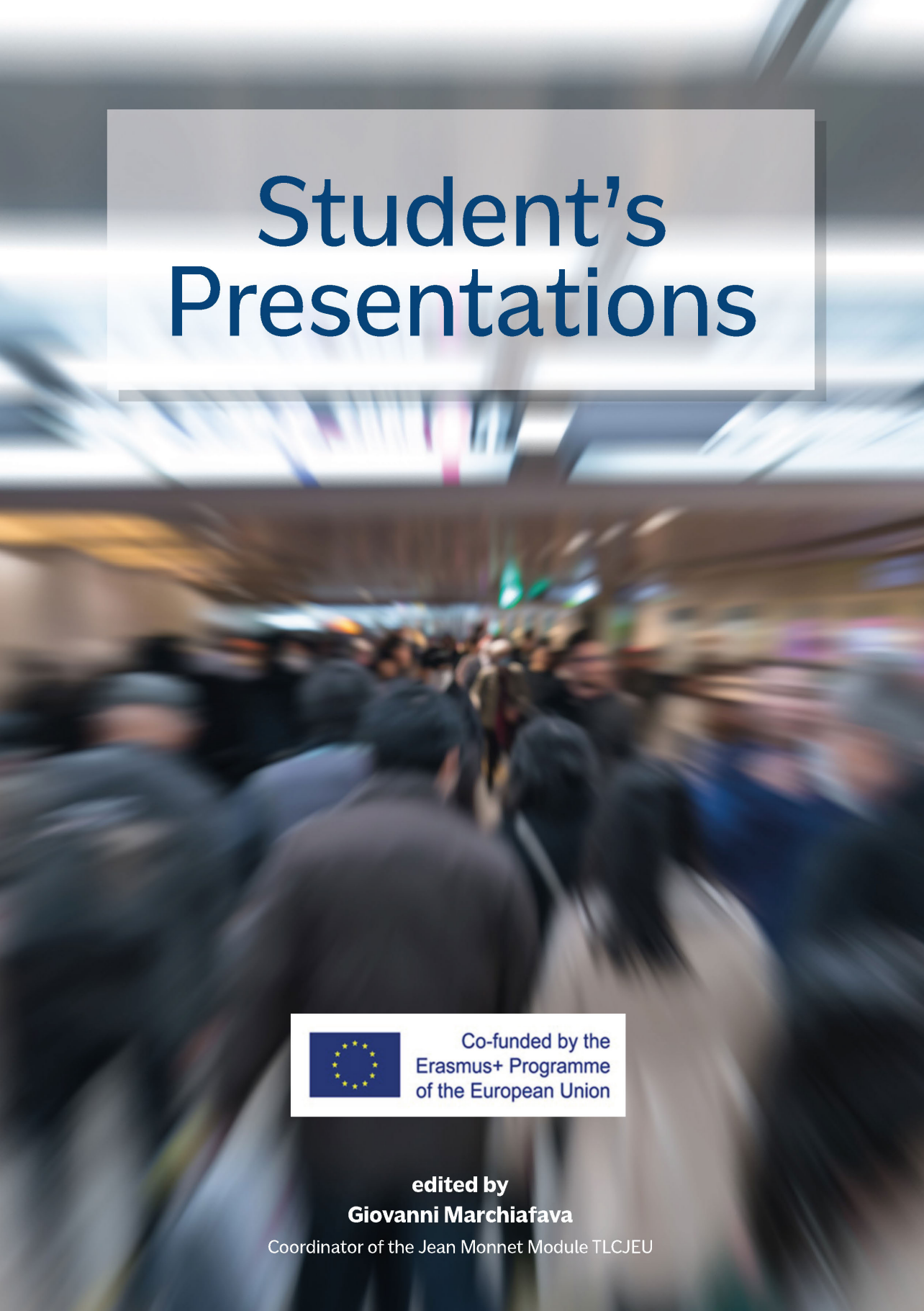
Student's Presentations



Co-funded by the
Erasmus+ Programme
of the European Union

edited by
Giovanni Marchiafava
Coordinator of the Jean Monnet Module TLCJEU

ISSN 2785-1095

SAPIENZA UNIVERSITÀ DI ROMA

FACOLTÀ DI GIURISPRUDENZA
DIPARTIMENTO DI SCIENZE GIURIDICHE

DEGREE COURSE "EUROPEAN STUDIES" (LM-90)

JEAN MONNET MODULE TLCJEU

TRANSPORTATION LAW AND COURT
OF JUSTICE OF THE EUROPEAN UNION
2018-2021

Student's Presentations

edited by

Giovanni Marchiafava
Coordinator of the Jean Monnet Module TLCJEU

Co-funded by the
Erasmus+ Programme
of the European Union

PREFAZIONE DEL COMITATO DI REDAZIONE DEI SAPIENZA LEGAL PAPERS

Il Comitato di Redazione dei Sapienza Legal Papers è lieto di presentare i seguenti contributi realizzati dagli studenti del Modulo Jean Monnet "*Transportation Law and Court of Justice of the European Union*" (TLCJEU) del triennio accademico 2018-2021.

Ringraziamo il prof. Marchiafava per averci coinvolto in tale progetto, cui abbiamo aderito con entusiasmo, rivedendo in esso lo spirito e gli obiettivi che animano la nostra iniziativa.

Sapienza Legal Papers, che quest'anno ha completato il processo di transizione a rivista, nasce nel 2012 come collana di libri promossa e gestita dagli studenti della Facoltà di Giurisprudenza della Sapienza Università di Roma e patrocinata dagli organi della Facoltà e dei Dipartimenti. L'idea che ispira i fondatori è quella di dare agli studenti la possibilità di cimentarsi nella scrittura di articoli di approfondimento su temi giuridici, così da andare oltre il mero studio finalizzato al superamento degli esami e dare spazio al proprio senso critico e alla propria curiosità.

Proprio questo spirito lo ritroviamo, come accennato, nei contributi della presente pubblicazione, i cui autori, sotto la guida del prof. Marchiafava, hanno partecipato intensamente all'attività accademica, portando avanti delle analisi critiche delle più rilevanti questioni giuridiche oggetto del corso e tentando di individuare possibili soluzioni. Proprio ciò rende tali contributi

di estremo valore, perché frutto dell'impegno di studenti volenterosi e desiderosi di mettersi alla prova.

Ringraziamo nuovamente il prof. Marchiafava e i suoi studenti, augurandoci che tale collaborazione possa proseguire e consolidarsi nei prossimi anni.

PREFACE BY SAPIENZA LEGAL PAPERS' EDITORIAL BOARD

Sapienza Legal Papers' Editorial Board is pleased to introduce the following presentations by the students of the Jean Monnet Module *"Transportation Law and Court of Justice of the European Union"* (TLCJEU) of the three-year academic period 2018-2021.

We would like to thank prof. Marchiafava for involving us in this project, which we have joined with enthusiasm, recognizing in it the spirit and the purposes that inspire our activity.

Sapienza Legal Papers, that this year has become recognized as a review, was born in 2012 as series of books promoted and managed by students of the Faculty of Law of Sapienza University of Rome and supported by the Faculty and the Departments. The idea that inspired the founders was to give students the opportunity to engage in writing in-depth articles on legal issues, giving space to their critical sense and their curiosity, trying to do more than just preparing for the exams.

This spirit can be found, as mentioned, in the following presentations. The authors, under the supervision of prof. Marchiafava, have actively participated in the academic activity, carrying out critical analyses of the most relevant legal issues of the course and trying to identify possible solutions. This is what makes these presentations extremely valuable, since they are the result of the commitment of willing students eager to challenge themselves.

We thank again prof. Marchiafava and his students, hoping that this collaboration will continue and strengthen in the following years.

PREMESSA

La presente pubblicazione contiene una selezione di presentazioni elaborate da studenti frequentanti le attività accademiche del Modulo Jean Monnet "Transportation Law and Court of Justice of the European Union" (TLCJEU), cofinanziato dall'Unione europea nell'ambito del Programma Erasmus+, Dipartimento di Scienze Giuridiche, Sapienza Università di Roma.

Le attività del Modulo Jean Monnet TLCJEU si sono svolte durante il triennio accademico 2018-2019 nell'ambito del corso di insegnamento di "Transportation Law", Corso di Laurea Magistrale "European Studies", erogato in lingua inglese, presso la Facoltà di Giurisprudenza, Sapienza Università di Roma.

La presente pubblicazione contiene n. 10 presentazioni svolte da n. 18 studenti e dedicate a esaminare i seguenti argomenti del diritto europeo dei trasporti: diritti dei passeggeri nel trasporto aereo, responsabilità del vettore aereo, assegnazione delle bande orarie, servizi marittimi, trasporto sostenibile e infrastrutture di trasporto. Tali argomenti sono stati affrontati alla luce di attività delle Corte di giustizia dell'Unione europea e di altre Istituzioni europee in materia di trasporto.

Le presentazioni sono state elaborate dagli studenti su base volontaria individualmente o congiuntamente in gruppi di studio.

Ciascuna presentazione è introdotta da un abstract.

Lo svolgimento di tali presentazioni ha favorito la partecipazione attiva e interattiva degli studenti alle attività accademiche del Modulo, stimolando un loro approccio critico alle questioni giuridiche esaminate e l'individuazione di possibili soluzioni.

A causa dell'emergenza sanitaria COVID-19, le presentazioni sono state tenute a distanza nell'ambito di tavole rotonde durante le lezioni del Modulo mediante apposite piattaforme digitali.

Roma, 15 ottobre 2021

Dott. Giovanni Marchiafava

Coordinatore del Modulo Jean Monnet "Transportation Law and Court of Justice of the European Union" (TLCJEU) e docente di Transportation Law, Corso di Laurea "European Studies" (LM-90), Dipartimento di Scienze Giuridiche, Facoltà di Giurisprudenza, "Sapienza" Università di Roma.

CONTENTS / INDICE

1. Presentation / Presentazione

Ayabekova Marzhan
(student's matriculation No 1920716)

THE PROPOSAL OF EU COMMISSION FOR A NEW REGULATION ON AIR PASSENGER RIGHTS

Student examined the proposal of the EU Commission for a new regulation amending 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 Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air (COM/2013/0130 final).

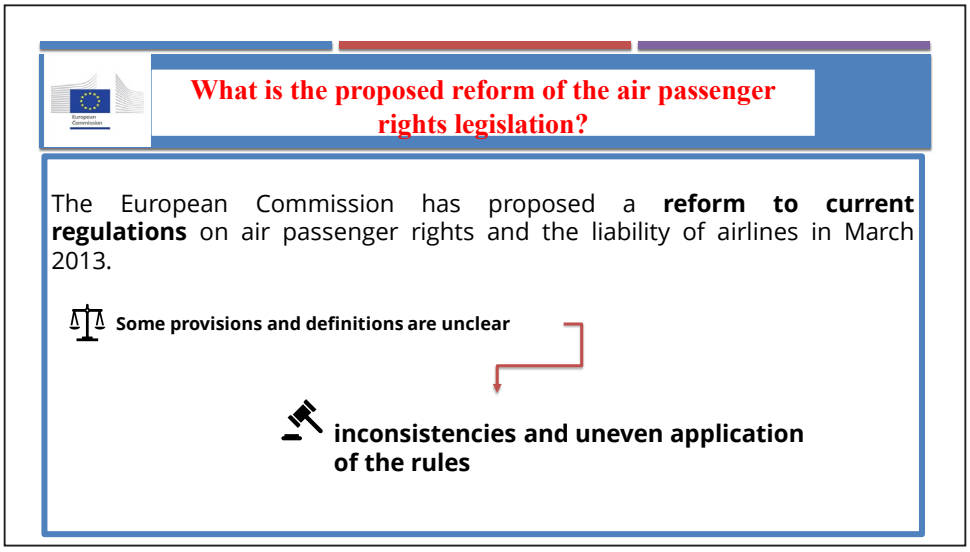
LA PROPOSTA DELLA COMMISSIONE EUROPEA PER UN NUOVO REGOLAMENTO SUI DIRITTI DEI PASSEGGERI NEL TRASPORTO AEREO

La studentessa ha esaminato la proposta di un nuovo regolamento presentata dalla Commissione europea per modificare il regolamento (CE) n. 261/2004 del Parlamento europeo e del Consiglio dell'11 febbraio 2004, che istituisce regole comuni in materia di compensazione ed assistenza ai passeggeri in caso di negato imbarco, di cancellazione del volo o di ritardo prolungato, e il Regolamento (CE) n. 2027/97 del Consiglio del 9 ottobre 1997 sulla responsabilità del vettore aereo in merito al trasporto aereo di passeggeri e dei loro bagagli.

