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Air passenger rights — A new departure in European aviation law

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Air passenger rights — A new departure in European aviation law

Niall Neligan B.L.

The purpose of this article is to critically evaluate the legal and economic implications of the framework for passenger rights under Regulation 261/2004 in light of the recent decision of the Court of Justice in *International Air Transport Association v The Department of Transport*. This article will examine in detail the Regulation, outlining the major provisions contained within, the legal challenge brought by the International Air Transport Association (“IATA”) and the European Low Fares Association (“ELFA”) and the impact it will have on passenger rights in the European Union. Furthermore, the article will conclude by examining how national enforcement bodies will attempt to implement the provisions of the Regulation and the likely difficulties that may be encountered where “extraordinary circumstances” arise.

Introduction

In the recent decision of *International Air Transport Association and others v The Department of Transport*, the European Court of Justice confirmed the validity of Community legislation on air passengers' rights following the introduction of Regulation 261/2004.¹ The Regulation affords passengers greater protection in the event of denied boarding, flight cancellation or long delays.² During the course of the case, the IATA and ELFFA argued not unreasonably that airlines will be held responsible for delays over which they may have no control, such as air traffic congestion, adverse weather and industrial action taken at different airports. On the other hand, airlines are generally responsible where passengers are denied boarding due to over booking and responsible where scheduled and non-scheduled services are cancelled owing to a failure on the part of the airline to provide a serviceable aircraft to its customers.

Evolution of the Air Passengers Rights Regulation

With the creation of the single market for air transport, which has been in operation since April 1, 1997, the air transport sector has undergone radical change resulting in the emergence of low cost airlines, the opening of new routes, reduction in fares and the ability to book flights online. Despite a brief turn-down in this sector in the immediate aftermath of the events of September 11, 2001 air-traffic industry has witnessed unprecedented growth in passenger numbers.³

However, despite this enormous growth, there has been growing dissatisfaction with service quality in the absence of sufficient measures to protect the rights of passengers.⁴ This is particularly evident in the area of delayed flights, cancellations and denied boardings.⁵ In 1999, the Commission established that as many as 250,000 passengers were denied boarding to flights which they had paid for on scheduled services.

In 2000, the Commission published a communication on the Protection of Air Passengers in the European Union.⁶ Arising out of this communication, the Commission made a number of legislative proposals⁷ :

- • Enable delayed passengers to continue their journeys under good conditions, by giving them the right either to reimbursement of the ticket or to an alternative flight at the earliest opportunity.□
- . • Create new rights for passengers, by setting minimum requirements for contracts in air travel.□
- . • Give passengers the information they need to make well-founded choices between airlines, by requiring airlines to submit the data necessary for it to publish regular customer reports.□

In addition, the Commission made proposals for the introduction of voluntary commitments by the airlines in relation to the following:

- . • improvement of service quality as widely as possible;□
- . • adequate care for delayed passengers; and□
- . • simple procedures for lodging complaints.□

Air Passenger's rights—The legal framework

In 2001, the Commission proposed the creation of a regulation establishing common rules on compensation and assistance to air passengers in the event of delays, cancellations and denied boarding's to airline flights.⁸ Although the Commission had previously enacted Regulation 295/91 which created basic protection for passengers in the event of denied boarding, it was felt this provision did not go far enough in reducing the unacceptable number of passengers who were continuously denied access to flights which they had in fact paid for.⁹

The Commission's proposals on compensating and assisting passengers in the event of denied boarding; cancellations and long delays were put to the European Parliament who overwhelmingly adopted the provisions in December 2003.¹⁰ The proposal was placed before the Council and was adopted by majority vote with only Ireland and the UK voting against.¹¹

The regulation was published within a couple of weeks of the Council adopting the measure; however, it was soon challenged by the IATA in conjunction with the ELFAA, and Hapag-Lloyd Express in the UK High Court.¹² During 2005, the Commission wrote to a number of Member States requesting progress reports on the creation of National Enforcement Bodies and incorporating sanctioning as part of their domestic legislation.¹³

A number of Member States failed to fulfil their obligations and infringement procedures were initiated against Austria, Belgium, Italy, Luxembourg, Malta and Sweden.¹⁴ Subsequently, four Member States were referred to the Court of Justice, and a fifth, Slovakia, received a reasoned opinion for failing to provide for sanctions in their legislation as requested. Subsequently, the Court of Justice confirmed the validity of the Regulation on January 10, 2006, the implications of which will be addressed below.

