Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 28 April 2022 [1]

Case C-597/20

Polskie Linie Lotnicze 'LOT' S.A.
v
Budapest Főváros Kormányhivatala

(Request for a preliminary ruling from the Fővárosi Törvényszék (Budapest High Court, Hungary))

(Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Article 5(1)(c) and Article 7 – Compensation for passengers – Article 16 – Task of the national body responsible for enforcing the regulation – National legislation empowering that body to order an air carrier to pay the compensation due to a passenger)

I. Introduction

1. Under Article 16(1) and (2) of Regulation (EC) No 261/2004, [2] can a Member State grant the national body responsible for enforcing that regulation the power to order an air carrier to pay the compensation due to a passenger on account of the cancellation or long delay of his or her flight?

2. The answer to that question submitted by the Fővárosi Törvényszék (Budapest High Court, Hungary) must enable the powers conferred on that body and, thus, the scope of the principles identified by the Court in the judgment of 17 March 2016, *Ruijssenaars and Others*, [3] to be clarified.

3. In this Opinion, I shall set out the reasons for my view that that provision does not preclude national legislation under which a Member State confers such a power of enforcement on its national body, provided, however, that that legislation does not deprive the air carrier of the possibility of bringing an action before the national court having jurisdiction in order to challenge the compensation thus claimed from it.

1 Original language: French.

2 Regulation 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).

3 C-145/15 and C-146/15, EU:C:2016:187; '*Ruijssenaars and Others*'.

II. Legal context

A. European Union law

4. Recitals 1, 21 and 22 of Regulation No 261/2004 state:

‘(1) Action by the [European Union] 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.

…

(21) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.

(22) Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law.’

5. Article 5 of that regulation, headed ‘Cancellation’, provides:

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

…

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

…

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.’

6. Under Article 7 of the regulation, headed ‘Right to compensation’:

‘1. Where reference is made to this Article, passengers shall receive compensation amounting to:

(a) EUR 250 for all flights of 1 500 kilometres or less;

(b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;

(c) EUR 600 for all flights not falling under (a) or (b).

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

2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

(a) by two hours, in respect of all flights of 1 500 kilometres or less; or

(b) by three hours, in respect of all intra-Community flights of more than 1 500 kilometres and for all other flights between 1 500 and 3 500 kilometres; or

(c) by four hours, in respect of all flights not falling under (a) or (b),

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50%.

…'

7. Article 16 of that regulation, headed 'Infringements', states:

'1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the [European] Commission of the body that has been designated in accordance with this paragraph.

2. Without prejudice to Article 12, each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.'

B. Hungarian law

8. Article 43/A(2) of the fogyasztóvédelemről szóló 1997. évi CLV. törvény (Law No CLV of 1997 on consumer protection) [4] of 15 December 1997 provides:

'The consumer protection authority – following consultation, where necessary, with the civil aviation authority – shall be responsible for enforcing Regulation (EU) 2017/2394 [5] in the event of infringements of Regulation No 261/2004 within the [European Union].'

9. Under Article 47(1)(c) and (i) of the Law on Consumer Protection, that authority has the power to compel the undertaking concerned to bring an end to any identified irregularities or shortcomings within a specified period and to impose a 'consumer protection' fine.

4 *Magyar Közlöny* 1997/119; 'the Law on Consumer Protection'.

5 Regulation of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ 2017 L 345, p. 1).

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

10. Following a delay of more than three hours of a flight from New York (United States) to Budapest (Hungary) operated by the company Polskie Linie Lotnicze 'LOT' S.A.,[6] a number of passengers brought the matter before the Budapest Főváros Kormányhivatala (Consumer Protection Inspectorate of the Budapest Metropolitan Government Office, Hungary),[7] asking it to order that air carrier to pay them, by way of redress for having infringed Article 5(1)(c) of Regulation No 261/2004, the compensation provided for in Article 7 thereof.

11. By decision of 20 April 2020, the Consumer Protection Inspectorate found that LOT had infringed its obligations under Article 6(1)(c) and Article 7(1)(c) of Regulation No 261/2004 and ordered it to pay the passengers concerned compensation of EUR 600 per person and to pay the same compensation in the future to any passenger who makes a similar complaint. The Consumer Protection Inspectorate states that, under Article 43/A(2) of the Law on Consumer Protection, which transposes the requirements of Article 16(1) and (2) of that regulation, it is empowered to compel air carriers to bring an end to infringements of the regulation within a specified period.

