now reflected in Article 94 of the Rules of Procedure of the Court of Justice, the need to provide an interpretation of EU law which will be of use to the national court requires that the national court define the factual and legal context of its questions or, at the very least, that it explain the factual circumstances on which those questions are based. The order for reference must also set out the precise reasons why the national court is unsure as to the interpretation of EU law and considers it necessary to refer a question to the Court for a preliminary ruling (judgment of 19 December 2018, *Stanley International Betting and Stanleybet Malta*, C-375/17, EU:C:2018:1026, paragraph 29 and the case-law cited).

44 In the present case, the request for a preliminary ruling sufficiently defines the legal and factual context of the dispute in the main proceedings. In particular, given the nature and scope of the acts of EU law whose interpretation is sought, the fact that the content of the applicable national provisions has not been set out in no way impedes a proper understanding of the context of the referring court's questions. Furthermore, the information provided by the referring court as to the relevance of the questions referred for the purpose of ruling on that dispute makes it possible to assess the scope of those questions and to provide a useful answer to those questions, which the written observations submitted by the Cypriot, German and Netherlands Governments also confirm.

45 Lastly, the German Government expresses doubts as to the relevance of the fourth and fifth questions, as D. Z. does not seem to have made a claim for compensation under Regulation No 261/2004.

46 In that regard, it should be observed, first, that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (judgments of 15 May 2003, *Salzmann*, C-300/01, EU:C:2003:283, paragraph 31, and of 28 March 2019, *Cogeco Communications*, C-637/17, EU:C:2019:263, paragraph 57 and the case-law cited).

47 Secondly, as the Advocate General observed in point 23 of his Opinion, the referring court stated, in its request for a preliminary ruling, that Cypriot law allows it to grant compensation to a party even if it has not been expressly sought by that party, so that it may grant compensation to the applicant in the main proceedings under Regulation No 261/2004, in so far as that regulation must be interpreted as conferring on that court the right to do so.

48 In the light of all the foregoing considerations, the request for a preliminary ruling is admissible.

## *Substance*

### *The first question*

49 By its first question, the referring court asks, in essence, whether Article 3(1) of Decision No 565/2014 must be interpreted as having direct effect and giving third-country nationals rights upon which they can rely against the Member State of destination, in particular the right to enter into the territory of that Member State without being required to have a visa, where they are in possession of an entry visa or residence permit included in the list of documents recognised on the basis of that decision, which the Member State has undertaken to apply.

50 First of all, according to the fourth paragraph of Article 288 TFEU, an EU decision is to be binding in its entirety, and if the decision specifies those to whom it is addressed, it is to be binding only on them.

51 In the present case, Article 8 of Decision No 565/2014 specifies that the decision is addressed to Bulgaria, Croatia, Cyprus and Romania. It is therefore binding only on those four Member States.

52 Moreover, Article 3(1) of that decision provides, in essence, that each of those four Member States may recognise as equivalent to their national visas the visas and residence permits listed in that article, issued by any of the other Member States to which that decision is addressed.

53 In the first place, it is therefore apparent from the wording of Article 3(1) of Decision No 565/2014, read in conjunction with recital 7 of that decision, that recognition of the visas and residence permits listed in that article is merely optional for Member States concerned.

54 However, in so far as those Member States undertake, as Romania did, to apply Decision No 565/2014 and, in accordance with Article 5 thereof, notify their decision to recognise as equivalent to their own visas the national visas and residence permits issued by the other Member States to which that decision is addressed, including the documents covered by Article 3(1) of that decision, it is clear from Section II of the Information from the Commission that the exercise, by the aforementioned Member States, of the option given to them under Article 3(1) entails the obligation for them to recognise the documents referred to in Article 3(1).

55 That conclusion is not called into question by the fact that Article 3 of Decision No 565/2014 does not contain any provision equivalent to that in Article 2 of that decision, paragraph 3 of which expressly states that, in so far as one of the four Member States to which Decision No 565/2014 is addressed decides to apply that decision, that Member State is obliged to recognise, as a rule, all the documents referred to in paragraphs 1 and 2 of that article.