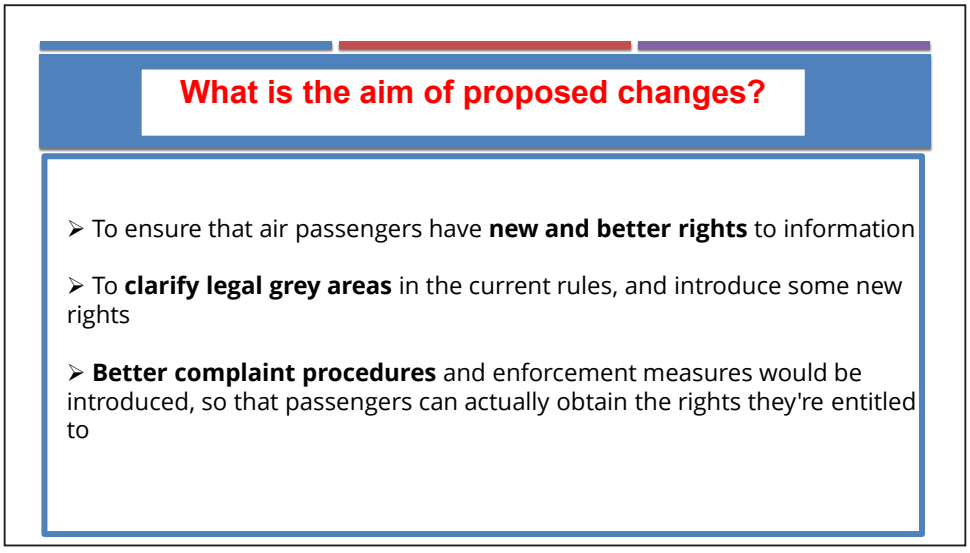
Diapositiva 1

Diapositiva 2

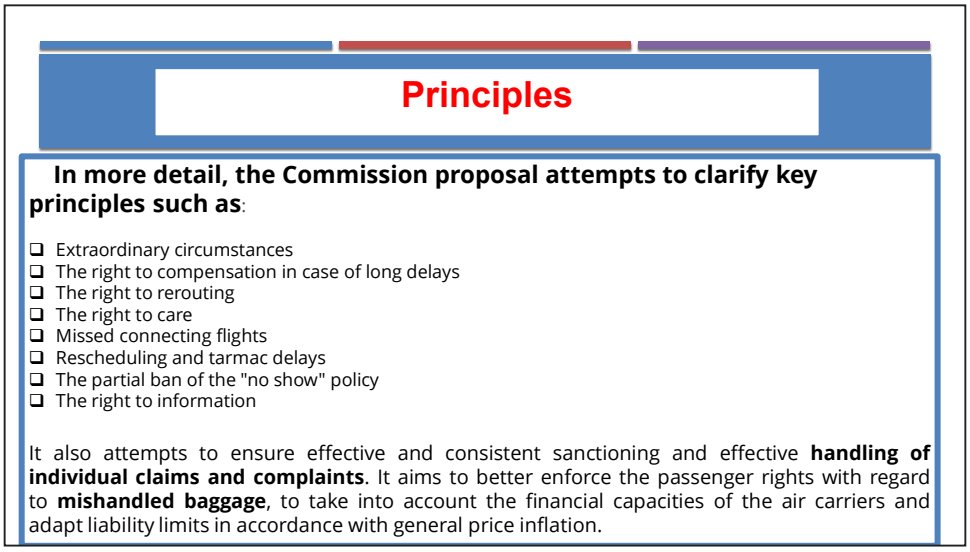
Diapositiva 3



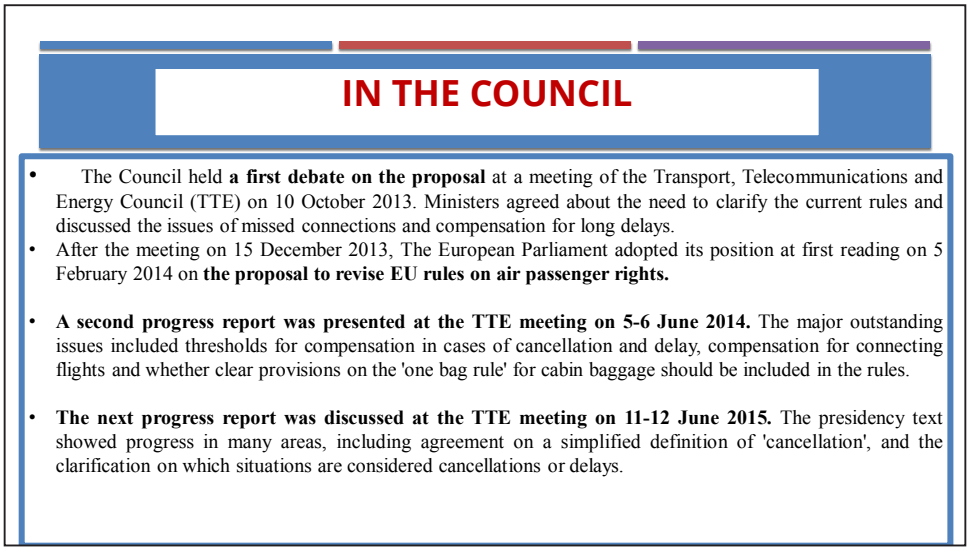
Diapositiva 4



Diapositiva 5



Diapositiva 6



Diapositiva 7

RECENT DEVELOPMENTS

➢**Airlines often fail to offer passengers the rights to which they are entitled in instances of denied boarding, long delays, cancellations or mishandled baggage, in particular under Regulation (EC) No 261/2004 ("the Regulation") and Regulation (EC) No 2027/97.**

◆The Commission EU **Citizenship Report** of October 2010 on dismantling obstacles to EU citizens' rights3 announced measures to ensure a set of common rights for passengers travelling by any transport mode across the EU and the adequate enforcement of these rights.

◆The Commission **White Paper on Transport** adopted on 28 March 2011 mentioned among its initiatives the need 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"

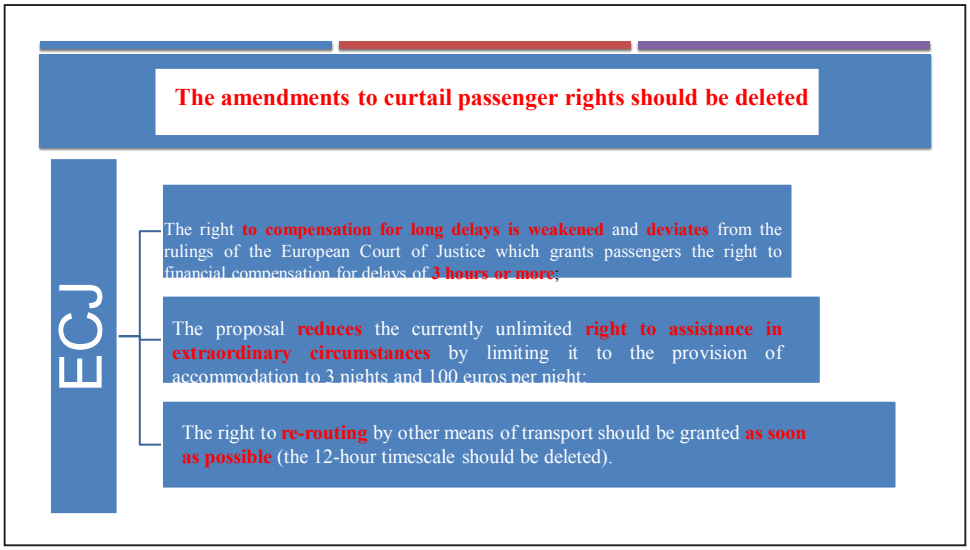
Diapositiva 8

RECENT DEVELOPMENTS

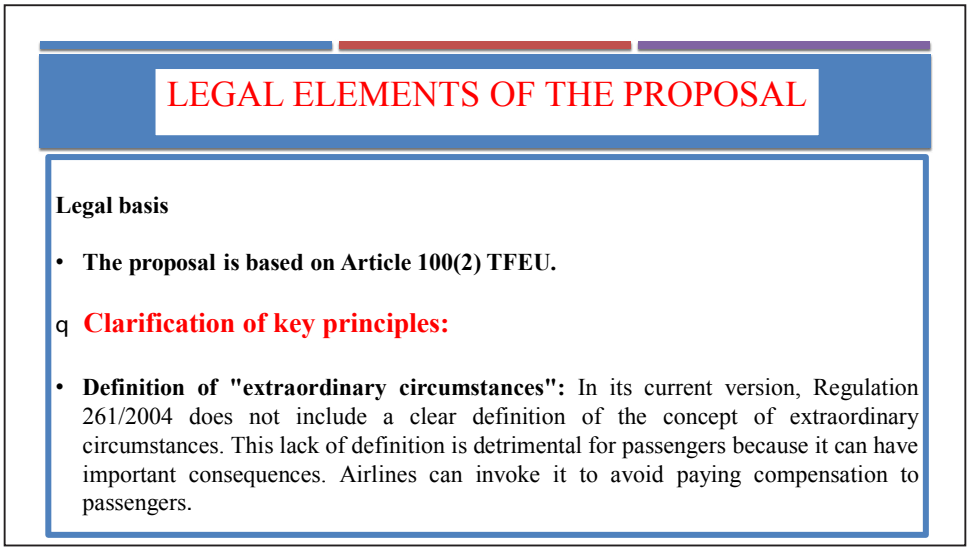
Ø **The Commission Communication** of 11 April 20115 reported on the varying interpretation being taken on the provisions of Regulation (EC) No 261/2004, due to grey zones and gaps in the current text, and the non-uniform enforcement across Member States. Furthermore, it is difficult for passengers to enforce their individual rights.

- **Case law** has had a decisive impact on the interpretation of the Regulation.
- **In case C-344/04 (IATA),** the ECJ confirmed its full compatibility with the Montreal Convention and the complementarities between the two legal instruments.
- **In case C-549/07 Wallentin-Herrman**, the Court clarified when a technical problem in an aircraft should not be regarded as an **'extraordinary circumstance'.**
- **In the Sturgeon case** (Joined Cases C-402/07 and C-432/07), the ECJ held that a long delay of at least three hours at arrival entitles passengers to compensation.

Diapositiva 9



Diapositiva 10



Diapositiva 11

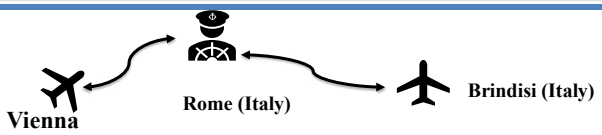
EXTRAORDINARY CIRCUMSTANCES

➢**An 'extraordinary circumstance' is a situation in which there is the airline is not responsible for the problems with the flight. This includes the following situations:**

- Extreme weather conditions during the flight, such as heavy fog or a storm
- Natural disasters, such as a volcanic ash cloud
- Strike action by air traffic control
- Medical emergency landings
- Acts of terrorism
- Situations with passengers on board the airplane

Diapositiva 12

C-549/07 - Wallentin-Hermann



After checking in, the three passengers were informed, five minutes before the scheduled departure time, that their flight **had been cancelled.** They were subsequently transferred to an Austrian Airlines flight to Rome, where they arrived at 9.40 a.m

Mrs Wallentin-Hermann requested that **Alitalia pay her EUR 250 compensation** pursuant to Articles 5(1)(c) and 7(1) of Regulation No 261/2004 due to the cancellation of her flight and also EUR 10 for telephone charges. Alitalia rejected that request. **Extraordinary circumstances (technical problem)**

Diapositiva 13

The right to financial compensation – Long delays (article 6)

Right to compensation in case of long delays: the proposal explicitly introduces the right to compensation in case of long delays - as announced by the ECJ in the joined **cases C-407/07 and C-432/07 (Sturgeon) - into the text of Regulation (EC) No 261/2004.**

- To avoid an increase in cancellations (which are in general more inconvenient to passengers
- The right to compensation arises is proposed to be increased **from three to five hours** for all journeys within the EU. (Article 1(5) of the proposal – Article 6(2) of the amended Regulation (EC) No 261/2004)

Diapositiva 14

RIGHT TO REROUTING

According to Article 8 of the proposal, which specifies that consumers have the option of being **re-routed free of charge in the event of cancellation** and that airlines must also propose the re-routing option via alternative means of transport and with another air carrier. As a reminder, when a flight is disrupted, 3 out of 4 passengers prefer to be re-routed rather than refunded. However, according to the Commission's proposal, passengers should wait at least 12 hours before being re-routed by other means of transport. In its position, **the European Parliament proposed an 8-hour waiting period.**

These waiting times are unacceptable for a re-routing "at the earliest opportunity". BEUC strongly encourages the legislators to delete such time limits before passengers can benefit from the re-routing right. Moreover, alternative transport should be guaranteed as soon as possible even with **alternative modes of transport (i.e. train, bus) if they allow consumers to reach their destination quicker.**

Diapositiva 15

PRINCIPLES

Missed connecting flight: the proposal confirms that passengers that miss a flight connection because their previous flight was delayed have a right to care (to be provided by the operating air carrier of the missed flight which is best positioned to provide this care) and, under certain circumstances, a right to compensation (to be provided by the air carrier operating the delayed flight as it was at the origin of the total delay).

Rescheduling: the proposal confirms that passengers of flights rescheduled with a notice of period of less than two weeks in advance of the originally scheduled time have similar rights to delayed passengers (Article 1(5) of the proposal – Article 6 of the amended Regulation (EC) No 261/2004).

