

Gleiss Lutz

Consumer Rights in the EU

Possible Implications for India

Dr. Martin Bartlik, LL.M. (McGill) , New Delhi, April 23, 2008



Gleiss Lutz in association with
Herbert Smith and Stibbe

Overview

Air
Carrier Liability

Denied Boarding
Compensation



Airline
Blacklisting

Rights for Passengers
with Reduced Mobility

Air Carrier Liability

Air Carrier Liability

-Regulation (EC) No 2027/1997-

- amended by Regulation (EC) No 889/2002
- transposition of Montreal Convention 1999
- generally applicable to EU air carriers only
- additional obligation beyond Montreal Convention imposed on all air carriers operating into, out of or within the EU to inform passengers on core elements of contract of carriage (e.g. liability limitations, applicable periods for filing suits, etc.) irrespective of how the contract is concluded (phone, internet, agency, etc.)

Disabled Person and Person with Reduced Mobility

Reduced Mobility (1)

-Regulation (EC) No 1107/2006-

Current status quo

- objective: protection of disabled persons and persons with reduced mobility from discrimination
 - prohibition of refusal by airlines to carry passengers or to take bookings relating to flights *from EU airports* due to reduced mobility
- exception: embarkation or carriage of passenger due to size of aircraft or its doors physically impossible or for safety reasons
- violation of obligation to carry passengers can be sanctioned by fines

Reduced Mobility (2)

-Regulation (EC) No 1107/2006-

Obligations as of July 26, 2008

- obligation of contracting air carriers to receive information of disabled persons on required assistance and to forward this information to management of airports concerned and to operating air carriers
- training of employees on how to deal with disabled persons and what special treatment different disabilities require
- obligations of airports to render assistance to disabled passengers
- costs for services rendered by airports to disabled persons can be transferred to airlines based on the total amount of carried passengers to and from respective airport
- liability for loss or damage of mobility equipment and assistance devices according to international, EU and national law

Reduced Mobility (3)

-Regulation (EC) No 1107/2006-

Free services to be provided by air carriers

- carriage of assistance dogs in cabin *subject to national regulations*
- transport of up to 2 pieces of mobility equipment *subject to advance warning, limitations of space and legislations on carriage of dangerous goods*
- seating that meets the needs of disabled persons *subject to availability and safety requirements*
- seating of accompanying persons next to disabled persons

Denied Boarding Compensation

Denied Boarding Compensation (1)

-Regulation (EC) No 261/2004-

Conditions

- flight *from* an airport within the EU (or flight on an EU air carrier from outside the EU into the EU)

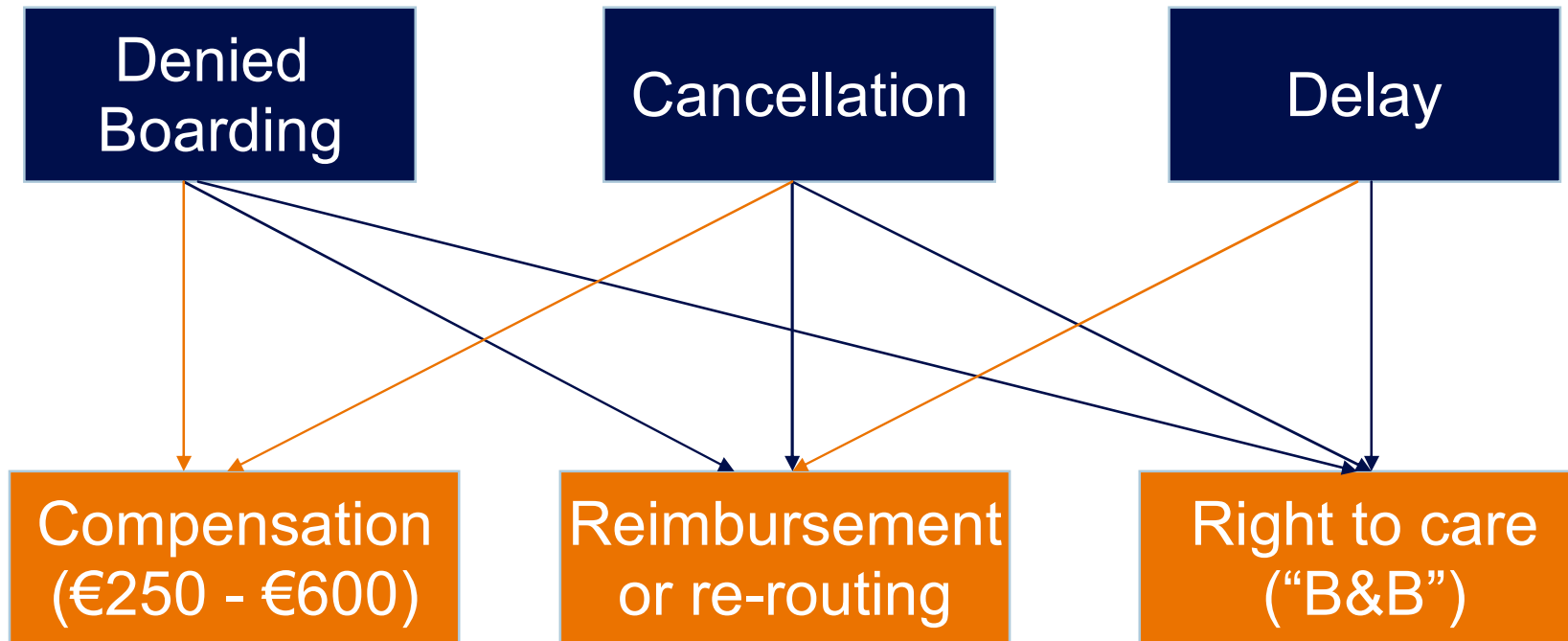
recommendation: Obligation lies always with operating air carrier not with contracting air carrier. In case of code-sharing (airline alliances) flights from outside the EU into the EU preferably to be conducted by non-EU air carriers.

