

Navigating EOPs—jurisdiction and compensation (Flight Refund v Deutsche Lufthansa)

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Dispute Resolution analysis: What should be done to designate a competent court when a European Order for Payment (EOP) arising out of a right to compensation for a flight delay has been issued in breach of the EOP procedure and when, following an opposition, contentious proceedings must be pursued before ‘the competent courts of the Member State of origin’? Suzanne Rab of Serle Court Chambers discusses the recent decision from the Court of Justice in *Flight Refund Ltd v Deutsche Lufthansa AG*.

Original news

C-94/14 *Flight Refund Ltd v Deutsche Lufthansa AG*-94/14 *Flight Refund Ltd v Deutsche Lufthansa AG* [2016] All ER (D) 117 (Mar)

The Court of Justice of the European Union gave a preliminary ruling concerned the interpretation of the European Order for Payment Regulation (EC) 1896/2006 of the European Parliament and of the Council. The request had been made in proceedings between Flight Refund Ltd, a company established in the UK, and Deutsche Lufthansa AG, a company established in Germany, concerning a debt in respect of compensation claimed on account of a flight delay.

What is an EOP?

The EOP Regulation created an EOP procedure to simplify, speed-up and reduce the costs of litigation in cross-border cases concerning monetary claims. The EOP Regulation applies to all EU Member States except Denmark. A claimant may only obtain an EOP where their application is not contested. If the defendant opposes the application then, unless the claimant chooses not to proceed with the claim, it will proceed as an ordinary civil claim.

What were the facts in this dispute?

The background to this case is quite complex, but it is worth setting this out to put in context the jurisdictional quandary facing the court. A Hungarian passenger on a delayed flight from Newark (USA) to London asserted a right to compensation from Lufthansa under Regulation (EC) 261/2004 (the Air Passengers Regulation). She assigned the right to compensation to Flight Refund, a company established in the UK which obtained an EOP from a Hungarian notary using the EOP procedure. The notary’s competence was asserted on the basis of a translation of the provisions relating to jurisdiction in the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention).

Lufthansa opposed the EOP and denied having operated the flight in question. According to the EOP Regulation, since the claim was opposed the proceedings must continue ‘before the competent courts of the Member State of origin’, namely Hungary where the EOP was issued.

What is the interaction between the EOP Regulation and other rules on procedure and jurisdiction?

The EOP procedure is intended to sit alongside, and not replace, the existing procedures of the Member States (art 1(2)). EOP applications are mainly governed by the EOP Regulation. However, where the EOP Regulation is silent, national rules may supplement it and in England and Wales, the Civil Procedure Rules 1998, SI 1998/3132 apply, with necessary modifications.

Jurisdiction under the EOP Regulation will be determined in accordance with Brussels I (Regulation (EC) 44/2001), or Brussels I (recast) (Regulation (EU) 1215/2012).

What were the questions referred to the Court of Justice?

It fell to the Hungarian Supreme Court (apparently a rather grandiose building in Art-Deco style) to designate a competent court. The Hungarian Supreme Court felt that it was unable to do so without guidance on the relevant legislative provisions and referred the case to the Court of Justice for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union. It was not clear to the Supreme Court whether the rules applicable were those in the Montreal Convention, those in Brussels I or those in the EOP Regulation.

Further, the Supreme Court was of the view that the notary who issued the EOP did so without having regard to the EOP Regulation, art 6 in accordance with which she ought to have examined the question of jurisdiction of the Hungarian courts on the basis of Brussels I.

The Hungarian Court referred a number of questions, the substance of which were:

- o Can [an EOP] which has been issued in breach of [the EOP Regulation] or by an authority which does not have international jurisdiction be the subject of an ex officio review? Or must the contentious proceedings following the lodging of a statement of opposition, where there is a lack of jurisdiction be discontinued ex officio or on request?
- o If any Hungarian court has jurisdiction to consider the case, should the relevant rule governing jurisdiction be interpreted as meaning that [the Supreme Court], in assigning jurisdiction to a court, should designate [a court] which, in the absence of a jurisdiction and competence determined by a Member State's procedural law, is required to conduct the proceedings on the substance of a case which has arisen as a result of a statement of opposition?

How did the Court of Justice deal with the issue of the EPO in breach of the EPO Regulation?

The Court of Justice did not consider that the EOP Regulation provided any indications as to the powers and obligations of the court in the matter in question. It ruled that if the court of the Member State of origin of the EPO finds that there is jurisdiction in the light of the criteria set out in Brussels I that Regulation and the EPO Regulation require the court to interpret national law in such a way that it permits it to identify or designate a court having jurisdiction to hear the contested procedure. The court also ruled that if the court finds that there is no such international jurisdiction that court is not required to review the EOP.

What practical implications does this case have for practitioners dealing with EOPs?

The case demonstrates a certain amount of improvisation where the legislative texts were not exhaustive. No straight answer was provided by looking at the language of the European or international texts. The court filled in the gaps by looking at the purpose, aims and objectives of these interlocking legal provisions. It also noted that to close the contentious proceedings when the jurisdiction of the Member State of origin has been established on the basis of Brussels I would also undermine the effectiveness of the EOP Regulation insofar as that requires the proceedings automatically to be continued in the event that the defendant has entered a statement of objections before the courts of the Member State of origin of the EOP.

The case serves as a reminder that even though EOP cases will be primarily governed by the EOP Regulation reference will still need to be made to national procedural rules. Indeed, the court observed that the EOP Regulation does not seek to harmonise the procedural rules of the Member States. The ruling also displays a certain degree of judicial alacrity in interpreting the EOP Regulation as requiring a court seised in contentious proceedings to interpret national law 'in such a way that it permits it to identify or designate' a competent court to hear the matter once international jurisdiction is established.

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Interviewed by Barbara Bergin.

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