12. Hearing an action for annulment of that decision, the referring court has doubts as to the scope of the powers held by the Consumer Protection Inspectorate. In those circumstances, it decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 16(1) and (2) of Regulation [No 261/2004] be interpreted as meaning that where an individual complaint has been made by a passenger to the national body responsible for the enforcement of that regulation, that body cannot compel the airline in question to pay the compensation due to the passenger under [that] regulation?'

13. LOT, the Consumer Protection Inspectorate, the Hungarian, Netherlands and Polish Governments and the Commission submitted written observations. Those parties also presented oral argument at the hearing held on 2 February 2022.

IV. Analysis

A. Initial remark

14. In order to examine the reference for a preliminary ruling, one initial remark should be made concerning the need to take account of rules of law other than those expressly cited by the referring court.

15. The question arises against the backdrop of the provisions of Regulation 2017/2394 and, in particular, Article 9(4)(f) thereof.

16. Article 1 of that regulation states that the regulation 'lays down the conditions under which competent authorities, having been designated by their Member States as responsible for the enforcement of Union laws that protect consumers' interests, cooperate and coordinate actions

6 'LOT'.

7 'Consumer Protection Inspectorate'.

with each other and with the Commission, in order to enforce compliance with those laws and to ensure the smooth functioning of the internal market, and in order to enhance the protection of consumers' economic interests'.

17. Pursuant to Article 3(1) of Regulation 2017/2394 and the annex thereto, 'Union laws that protect consumers' interests' include those set out in Regulation No 261/2004.

18. In Article 9(4)(f) of Regulation 2017/2349, the EU legislature made the following provision:

'Competent authorities [namely any public authority established either at national, regional or local level and designated by a Member State as responsible for enforcing the Union laws that protect consumers' interests [8]] shall have at least the following enforcement powers:

…

(f) the power to bring about the cessation or the prohibition of infringements covered by this Regulation;

…'

19. In the light of those factors, the question is whether the provisions laid down in that article could be relevant for the purposes of assessing the nature and scope of the powers thus conferred on national bodies, pursuant to Article 16 of Regulation No 261/2004.

20. For the reasons I shall set out below, I am of the opinion – in line with the views expressed by the parties at the hearing – that such provisions are not relevant for the analysis.

21. Under Article 2(1) of Regulation 2017/2394, that regulation applies 'to intra-Union infringements, widespread infringements and widespread infringements with a Union dimension, even if those infringements have ceased before enforcement starts or is completed'. It follows from Article 3 of that regulation that all of those infringements are defined as referring to acts or omissions contrary to EU laws that protect consumers' interests which have done, do or are likely to do harm to the 'collective interests' of consumers.

22. In its interpretative guidelines,[9] the Commission thus pointed out that the national authorities responsible for enforcing Regulation No 261/2004 'have to fulfil their obligations under [Regulation (EC) No 2006/2004 [10]] *where the collective interests of consumers are at stake* in a cross-border context'. [11]

23. Although the national body responsible for enforcing Regulation No 261/2004 protects, as its primary task, the collective interests of air passengers, the referring court's question arises in a very different context concerning the protection of those passengers' individual interests. The

[8] The concept of 'competent authority' is defined in Article 3(6) of Regulation 2017/2394.

[9] Commission Notice – Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council (OJ 2016 C 214, p. 5).

[10] Regulation of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) (OJ 2004 L 364, p. 1). I note that that was repealed by Regulation 2017/2394.

[11] Section 7.3 of that notice. Emphasis added.

right to compensation established by the EU legislature in Article 7 of that regulation forms part of the performance of the contract of carriage concluded between the passenger and the air carrier. The power of enforcement which that body wields following an individual complaint is therefore applied in the interests not of a group of individuals, but of a clearly defined individual. In its case-law, the Court thus refers to the collective interests of consumers as covering a situation 'more extensive than the relations between the parties to the dispute'. [12] The concept of collective interest [13] can be distinguished from that of individual interest. It follows that there is a clear contradiction between the context of the case in the main proceedings and the situations to which Regulation 2017/2394 applies, characterised in particular by its objective of protecting the 'collective interests of consumers as a group'. [14]

24. In the light of those factors, there is therefore no need to take account of the provisions laid down by that regulation for the purposes of the interpretation sought by the referring court.

