



AIRLINES CAN INDEED CHARGE PASSENGERS FOR CARRY-ON LUGGAGE

On 4th October 2023, the European Parliament¹ approved a resolution urging the European Commission to propose strategic measures to define the scope and specific requirements regarding the weight and dimensions of carry-on luggage. It also aims to address the complexity of the rules in this area in the context of the revision of Regulation (EC) No. 1008/2008².

This resolution, which has arisen at the request of the Committee on Petitions³, is not legally binding and, therefore, has no direct application or obligation on airlines at this stage.

Hence, despite recent media reports, airline policies such as charging for carry-on baggage have not been prohibited yet. In this newsletter, we will delve deeper into this controversy with the aim of clarifying whether charging additional fees for hand baggage complies with current legality in the European legal framework.

LEGAL FRAMEWORK, CASE C-487/12, AND THE EUROPEAN PARLIAMENT RESOLUTION

To address this issue, it is important to begin by referencing Regulation (EC) No. 1008/2008, which, among others, regulates the licenses of European Union air carriers, their right to operate air services within the European Community, and, particularly pertinent in this context, the setting of air fares.

This Regulation was adopted in the context of the European market's liberalization, with the aim of removing existing barriers between the different national markets of the Member States and increasing the competitiveness of airlines. In turn, these objectives have led to greater consumers choice and more affordable airfares.

In line with these objectives, Regulation (EC) No. 1008/2008, in its Articles 22 and 23, established the "freedom to set fares and rates for intra-Community services" and, regarding how rates should be set,

stipulated that the mandatory and foreseeable components of the air service price must be clearly indicated as part of the final price to be paid. Furthermore, the Regulation stated that any additional charges for non-essential and non-obligatory services for the air transport service must be presented transparently and unambiguously at the initiation of the booking process, with the explicit acceptance of the customer.

Settled the above, it is essential to refer to the Judgment of the Court of Justice of the European Union (CJEU) in case C-487/12⁴. This ruling responded to a preliminary question about the compatibility of Spanish legislation with European law, particularly in relation to Article 97 of the Spanish Air Navigation Act⁵, which requires the carriage of passengers along with their luggage without any additional charge for the carriage of such luggage.

In the context of fares setting, in accordance with Article 23 of Regulation (EC) No. 1008/2008, the CJEU clarified that passengers checked-in baggage may be subject to an optional price supplement since this service cannot be considered as compulsory or essential for the transportation of these passengers.

In contrast, the CJEU ruled that carry-on luggage should be considered an integral element of passenger transportation and, consequently, should not be subject to extra charges, provided that such luggage adheres to reasonable weight and dimension requirements, as well as safety standards.

The above, as concluded by the CJEU, would not allow charging separately for the transportation of the passenger and their carry-on luggage, and therefore, would prevent the free setting of a price for the transportation of passengers. This stance, according to the Court, rendered the Spanish regulation contrary to the rights of air carriers to freely set the price for passenger transportation in air services and the

¹ For more information, please be referred to the [Resolution approved by the European Parliament](#)

² Regulation (EC) No. 1008/2008 of the European Parliament and of the Council, of September 24, 2008, on common rules for the operation of air services in the Community. (Hereinafter, "Regulation (EC) No. 1008/2008").

³ For further details, please be referred to the [Proposal submitted by the Committee on Petitions of the European Parliament](#).

⁴ Judgment of 18th September 2014, by the CJEU (Case C-487/12).

⁵ Article 97 of Act 48/1960, of 21st July, on Air Navigation (hereinafter, "LNA"), stipulates that the carrier shall be obliged to transport baggage together with passengers, within the ticket price, within the weight limits, regardless of the number of items, and volume established by the Regulations. The excess shall be subject to a separate agreement.