Diapositiva 16

Tarmac delays: Proposal supports the new right to assistance for passengers blocked on the plane **after 1 hour of waiting (toilets, drinking water, air conditioning and medical assistance).** More importantly, passengers **should not be obliged** to stay on the plane for 5 hours but should rather have the right to disembark after a 2-hour delay as proposed in the European Parliament's position

- **Partial ban of the "no show" policy:** the proposal confirms that passengers may not be denied boarding on a return journey of the same ticket on the grounds that they did not take the outward journey. The Commission decided against a full ban of the "no show" policy because it would impair airlines from offering indirect flights at lower prices than direct flights and therefore hurt competition (Article 1(3(b)) of the proposal – Article 4(4) of the amended Regulation (EC) No 261/2004).

- **Right to information:** passengers should have a right to information about the flight disruption as soon as the information is available (Article 1(13) of the proposal – Article 14 of the amended Regulation (EC) No 261/2004).

Diapositiva 17

CLARIFICATION

- **Protection of passengers in case of insolvency of the airline.** Since the beginning of 2017 at least 32 airlines went bankrupt. Over this period 76% of passengers did not benefit from any form of protection.
- **Right for passengers to transfer their tickets. PROPOSAL** supports the introduction of the right to correct spelling mistakes but considers that the proposal does not go far enough. Passengers should be able to modify errors in relation to the day and time of the flight during a similar period of 48 hours and to transfer their tickets.

Diapositiva 18

CONCLUSION

⚖ Until 2019, work on the proposal was put on hold due to a number of outstanding issues to be resolved.

⚖ In 2019, the **Finnish presidency restarted discussions** on the proposal. The European Parliament reconfirmed its position.

⚖ In early 2020, the **Croatian presidency made further progress** putting forward new compromise proposals with the objective of reaching a general approach within the Council.

2. Presentation / Presentazione

Dariya Bagdatova - Zulaykho Ravshanova
Alua Shakhmetova
(student's matriculation No 1915491, 1924336 and 1919869)

EU AIR PASSENGER RIGHTS

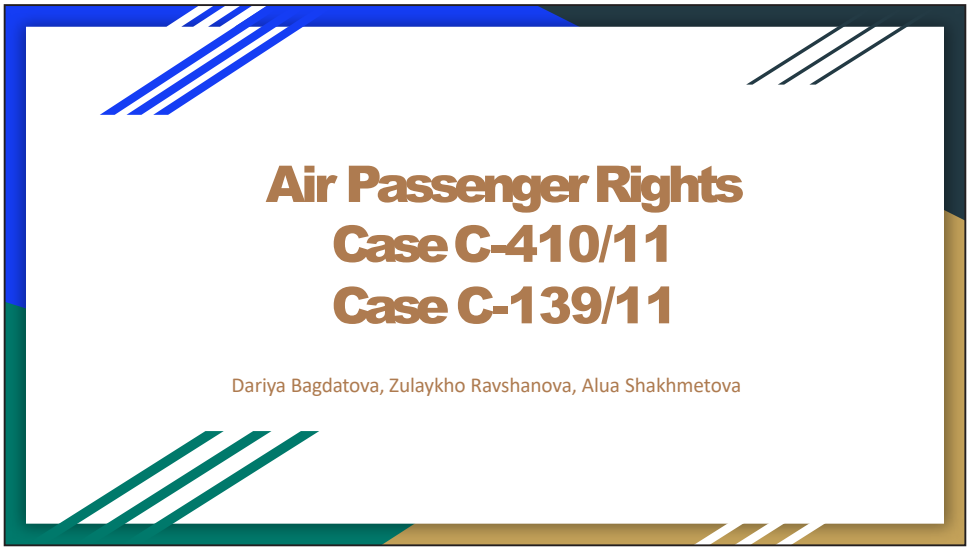
Students dealt with the Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. The following two judgements of the Court of Justice of the European Union are also considered: 22 November 2012, Pedro Espada Sánchez and Others v Iberia Líneas Aéreas de España SA (Case C-410/11) and 22 November 2012, Joan Cuadrench Moré v Koninklijke Luchtvaart Maatschappij NV (Case C-139/11). The first judgment is related to the interpretation of Article 22.2 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999. The second judgment is related to the interpretation of Articles 5 and 7 of the Reg. (EC) No 261/2004, which respectively refer to flight's cancellation and compensation.

I DIRITTI DEI PASSEGGERI NEL TRASPORTO AEREO

Le studentesse hanno esaminato il Regolamento (CE) n. 261/2004 che istituisce regole comuni in materia di compensazione ed assistenza ai passeggeri in caso di negato imbarco, di cancellazione del volo o di ritardo prolungato, attraverso l'analisi delle seguenti decisioni della Corte di giustizia dell'Unione europea: 22 novembre 2012, Pedro Espada Sánchez e altri c. Iberia Líneas Aéreas de España SA (Causa C-410/11) and 22 novembre 2012, Joan Cuadrench Moré c. Koninklijke Luchtvaart Maatschappij NV (Causa

C-139/11). La prima sentenza riguarda l'interpretazione dell'articolo 22.2 della Convezione di Montreal del 28 maggio 1999 per l'unificazione di alcune norme relative al trasporto aereo internazionale. La seconda sentenza attiene all'interpretazione degli articoli 5 e 7 del Reg. (CE) n. 261/2004, che riguardano rispettivamente la cancellazione del volo e la compensazione.

Diapositiva 1



Diapositiva 2

Mr Espada Sánchez,

Ms Oviedo Gonzáles

Their two children: Lucía and Pedro

The Airline

Iberia Líneas Aéreas de España SA

('Iberia')

The loss of checked baggage

Diapositiva 3

Legal Context

The Montreal Convention

The third recital in the preamble to the Montreal Convention, the States Parties to that convention 'recognise the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution.'

The fifth recital in that preamble states: '…collective State action for further harmonisation and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests …'.

Paragraph 3 of Article 3 of the Montreal Convention, which is entitled 'Passengers and baggage', provides:

'The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.'

Diapositiva 4

Legal Context

The Montreal Convention

Paragraphs 2 of Article 17

'The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.'

Diapositiva 5

Legal Context

The Montreal Convention

Paragraph 2 of Article 22

'In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.'

Diapositiva 6

Legal Context

Recital 1 in the preamble to Decision 2001/539 states:

'It is beneficial for European Community air carriers to operate under uniform and clear rules regarding their liability for damage and that such rules should be the same as those applicable to carriers from third countries.'

Article 1 of Regulation (EC) No 2027/97 of the Council of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ 1997 L 285, p. 1), as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ 2002 L 140, p. 2) ('Regulation No 2027/97'), states:

'This Regulation implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions …'.

Diapositiva 7

Legal Context

Article 3(1) of Regulation No 2027/97 is worded as follows:

'The liability of a Community air carrier in respect of passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability.'

Recital 12 in the preamble to Regulation No 889/2002 states that 'uniform liability limits for loss of, damage to, or destruction of, baggage and for damage occasioned by delay, which apply to all travel on Community carriers, will ensure simple and clear rules for both passengers and airlines and enable passengers to recognise when additional insurance is necessary.'

Diapositiva 8

The four passengers seek damages from Iberia, pursuant to Article 22(2) of the Montreal Convention, in the amount of EUR 4 400, corresponding to 4 000 Special Drawing Rights ('SDR'), that is to say, 1000 SDR per passenger.

By judgment of 18 March 2010, the Juzgado Mercantil (Commercial Court) No 2, Barcelona, upheld their claim in part and ordered Iberia to pay the sum of EUR 600 together with interest at the statutory rate.

The Audiencia Provincial de Barcelona (Provincial Court, Barcelona), hearing the appeal against that judgment, is uncertain as to how to interpret Article 22(2) of the Montreal Convention. It notes in that connection that the possibility cannot be ruled out that, under Article 22(2) of that convention, read in the light of Article 3(3) thereof, only a passenger who has obtained the baggage identification tag referred to in Article 3(3) is entitled to compensation in the case of loss of baggage.

Diapositiva 9

Questions to the Court of Justice

Must the limit of 1000 [SDR] per passenger, laid down in Article 22(2) of the Montreal Convention …, concerning the liability of the carrier in the event of the destruction, loss or damage of baggage, considered in conjunction with Article 3(3) of that convention, be interpreted as a maximum limit for each individual passenger where a number of passengers travelling check in their shared baggage together, regardless of whether there are fewer pieces of checked baggage than there are actual travellers?

Or, on the contrary, must the limit to damages laid down in Article 22(2) of the Montreal Convention be interpreted as meaning that, for each piece of checked baggage, only one passenger can be entitled to claim compensation and that, accordingly, the maximum limit applied must be that fixed for a single passenger even if it is proved that the lost baggage identified by a single tag belongs to more than one passenger?

Diapositiva 10

Consideration of the questions referred

Article 17(2) of the Montreal Convention that a carrier is liable, inter alia, for damage sustained in the event of loss of baggage. Article 22(2) of that convention provides, in particular, that '[i]n the carriage of baggage, the liability of the carrier in the case of … loss … is limited to 1 000 [SDR] for each passenger …'

It is apparent from the provisions referred to in the preceding paragraph that it is the damage sustained in the event of loss of baggage carried which engages the air carrier's liability and that it is the passenger who is entitled, within the limits laid down, to compensation for the damage sustained.

In addition, it is apparent from Article 17(2) of the Montreal Convention that the air carrier is liable for damage linked to the loss of any of the baggage belonging to the passengers, whether checked or unchecked. That finding is also confirmed by the use, without additional clarification, in Article 22(2) of the Montreal Convention, of the term 'baggage', defined in Article 17(4) of that convention as meaning – unless otherwise specified – 'both checked baggage and unchecked baggage

Diapositiva 11

Incompatibility

That interpretation cannot be called in question by Article 3(3) of the Montreal Convention, which provides that '[t]he carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.' Contrary to the assertions made by Iberia and the European Commission, that provision – as the German Government has correctly argued – merely imposes on an air carrier an obligation to ensure that checked baggage is identifiable and cannot support the inference that the right to compensation in the event of loss of baggage and the limits placed on that right, referred to in Article 22(2) of the convention, apply solely for the benefit of passengers who have checked in one or more pieces of baggage

Thus, when read together, the relevant provisions of the Montreal Convention must be interpreted as meaning that an air carrier must be considered liable to pay a passenger compensation to the extent that that passenger has sustained damage in the form of the loss of items belonging to him, where those items were placed in baggage checked in in the name of another passenger on the same flight and that baggage was lost. Consequently, not only a passenger who has checked in his own baggage in person, but also a passenger whose items were placed in the baggage checked in by another passenger on the same flight, is granted an individual right to compensation by the Montreal Convention where those items are lost, in accordance with the conditions laid down in the first sentence of Article 17(2) of that convention and within the limits laid down in Article 22(2) thereof

Diapositiva 12

Considerations:

It should be noted that the third recital in the preamble to the Montreal Convention recognises 'the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution

Given those objectives, the parties to that convention decided to establish a system of strict liability which implies, none the less, that an 'equitable balance of interests' be maintained, in particular as regards the interests of air carriers and of passengers (see *Walz*, paragraphs 31 and 33)

That would not be the position if items belonging to a passenger, placed in baggage belonging to another passenger and checked in by the latter, had to be regarded as excluded from the right to compensation provided for under the Montreal Convention, on the ground that the baggage had not been checked in by that first passenger

Granting a right to compensation would impose a very heavy compensatory burden on air carriers – which would be difficult to determine and calculate – and would be liable to undermine, if not paralyse, the economic activity of those carriers, thereby breaching the convention

Diapositiva 13

Further consideration:

In that connection, it should first of all be noted that granting such a right in no way prevents air carriers from being able to identify and calculate clearly, in respect of each passenger, the burden of compensation liable to be imposed upon them

that potential burden cannot be regarded as undermining or paralysing the economic activity of those carriers. It must be emphasised that the liability limits referred to in paragraph 29 above operate for the benefit of air carriers and that, as regards baggage, the limit laid down constitutes, pursuant to Article 22(2) of the Montreal Convention

it should be recalled that, for the purposes of the compensation provided for under Article 22(2) of the Montreal Convention, it is for the passengers concerned, subject to review by the national court, to establish to the requisite legal standard the contents of the lost baggage and the fact that the baggage checked in in another passenger's name did in fact contain items belonging to another passenger on the same flight. In that connection, the national court may have regard to the fact that those passengers are members of the same family, that they bought their tickets together or that they checked in at the same time

Diapositiva 14

The Court rules...

Article 22(2) of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001, read in conjunction with Article 3(3) of that convention, must be interpreted as meaning that the right to compensation and the limits to a carrier's liability in the event of loss of baggage apply also to a passenger who claims that compensation by virtue of the loss of baggage checked in in another passenger's name, provided that that lost baggage did in fact contain the first passenger's items.

Diapositiva 15

Mr Cuadrench Moré

Koninklijke Luchtvaart Maatschappij NV ('KLM')

Compensation of the cancellation of a flight

Diapositiva 16

Legal Context

The Warsaw Convention

Article 17(1) of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as amended and supplemented by the Hague Protocol of 28 September 1955, the Guadalajara Convention of 18 September 1961, the Guatemala Protocol of 8 March 1971, and the four additional Montreal Protocols of 25 September 1975 ('the Warsaw Convention') provides: '[t]he carrier is liable for damage sustained in case of death or personal injury of a passenger upon condition only that the event which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking …'

Article 19: 'The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.'

Article 29: ' 1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped. 2. The method of calculating the period of limitation shall be determined by the law of the Court seised of the case.'