25. However, in my analysis, I shall refer to the provisions laid down by the regulations in force on the protection of the rights of disabled air passengers and passengers travelling by rail, by sea or by bus and coach. [15] It is true that the different modes of transport concerned are not comparable and, as the Court pointed out in its judgment of 2 September 2021, *Irish Ferries*, [16] the EU legislature did not intend to ensure an identical level of protection for each of those modes of transport. [17] However, like Regulation No 261/2004, all of those instruments provide for the designation of a national body responsible for enforcing the regulation concerned. In *Irish Ferries*, the Court did not neglect to note the intention of the EU legislature to adopt 'a uniform approach' to the interpretation of the concepts used in each of those regulations. [18] That is true, for example, of the concept of 'extraordinary circumstances', used in relation to the rights of both air and sea passengers. [19] I therefore consider it useful to have regard to the provisions which the EU legislature laid down in those regulations concerning the powers of the national body responsible for ensuring that the rights of passengers are respected.

12 See, by way of illustration, judgment of 28 July 2016, *Verein für Konsumenteninformation* (C-191/15, EU:C:2016:612, paragraph 45).

13 See the definition of 'intérêt' ('interest') in Littré, E., *Dictionnaire de la langue française*, Paris, L. Hachette, 1873-1874, which contrasts 'the individual, private or personal interest, the advantage of a person' with 'the public interest, the advantage of the State, of society' (free translation). Also see the definition of that concept in Lalande, A., *Vocabulaire technique et critique de la philosophie*, Presses universitaires de France, Paris, 1997, 4th edition, p. 531, according to which the collective interest is not the sum of the individual interests of the members of a sector or group, for example, but refers to the interests of a group of individuals (which cannot be considered indivisibly) because it forms a whole. That concept is used in certain specific sectors and, in particular, in the context of the protection of a collective body, of a profession or of consumers by consumer associations.

14 See judgment of 28 July 2016, *Verein für Konsumenteninformation* (C-191/15, EU:C:2016:612, paragraph 42).

15 See, respectively, Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ 2006 L 204, p. 1); Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations (OJ 2021 L 172, p. 1); Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ 2010 L 334, p. 1); and Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ 2011 L 55, p. 1).

16 C-570/19, EU:C:2021:664; '*Irish Ferries*'.

17 See paragraphs 143 and 145 of that judgment and the case-law cited.

18 See paragraphs 106 and 107 of that judgment and the case-law cited. See also the Commission White Paper of 28 March 2011 entitled 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system' (COM(2011) 144 final), in which the Commission stated that it was necessary to 'develop a uniform interpretation of EU Law on passenger rights and a harmonised and effective enforcement, to ensure both a level playing field for the industry and a European standard of protection for the citizens' (p. 23).

19 See paragraph 106 of that judgment. Concerning the interpretation of the concept of 'extraordinary circumstances' used in Regulation No 1177/2010 on maritime transport, the Court noted the EU legislature's intention to adopt 'a uniform approach', by integrating the Court's case-law on the rights of air transport passengers.

B. Consideration of the question referred

26. By its single question, the referring court asks the Court, in essence, whether Article 16(1) and (2) of Regulation No 261/2004 must be interpreted as precluding national legislation under which the national body responsible for enforcing that regulation has the power to order air carriers to pay the compensation provided for in Article 7 of the regulation on account of the cancellation of a flight.[20]

27. As I have stated, the answer to that question must enable the scope of the powers conferred on that national body to be clarified in line with the principles previously identified by the Court in *Ruijssenaars and Others*.