56 It is apparent from Article 2(3) of Decision No 565/2014 that the Member States to which that decision is addressed and which have decided to apply it are required, as a rule, to recognise all the documents referred to in Article 2(1) and (2) of that decision issued by Member States fully implementing the Schengen acquis, irrespective of which of those Member States has issued the document.

57 In those circumstances, the fact that there is no provision in Article 3 of Decision No 565/2014 equivalent to that in Article 2(3) cannot be interpreted as meaning that the Member States to which that decision is addressed, which have chosen to apply Article 3 thereof, are permitted to derogate, on a case-by-case basis, from the regime for the recognition of visas and residence permits in which they have chosen to participate in accordance with Article 5 of that decision.

58 In the second place, as regards the scope of the obligation referred to in Article 54 of the present judgment, the Member States concerned are required to recognise as equivalent to their national visas, for transit through or intended stays on their territory not exceeding 90 days in any 180-day period, national visas and residence permits issued by the other Member States to which Decision No 565/2014 is addressed, as mentioned in Article 3(1)(a) and (b) of that decision and listed in the annexes thereto.

59 It also follows from Article 3(1) of Decision No 565/2014 that the EU legislature considers that derogation from the obligation laid down in that decision is possible only where visas and residence permits are affixed to travel documents that the Member States concerned do not recognise, or to travel documents issued by a third country with which they do not have diplomatic relations.

60 It follows that, unless the derogation expressly provided for applies, the Member States to which Decision No 565/2014 is addressed and which chose to participate in the regime provided for in Article 3(1) of Decision No 565/2014 must comply with that obligation of recognition where an individual case falls within the scope of that obligation.

61 That interpretation is supported by the objective pursued by Decision No 565/2014, which, as is apparent from its title, is to introduce a simplified regime for the control of persons at the external borders based on the recognition by the participating Member States, of certain documents as equivalent to their national visas.

62 As noted by the Advocate General in point 49 of his Opinion, first, if the Member States to which Decision No 565/2014 is addressed and which have chosen to apply Article 3 of that decision had the option to derogate, on a case-by-case basis, from the simplified regime for control established by that decision, that regime could not be implemented effectively.

63 Secondly, such an option would not be consistent with the principle of legal certainty which is promoted by publishing the decision of the Member State concerned to apply Decision No 565/2014 in the *Official Journal of the European Union*, in accordance with Article 5 of that decision.

64 In the third place, as regards the possibility of relying on the obligation laid down in Article 3(2) of Decision No 565/2014 against the Member State of destination, the Court has held that the provisions of an EU decision addressed to a Member State may be relied upon by individuals against that Member State, in so far as the obligations imposed on that Member State by those provisions are unconditional and sufficiently precise (see, to that effect, judgment of 10 November 1992, *Hansa Fleisch Ernst Mundt*, C-156/91, EU:C:1992:423, paragraphs 12 and 13 and the case-law cited).

65 In that regard, it must be held that, once the Member State concerned has undertaken to apply Decision No 565/2014, as referred to in paragraph 54 of this judgment, the obligation laid down in Article 3(2) of that decision, as interpreted in paragraphs 60 to 63 of the present judgment, satisfies the criteria of unconditionality and sufficient precision.

66 That assessment is not invalidated by the fact that, like Article 2(3) of Decision No 565/2014, Article 3(1) of that decision allows the Member States to derogate from the obligation laid down in that provision if the visas and residence permits are affixed to travel documents that those Member States do not recognise or to travel documents issued by a third country with which they do not have diplomatic relations.

67 The Court has already held that the fact that a decision allows the Member States to which it is addressed, in certain circumstances subject to judicial review, to derogate from clear and precise provisions contained therein does not in itself deprive those provisions of direct effect (judgment of 9 September 1999, *Feyrer*, C-374/97, EU:C:1999:397, paragraph 24 and the case-law cited).