Regulation 261/2004

The Regulation dealing with Air Passenger Rights came into force on February 11, 2004, and its object is to raise standards and afford greater protection to passengers ensuring that air carriers operate

under harmonised conditions within the Community.

The Regulation applies to both scheduled and non-scheduled air services, including package tours departing from an airport in a Member State, or from an airport in a third State where the flight is operated both as a Community air carrier.¹⁵ Furthermore, the provisions of the Regulation apply irrespective of whether the airliner owns the aircraft or holds it under a lease.

The Regulation establishes common rules for passengers on compensation and assistance in the event of denied boarding, cancellation and delay. The provisions of the Regulation only apply to those passengers who have a confirmed reservation and have presented themselves for check-in at the time stipulated by the air carrier, tour operator or authorised travel agent, but not less than 45 minutes before the published departure time or where the passenger has been transferred from the flight for which they held a reservation to another flight, irrespective of the reason.¹⁶ Article (3)(3) provides that the Regulation will not apply to passengers who travel free of charge or on a fare at a reduced charge which is generally not directly or indirectly available to members of the public. However, where the passenger has received a complimentary ticket issued under a frequent flyer programme then he or she will be entitled to assistance or compensation within the meaning of the Regulation.¹⁷

Denied boarding

Denied boarding is defined under Art.2 as a refusal to carry passengers on a flight although they have presented themselves for boarding unless there are reasonable grounds to deny them boarding.¹⁸ Article 4 provides that where an operating carrier reasonably expects to deny boarding on a flight, it must first call on passengers to voluntarily surrender their seats in exchange for certain benefits to be agreed between the passenger and the airline.

This will allow the passenger and the airline to negotiate such things as a refund of the price of the ticket (plus a free flight back to your original point of departure) and alternative transport to the final point of destination. This negotiation between the passenger and the

airline is for the purpose of agreeing conditions for the surrender of the seat; as to what the precise terms of the agreement will be is a matter for the parties to decide on an individual basis. Typically, this would include accommodation, meals and transfers where required.

It should be noted that a volunteer will not be forced to surrender his or her seat, especially where the parties fail to agree terms. In the event of a failure to conclude a successful negotiation the volunteer can take his/her place on the aircraft as normal.

Only where insufficient volunteers come forward can an airline deny boarding to passengers against their will. If such a situation arises, the airline must compensate those passengers in accordance with Art.7 of the Regulation and assist them in accordance with Arts 8 and 9.¹⁹

The standard form of compensation in relation to denied boarding is set out under Art.7 which provides that a passenger shall receive the following:

- . (a) €250 for all flights of 1,500 km or less. □
- . (b) €400 for all intra-community flights of more than 1,500 km, and for all other flights between 1,500 and 3,500 km. □
- . (c) €600 for all flights not falling under (a) or (b). □

The level of compensation set is meant to serve as a deterrent to air carriers in order to prevent overbooking.²⁰ In addition to the above, the airline must also give the passenger a choice of either a refund of the ticket together with a free flight back to the passenger's initial point of departure, when relevant.²¹ The right to reimbursement and rerouting applies irrespective of whether the flight bookings were made as part of a package deal except for the right to reimbursement where such right arises under Directive 90/314/EEC. Furthermore, where the flight was supposed to depart from a town or city served by other airports, and where the airline offers the passenger a flight from an alternative airport; the airline is obliged to pay the cost of transferring the passenger.²²

Article 9 sets out the right to care where a passenger has been denied boarding against their will in accordance with the terms of Art.4(3) of the Regulation. Article 9 provides, *inter alia*, that such passengers shall be offered free meals and refreshments in

reasonable relation to the waiting time, hotel accommodation in cases where a stay of one or more nights becomes necessary or where an additional stay in addition to what was intended by the passenger becomes necessary.²³ Article 9 further provides that the passenger is also entitled to free access to communication facilities and transport between the airport and place of accommodation.²⁴

Cancellation

Cancellation for the purpose of the Regulation means the non-operation of a flight which was previously planned and on which at least one place was reserved.²⁵ Where a flight has been cancelled, passengers will be entitled to more or less the same rights afforded in the case of denied boarding's, save where it is proved the cancellation was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.²⁶ This of course raises the spectre that a flight may be cancelled by an operator for commercial reasons, yet conveniently blamed on extraordinary circumstances. This will be discussed further below in the case of *IATA v The Department of Transport*.