28. In the operative part of *Ruijssenaars and Others*, the Court ruled that 'Article 16 of [Regulation No 261/2004] must be interpreted as meaning that, where an individual complaint has been made by a passenger to the body designated by each Member State pursuant to Article 16(1) of the regulation following the refusal by an air carrier to pay to the passenger the compensation provided for in Article 7(1) of the regulation, that body *is not required* to take enforcement action against the carrier with a view to compelling it to pay the compensation'.[21]

29. That interpretation is based on three considerations which the Court set out as a first step in its reasoning. The first consideration concerns the actual wording of Article 16 of Regulation No 261/2004 (paragraphs 28 to 32 of *Ruijssenaars and Others*), the second the objectives of that regulation (paragraph 33 of *Ruijssenaars and Others*), and the third the allocation of the roles attributed, respectively, to the national bodies and the national courts (paragraph 35 of *Ruijssenaars and Others*).[22] That reasoning led the Court to conclude that the EU legislature did not impose on Member States the obligation to confer on their national bodies the power to take enforcement action against air carriers in order to secure payment of the compensation due to passengers. The Court held that such an interpretation made it possible to avoid any occurrence of different assessments that are detrimental to the rights of air passengers between, on the one hand, the national bodies responsible for handling individual complaints and, on the other, the national courts adjudicating on individual actions seeking compensation under Article 7 of Regulation No 261/2004 (paragraph 34 of *Ruijssenaars and Others*).

30. However, as a second step in its reasoning, the Court added an *obiter dictum*, as follows:

'*For that reason*, in view of those objectives and the discretion enjoyed by Member States in the allocation of the powers with which they intend to endow the bodies referred to in Article 16(1) of Regulation No 261/2004, *… it is open to Member States, in order to remedy inadequate protection for air passengers, to empower the body referred to in Article 16(1) of the regulation to adopt measures in response to individual complaints*.'[23]

31. That paragraph must be understood as reflecting the Court's finding that Member States *may* allocate to their national bodies responsible for enforcing Regulation No 261/2004 a power to impose orders in the context of the task conferred on them by Article 16 thereof.

[20] The question referred does not concern the further compensation provided for in Article 12 of that regulation.

[21] Emphasis added.

[22] The Court refers here to the second sentence of recital 22 of Regulation No 261/2004 and to its case-law, particularly the judgments of 13 October 2011, *Sousa Rodríguez and Others* (C-83/10, EU:C:2011:652, paragraph 44), and of 31 January 2013, *McDonagh* (C-12/11, EU:C:2013:43, paragraph 51).

[23] Paragraph 36 of *Ruijssenaars and Others*, emphasis added.

32. In the present dispute, while LOT relies on the first step of the Court's reasoning in *Ruijssenaars and Others* in order to challenge the allocation of such a power to the Consumer Protection Inspectorate, the latter relies on the second step of that reasoning to assert the power thus conferred on it by national legislation. The Court is therefore asked to clarify the scope of that *obiter dictum*. For the purposes of that clarification, I propose that the Court take into account, in accordance with its settled case-law, not only the wording of Article 16 of Regulation No 261/2004, but also the scheme and objectives of that regulation, whilst having regard to the principles previously identified by the Court in its case-law.

33. That clarification is essential as the practical consequences flowing from the powers enjoyed by national bodies are far reaching, particularly for the thousands of passengers affected each year by the cancellation or long delay of their flights. Such clarification will also make it possible to respond to the demands from the Commission, which has repeatedly highlighted the difficulties in enforcing Regulation No 261/2004 because of the absence of a uniform interpretation and of consistent, detailed rules for the application of that regulation at national level, and has stated that the regulation should be improved to ensure that there are clear and accessible mechanisms for handling complaints. [24]

1. The wording of Article 16 of Regulation No 261/2004

34. In Article 16 of Regulation No 261/2004, the EU legislature lays down the rules applying in the event of 'infringements' of the provisions of that regulation.

35. In the first place, Article 16(1) of the regulation requires Member States to designate 'a body responsible for the enforcement of this Regulation' as regards flights from airports situated on its territory and flights from a third country to such airports, which is to be responsible, where appropriate, for taking the measures necessary to ensure that the rights of passengers are respected. Although the legislature clearly defines the extent of the territorial jurisdiction of that body, I note that it does not specify either the conditions or the manner in which the latter is to perform its tasks and 'ensure that the rights of passengers are respected'. [25] Furthermore, I observe that the expression 'ensure that the rights of passengers are respected' is clearly broad in scope. It covers the protection of both the collective and individual interests of air passengers. Recital 22 of Regulation No 261/2004, which sets out the considerations on which the EU legislature relied in adopting Article 16(1) of that regulation, does not provide any further clarification in that regard.