Diapositiva 17

Legal Context

The Warsaw Convention

The Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, was signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38; 'the Montreal Convention'). That convention entered into force, so far as the European Union is concerned, on 28 June 2004. As from that date and, in particular, as between the Member States, the Montreal Convention prevails over the Warsaw Convention, pursuant to Article 55 of the Montreal Convention.

Article 19 of the Montreal Convention provides:

'The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo …'.

Article 35 of the Montreal Convention, entitled 'Limitation of actions', reproduces verbatim the wording of Article 29 of the Warsaw Convention.

Diapositiva 18

Legal Context

By Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents (OJ 1997 L 285, p. 1), the EU legislature sought to improve the level of protection of passengers involved in air accidents by the introduction of provisions intended to replace, as regards air transport between the Member States, certain provisions of the Warsaw Convention, pending a full review and revision of that convention.

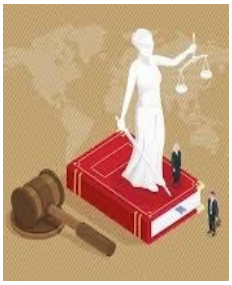
Article 1 of Regulation No 2027/97 provides:

'This Regulation lays down the obligations of Community air carriers in relation to liability in the event of accidents to passengers for damage sustained in the event of death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board an aircraft or in the course of any of the operations of embarking or disembarking...'

Diapositiva 19

Legal Context

Regulation No 261/2004



Article 5(1): '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 …'

Article 6 of that regulation lays down the obligations on air carriers concerning assistance to passengers when a flight is delayed.

Article 7(1): 'Where reference is made to this Article, passengers shall receive compensation amounting to: (a) EUR 250 for all flights of 1500 kilometres or less; (b) EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres; (c) EUR 600 for all flights not falling under (a) or (b).'

Regulation No 261/2004 contains no provision fixing a time-limit for bringing actions to enforce the rights guaranteed by that regulation.

Diapositiva 20

Legal Context

Spanish law

The applicable national rules set a period of 10 years for claims for which no other period is stipulated.

Diapositiva 21

On 27 February 2009, Mr Cuadrench Moré brought an action against KLM before the Juzgado Mercantil No 7 de Barcelona (Commercial Court 7, Barcelona), claiming, on the basis of Regulation No 261/2004, EUR 2 990 together with interest and costs, by way of compensation for the damage sustained as a result of the cancellation of flight in question.

In that regard, KLM contended that the action was time-barred, on the ground that the two-year period specified in Article 29 of the Warsaw Convention within which actions for damages against air carriers must be brought had expired.

By judgment of 26 May 2009, the Juzgado Mercantil No 7 de Barcelona ordered KLM to pay the amount of EUR 600 together with statutory interest, on the basis of Regulation No 261/2004. In its judgment, that court rejected the ground of defence raised by KLM, taking the view that neither the limitation period in Article 29 of the Warsaw Convention nor that in Article 35 of the Montreal Convention was applicable in the present case, since it was Regulation No 261/2004 that was at issue. In the absence of express provision in that regulation for a time-limit for bringing actions thereunder, that court took the view that the Spanish rules were applicable.

Diapositiva 22

Question to the Court of Justice

Is [Regulation No 261/2004] to be interpreted as meaning that, as regards time-limits for bringing proceedings, Article 35 of the Montreal Convention, establishing a two-year period, is applicable, or must some other [European Union] provision or domestic law be regarded as applicable?

Diapositiva 23

First of all, it must be recalled 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.

To that effect

it is not disputed that Regulation No 261/2004 contains no provision on the time-limits for bringing actions before the national courts for compensation under Articles 5 and 7 of that regulation.

Diapositiva 24

Regulation No 2027/97

Purpose of Regulation 2027/97 is to substitute, as regards air transport between the Member States, certain provisions affording greater protection to passengers involved in air accidents than the provisions laid down by the Warsaw Convention, without, however, precluding the application of the remaining provisions, which included, in particular, the procedural rules for bringing an action for damages laid down in Article 29 of that convention.

By contrast, Regulation No 261/2004 establishes a system to redress, in a standardised and immediate manner, the damage that is constituted by the inconvenience that delay and cancellations to flights cause, which operates at an earlier stage than the Montreal Convention and, consequently, is independent of the system stemming from that convention.

Diapositiva 25

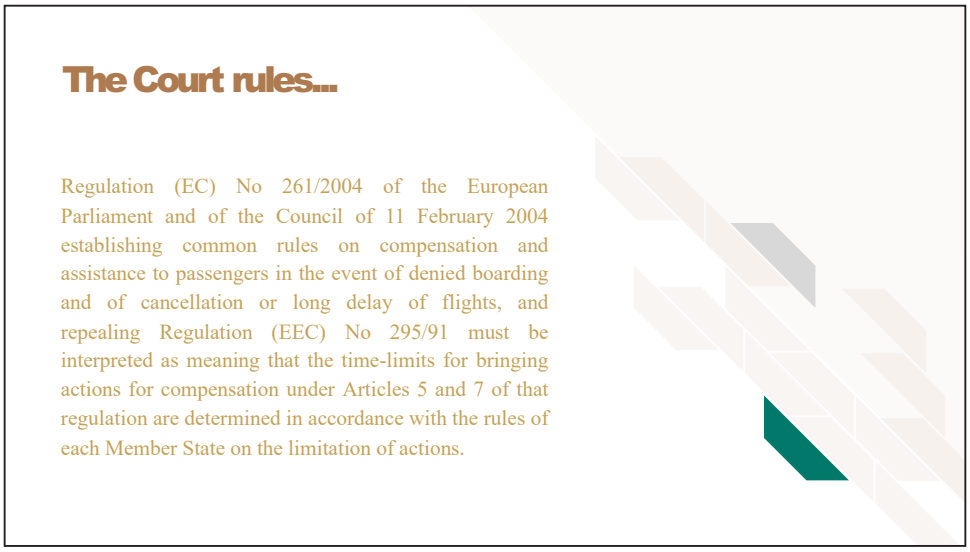
That finding cannot be called into question, contrary to what KLM maintains, by the fact that Article 29 of the Warsaw Convention and Article 35 of the Montreal Convention provide that the right to damages is to be extinguished if an action in respect of the rights granted by those conventions is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

That finding cannot be called into question, contrary to what KLM maintains, by the fact that Article 29 of the Warsaw Convention and Article 35 of the Montreal Convention provide that the right to damages is to be extinguished if an action in respect of the rights granted by those conventions is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

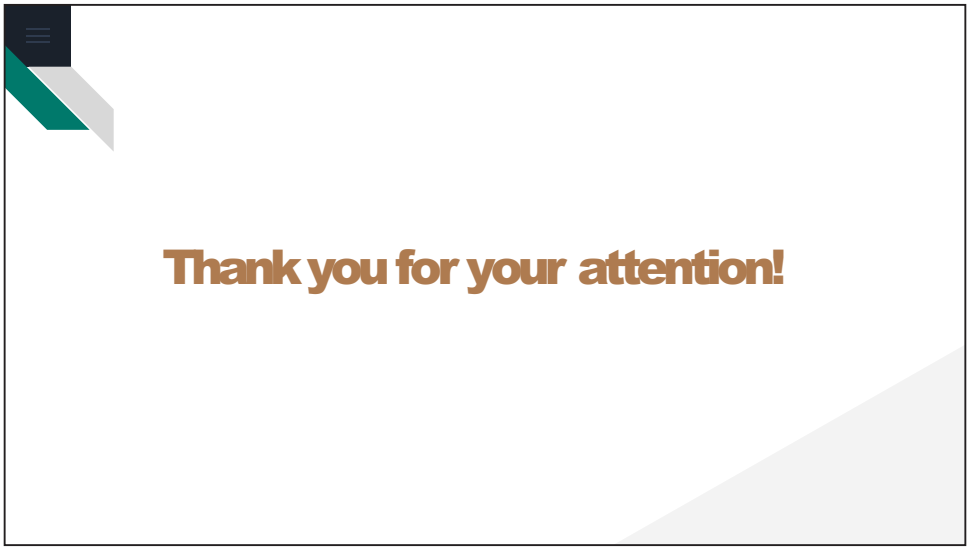
> The compensation measure laid down in Articles 5 and 7 of Regulation No 261/2004 falls outside the scope of the Warsaw and Montreal Conventions (see, to that effect, Joined Cases C-581/10 and C-629/10 *Nelson and Others* [2012] ECR, paragraph 55).

Consequently, the two-year limitation period laid down in Article 29 of the Warsaw Convention and in Article 35 of the Montreal Convention cannot be considered to apply to actions brought, inter alia, under Articles 5 and 7 of Regulation No 261/2004.

Diapositiva 26



Diapositiva 27



3. Presentation / Presentazione

Hala Boumaiz - Alexandru Melnic
(student's matriculation No 1903942 and 1896940)

SLOT ALLOCATION AND EU AIRPORT COORDINATOR

Students examined the slot allocation procedure within the EU airports according to Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at EU airports. The role and functions of the airport coordinator were also analysed, considering the following judgement of the Court of Justice of the European Union: 2 June 2016 European Commission v Portuguese Republic (Case C-205/14). This judgement deals with the legal issue of the functional and financial independence of the airport coordinator for the slot's allocation procedure.

ASSEGNAZIONE DELLE BANDE ORARIE E COORDINATORE AEROPORTUALE EUROPEO

Gli studenti hanno analizzato la procedura di assegnazione delle bande orarie negli aeroporti dell'Unione europea secondo il regolamento (CEE) n. 95/93 del Consiglio, del 18 gennaio 1993, relativo a norme comuni per l'assegnazione di bande orarie negli aeroporti della Comunità. Inoltre, gli studenti hanno poi esaminato il ruolo e le funzioni del coordinatore aeroportuale attraverso l'analisi della seguente sentenza della Corte di giustizia dell'Unione europea: 2 giugno 2016, Commissione europea c. Repubblica portoghese (Causa C-205/14). La sentenza affronta la questione giuridica dell'indipendenza funzionale e finanziaria del coordinatore aeroportuale per la procedura di assegnazione delle bande orarie.

Diapositiva 1

Diapositiva 2

Diapositiva 3

PREFATIO

- The aviation sector has experienced continued growth over the past years, which has significantly enhanced connectivity within Europe, and translated into important socio-economic benefits.
- As air transport becomes increasingly prominent for both citizens and businesses, traffic flows will continue on a firm upwards trajectory and are, in fact expected to double in Europe by 2035 according to IATA estimates.
- This surge in air transport demand is placing increasing pressure on scarce airport infrastructure and capacity, which in turn can lead to delays, weakened connectivity and lowered quality of services.
- Following the creation of a single market for aviation in the 1990s, and in light of continuous growth in air transport, the need for regulation of airport slots was acknowledged in order to ensure an efficient use of capacity at congested airports.

Diapositiva 4

SLOT ALLOCATION AT INTERNATIONAL LEVEL IATA GUIDELINES

- The Worldwide Slot Guidelines (WSG) is published by IATA to provide the global air transport community with a single set of standards for the management of airport slots at coordinated airports and of planned operations at facilitated airports.
- The WSG is the industry standard recognized by many regulatory authorities for the management and allocation of airport capacity.
- The WSG is overseen by the IATA Joint Slot Advisory Group (JSAG), composed of an equal number of IATA member airlines and airport coordinators.
- JSAG meets regularly to agree on proposals for changes to the WSG, twice a year at the IATA Slot Conference.
- All changes are agreed by JSAG before being endorsed by the Heads of Delegation of the Slot Conference.

Diapositiva 5

SLOT ALLOCATION EU LEVEL

- Airport slot allocation at EU airports is governed globally by the IATA Worldwide Slot Guidelines.
- Within the European Union by Regulation 95/93 and its respective amendments:
  - Regulation **894/2002**,
  - Regulation **1554/2003**,
  - Regulation **793/2004**,
  - Regulation **545/2009**, and
  - Regulation **459/2020**.
- Although the European Regulation is broadly based on the IATA guidelines, the EU Slot Regulation contains some specific measures to promote non-discriminatory behaviour, support protection for routes serving Public Service Obligations (PSO) and encourage new entrants.

Diapositiva 6

SLOT LEGAL REGIME

- "Slot" is defined in the current EU Reg. 95/93 as "the permission given by a coordinator in accordance with this Regulation to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator in accordance with this Regulation".
- ICAO, defines a "Slot" as "specific time periods allotted for an aircraft to land or take off at an airport".
- The definitions include the full range of airport infrastructure, i.e. runway, terminal, apron, gates. They do not refer just to the runway.
- Speculative doctrine in what regards the legal properties of a "Slot":
  - property-right;
  - utilization-right;
  - participation-right.

Diapositiva 7

ALLOCATION PROCEDURE

- The primary allocation of slots is an administrative process.
- Member States designate congested airports as coordinated, and slot coordinators at each of these airports seek to balance the demand for slots with the supply.
- Grandfather rights;
- Time adjustments of historical slots;
- Public Service Obligations;

Diapositiva 8

GRANDFATHER RIGHTS

- The process of slot allocation is dealt with in Article 8 of the Regulation.
- An air carrier is entitled to claim the same slot in the next scheduling period that it had been operating in the previous equivalent period.
- Use-it-or-lose-it rule, also called 80-20 rule.
- Unused slots should be withdrawn from the carrier and made available in the appropriate pool.
- Non-utilisation can only be justified by reason of airspace or airport closures, grounding of a type of aircraft or any other exceptional situation of a similar type.