In the case of a cancelled flight, the operator shall offer passengers assistance in accordance with Art.(8), and the right to care within the meaning of Art.9(1) and (2). Passengers will have a right to compensation by the operating air carrier in accordance with Art.(7), unless:

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

destination less than two hours after the scheduled time of arrival.□

When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative means of transport. In some cases it may be difficult to establish contact with the passenger in advance of the cancellation, particularly where they are independent travellers; bearing this in mind, the onus of proof lies with the airline to prove that they informed the passenger of the cancellation in advance. Where a passenger presents himself for check-in only to discover the flight has been cancelled, then he is entitled to receive compensation and assistance in accordance with Arts 7, 8 and 9.

Delay

The concept of *delay* is not defined within the meaning of the Regulation which is perhaps one of the principle weaknesses in the legislation.²⁷ In 1999, the Commission estimated that approximately 21 per cent of all flights were delayed with an average delay of 25 minutes.²⁸ Delays can arise from both systemic and non-systemic factors, and in situations where delays are caused by extraordinary circumstances then liability should be limited or excluded.

Presently, European airspace is the most congested in the world; in the last seven years aviation traffic in Europe has grown by 15 per cent, and is set to grow further; this has an adverse effect on route traffic resulting in delayed flights.²⁹

There are several reasons why European airspace is so congested; historically individual States have been responsible for air traffic management, thus giving rise to a fragmented system based on national interests.³⁰ In turn this has had a knock on effect en route management resulting in inefficient use of available airspace.³¹ Allied to this problem is the need to use airspace for military purposes; consequently, air routes have to be managed on an ongoing basis.³² This inefficient use of airspace has resulted in traffic convergence and occasionally gridlock on fixed route networks prolonging flight times and causing delay. In order to reduce overall delays on European aviation traffic, the Commission launched the

Single European Sky initiative in 2004, whose overall objective is to reduce substantially systemic delays caused by the fragmented nature of European airspace management.

Whereas it would be unreasonable to hold air carriers responsible for systemic delays over which they may have control, the Commission believes that airlines owe a responsibility to those passengers whom they have undertaken to transport. Some airlines have taken the initiative in providing voluntary assistance to their passengers in the event of prolonged delays. However, the Commission has by virtue of Art.6 of the Regulation introduced a system of assistance in line with Art.9 where the following applies:

If the airline operating the flight expects a delay, (a) two hours or more, for flights of 1,500 km or less, or (b) of 3 hours or more, for flights within the EU, and for other flights between 1,500 and 3,500 km, or (c) of 4 hours or more for flights over 3,500 km outside the EU, the airline must give passengers meals and refreshments, and hotel accommodation where necessary (including transfers) and communication facilities.³³ Where a passenger's flight has been delayed by five hours or more, then the passenger is entitled to a refund of the ticket together with a free flight back to the initial point of departure where relevant.

International Air Transport Association v Department of Transport

Following the publication of the Regulation, an application was made for judicial review to the English High Court, claiming the Regulation was invalid on several grounds. The High Court referred eight questions to the Court of Justice for a preliminary ruling concerning the validity of Arts 5, 6, and 7 of the Regulation, and secondly seeking clarification of Art.234 of the EC Treaty.

Principal among the questions asked was whether Art.6 of Regulation 261/2004 conflicted with certain provisions under the Montreal Convention?³⁴

The Court noted that delay arising out of air carriage caused two kinds of damage:

“First, excessive delay will cause damage that is almost identical for every passenger, redress for which may take the form of standardised and immediate assistance or care for everybody concerned, through the provision, for example, of refreshments, meals and accommodation and of the opportunity to make telephone calls. Second, passengers are liable to suffer individual damage, inherent in the reason for travelling, 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”

The Court was of the view that the Convention merely governs conditions under which a flight is delayed, and where individual passengers may initiate proceedings for damages. Furthermore, there was nothing within the Convention which could preclude any other form of intervention by public authorities for the purposes of redress for damages caused by delay. The Court emphasised that Art.6 was not inconsistent with the provisions set out in the Montreal Convention.³⁵

“The Montreal Convention could not therefore prevent the action taken by the Community legislature to lay down, in exercise of the powers conferred on the Community in the fields of transport and consumer protection, the conditions under which damage linked to the abovementioned inconvenience should be redressed. Since the assistance and taking care of passengers envisaged by Article 6 of Regulation No 261/2004 in the event of a long delay to a flight constitute such standardised and immediate compensatory measures, they are not among those whose institution is regulated by the Convention. The system prescribed in Article 6 simply operates at an earlier stage than the system which results from the Montreal Convention.”