36. In those circumstances, it must be accepted that under Article 16(1) of that regulation, Member States enjoy discretion as to the powers with which they intend to endow their national bodies for the purpose of protecting passengers' rights, to which the Court moreover expressly referred in paragraph 36 of *Ruijssenaars and Others*.

37. Since Article 5(1)(c) of Regulation No 261/2004 confers on air passengers the right to compensation in the event of cancellation of their flight, there is nothing, in my view, to prevent a Member State from endowing its national body with the power to order an air carrier to pay

[24] See, to that effect, the Commission White Paper of 28 March 2011, entitled 'Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system' (COM(2011) 144 final), p. 23.

[25] That is what distinguishes Regulation No 261/2004 from other regulations. For other modes of transport, the EU legislature requires the national body to be independent of the carrier or infrastructure manager in its organisation, funding decisions, legal structure and decision making. See, for example, the second subparagraph of Article 25(1) of Regulation No 1177/2010, Article 31(2) of Regulation 2021/782 and the second subparagraph of Article 28(1) of Regulation No 181/2011.

the compensation due in order to ensure that that right is respected. Failure to respect that right constitutes not only a breach of the contractual obligations of air carriers, but also a failure to apply that regulation properly.

38. As regards, in the second place, the provisions set out in Article 16(2) and (3) of Regulation No 261/2004, my view is that they have neither the object nor the effect of restricting the scope of the powers which Member States may confer on their national bodies.

39. I note that, under Article 16(2) of that regulation, 'each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of [that] Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory'.

40. It follows from both *Ruijssenaars and Others*, concerning the interpretation of Regulation No 261/2004, and *Irish Ferries*, concerning the interpretation of Regulation No 1177/2010, that the 'complaint' referred to in Article 16(2) of Regulation No 261/2004 differs, by its nature and scope, from an individual claim made by a passenger seeking the compensation due to him or her on account of the cancellation of a transport service. According to the Court, that complaint amounts to a report by the passenger intended to draw the competent body's attention to the alleged infringement of an obligation on carriers with a view to contributing to the proper application of the regulations at issue in general. The Court made clear, in *Ruijssenaars and Others*, that such a complaint does not require '[the national body] to act … in order to guarantee each individual passenger's right to obtain compensation'[26] and stated, in *Irish Ferries*, that the carrier 'has a certain discretion as to the action to be taken in response to that report'.[27]

41. I also note that, under Article 16(3) of Regulation No 261/2004, 'the sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive'. Those sanctions are clearly different, in their nature and scope, from the enforcement action by which the national body seeks to secure payment of the compensation due to an air passenger on account of the cancellation of his or her flight, which is a fixed sum. In *Ruijssenaars and Others*, the Court thus held that the 'sanctions' to which the EU legislature refers in that article are the measures that the national body adopts in response to the infringements which it identifies in the performance of its general monitoring task, 'not … administrative enforcement action to be taken in each individual case'.[28]

42. Since, as the Court has found, the provisions set out in Article 16(2) and (3) of Regulation No 261/2004 specifically identify 'the various aspects of the task entrusted to the body referred to in Article 16(1)',[29] they cannot therefore be interpreted as precluding the possibility of conferring on the national body powers other than those relating to the handling of reports brought to its attention and the imposition of sanctions.

43. In the absence of rules established by EU law, Member States therefore enjoy discretion as regards the allocation to that national body of powers intended to ensure that the rights of air passengers are respected. Against that background, and in the light of the wording used in

[26] *Ruijssenaars and Others* (paragraph 31).

[27] *Irish Ferries* (paragraph 118).

[28] *Ruijssenaars and Others* (paragraph 32).

[29] *Ruijssenaars and Others* (paragraph 30).

Article 16 of Regulation No 261/2004, there is nothing to prevent a Member State from conferring on that body the power to order an air carrier to pay the compensation due to a passenger, in accordance with Articles 5 and 7 of that regulation.

44. That interpretation is also, to my mind, supported by both the scheme and the objectives of that regulation.

2. The scheme and objectives of Regulation No 261/2004

45. The scope of the tasks entrusted to the national body must also be assessed in the light of the nature of the compensation provided for in Article 7 of Regulation No 261/2004 and the objectives pursued by the EU legislature.