For the purposes of this provision, objects and carry-on items brought by the traveler shall not be considered as baggage. The carrier shall be obliged to transport, free of charge in the cabin, as carry-on baggage, the objects and items brought by the traveler, including items purchased in stores located at airports. The boarding of these objects and items may only be denied for safety reasons related to the weight or size of the item, in relation to the characteristics of the aircraft.



conditions governing these prices, as provided by articles 2, 18, and 22.1 of Regulation (EC) No. 1008/2008. Such a position also risked undermining the regulation's core objective, which is to facilitate genuine comparability of these prices (vid. paragraph 45).

In conclusion, the CJEU determined that Article 22 is incompatible with provisions like Article 97 of the Spanish Air Navigation Act.

As we can see, the CJEU made a distinction between checked-in and carry-on luggage, highlighting, on one hand, the incompatibility of national and community law and, on the other hand, the compatibility of both legislations on cabin carry-on baggage, contingent on adherence to reasonable size and weight criteria as well as safety requirements.

The debate thus focuses on the precise definition of "reasonable requirements" in terms of the size and weight of cabin baggage, which, up to this point, has depended on the provisions of each airline's General Conditions of Carriage, which should be understood to be in accordance with the law, as determined by the CJEU, provided that this information is also communicated to the passenger in a clear and transparent manner.

Within this context, the European Parliament has issued a resolution advocating for the harmonization of size, weight, and type requirements for both carry-on and checked-in baggage. This proposal additionally aims to bolster transparency and consumer protection regarding information and fee disclosure.

Despite the non-binding nature of this Resolution, it raises some questions, such as, what would be the operational consequences of the proposed regulation? Would all passengers' carry-on luggage fit in the overhead compartments? What financial implications will airlines face, and could this potentially lead to increased airfare costs? We will attempt to address these issues below.

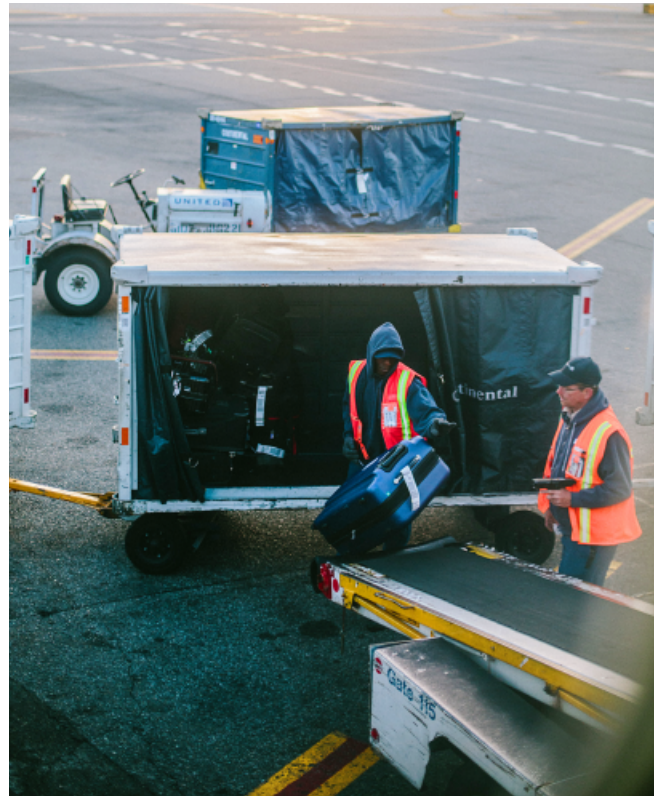
AIRLINE CARRY-ON BAGGAGE POLICIES

The specifications for checked-in and carry-on baggage, including their size, weight, and type, can differ significantly between airlines. These disparities are influenced by factors such as the specific aircraft model and its configurations used by each airline.