The Court concluded that the standardised measures provided under Art.6 do not prevent passengers from bringing an action for damages arising out of delay under the provisions of the Montreal Convention. The Court further examined whether Arts 5 and 6 were:

- . (a) invalid on the grounds that they were inconsistent with the principle of legal certainty;
- . (b) were not supported by adequate reasoning;

- . (c) inconsistent with the principle of proportionality; and (d) discriminatory in so far that the terms of the articles were arbitrary and not objectively justified.□

The Court, having examined the issues raised by the claimants, held that Arts 5 and 6 were not in breach of the principle of legal certainty or the obligation to state reasons. In terms of proportionality, the claimants argued that the measures introduced under Arts 5, 6 and 7 would not attain the objective of reducing incidences of cancellation and delay; instead the terms of the Regulation would impose a considerable and disproportionate financial burden on Community air carriers.

The Court noted that the discharge of obligations under the Regulation is without prejudice to the air carrier's right to seek compensation from any person, including third parties under Art.13 of the Regulation.³⁶ Theoretically, it is possible that an air carrier can seek financial redress from a union where a delay or cancellation has been brought about by the actions of that union or group of unions where the air carrier has had to pay compensation or provide assistance to passengers.

Further, as noted above, an air carrier can escape liability where the cancellation or delay has been brought about by extraordinary circumstances which could not have been avoided if all reasonable measures had been taken. The Court therefore concluded that Arts 5, 6 and 7 were not invalid by reason of infringement of the principle of proportionality.

The right to be informed

In relation to denied boarding, cancellations and delays, airlines are obliged under the Regulation to inform passengers of their rights. A clearly legible and visible notice should be displayed at check in.³⁷ Furthermore, the operating airline must provide each passenger with a written notice setting out the rules for compensation and assistance. There is of course a potential problem in this area where airlines embark on a process of online checking-in, thus avoiding the

use of a check-in counter. Presumably, the expression “check-in” shall be given its widest interpretation to include procedures whereby passengers check-in online, and would be advisable for an airline to bring the provisions of Regulation 261/2004 directly to the attention of passengers.

Infringements and exclusion of waivers

Article 15 precludes obligations from being waived under the terms of the Regulation. Where a restrictive clause has been placed in a contract between a passenger and an airline reducing or limiting the scope of the Regulation or affording less compensation to which the passenger is entitled to, then he or she shall be entitled to take proceedings in order to obtain additional compensation.

In order to ensure that the terms of the Regulation are complied with, each Member State shall designate a body with responsibility for enforcing passenger rights.³⁸ Passengers shall be entitled to make complaints to the nominated body about alleged infringements at any airport situated on the territory of the Member State or concerning any flight from a third country.

Section 5 of the Aviation Act 2006 inserts a new subsection into s.8 of the Aviation Regulation Act 2001 and vests sole responsibility for enforcing the terms of the Regulation in this jurisdiction with the Commission for Aviation Regulation.

Under S.I. No. 274 of 2005, where the regulator considers either on its own initiative or following a complaint by a passenger that an operating air carrier is infringing the Regulation, it may issue to the carrier a direction to cease the infringement and to comply with any instructions contained in the direction. The carrier may, within one month of issue of the direction, make representations to the regulator. The regulator shall consider any such representations and reply to the carrier.³⁹

Where the Aviation regulator has issued the operating air carrier with a direction, and there has been non-compliance, the regulator may, not earlier than one month after considering any

representations and having replied to them, apply to the appropriate court for an order directing such compliance. If an air carrier fails to comply with a direction, it shall be liable on summary conviction, to a fine not exceeding €5,000, or on conviction on indictment to a fine not exceeding €150,000. The court may make whatever order it sees fit.⁴⁰

Where an application is made to the appropriate court under reg.5, the Regulator may propose a sum as a financial penalty for non-compliance; however, the court is not bound by this figure where non-compliance has been found and may consider what the appropriate penalty shall be having regard to the circumstances of non-compliance and its effect on passengers. If a penalty has been imposed on an air carrier, the fine shall be paid to and retained by the Aviation Regulator.⁴¹