Diapositiva 9

TIME ADJUSTMENT OF HISTORICAL SLOTS

- Time adjustments of historical slots are made after historical precedence has been taken into account and before the allocation of the remaining slots from the pool to the other applicant air carriers.
- Re-timing of series of slots is carried out only for operational reasons or for improvement of the slot timing of the applicant air carrier with respect to the timing initially requested.
- If a requested slot cannot be accommodated, the coordinator informs the requesting air carrier of the reasons and indicates the nearest alternative slot.
- If no adequate alternative is available or acceptable, the slot request is rejected.
- If not all requests can be satisfactorily accommodated, preference shall be given to commercial air services, in particular for scheduled and programmed non-scheduled services.

Diapositiva 10

PUBLIC SERVICE OBLIGATIONS (PSO)

- Member State may reserve at a coordinated airport the slots required for the operations envisaged the public service route.
- If the reserved slots on the route concerned are not used, they shall be made available to any other air carrier interested in operating the route in accordance with the public service obligations.
- If no other carrier is interested in operating the route and the Member State concerned does not issue a call for tenders, the slots shall either be reserved for another route subject to public service obligations or be returned to the pool.

Diapositiva 11

SLOT POOL

→ *Article 10 of Reg. No. 95/93.*

- Airports where slots are allocated, a pool for each coordinated period shall be set up which contains all newly created slots.
- Unused slots and those slots that carriers give up or otherwise become free.
- After this first assignment to incumbent airlines and the slot reservation for PSOs, a slot pool is created with the remaining slots.
- 50% of this slot pool is allocated free of charge by the slot coordinator to new entrant airlines.
- An airline is considered a new entrant at an airport on a particular day if, upon allocation:

  a) it would hold fewer than five slots in total on that day;

  b) for an intra-EU route with less than 3 competitors, it would hold fewer than five slots for that route on that day.

Diapositiva 12

SLOT MOBILITY - IATA PROVISIONS

- Slot exchange is expressly encouraged if the exchange improves the operating position of the airline.
- Slots may be freely exchanged;
- One for one basis;
- Any number of Airlines;
- Encourage and facilitate multilateral slot exchanges;
- IATA website, an information portal to exchange slots;
- IATA Guidelines - there is no bar to monetary consideration.

Diapositiva 13

SLOT MOBILITY – REG. (EEC) NO. 95/93

- Article 8 (1) Reg. (EEC) No. 95/93;
- Slots may be exchanged or transferred;
- The transfer shall be notified to the coordinator;
- The coordinator can decline to confirm the transfers or exchanges;
- Exchange "one for one" refers to slots at the same airport;
- Slots may be exchanged by mutual agreement or as a result of a total or partial takeover or unilaterally.
- Slot trading is not specifically regulated at the time being;
- Secondary slot trading has been in operation at UK airports for some time.

Diapositiva 14

REGINA VS. AIRPORT COORDINATION LIMITED *EX PARTE* THE STATE OF GUERNSEY BOARD OF TRANSPORTATION

- Slot allocation has been the subject of a number of legal actions.
- This case offers a clear example of the application of Regulation 95/93.
- In 1998, the States of Guernsey Transportation Board ("the Board") brought a suit against Airport Co-ordination Ltd. ("ACL"), the designated airport coordinator for Heathrow Airport in London.
- Object of the case: exchange of slots at Heathrow between Air UK and British Airways.
- The Board alleged that this violated Articles 8 and 10 of Regulation 95/93.
- The Board also alleged that the decision of ACL to reallocate the same slots to Air UK was illegal.

Diapositiva 15

REGINA VS. AIRPORT COORDINATION LIMITED *EX PARTE* THE STATE OF GUERNSEY BOARD OF TRANSPORTATION

- The Board raised four possible issues for consideration:
- **The first** was that the transactions between Air UK and British Airways "were not permissible exchanges" of slots.
- The Board grounded its argument on the fact that the slots British Airways provided were unsuitable for Air UK's use and that Air UK never used the slots, instead returning them to the Heathrow slot pool.
- The Board cited an informal statement made by a member of Commission's Directorate General VII (Transportation), "an exchange of money for slots, or an exchange of slots which results in only one party using its slots, is an illegal transfer of slots rather than an exchange".
- The Court rejected any such interpretation.
- Article 8(4) of Regulation 95/93, the court observed, provides for the free exchange of slots, placing no limitations or restrictions on how slots may be exchanged.
- The court also stated that the presence of an accompanying payment of money does not convert an exchange of slots into a sale.

Diapositiva 16

REGINA VS. AIRPORT COORDINATION LIMITED *EX PARTE* THE STATE OF GUERNSEY BOARD OF TRANSPORTATION

- **The second issue**, concerned the question of whether Air UK and British Airways effected a "transfer" rather than an exchange.
- The court noted that this was an odd linguistic issue.
- The opening sentence of Article 8(4), which states that slots may be "exchanged" or "transferred," without distinguishing between the two.
- An explanation of the distinction between the two terms would be left for a court that had reason to define them. (which court according to your opinion?)

Diapositiva 17

REGINA VS. AIRPORT COORDINATION LIMITED *EX PARTE* THE STATE OF GUERNSEY BOARD OF TRANSPORTATION

- **The third issue** the Board presented was whether ACL, as airport coordinator, had a duty to investigate the circumstances surrounding exchanges of slots.
- The Board, based its argument on Article 8(4), which makes exchanges of slots "subject to confirmation" by the airport coordinator.
- The court found that Regulation 95/93 did not grant airport coordinators investigative powers to examine slot exchanges in depth.
- **The final issue** was whether the decision of ACL to allocate the same slots to Air UK during the next scheduling period was legal.
- The Board argued that Regulation 95/93 was intended to assure that slots were allocated in a manner which would make the best possible use of them.
- The court rejected this argument, pointing out that Article 10 of the regulation specifically gave rights to the previous holders of slots, subject only to the condition that the holders had met the operating requirement for the previous scheduling period.

Diapositiva 18

REGINA VS. AIRPORT COORDINATION LIMITED *EX PARTE* THE STATE OF GUERNSEY BOARD OF TRANSPORTATION

Conclusions

- The court's final determination was that ACL had not violated the plain meaning of the terms of Regulation 95/93.
- Although the court did not specifically address the terms of the agreement between Air UK and British Airways in its final decision, its analysis clearly implied that the agreement was in compliance with the regulation.
- While the court's decision is obviously not binding on the whole EU, the fact that the Board could not present any Commission rulings to support its position strongly suggests that the court's decision was not too far removed from the official Union view on the subject.
- It would thus appear that the exchange of slots, provided it is done on a one-for-one basis, is permitted regardless of what the exchanging parties plan to do with the slots or if the exchange is "sweetened" with money or other benefits.

Diapositiva 19

PART B

AIRPORT COORDINATION

Diapositiva 20

INTRODUCTION

- Due to the growth of air traffic some airports are experiencing a discrepancy between available airport capacity and demand

Would building new capacity solve the problem?

- Capacity building is not always possible for various reasons: economic, environmental, landscape…
- Airport coordination seems to be the most efficient way to deal with air traffic and air congestion by maximizing the efficient use of airport infrastructure.

2% The global aviation industry produces around **2%** of all human-induced carbon dioxide (CO_2) emissions.

12% Aviation is responsible for **12%** of CO_2 emissions from all transports sources, compared to 74% from road transport.

Source: ATAG

Diapositiva 21

DEFINITIONS

- According to **reg. 95/93** and IATA WSG, the levels of airport coordination are:
  - **Coordinated airport (Level 3)**: any airport where, in order to land or take off, it is necessary for an air carrier or any other aircraft operator to have been allocated a slot by a coordinator.
  - **Schedules facilitated airport (Level 2)**: an airport where there is potential for congestion at some periods of the day, week or year which is amenable to resolution by voluntary cooperation between air carriers and where a schedules facilitator has been appointed to facilitate the operations of air carriers operating services or intending to operate services at that airport.
  - **Non-coordinated airport (Level 1)**
- The Member States are responsible for designating airports as schedules facilitated or coordinated.
- They have to meet the principles of transparency, neutrality and non-discrimination in the discussions conducted between the coordinators/facilitators and the aircraft operators.

Diapositiva 22

AIRPORT COORDINATION - OVERVIEW

Coordination plans may change depending on the season (Summer/Winter)

→ There are also airports that are not coordinated but are very flexible in case of air congestion

Diapositiva 23

DESIGNATION OF A COORDINATED AIRPORT

- The designation of an airport as coordinated or schedules facilitated shall be subject to a **capacity analysis** and a consultation on the capacity situation with several stakeholders.
- They must determine any shortfall in capacity, taking into account environmental constraints, when one of the following situations occur:
  - the Member State considers it necessary;
  - within 6 months following a request from air carriers representing more than 50% of the operations at the airport considering that the airport capacity is insufficient;
  - within 6 months following a request from the airport managing body considering that the airport capacity is insufficient;
  - within 6 months upon request from the Commission, especially where an airport is only accessible for air carriers that have been allocated slots or where air carriers (in particular new entrants) have serious problems in securing landing and take-off possibilities.

Diapositiva 24

COORDINATED AIRPORT PARAMETERS

- **Reg. 95/93** defines coordination parameters as the "*expression in operational terms of all the capacity available for airport slot allocation at an airport during each coordination period, reflecting all technical, operational and environmental factors that affect the performance of the airport infrastructure and its different sub-systems*".
- In order to design an airport at coordinated, the Member States have to follow certain parameters (criteria) to determine the airport's eligibility for coordination.
- A well equipped airport leads to maintaining a stable flow in regards to certain weather conditions → delays are minimized.
- Declared capacity is based on a seasonal weather norm and capacities designed to maximise the productivity of the airport infrastructure, these might entail:
  - Noise and emission constraints;
  - Ground handling and capacity of terminal facilities;
  - Runway capacities;
  - Taxiway capacities;
  - De-icing

Diapositiva 25

AIRPORT COORDINATOR

- After an airport is designated as coordinated, Member States shall ensure the appointment of an airport coordinator.
- The airport coordinator must be a qualified natural or legal person whose **neutrality should be unquestioned**. (Article 4(2) of reg. 95/93)
- The responsibilities of the airport coordinator consist in:
  - allocating airport slots in accordance with the provisions of the Reg. 95/93;
  - monitoring the air carrier's activities related to the allocated slots usage in order to apply the regulation
  - participating in the IATA conferences;
  - providing information related to the airport slot allocation process to interested parties in a transparent and timely manner, including reports such as airlines historical slots, requested slots, allocated slots, remaining available slots, etc.

Diapositiva 26

COORDINATION COMMITTEE

- Additionally to the appointment of an airport coordinator, the Member State must also set up a coordination committee at each coordinated airport. This coordination committee may also be appointed for more than one airport. Membership of the committee shall be open to at least:
  - The airport managing body;
  - The relevant air traffic control authorities;
  - The air carriers using the airport and their representative organisations;
  - The general aviation using the airport regularly.

Diapositiva 27

COORDINATION COMMITTEE

- Additionally, the airport coordinator and the Member State representatives shall be invited as observers to the coordination committee meetings.
- The activities of the coordination committee are:
  - Mediate between all parties concerned on the allocation of slots complaints;
  - Make proposals or advise the coordinator and/or the Member State on the possibilities of increasing airport capacity, coordination parameters, allocated slots usage monitoring methods, problems encountered by new entrants, local guidelines for airport slot allocation or usage monitoring and all questions related to the airport capacity;
  - Discuss and propose local guidelines related to airport slot allocation and usage of allocated slots monitoring;
  - Submit the coordination committee discussions report to the Member State with an indication of the positions stated within the committee.

Diapositiva 28

AIRPORT COORDINATOR

What happens if the coordinator is not an independent party (breaching the independence and neutrality principles set by reg. 95/93)?

Diapositiva 29

COMMISSION V PORTUGAL (C-205/14)

EU LAW (Reg 95/93)	Portuguese Law (Decree)
"...the allocation of slots at congested airports should be based on neutral, transparent and non-discriminatory rules" "...the Member State responsible for the coordinated airport should ensure the appointment of a coordinator whose neutrality should be unquestioned"	"Decree Law that designates the coordinated airports, in accordance with Reg. No 95/93." "...appoints Aeroportos de Portugal SA ('ANA') as the national coordinator for the allocation of slots at coordinated airports. ANA, a commercial company governed by private law, is also the managing body of the Portuguese airports."