46. That compensation was described by the Court in its judgment of 29 July 2019, *Rusu*, as being fixed, standardised and immediate.[30] In the words of the Court in *Irish Ferries*, it is a 'pecuniary claim … and [the] passenger may request payment of that claim from the carrier on the sole ground that the conditions laid down in [Article 19 of Regulation No 1177/2010] are satisfied'.[31] If the cancellation of the flight is not caused by extraordinary circumstances within the meaning of Article 5(3) of Regulation No 261/2004, the amount of compensation is fixed in accordance with the scales set out in Article 7(1) and (2) of that regulation. Air passengers will receive compensation in the amount of EUR 250 for all flights of 1 500 km or less (point (a)), EUR 400 for intra-Community flights of more than 1 500 km and for all other flights between 1 500 and 3 500 km (point (b)) and, lastly, EUR 600 for all flights not covered by the preceding points. In addition, the compensation will be reduced by half, subject to certain conditions, if the passenger has been re-routed. The Court has held that 'such fixed amounts are intended to provide compensation only for the damage that is almost identical for every passenger concerned'.[32] Accordingly, both passengers and air carriers can identify the amount of compensation due, since that amount is not assessed on a case-by-case basis in the light of the individual circumstances of each passenger, but depends solely on the distance and destination of the flight concerned.[33] In those circumstances, except where the right to compensation is disputed under Article 5(3) of Regulation No 261/2004 and requires legal assessments as to the existence, for example, of 'extraordinary circumstances', the national body seems to me to be quite capable of assessing the merits of the claim and, where appropriate, the amount thereof for the purposes of taking enforcement action.

47. Furthermore, such an allocation of powers seems to me to contribute to the objectives pursued by the EU legislature in the context of Regulation No 261/2004. In accordance with recitals 1, 2, 4 and 12 of that regulation, the regulation seeks to ensure a high level of protection for air passengers whose flight cancellation has caused them serious trouble and inconvenience.[34] The Court has repeatedly held that the amounts set by Article 7(1) of Regulation No 261/2004 are intended to compensate, in a standardised and immediate manner, for the damage that is constituted by such inconvenience, 'without the passengers having to suffer the inconvenience

30 C-354/18, EU:C:2019:637; '*Rusu*' (paragraphs 28 and 34 and the case-law cited).

31 *Irish Ferries* (paragraph 118).

32 *Rusu* (paragraph 30 and the case-law cited).

33 In *Rusu*, the Court held that 'neither Article 7(1) of Regulation No 261/2004 nor that regulation taken as whole provides for the compensation of individual damage, inherent in the reason for travelling of the passengers concerned, redress for which requires a case-by-case assessment of the extent of the damage caused and can consequently only be the subject of compensation granted subsequently on an individual basis' (paragraph 31).

34 See *Ruijssenaars and Others* (paragraph 33) and *Rusu* (paragraph 26 and the case-law cited).

inherent in the bringing of actions for damages before the courts having jurisdiction.'[35] In *Irish Ferries*, the Court added that the compensation worded in identical terms in Article 19 of Regulation No 1177/2010 is 'in [itself] capable of remedying immediately some of the inconvenience suffered by passengers in the event of cancellation of a service and thus [makes] it possible to ensure a high level of protection for passengers, sought by that regulation'.[36]

48. A measure like that provided for in the national legislation at issue seems to me to contribute to the simplicity, speed and effectiveness of the compensation procedure, by avoiding the situation whereby the air passenger concerned is required to bring an action before the courts with jurisdiction in order to claim payment of the compensation due to him or her, which is liable to involve longer and sometimes more complex procedures. My view is that such a measure ensures a high level of protection for air passengers while, at the same time, preventing the courts from being clogged up by the extremely high number of claims for compensation.

49. In addition, it should be noted that conferring such a power on the national body does not deprive either passengers or air carriers of the possibility of bringing proceedings before the national court with jurisdiction under procedures of national law.[37] Passengers may bring an action before the court with jurisdiction in order to claim payment of the compensation provided for in Article 7 of Regulation No 261/2004 and, in the same way, air carriers must be able to challenge the justification for the compensation claimed from them.