Conclusion

With the introduction of Regulation 261/2004, it is hoped that the interests of passengers will be safeguarded in the event of denied boarding, delayed flights and cancellations. From a consumer's perspective, the introduction of the Regulation and the subsequent decision of the Court of Justice are to be welcomed. However, there are some ambiguities in the Regulation which will need to be clarified, and indeed some suspicion that the extraordinary circumstances outlined under para.15 may be used by some unscrupulous operators in order to avoid the terms of the Regulation. No doubt this area of ambiguity will be tested in the national courts as to whether “reasonable measures” had in fact been taken to avoid cancellations and delays.

From the airlines perspective, some protection is afforded by virtue of Art.13 which does not restrict the airline from seeking compensation from any person, including third parties. As to the circumstances where air carriers may be afforded compensation, that no doubt will be a matter for the national courts to decide at some future date.

¹ [*Case C-344/04 International Air Transport Association v The Department of Transport* [2006] E.C.R. *The International Air Transport Association was founded in Havana in 1945 and represents 270 members from more than 140 nations. The European Low Fares Airline Association was founded in 2003 as an unincorporated association representing 10 airlines from nine countries.*]

² [*Despite reduced delays to European Air Traffic, in 2003 it was estimated that 14.8 million minutes were lost to Air Traffic Management [ATM] delays. The Single European Sky-Implementing Political Commitments . The European Commission, Directorate General for Energy and Transport (Brussels) 2004, p.1.*]

³ [*According to the European Commission passenger numbers have more than doubled since 1970.*]

⁴ [*The modernisation of computer reservation systems enabled airlines to know exactly the number of reservations accepted and tickets issued, compared with the limited number of seats on each flight and to follow a fare strategy based on the number seats remaining. The airlines began to sell more tickets than there are seats, operating on the basis that some passengers will not turn up for their flights. The rationale is based on the idea that it is better that the flight is full rather than depart with empty seats. Naturally, what can occur is that more passengers turn up for the flight with the consequence that there is not enough room to accommodate them. See COM (2000) 365: Communication from the Commission to the European Parliament and the Council “Strengthening passenger rights within the European Union”, December 16, 2005 (Brussels).*]

⁵ [*In terms of denied boarding there are both systemic and non-systemic reasons why passengers are denied access to flights they have paid for. In n.4, above, I addressed the issue of overbooking; however, there are of course other reasons. Where a transfer flight has been delayed due to operational or systemic difficulties, quite often the passengers will have to wait to conclude their trip on the next available flight or the replacement of an out of order aircraft*

with a smaller one.]

⁶ [*COM (2000) 365: Communication from the Commission to the European Parliament and the Council 'Protection of Air Passengers in the European Union'. June 21, 2000 (Brussels).]*

⁷ [*ibid. at p.3.]*

⁸ [*First Anniversary of Air Passenger Rights, Press Release, February 16, 2006. The European Commission Transport Directorate (Brussels).]*

⁹ [*Regulation 261/2004 repeals Regulation 295/91. One of the problems associated with Regulation 295/91 was that passengers were unaware of their legal rights, and furthermore, the belief in some quarters that the legislation did not go far enough. This legislation was extended twice; once in 1997 to introduce a system of air carrier liability in the event of an accident, Regulation 2027/97 which was amended by Regulation 889/2002. The result of this legislation was that it introduced a modern system to compensate passengers in the event of an accident which surpassed existing international conventions. Consequently, a new international convention had to be negotiated at Montreal in 1999 and came into force in 2004 at the same time as Regulation 889/2002.]*

¹⁰ [*Legislative resolution of the European Parliament, December 18, 2003. The Parliament voted by 467 in favour and four against with 13 abstentions.]*

¹¹ [*Council Decision, January 26, 2004.]*

¹² [*see, n.1 above.]*

¹³ [*see, n.3 above at p.2. The Commission wrote to all Member States on March 9, 2005.]*

¹⁴ [*ibid. at p.2. Infringement procedures were initiated on July 6, 2005. Additional procedures were initiated against Luxembourg for failing to incorporate to set up a National Enforcement Body.]*

¹⁵ [*Regulation 261/2004 at 4-6.]*

¹⁶ [*ibid.* , Art.3(2).]