Diapositiva 30

COMMISSION V PORTUGAL (C-205/14)

- The Commission sent a letter of formal notice to the Portuguese Republic in which it claimed that a department that had been created within the structure of ANA to carry out the tasks which are part of the function of the coordinator ('the DCNS') **did not satisfy the requirements of independence laid down in Article 4(2) of Regulation No 95/93**.
- The Commission stated that, since the DCNS was a division of ANA, there was no functional separation within the meaning of Article 4(2)(b) of that regulation. Furthermore, it maintained that the financing of the DCNS was not such as to guarantee its independent status. It stated that such independence could be ensured only by means of accounts and a budget which are specific to the DCNS. According to the Commission, the **DCNS was financed entirely by ANA.**

Diapositiva 31

COMMISSION V PORTUGAL (C-205/14)

- The Court considers that ANA is a party of interest within the meaning of te regulation. It is in fact an entity of which interest could be affected by slot allocation schedules, as it has the right to be consulted prior to the appointment of the coordinator and must be informed of the requested slots. It is also likely to have an interest that one carrier rather than another should get the time slots, e.g. on the basis of rental contracts of space concluded between certain carriers and the manager.
- Guarantees must therefore be put in place to guarantee the **functional separation of the coordinator from entities with an interest in slot allocation**, so that he can allocate slots in a neutral, transparent and non-discriminatory manner.
- The Court added that a situation such as the one in this case, in which the same entity is both the manager and the slot coordinator does not offer sufficient guarantees to neutrality, transparency and non-discrimination. Insofar as the manager must himself ensure that the coordinator's activity is independent of his or her managerial activity.
- The Court finds that ANA does not present all the guarantees necessary to ensure its independence, since it does not have its own accounts, budget and financial resources. On the contrary, in this case, the funding of the coordinator depends on the airport manager.

Diapositiva 32

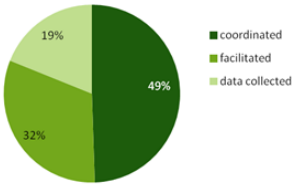
COORDINATION AT EUROPEAN AND INTERNATIONAL LEVEL

- Airport slots are not independent time permissions which can be easily modified. A schedule change at one airport can affect one or more other airports. (Contagion)
- The structure and organisation at international level is a key element in the airport slot allocation process and for that purpose different associations intervene.
- **Airport coordinators association**:
- European airports account for about 60% of all Level 3 slot coordinated airports in the world. Within the remaining 40% of coordinated airports located in other regions, about half of them are located in the Asia Pacific Region.
- The European Airport Coordinators Association (EUACA) is the association of coordinated and schedules facilitated airports within Europe. There are a total of 25 European coordinators and schedules facilitators represented in EUACA.

Diapositiva 33

COORDINATION AT EUROPEAN AND INTERNATIONAL LEVEL

- The EUACA database contains information related to 25 different countries and 190 airports:
  - 94 coordinated airports;
  - 60 schedule facilitated airports;
  - 36 other airports (not coordinated nor schedule facilitated) from which data is collected.

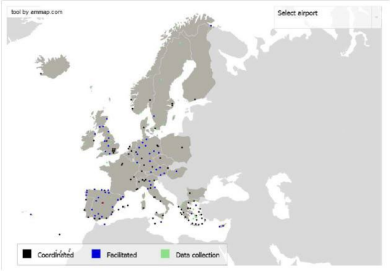


Source: EUACA

Diapositiva 34

COORDINATION AT EUROPEAN AND INTERNATIONAL LEVEL

- As an average, there are almost 4 coordinated airports in each European country, but their distribution within Europe is far from homogeneous. The States with more coordinated airports are Greece, Spain and Italy.

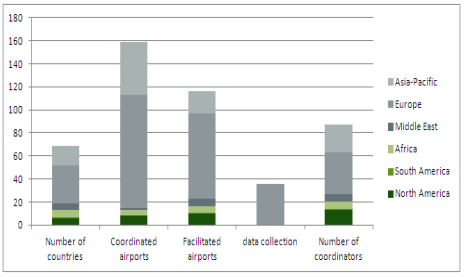


Diapositiva 35

COORDINATION AT EUROPEAN AND INTERNATIONAL LEVEL

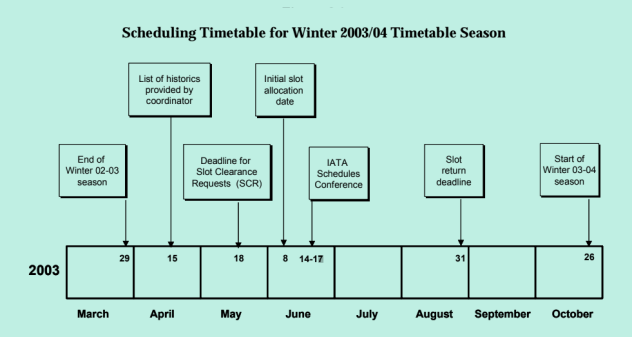
- In the same way that the European coordinators are associated through EUACA, there is a similar association worldwide called Worldwide Airport Coordinators Group (WWACG). The WWACG represents a total of 87 coordinators, which concerns 313 airports and 69 different countries. The distribution of the type of airports is very similar to the one in Europe:

- 158 coordinated airports (51%);
- 118 facilitated airports (38%);
- 35 other airports from which data is collected (11%).



Diapositiva 36

THE WORLDWIDE SCHEDULING PROCESS



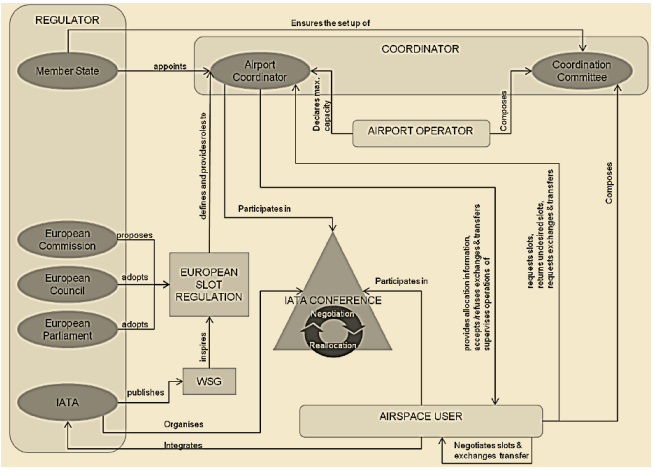
Diapositiva 37

AFTER THE IATA CONFERENCE

- Coordinators need to adjust the schedules to match the available slot holdings.
- If there are small mismatches between the slot holdings and the timetable (5 or 10 minutes), then it may be possible to reschedule the flights.
- If the mismatches become larger (15 or 20 minutes) → may be possible to reschedule the flights but can however be difficult and there will be instances where such rescheduling is not possible without impacting on the overall schedule.
- In the case of larger mismatches, rescheduling will often be impossible and slot exchanges are likely to be required. In the few cases where rescheduling is possible in such circumstances, there will be a **commercial impact arising** (flights not evenly spaced throughout the day).

Diapositiva 38

SUMMARY



Diapositiva 39

4. Presentation / Presentazione

Saadi Chekeeva - Aigerim Tilekeeva
(student's matriculation No 1957924 and 1957889)

COMPARATIVE ANALYSIS: KYRGYZSTAN AND EU REGULATIONS ON AIR PASSENGER RIGHTS

Students dealt with a short comparative analysis of provisions of the Kyrgyzstan and EU rules on air passenger rights.

PROFILI COMPARATIVI DELLA NORMATIVA DEL KYRGYZSTAN E DELL'UNIONE EUROPEA SUI DIRITTI DEI PASSEGGERI NEL TRASPORTO AEREO

Le studentesse hanno svolto una breve analisi comparativa di disposizioni della normativa del Kyrgyzstan e dell'Unione europea sui diritti dei passeggeri nel trasporto aereo.

Diapositiva 1

Comparative Analysis: Kyrgyzstan and EU Regulation on Air Passenger Rights

Saadi Chekeeva - chekeeva.1957924@studenti.uniroma1.it
Aigerim Tilekeeva - tilekeeva.1957889@studenti.uniroma1.it

Diapositiva 2

The movement of passengers and cargo by aircraft such as airplanes and helicopters.

Air transportation has become the primary means of common-carrier traveling. Greatest efficiency and value are obtained when long distances are traveled, high-value payloads are moved, immediate needs must be met, or surface terrain prevents easy movement or significantly raises transport costs.

Although the time and cost efficiencies obtained decrease as distance traveled is reduced, air transport is often worthwhile even for relatively short distances.

Air transportation also provides a communication or medical link, which is sometimes vital, between the different groups of people being served.

Diapositiva 3

HISTORY OF CIVIL AVIATION OF THE KYRGYZ REPUBLIC

1927 - Finn Theodore Suopio landed the first plane on the territory of the Kyrgyz Republic. He flew in Ju-13, which he planted directly on the ground, where today one of the city's hospitals is located.

1933 - The history of civil aviation of the Kyrgyz Republic begins with the adoption of the Resolution of the Council of People's Commissars of the Kyrgyz ASSR.

December 28, 1996 - establishment of the Department of Air Transport and Airspace Use under the Ministry of Transport and Communications of the Kyrgyz Republic

2002 - The Department of Air Transport and Air Use was renamed into the Department of Civil Aviation under the Ministry of Transport and Communications of the Kyrgyz Republic

2009 - The Department was transformed into the Civil Aviation Agency under the Ministry of Transport and Communication of the Kyrgyz Republic.

2016 - Civil Aviation Agency under the Ministry of Transport and Roads of the Kyrgyz Republic

Diapositiva 4

Civil Aviation of the Republic: Figures and Facts

Today, civil aviation is an important part of the industrial and social infrastructure, and its effective functioning serves as a condition for ensuring national security and economic growth of the country.

Air transport gained its development in the post-war period, when passenger traffic began to be carried out on a regular basis.

The main air transport enterprises today is the Manas International Airport, which also includes the Osh, Issyk-Kul, Karakol and Batken airports.

Diapositiva 5

Civil Aviation of the Republic: Figures and Facts

In 2019, the volume of national air traffic of passengers amounted to more than one million passengers, of which about 48 percent was accounted for by international air travel and about 53 percent - by domestic ones. At the same time, the passenger turnover of air transport amounted to more than 2 billion passenger-kilometers.

Diapositiva 6

Scope of legislation

Aviation regulations. Air carriage regulations

According to the rules of air carriage posted on the website of the Civil Aviation Agency, passengers have the right to claim on compensation if the flight was delayed due to the fault of the airline, including due to bad weather conditions.

Diapositiva 7

According to clause 9.3. in the aviation regulations of the Kyrgyz Republic. Air Carriage Rules

Air carrier liability for delay

9.3.1. Unless otherwise specified in the air carriage contract, in the event of delay and subsequent cancellation of the flight due to the fault of the air carrier the air carrier

at the request of the passenger, pays the latter monetary compensation in the amount of the cost of transportation on the section where the delay occurred:

- 10 percent - with a delay of more than 4 hours when performing internal transportation;

- 25 percent - if there is a delay of more than 8 hours in execution international flights.

Diapositiva 8

Kyrgyz Regulation on Air Passenger Rights

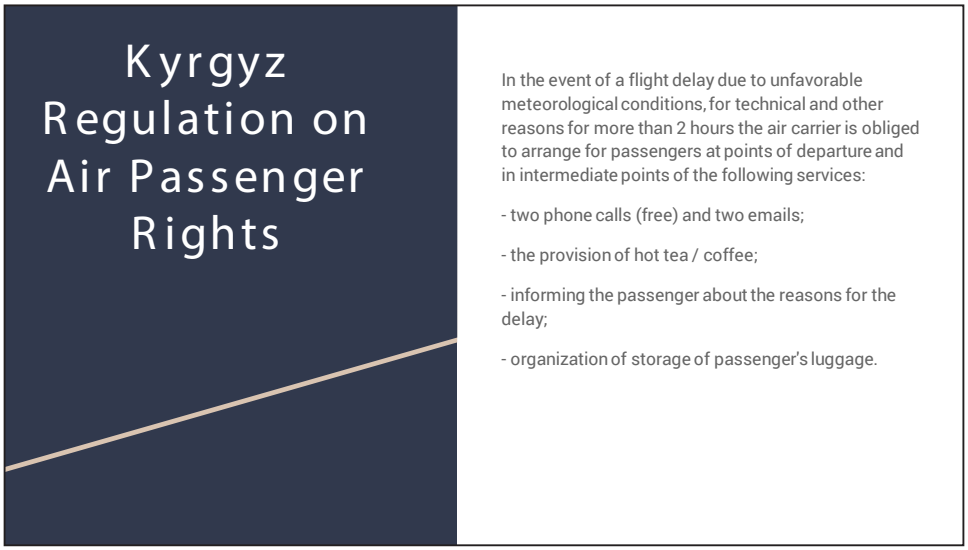
In the event of a flight delay due to unfavorable meteorological conditions, for technical and other reasons for less than 2 hours the air carrier is obliged to arrange for passengers at points of departure and in intermediate points of the following services:

- organization of storage of passenger's baggage;

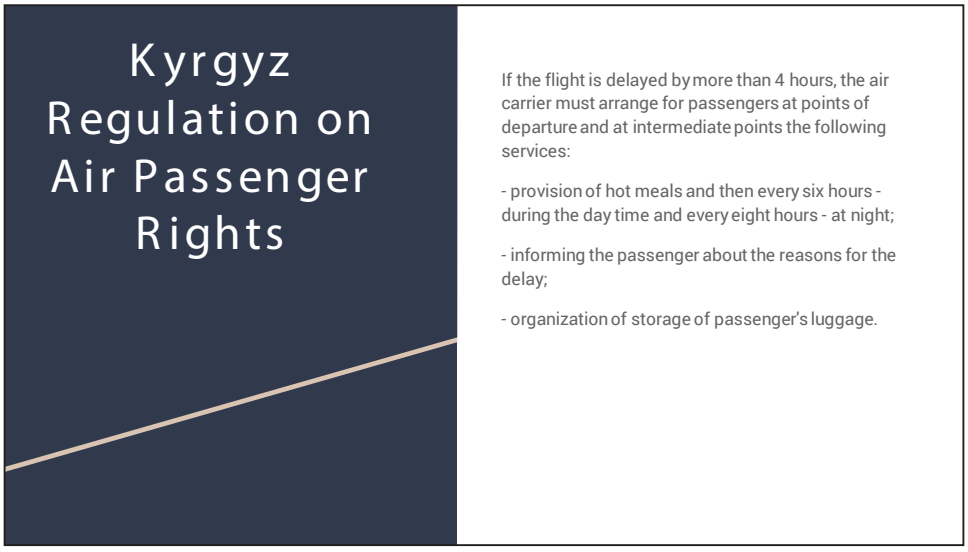
- provision of rooms for mother and child for a passenger with a child at the age up to seven years old;

- informing the passenger about the reasons for the delay.