68 Individuals may therefore rely on the obligation laid down in Article 3(1) of Decision No 565/2014 against a Member State to which that decision is addressed and which has decided to exercise the option provided for in that provision.

69 In the light of the foregoing considerations, the answer to the first question is that Article 3(1) of Decision No 565/2014 must be interpreted as meaning that it has direct effect and gives third-country nationals rights upon which they can rely against the Member State of destination, in particular the right to enter into the territory of that Member State without being required to have a visa, where they are in possession of an entry visa or residence permit included in the list of documents recognised on the basis of that decision, which the Member State has undertaken to apply.

***The second question***

70 By its second question, the referring court asks, in essence, whether EU law is to be interpreted as meaning that, where an air carrier directly or through its representatives and agents at the airport of the Member State of departure denies boarding to a passenger, giving as its reason that the authorities of the Member State of destination have refused him or her entry to that State, can the air carrier be considered to be acting as an emanation of that State, such that the aggrieved passenger may rely on Decision No 565/2014 against the air carrier before a court of the Member State of departure in order to claim compensation for infringement of his or her right to enter into the territory of the Member State of destination without being in possession of a visa issued by the latter.

71 As a preliminary point, it is noteworthy that, in the light of the clarifications provided in paragraphs 29 and 30 of this judgment, it is for the referring court to ascertain whether or not the applicant was actually refused entry by the Romanian authorities. With that proviso, and since the referring court has worded the second question in such a way as to suggest that that may have been the case, the Court is required to answer on the basis that it was.

72 The Court has held that provisions of a directive that are unconditional and sufficiently precise may be relied upon by individuals, not only against a Member State and all the organs of its administration, but also against organisations or bodies, even ones governed by private law, which are subject to the authority or control of a public body, or to which a Member State has delegated the performance of a task in the public interest and which possess for that purpose special powers beyond those which result from the normal rules applicable to relations between individuals. It is necessary to prevent the State from taking advantage of its own failure to comply with EU law (see, to that effect, judgment of 10 October 2017, *Farrell*, C-413/15, EU:C:2017:745, paragraphs 32, 34 and 35).

73 Such case-law may be applied by analogy to the unconditional and sufficiently precise provisions of an EU decision, such as the provisions in Article 3(1) of Decision No 565/2014 (see, to that effect, judgment of 7 June 2007, *Carp*, C-80/06, EU:C:2007:327, paragraph 21).

74 Therefore, in order to determine whether Decision No 565/2014 may be relied on against an air carrier by an individual to whom it has denied boarding on the ground that the authorities in the Member State of destination refused him or her entry into their territory because he or she did not have an entry visa, it is necessary to ascertain whether that air carrier must be regarded as an entity such as those referred to in paragraph 72 of the present judgment.

75 In particular, the question arises whether an air carrier or its agent which checks the travel documents of a passenger, who is a third-country national, at the airport of the Member State of departure must be considered to have been entrusted by the Member State of destination to carry out border control tasks, in accordance with Article 7(3) of the Schengen Borders Code, and to have adequate powers for that purpose.

76 In that regard, first, as is apparent from Article 7(1) of the Schengen Borders Code, read in conjunction with Article 2(13) of that code, only border guards, who are public officials and are subject to the rules laid down by that code, can carry out border control tasks. In accordance with Article 15(1) of the Schengen Borders Code, they are specialised and properly trained professionals. Furthermore, under Article 15(2) of that code, Member States are required to notify to the Commission the list of national services responsible for border control.

77 Secondly, it is apparent from Article 7(3) of the Schengen Borders Code that border controls concerning third-country nationals are to consist of thorough checks which include, inter alia, scrutiny of the travel document for signs of falsification or counterfeiting, verification that the third-country national concerned has sufficient means of subsistence, and verification that the third-country national concerned, his or her means of transport and the objects he or she is transporting are not likely to jeopardise the public policy, internal security, public health or international relations of any of the Member States.