- presentation by passenger for check-in in due time

Denied Boarding Compensation (2)

-Regulation (EC) No 261/2004-

Overview



Denied Boarding Compensation (3)

-Regulation (EC) No 261/2004-

Denied Boarding

- voluntary
 - reimbursement or re-routing
 - agreed benefits
 - no right to compensation, neither under Regulation (EC) No 261/2004 nor under national liability laws
- involuntary
 - reimbursement or re-routing
 - right to compensation
 - B & B

Denied Boarding Compensation (4)

-Regulation (EC) No 261/2004-

Cancellation

- compensation
 - flights $\leq 1,500$ km: € 250
 - flights $\leq 3,500$ km or intra-EU flights $> 1,500$ km: € 400
 - flights $> 3,500$ km: € 600
- compensation can be reduced by 50% if passengers are offered re-routing and arrival time is within certain time limits
- no compensation payable, if
 - passengers are informed in due time about cancellation; **or**
 - cancellation is based on extraordinary circumstances; **and**
 - circumstances could not have been avoided, even if all reasonable measures had been taken

Denied Boarding Compensation (5)

-Regulation (EC) No 261/2004-

Problems

- differentiation between cancellation and delay
 - relevant for claim for compensation
 - no definition in the Regulation
 - no defined time limit (unofficial time limit: 24h)
 - various aspects to be taken into account
- technical failures
 - extraordinary circumstances?
 - reasonable measures to be undertaken for avoidance? => maintenance in compliance with maintenance schedule
 - backup aircrafts?
- responsible courts for claims

Denied Boarding Compensation (6)

-Regulation (EC) No 261/2004-

Downgrading

reimbursement of ticket costs

- flights \leq 1,500 km: 30% of ticket price
- flights \leq 3,500 km or intra-EU flights $>$ 1,500 km: 50% of ticket price
- flights $>$ 3,500 km: 75% of ticket price

Denied Boarding Compensation (7)

-Regulation (EC) No 261/2004-

Pending cases before the ECJ

- C-402/07 and C-432/07: differentiation between cancellation and delay
- C-549/07 and C-432/07: technical failures as exceptional circumstances and all necessary measures to be undertaken
- C-173/07: applicability of Regulation (EC) No 261/2004 on flights departing outside the EU on a non-EU air carrier

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Thank you for your attention.

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Publications

The „Open-Skies“ Decision of the European Court of Justice: The Advent of a New Era? (Annals of Air and Space Law 2003)

The Impact of EU Law on the Regulation of International Air Transportation (Ashgate 2007)

Languages

german, english, french, polish

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