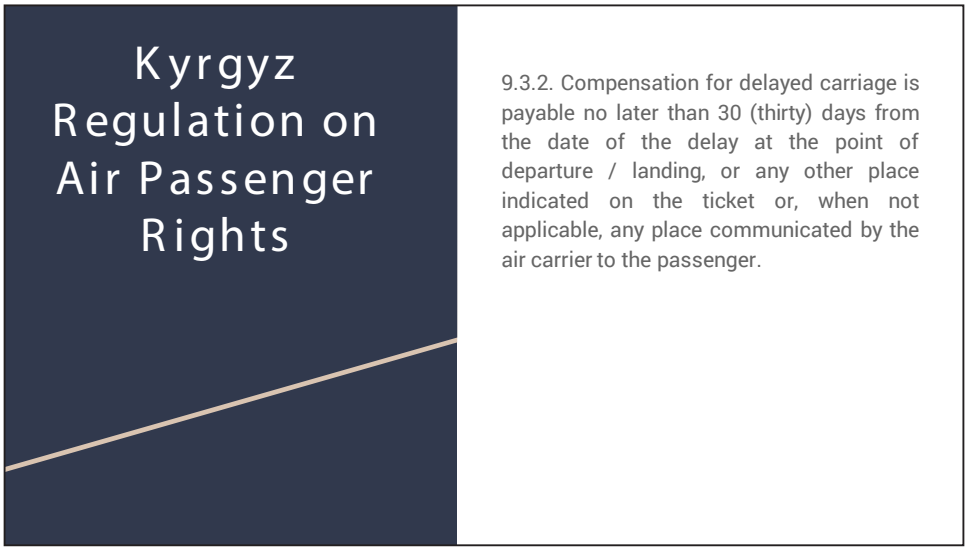
Diapositiva 9



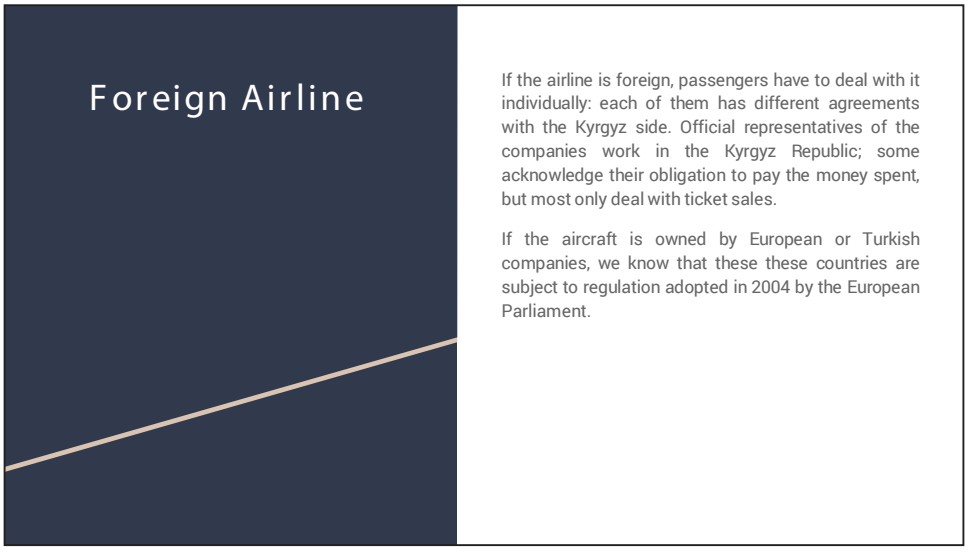
Diapositiva 10



Diapositiva 11

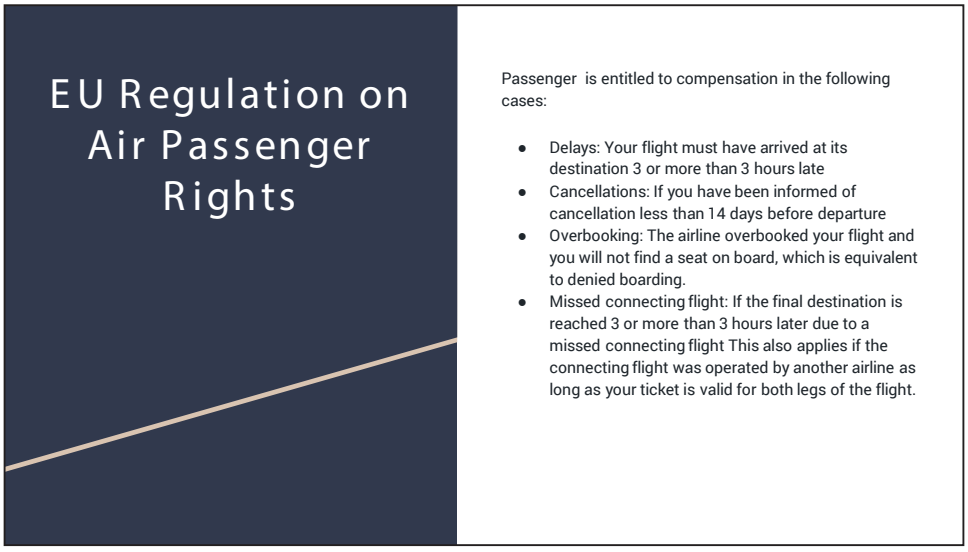


Diapositiva 12



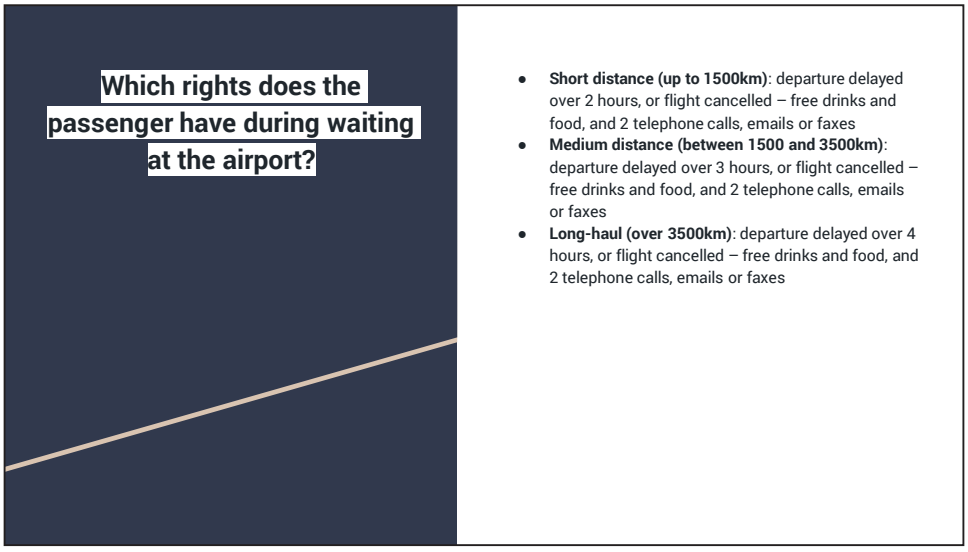
Diapositiva 13

Diapositiva 14

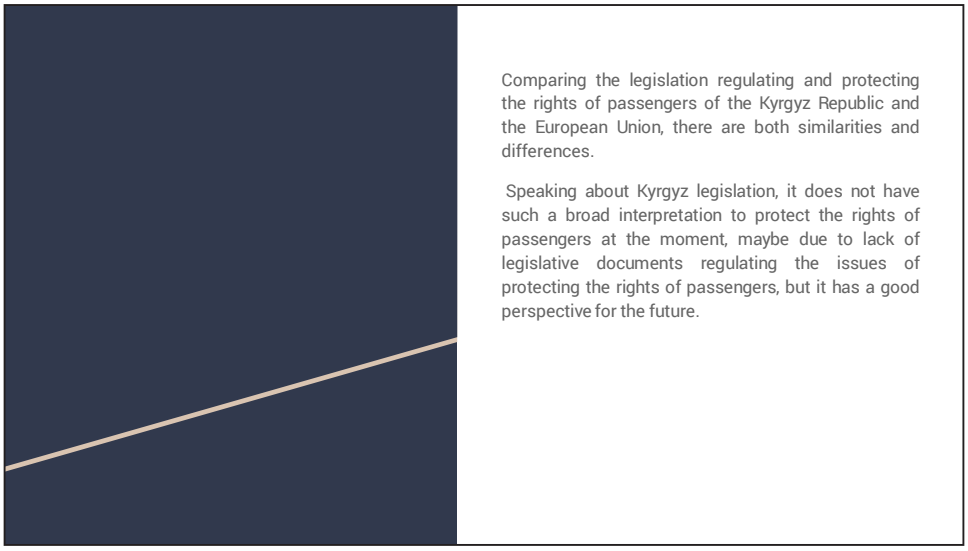


Diapositiva 15

Diapositiva 16



Diapositiva 17



5. Presentation / Presentazione

Tamar Navdarashvili - Hala Boumaiz
(student's matriculation No 1903247 and 1903942)

THE EUROPEAN GREEN DEAL AND ITS IMPLICATIONS ON THE TRANSPORT SECTOR

Students analysed the EU Green Deal. Additionally, EU Sustainable Transport Policy and the role of the EU Commission were considered. The issue of the emission trading in maritime transport sector was also briefly treated. In the last part of the presentation students examined the following judgement of the Court of Justice of the European Union: 11 July 2018, Bosphorus Queen Shipping Ltd Corp v Rajavartiolaitos (Finnish Border Protection Agency) (Case C-15/17). This judgment concerns the interpretation of Article 220.6 of the United Nations Convention on the Law of the Sea (UNCLOS), signed at Montego Bay on 10 December 1982 and Article 7.2 of Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences.

IL GREEN DEAL EUROPEO E I SUOI RIFLESSI SUL SETTORE DEL TRASPORTO

Le studentesse hanno trattato la tematica del Green Deal europeo, Inoltre, esse hanno considerato la politica europea del trasporto sostenibile e il ruolo della Commissione europea. La questione dello scambio delle quote di emissioni di gas a effetto serra è stata trattata brevemente con particolare riferimento al settore del trasporto marittimo. Nell'ultima parte le studentesse hanno analizzato la seguente sentenza della Corte di giustizia dell'Unione europea: 11 luglio 2018, Bosphorus Queen Shipping Ltd

Corp. c. Rajavartiolaitos (Causa C-15/17). Tale sentenza attiene all'interpretazione dell'art. 220.6 della Convenzione delle Nazioni Unite sul diritto del mare (UNCLOS), firmata a Montego Bay il 10 dicembre 1982 e dell'art. 7.2 della Direttiva 2005/35/EC del Parlamento europeo e del Consiglio, del 7 settembre 2005, relativa all'inquinamento provocato dalle navi e all'introduzione di sanzioni per violazioni.

Diapositiva 1

Diapositiva 2

Background

- **Climate change and environmental degradation present an existential threat to Europe and the world. To overcome this challenge, Europe needs a new growth strategy that protects both the environment AND the economy.**

- **The Green Deal Communication sets the path for action in the months and years ahead. The Commission's future work will be guided by the public's demand for action and by undeniable scientific evidence (namely the IPCC)**

Diapositiva 3

Planning ahead is not always easy

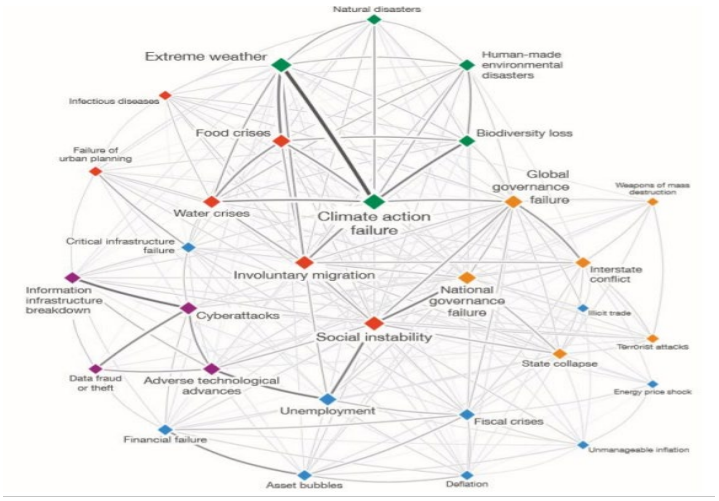
Top 10 risks in terms of **Likelihood**

1. Extreme weather
2. Climate action failure
3. Natural disasters
4. Biodiversity loss
5. Human-made environmental disasters
6. Data fraud or theft
7. Cyberattacks
8. Water crises
9. Global governance failure
10. Asset bubbles

Top 10 risks in terms of **Impact**

1. Climate action failure
2. Weapons of mass destruction
3. Biodiversity loss
4. Extreme weather
5. Water crises
6. Information infrastructure breakdown
7. Natural disasters
8. Cyberattacks
9. Human-made environmental disasters
10. Infectious diseases

Diapositiva 4



Diapositiva 5

What is the European Green Deal?