78 The mission of air carriers is clearly different from that which falls to border guards, in that, as is apparent from Article 26(1)(b) of the CISA, air carriers are required only to check that the third-country nationals they are carrying are 'in possession of the travel documents required' for entry into the territory of the Member State of destination.

79 It follows from the foregoing considerations that an air carrier or its agent cannot be considered to have been entrusted by the Member State of destination to carry out border control tasks, in accordance with Article 7(3) of the Schengen Borders Code, nor to have adequate powers for that purpose.

80 Therefore, a passenger may not rely on Decision No 565/2014 against an air carrier which denied him or her boarding on the ground that his or her entry into the territory of the Member State of destination was refused by the authorities of that State.

81 In the light of the foregoing considerations, the answer to the second question is that EU law must be interpreted as meaning that, where an air carrier directly or through its representatives and agents at the airport of the Member State of departure denies boarding to a passenger, giving as its reason that the authorities of the Member State of destination have refused him or her entry to that State, it cannot be considered to be acting as an emanation of that State, and therefore the aggrieved passenger may not rely on Decision No 565/2014 against that air carrier before a court of the Member State of departure in order to claim compensation for infringement of his or her right to enter into the territory of the Member State of destination without being in possession of a visa issued by the latter.

### *The third question*

82 By its third question, the referring court asks, in essence, whether EU law, in particular Article 13 of the Schengen Borders Code, is to be interpreted as precluding an air carrier from denying boarding to a third-country national on the basis that the authorities of the Member State of

destination have refused him or her entry into the territory of that State, without that third-country national having first been given a written substantiated decision in respect of that refusal of entry.

83 In that regard, it is important to point out that, in accordance with Article 13(2) of the Schengen Borders Code, entry into the territory of a Member State by a third-country national may be refused only by a substantiated decision stating the precise reasons for the refusal, taken by an authority empowered by national law, and notified by means of a standard form, handed to the third-country national concerned, who is to acknowledge receipt of the decision to refuse entry by means of that form.

84 It is clear from that provision that refusal of entry is subject to particularly strict formal requirements which are intended, in particular, to safeguard the rights of defence, as is apparent from Article 13(3) of the Schengen Borders Code, according to which persons refused entry are to have the right to appeal.

85 It follows that, in the absence of a decision to refuse entry adopted and communicated in accordance with Article 13(2) of the Schengen Borders Code, Article 13(3) of that code precludes an air carrier from relying on an arbitrary refusal of entry into the territory of the Member State of destination in order to justify denying boarding to a passenger, otherwise that passenger would be deprived, in particular, of the opportunity to exercise his or her rights of defence.

86 In the light of the foregoing considerations, the answer to the third question is that EU law, in particular Article 13 of the Schengen Borders Code, must be interpreted as precluding an air carrier from denying boarding to a third-country national on the basis that the authorities of the Member State of destination have refused him or her entry into the territory of that State, without that third-country national having first been given a written substantiated decision in respect of that refusal of entry.

### *The fourth question*

87 By its fourth question, the referring court asks, in essence, whether Regulation No 261/2004, in particular Article 2(j) thereof, must be interpreted as meaning that, where an air carrier denies boarding to a passenger on the ground that he or she has allegedly presented inadequate travel documentation, such denied boarding deprives the passenger in question of protection under that regulation, or whether it is for the competent court to assess, based on the circumstances of the case, whether or not such denied boarding is reasonably justified in the light of that provision.

88 In that regard, it should, first of all, be recalled that the scope of Regulation No 261/2004 is defined in Article 3(2)(a) thereof, which provides that the regulation is to apply, inter alia, to passengers who have a confirmed reservation on a flight departing from an airport located in the territory of a Member State and present themselves for check-in as stipulated and at the time indicated, or, if no time is indicated, not later than 45 minutes before the published departure time.