Consider, for example, the distinction between a regional flight from MAD to AGP and an intra-community flight from MAD to BER. It is evident that the aircraft used in these two scenarios will be different and, consequently, the storage capacity for carry-on baggage will not be the same. As an additional factor, consider that the Boeing 737-800, for instance, can accommodate approximately 120 carry-on pieces of luggage in the overhead compartments of the cabin⁶, yet its marketed seating configurations range between 170 and 189 passengers. This means that, in practice, even if the airline desired to do so, it would be impossible to allow all passengers to bring a carry-on bag into the overhead cabin compartments.

Traditionally, the commercial practice of airlines has allowed passengers to check-in baggage in the hold at no additional cost. However, it's undeniable that, as referenced in the CJEU Judgment, airline business models have undergone significant evolution due to the widespread use of air travel.

In this context, as is widely known, there are airlines that follow a commercial strategy focused on offering air services at more compe-



titive prices –commonly referred to as "low-cost" or "ultra-low-cost" carriers– which frequently offer basic fares covering essential air transportation services, excluding services like carry-on or checked-in baggage, which are only paid for by passengers who require them, in accordance with size and weight requirements.

In this regard, it should be noted that these fares normally include the option to carry, free of charge, a piece of (carry-on) baggage that can fit under the front seat.

In our perspective, and considering the regulatory framework described earlier, these fares align with the carrier's freedom to set air service rates, as long as they are clearly, transparently, and unequivocally reflected in the information available to passengers during the ticket purchasing process.

However, while these policies have contributed to lower ticket prices and wider access to air travel, they have been harshly criticised and have even been subject to investigations by Spanish state authorities. These authorities argue that these policies can confuse passengers and may potentially constitute unfair commercial practices⁷.

Furthermore, in accordance with the principles established by the CJEU, it is reasonable to understand that carry-on baggage includes "personal effects that passengers carry with themselves." This understanding leads us to conclude that a restriction according to current criteria, such as requiring baggage to fit under the front seat, aligns with the definition and the existing legal framework.

On the other hand, in line with the arguments used by the Advocate General in case C-487/12 in his conclusions supporting the provision of the service at no cost, we must note that this implies the

⁶ The Boeing 737-800 has 30 cabin compartments in which 4 small suitcases can be accommodated.

⁷ On 3rd August 2023, the Spanish Ministry of Consumer Affairs initiated sanction proceedings against several airlines for their practice of charging fees for carry-on luggage in the cabin, considering that these practices violate the General Act for the Defense of Consumers and Users. There exist uncertainties regarding whether the Ministry of Consumer Affairs has the authority to do so, as the competence may lie with the Ministry of Public Works. Additionally, the national aviation legislation only identifies the refusal to transport checked-in baggage as a minor offense, without categorizing charges for carry-on baggage as an offense. We will have to await the completion of these proceedings to see their conclusions.



lack of responsibility of the carrier for the custody of carry-on luggage. Hence, it becomes the passenger's duty to manage this aspect.

Finally, from an operational cost perspective, two brief observations should be made:

- (i) Firstly, it's crucial to recognize that practices involving the use of cabin bags with expandable systems that exceed the permitted dimensions and/or weight can generate operating costs. These costs result not only from delays in aircraft boarding but also from the impact on fuel expenses.
- (ii) Secondly, allowing all passengers to carry their carry-on baggage can lead to inadequate space in the overhead compartments, necessitating the transportation of excess luggage in the aircraft's hold. This situation carries various financial, administrative, and liability implications for the carrier.

CONCLUSIONS

In conclusion, it is evident that the transportation of carry-on baggage by airlines entails increased operational costs and additional responsibilities borne by carriers. These factors may have potential implications for ticket pricing and airline policies. From this perspective, it's important to recognize that not all passengers may agree with a change in the current transportation policies.

On the other hand, while it is necessary to recognize the importance and the need for explicit regulation by the legislator in this matter, the aviation industry has, through its self-regulation already addressed the passengers' needs, adapting, in our opinion, to the reasonableness criteria established by the CJEU with the current baggage policies.

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