50. I note that, in its judgment of 22 November 2012, *Cuadrench Moré*,[38] the Court held that, 'when a flight is cancelled and provided that the cancellation is not caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, Articles 5 and 7 of Regulation No 261/2004 afford passengers a right to compensation according to the distance and destination of the flight concerned, *a right which those passengers may rely on, if necessary, before the national courts*'.[39] The Court added that 'in the absence of provisions of EU law on the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, provided that those rules observe the principles of equivalence and effectiveness'.[40]

51. It is true that, in paragraph 34 of *Ruijssenaars and Others*, the Court drew attention to the risk of divergence, in the assessment of the same individual situation, between the national body and the national court. There is, moreover, another risk related to the simultaneous submission of two claims seeking payment of the compensation due, one before the national body and the other before the national court. I think, however, that Member States can mitigate that risk by adopting procedural measures ensuring coordination between the administrative and judicial procedures. In the absence of EU rules governing the matter and having regard to the discretion enjoyed by Member States as to the powers with which they intend to endow their national bodies, it is for the domestic legal system of each Member State to lay down those detailed procedural rules.

35 *Rusu* (paragraph 28 and the case-law cited).

36 *Irish Ferries* (paragraphs 152 and 154).

37 See Commission Notice – Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council (OJ 2016 C 214, p. 5) (Section 8 et seq.).

38 C-139/11, EU:C:2012:741.

39 Paragraph 23 of that judgment, emphasis added.

40 Paragraph 25 of that judgment.

52. In the instant case, I note that there is nothing in the order for reference or in the observations lodged by the Hungarian Government to suggest that the conferral of such a power on the Consumer Protection Inspectorate could undermine the rights of passengers and air carriers to bring an action before the courts or could give rise to a risk of divergence between that inspectorate and the courts in the context of the assessment of the same individual situation.

53. In the light of all the foregoing, I therefore propose that the Court rule that Article 16(1) of Regulation No 261/2004 must be interpreted as not precluding national legislation under which a Member State confers on the national body responsible for enforcing that regulation the power to order an air carrier to pay the compensation due to a passenger on account of the cancellation or long delay of his or her flight, as provided for in Article 7 of that regulation, provided that that legislation does not deprive that passenger or that carrier of the possibility of bringing proceedings before the national court with jurisdiction in order to claim payment of that compensation or to challenge the justification for that compensation. It is for the Member State, within the framework of its procedural autonomy, to lay down detailed rules ensuring that procedures before the national body responsible for enforcing that regulation and before the national court having jurisdiction are coordinated.

3. Final remark

54. Before concluding my analysis, I think it of interest to point out that, as EU law currently stands, the Member States exercise the discretion afforded to them under Article 16 of Regulation No 261/2004.

55. As demonstrated by a comparative analysis of the different national laws, [41] the Member States involve in that procedure not only their national bodies and the national courts, but also consumer protection bodies and bodies with powers in the field of alternative dispute resolution for consumer disputes [42] and the settlement of small claims.

56. Some Member States have chosen to designate their national civil aviation authority as the national body responsible for enforcing Regulation No 261/2004, [43] while others have preferred to entrust that task to their national consumer protection authority, which may then be responsible for ensuring enforcement of the regulations on the rights of air passengers as well as of passengers

[41] See, in that regard, the report prepared by the Directorate-General for Mobility and Transport of the European Commission, Kouris, S., 'Study on the current level of protection of air passenger rights in the EU', Publications Office of the European Union, Brussels, 2020, MOVE/B5/2018-541, paragraph 5.5 et seq., available at the following internet address: https://op.europa.eu/en/publication-detail/-/publication/f03df002-335c-11ea-ba6e-01aa75ed71a1.

[42] Those entities are designated under Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ 2013 L 165, p. 63). In accordance with Article 1 thereof, the purpose of that directive is to ensure that consumers can, on a voluntary basis, submit complaints against traders using alternative dispute resolution procedures. See, to that effect, judgments of 14 June 2017, *Menini and Rampanelli* (C-75/16, EU:C:2017:457, paragraphs 39 and 40), and of 25 June 2020, *Bundesverband der Verbraucherzentralen und Verbraucherverbände* (C-380/19, EU:C:2020:498, paragraph 26).