89 Secondly, it should be noted that Article 4 of Regulation No 261/2004, entitled ‘Denied boarding’, provides in paragraph 3 that if boarding is denied to passengers against their will, the air carrier is required to compensate them in accordance with Article 7 of that regulation and to assist them in accordance with Articles 8 and 9.

90 Lastly, denied boarding is defined in Article 2(j) of Regulation No 261/2004 as the 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.

91 It follows from a combined reading of all the provisions mentioned in paragraphs 88 to 90 of the present judgment that, where a passenger who satisfies all the conditions laid down in Article 3(2) of Regulation No 261/2004 is denied boarding against his or her will, he or she has the right to compensation and assistance from the operating air carrier, except where there are reasonable grounds to deny him or her boarding, such as the inadequate nature of his or her travel documentation.

92 The wording 'except where there are reasonable grounds to deny them boarding' used in Article 2(j) of Regulation No 261/2004 shows that the EU legislature did not intend for the air carrier to have the power to assess and decide unilaterally and definitively whether or not a passenger's travel documentation is inadequate.

93 That interpretation is borne out by the objective pursued by Regulation No 261/2004, set out in recital 1 in the preamble thereto, of ensuring a high level of protection for passengers. Accordingly, the rights granted to passengers must be interpreted broadly (see, to that effect, judgment of 4 October 2012, *Rodríguez Cachafeiro and Martínez-Reboredo Varela-Villamor*, C-321/11, EU:C:2012:609, paragraph 25).

94 Since Regulation No 261/2004 seeks in particular to remedy the serious trouble and inconvenience to passengers caused by denied boarding, it would be contrary to that objective, which implies a high level of protection for passengers, to confer on the air carrier concerned the power to assess and decide unilaterally and definitively whether, in such a case, denied boarding is reasonably justified and, consequently, to deprive the passengers in question of protection they are entitled to under that regulation.

95 Accordingly, in the event of challenge by the passenger who has been denied boarding, it is for the competent court to assess, based on the relevant circumstances of the case, whether or not his or her travel documentation is inadequate and, ultimately, whether that denied boarding is reasonably justified or not.

96 In the present case, it is apparent from the order for reference that the applicant in the main proceedings presented, at the time of boarding, not only his flight reservation, passport and a valid Cypriot temporary residence permit, but also the written reply to his visa application from the Romanian Ministry of Foreign Affairs, upon which he relied in good faith, confirming that he did not need a visa to enter into Romanian territory. It is also apparent from the documents before the Court that boarding was denied to the passenger without the air carrier having been provided with a decision to refuse entry, in accordance with Article 13 of the Schengen Borders Code, or any assurance that the information supplied by Blue Air's ground control staff in Bucharest – that, if he was boarded, the applicant in the main proceedings would be refused entry into Romanian territory – came from an authority with competence to issue such a decision or to provide reliable information in that regard. It also appears that the passenger in question was denied boarding without that information being cross-checked against the relevant information in the databases which would confirm, in accordance with Decision No 565/2014, that the

Romanian authorities could not, in the circumstances described in the documents before the Court, refuse the applicant in the main proceedings entry into their territory solely on the ground that he did not have a national visa.

97 In such circumstances, the truth of which must be ascertained by the referring court, it cannot be considered that the denied boarding at issue in the main proceedings was justified on reasonable grounds, for the purposes of Article 2(j) of Regulation No 261/2004, since, first, it seems to have been based not on conduct attributable to the passenger, but on the air carrier's misunderstanding of the requirements relating to the travel documentation needed for the journey in question, which it based, where necessary, on information from an unidentified authority in the Member State of destination that was also incorrect, and secondly, it seems that that mistake could reasonably have been avoided.

98 In the light of the foregoing considerations, the answer to the fourth question is that Regulation No 261/2004, in particular Article 2(j) thereof, must be interpreted as meaning that, where an air carrier denies boarding to a passenger on the ground that he or she has presented inadequate travel documentation, such denied boarding does not, in itself, deprive the passenger in question from protection under that regulation. In the event of challenge by that passenger, it is for the competent court to assess, based on the circumstances of the case, whether or not such denied boarding is reasonably justified in the light of that provision.