¹⁷ [*ibid.* , Art.3(3)]

¹⁸ [*ibid.* , Art.2(k), it is permissible to deny boarding for reasons of health, safety, security or inadequate travel documentation.]

¹⁹ [*ibid.* , Art.4]

²⁰ [*The compensation referred to above shall be paid either in cash, by electronic transfer, bank orders or bank cheques, or with the signed agreement of the passenger, in travel vouchers, and/or other services.]*

²¹ [*Article 8 provides for a general right to reimbursement or rerouting. Passengers shall be offered a choice between: (a) reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity; (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or (c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.]*

²² [Art.8(3).]

²³ [Art.9.]

²⁴ [*One of the expressed rights contained within Art.9 relates to passengers with reduced mobility, this is further augmented by Art.11 which provides that operating air carriers shall give priority to carrying persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied children. In cases of denied boarding, cancellation and delays of any length, persons with reduced mobility and any persons accompanying them, as well as unaccompanied children, shall have the right to care in accordance with Art.9 as soon as*

possible.]

²⁵ *[Cancellation of a flight by an operator represents a refusal to supply a service for which it has contracted. Cancellation may arise in extraordinary circumstances such as technical failure, adverse weather conditions, security or industrial action.]*

²⁶ *[For a further and more detailed examination of extraordinary circumstances, see the decision of the Court of Justice in the case of the International Air Transport Association and others v The Department of Transport , which will be examined in detail below.]*

²⁷ *[In 2003, it was estimated that 14.8 million minutes were lost to ATM delays. The Single European Sky – Implementing Political Commitments (The European Commission, Directorate General for Energy and Transport (Brussels), 2004), p.1.]*

²⁸ *[European Commission Directorate-General for Energy and Transport, “Single European Sky” Report of the High Level Group. November 2000.]*

²⁹ *[Eurocontrol estimates that Air Traffic will continue to grow at approximately 3.7 per cent per annum for the whole of Europe between 2005–2011. “A vision for European Aviation” Eurocontrol and ACI Europe Press Conference. Aguado, Victor M. Director General of Eurocontrol.]*

³⁰ *[The European ATM network is operated by a multitude of National ATM centres that are responsible for controlling air traffic in their airspace.]*

³¹ *[In 1997 the EU introduced an open market for Air-Transport Services. Arising out of this, airlines licensed by the regulatory authorities of the Member States are free to operate between different points within the union. However, despite the deregulation of the A.T.S. Air Transport Control (A.T.C.) services are still largely organised according to national boundaries.]*

³² *[Civilian aircraft in traveling from one destination to another often circumnavigate large areas of airspace which is reserved for military aircraft. Consequently, a flight from Rome to Amsterdam*

will have to change course on several occasions during the flight rather than fly in a straight line from point of departure to point of arrival.]

³³ *[Article 6(ii) provides that when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance under Art.9(1)(b) and (9)(1)(c) applies. Namely, hotel accommodation, transfers, and communication facilities.]*

³⁴ *[The Montreal Convention was signed by the Community on December 9, 1999, on the basis of Art.300(2) EC Treaty, and was approved by Council decision of April 5, 2001, entering into force on June 28, 2004. From that date according to the Court of Justice, the provisions of the Convention have, in accordance with settled case law, been an integral part of the Community legal order (Case 181/73 Haegeman [1974] E.C.R. 449, para.5, and Case 12/86 Demirel [1987] E.C.R. 3719, para.7). It was after that date that, by decision of July 14, 2004, the High Court of Justice made the present order for reference in the judicial review proceedings before it. The provisions referred to were as follows: Article 19-Delay The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures. Article 22 – Limits of Liability in Relation to Delay, Baggage and Cargo In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights. Article 29 – Basis of Claims In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.]*

³⁵ *[see, n.1 above, at p.34.]*

³⁶ [*In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.]*

³⁷ [*Art.14. The wording of this notice is included in Art.14, and provides that “if you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance”.]*

³⁸ [*The designated body under Irish law is the Commission for Aviation Regulation (S.I. No. 274 of 2005).]*

³⁹ [*ibid. , reg.4.]*

⁴⁰ [*ibid. , reg.5.]*

⁴¹ [*Section 5 of the Aviation Act 2006 inserts a new s.45A after s.45 of the Aviation Regulation Act 2001 . Section 45A provides, inter alia , that an air carrier has 14 days to make representations to the regulator after a direction has been made.]*