[43] Such as the Kingdom of Denmark, Ireland, the Hellenic Republic, the French Republic, the Republic of Croatia and the Republic of Cyprus. See, in that regard, the notifications made by Member States pursuant to Article 16(1) of Regulation No 261/2004.

travelling by rail, sea or land.[44] Similarly, some Member States have entrusted their national body responsible for enforcing that regulation with the task of ensuring that it is properly applied in the general interest of passengers, which may include supervisory tasks (by means of, for example, on-the-spot inspections or audits), monitoring tasks (monitoring information published or communicated by the air carrier to passengers in order to correct wrong, misleading or incomplete information), the drawing up of activity reports, exchanges of information, and cross-border cooperation with other national bodies. Some Member States allow those bodies to examine and handle individual complaints from passengers so as to safeguard their right to compensation, or empower them to conduct alternative dispute resolution procedures.[45]

57. Lastly, I would like to point out that the discretion granted to Member States for the protection of air passengers' rights is also afforded to them in the regulations on the protection of the rights of disabled air passengers and passengers travelling by rail, by sea or by bus and coach. Those regulations lay down a typology of comparable rights (rights to information, reimbursement, re-routing, care while waiting prior to travel and compensation under certain conditions). Regardless of the mode of transport involved, the EU legislature requires Member States to designate 'a body or bodies' responsible for enforcing the regulation concerned and adopting the measures necessary to ensure that the rights of passengers are respected.[46] The EU legislature establishes that requirement in almost identical terms[47] and none of the legislative instruments adopted recently reveals any intention on its part to regulate the nature of the powers conferred on the national body more strictly or to limit their scope. On the contrary, in the context of Regulation No 2021/782, which is the most recent and most precise instrument for protecting passengers' rights, the EU legislature also allows the national body to act as an alternative dispute resolution body for consumer disputes in accordance with Directive 2013/11.[48]

V. Conclusion

58. In the light of the foregoing considerations, I propose that the Court give the following answer to the question submitted by the Fővárosi Törvényszék (Budapest High Court, Hungary):

Article 16(1) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 must be interpreted as not precluding national legislation under which a Member State confers on the national body responsible for enforcing that regulation the power to order an air carrier to pay the compensation due to a passenger on account of the cancellation

[44] Such as the Republic of Estonia, the Grand Duchy of Luxembourg, Hungary and the Republic of Finland. By contrast, in the French Republic, for instance, the Direction générale de l'aviation civile (DGAC) (Directorate-General for Civil Aviation) is responsible for regulating air transport, for general supervision and for monitoring the implementation of EU law on the protection of air passengers. In response to reports received from passengers, that body may take the necessary corrective measures. In cases of proven infringements, sanctions in the form of administrative fines may be imposed on air carriers which fail to comply with the obligations laid down in Regulation No 261/2004. However, that directorate does not individually monitor the reports sent to it and its input is independent of the handling of individual claims for compensation and reimbursement submitted to air carriers. To that end, passengers must bring an action before the court having jurisdiction, in accordance with the code de procédure civile (French Code of Civil Procedure), or bring the matter before the alternative dispute resolution body.

[45] See, in that regard, the report prepared by the Directorate-General for Mobility and Transport of the European Commission, 'Study on the EU Regulatory Framework for Passenger Rights. Comparative analysis of good practices: final report', Publications Office of the European Union, Brussels, 2021, Section 4.60 et seq., available at the following internet address: https://op.europa.eu/en/publication-detail/-/publication/afa2493d-1b4e-11ec-b4fe-01aa75ed71a1.

[46] With the exception of Regulation No 261/2004, the other regulations allow Member States to designate more than one national body.

[47] See, for example, Article 31(1) of Regulation 2021/782 and Article 14(1) of Regulation No 1107/2006.

[48] See footnote 42.

or long delay of his or her flight, as provided for in Article 7 of that regulation, provided that such legislation does not deprive that passenger or that carrier of the possibility of bringing proceedings before the national court with jurisdiction in order to claim payment of that compensation or to challenge the justification for that compensation. It is for the Member State, within the framework of its procedural autonomy, to lay down detailed rules ensuring that procedures before the national body responsible for enforcing that regulation and before the national court having jurisdiction are coordinated.