### *The fifth question*

99 By its fifth question, the referring court asks, in essence, whether Regulation No 261/2004, in particular Article 15 thereof, must be interpreted as precluding a clause included in the standard terms, published in advance, relating to the operation or provision of services by an air carrier, which limits or excludes the air carrier's liability in the event of denied boarding for reasons relating to the allegedly inadequate nature of a passenger's travel documentation, thus depriving that passenger of any right to compensation he or she may have.

100 Article 15 of Regulation No 261/2004, entitled 'Exclusion of waiver', provides in paragraph 1 that obligations vis-à-vis passengers pursuant to that regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.

101 According to Article 15(2) of that regulation, if, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his or her rights and for that reason has accepted compensation which is inferior to that provided for in that regulation, the passenger is entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.

102 In that regard, without it being necessary to examine the question whether an air carrier's general terms, such as those described by the referring court in its question, should be regarded as being part of the contract of carriage, within the meaning of Article 15(1) of Regulation No 261/2004, it must be found that, in view of the use of the adverb 'notably' in that provision and in the light of the objective of ensuring a high level of protection for air passengers which is pursued by that provision and by Regulation No 261/2004 as a whole, both the derogations in a contract of carriage imposing mutual obligations, which the passenger has signed, and, a fortiori, the derogations contained in other unilateral documents issued by the carrier which the latter seeks to rely on against the passengers concerned, must be considered to be inadmissible.

103 In the light of the foregoing considerations, the answer to the fifth question is that Regulation No 261/2004, in particular Article 15 thereof, must be interpreted as precluding a clause applicable to passengers, included in the standard terms, published in advance, relating to the operation or provision of services by an air carrier, which limits or excludes the air carrier's liability in the event of denied boarding for reasons relating to the allegedly inadequate nature of a passenger's travel documentation, thus depriving that passenger of any right to compensation he or she may have.

## Costs

104 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 (Third Chamber) hereby rules:

1. **Article 3(1) of Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC must be interpreted as meaning that it has direct effect and gives third-country nationals rights upon which they can rely against the Member State of destination, in particular the right to enter into the territory of that Member State without being required to have a visa, where they are in possession of an entry visa or residence permit included in the list of documents recognised on the basis of that decision, which the Member State has undertaken to apply.**

2. **EU law must be interpreted as meaning that, where an air carrier directly or through its representatives and agents at the airport of the Member State of departure denies boarding to a passenger, giving as its reason that the authorities of the Member State of destination have refused him or her entry to that State, it cannot be considered to be acting as an emanation of that State, and therefore the aggrieved passenger may not rely on Decision No 565/2014 against that air carrier before a court of the Member State of departure in order to claim compensation for infringement of his or her right to enter into the territory of the Member State of destination without being in possession of a visa issued by the latter.**

3. **EU law, in particular Article 13 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013, must be interpreted as precluding an air carrier from denying boarding to a third-country national on the basis that the authorities of the Member State of destination have refused him or her entry into the territory of that State, without that third-country national having first been given a written substantiated decision in respect of that refusal of entry.**

4. **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, in particular Article 2(j) thereof, must be interpreted as meaning that, where an air carrier denies boarding to a passenger on the ground that he or she has presented inadequate travel documentation, such denied boarding does not, in itself, deprive the passenger in question from protection under that regulation. In the event of challenge by that passenger, it is for the competent court to assess, based on the circumstances of the case, whether or not such denied boarding is reasonably justified in the light of that provision.**

5. **Regulation No 261/2004, in particular Article 15 thereof, must be interpreted as precluding a clause applicable to passengers, included in the standard terms, published in advance, relating to the operation or provision of services by an air carrier, which limits or excludes the air carrier's liability in the event of denied boarding for reasons relating to the allegedly inadequate nature of a passenger's travel documentation, thus depriving that passenger of any right to compensation he or she may have.**

[Signatures]