- **As a response to the challenges we have mentionned, the EGD aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use.**
- **It is NOT a Law, but a new growth strategy that will be translated into a legislative framework in the future.**
- **It also aims to protect, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts.**
- **This transition must be just and inclusive. It must put people first, and pay attention to the regions, industries and workers who will face the greatest challenges.**

Diapositiva 6

Diapositiva 7

The Essentials of the EGD

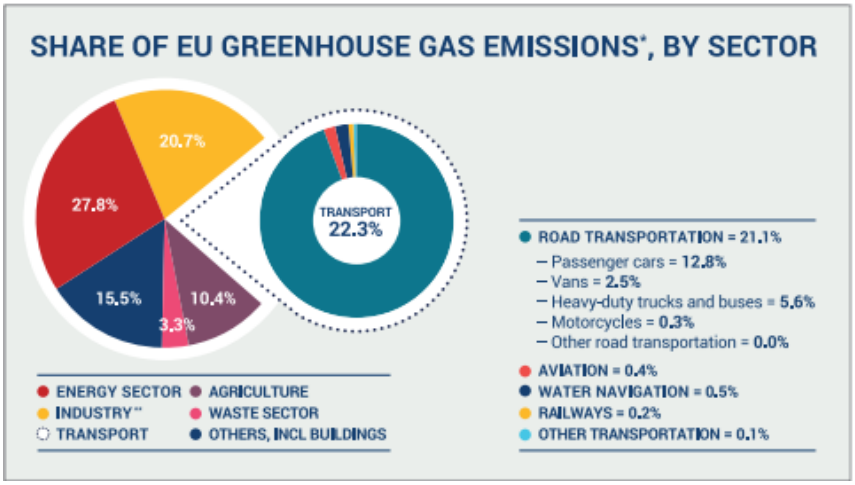
- Climate neutral Europe - **this is the objective of the European Green Deal. The EU will aim to reach net-zero greenhouse gas emissions by 2050.**
- Circular economy - **It will include a sustainable product policy with "prescriptions on how we make things" in order to use less materials, and ensure products can be reused and recycled.**
- Building renovation - **this is meant to be one of the flagship programmes of the Green Deal. The key objective there is to "at least double or even triple" the renovation rate of buildings, which currently stands at around 1%.**
- Zero-pollution - **whether in air, soil or water, the objective is to reach a "pollution-free environment" by 2050. New initiatives there include a chemical strategy for a "toxic-free environment".**

Diapositiva 8

The Essentials of the EGD

- Ecosystems & biodiversity - **That includes measures to tackle soil and water pollution as well as a new forest strategy. "We need more trees in Europe," the official said, both in cities and in the countryside**
- Farm to fork strategy - **aim for a "green and healthier agriculture" system. This includes plans to "significantly reduce the use of chemical pesticides, fertilisers and antibiotics,"**
- Transport - **One year after the EU agreed new CO2 emission standards for cars, Electric vehicles will be further encouraged + "Sustainable alternative fuels" – biofuels and hydrogen – will be promoted in aviation, shipping and heavy duty road transport where electrification is currently not possible.**

Diapositiva 9



Diapositiva 10

What is Sustainable Mobility?

- **Sustainable mobility is a mind shift: where transport in private cars and trucking give way to different modes of public transport. Like bicycle and pedestrian lanes, electric vehicles, car sharing and rail freight.**
- **Sustainable transportation applies the concept of sustainable development to the movements of people and goods. Sustainable development requires that in meeting their own needs, generations must not compromise the ability of future generations to meet their needs.**
- **More and more cities around the world are rising to the challenge. Creating solutions that ensure the vital flow of people, goods and services.**

Diapositiva 11

Diapositiva 12

Sustainable Transport-key objectives

- **A key objective is to boost considerably the uptake of clean vehicles and alternative fuels. By 2025, about 1 million public recharging and refuelling stations will be needed for the 13 million zero- and low-emission vehicles expected on European roads.**
- **Achieving the ambitious climate goals also requires a shift to more sustainable transport modes such as rail and inland waterways. For this to happen, the capacity of both modes will need to be both extended and better managed.**
- **Multimodal transport – the combining of various transport modes throughout a journey – can also increase the use of sustainable transport modes, but needs a strong boost. The Combined Transport Directive is important here – it is designed to support multimodal freight operations involving rail and waterborne transport, including short-sea shipping.**

Diapositiva 13

Sustainable Transport-key objectives

- **Improving efficiency across the whole transport system is crucial. Digital technologies enabling automated mobility and smart traffic management systems, for example, will help with efficiency while also making transport cleaner.**
- **Smart applications and 'Mobility as a Service' solutions will also play an important role. In aviation, the Single European Sky initiative should significantly reduce aviation emissions at zero cost to consumers and companies by reducing flight times.**

Diapositiva 14

The Role of the Commission

- **The Commission envisages extending emissions trading to the maritime sector and reducing the EU Emissions Trading System allowances currently allocated to airlines for free. This will be coordinated at the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO). Other EU action in support of the 'polluter-pays' principle includes effective road pricing in the EU, as well as ending subsidies for fossil fuel.**
- **It is in cities that pollution is felt the most. Measures are needed to address the issue, including improving public transport and promoting active modes of transport such as walking and cycling. The EU will pay particular attention to reducing pollution in EU ports as well as the pollutants emitted by aeroplanes and airport operations.**
- **The Commission supports the transition to sustainable mobility through the committement to spend 60% of the budget on infrastructure projects with a link to sustainability, it will be important in creating a European network of charging infrastructure for alternative fuels, and in enabling a highly performing European railway network.**

Diapositiva 15

The Aviation Sector

- **According to the European Commission, flying is responsible for 3% of the EU's direct emissions and 2% of global output. The ICAO forecasts that, in the absence of additional measures by 2050, these percentages could grow by over 300%**
- **Only intra-EU flights are included in the EU's Emissions Trading Scheme (ETS) and airlines still receive considerable free allowances under the scheme.**
- **In March 2020 air traffic has fallen by aproximately 90% compared to 2019 levels. Interestingly, what the virus has achieved in terms of reducing aviation's harmful impact on the environment in a matter of weeks, far exceeds the achievements of the past decades of the environmentalist movement and the European Commission combined.**

Diapositiva 16

The Railway Sector

- **In 2016, rail transport accounted for 11.2% of all freight and 6.6% of all passengers in the European Union**
- **According to the European Commission, shifting 75% of inland freight road traffic onto rail and waterways is considered a priority to reduce GHG in the traffic sector**
- **However, the EGD does not yet contain specific ideas as to how this goal could be achieved. The EC plans to propose specific initiatives to increase and better manage the capacity of railways at a later stage, in 2021**

Diapositiva 17

The Maritime Sector

- **The shipping industry accounts for 13.6% share of EU transport emissions. According to IMO, if this stays unregulated, these emissions could increase by 50-250% by 2050.**
- **According to the Directive (EU) 2018/410 of the European Parliament and the Council, the commission would review IMO actions to address shipping emissions from 2023.**
- **Measures may include: monitoring, reporting and verification of CO2 emissions from large ships using EU ports and GHS reduction targets for the maritime transport sector.**
- **The risk of oil spills in the maritime sector**

Diapositiva 18

Bosphorus Queen Shipping Ltd Corp v Rajavartiolaitos (Finnish Border Protection Agency)- Case C-15/17, Court of Justice of the European Union, 11 July 2018

❖**REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 12 December 2016, received at the Court on 13 January 2017, in the proceedings.**

This request for a preliminary ruling concerns

✓ **The interpretation of Article 220(6) of the United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982 (UNCLOS).**

✓ **Article 7(2) of Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties, including criminal penalties, for pollution offences (OJ 2005 L 255, p. 11), as amended by Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 (OJ 2009 L 280, p. 52) ('Directive 2005/35').**

✓ **The Marpol Convention 73/78 and the Convention Relating to Intervention on the High Seas 1969, and their relationship with EU law.**

Diapositiva 19

Rajavartiolaitos
Gränsbevakningsväsendet
The Finnish Border Guard

- **The request has been made in proceedings**

Bosphorous Queen Shipping Ltd Corp. (Bosphorous')	Rajavartiolaitos (Finnish Border Protection Agency)

The company which owns the dry cargo vessel Bosphorous Queen, registered in Panama

concerning a fine imposed by the latter on that company on account of an oil spill by that vessel in the Finnish exclusive economic zone (EEZ).

Diapositiva 20

Legal Context

❖International law

❑Convention Relating to Intervention on the High Seas 1969 à In accordance with Article I(1) of this convention, parties to that convention 'may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences'.

- Under Article II (4) "Related interests" means the interests of a coastal State directly affected or threatened by the maritime casualty, such as (a) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned; (b) tourist attractions of the area concerned; (c) the health of the coastal population and the well-being of the area concerned, including conservation of living marine resources and of wildlife.

❑ the Marpol Convention à The International Convention for the Prevention of Pollution from Ships; establishes rules to combat pollution of the marine environment. (The regulations for the prevention of pollution by oil are set out in Annex I to the Marpol Convention 73/78).

- The European Union is not a party to the convention. However, like all the other Member States of the EU, the Republic of Finland is a party to that convention.
- Said so, The court did not have jurisdiction to interpret the Intervention Convention, which was not binding on the EU, but it must be taken into account as part of the relevant rules for interpreting Montego Bay (UNCLOS).

Diapositiva 21

Legal context

❑Montego Bay Convention 1982 (UNCLOS)à According to Article 1 of that convention: (1)"Area" means the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction; (4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

- Article 220(3) to (6) lays down the rules of jurisdiction pursuant to which a coastal State may take measures against a vessel which commits a violation of the international rules and standards relating to pollution by vessels in its EEZ.

- 3. Where there are clear grounds for believing that a vessel navigating in the [EEZ] or the territorial sea of a State has, in the [EEZ], committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.
- 4. States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.

Diapositiva 22

Legal Context

- **5. Where there are clear grounds for believing that a vessel navigating in the [EEZ] or the territorial sea of a State has, in the [EEZ], committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.**
- **6. Where there is clear objective evidence that a vessel navigating in the [EEZ] or the territorial sea of a State has, in the [EEZ], committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or [EEZ], that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.'**
- **Article 221 of that convention, entitled 'Measures to avoid pollution arising from maritime casualties-> (2) "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.'**

Diapositiva 23

Legal Context

❖European Union law

- **EU Directive 2005/35à Article 1 of that directive provides: the purpose of this Directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges of polluting substances are subject to adequate penalties, including criminal penalties, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.**
- **Recitals 1 to 4 and 12 of Directive states:(1) The Community's maritime safety policy is aimed at a high level of safety and environmental protection and is based on the understanding that all parties involved in the transport of goods by sea have a responsibility for ensuring that ships used in Community waters comply with applicable rules and standards.**
- **(2)The material standards in all Member States for discharges of polluting substances from ships are based upon the Marpol 73/78 Convention; however these rules are being ignored on a daily basis by a very large number of ships sailing in Community waters, without corrective action being taken.**
- **(3) The implementation of Marpol 73/78 shows discrepancies among Member States and there is thus a need to harmonise its implementation at Community level; in particular the practices of Member States relating to the imposition of penalties for discharges of polluting substances from ships differ significantly.**
- **(4) Measures of a dissuasive nature form an integral part of the Community's maritime safety policy, as they ensure a link between the responsibility of each of the parties involved in the transport of polluting goods by sea and their exposure to penalties; in order to achieve effective protection of the environment there is therefore a need for effective, dissuasive and proportionate penalties.**

Diapositiva 24

Legal Context

- **(12) Where there is clear, objective evidence of a discharge causing major damage or a threat of major damage, Member States should submit the matter to their competent authorities with a view to instituting proceedings in accordance with Article 220 of the [Montego Bay Convention].'**
- **Article 7 of that directive, entitled 'Enforcement measures by coastal States with respect to ships in transit', provides in paragraph 2:'Where there is clear, objective evidence that a ship navigating in the areas referred to in Article 3(1)(b) or (d) has, in the area referred to in Article 3(1)(d), committed an infringement resulting in a discharge causing major damage or a threat of major damage to the coastline or related interests of the Member State concerned, or to any resources of the areas referred to in Article 3(1)(b) or (d), that State shall, subject to Part XII, Section 7 of [the Montego Bay Convention] and provided that the evidence so warrants, submit the matter to its competent authorities with a view to instituting proceedings, including detention of the ship, in accordance with its national law.'**

❖ **Finnish Law**

- **Directive 2005/35 was transposed into Finnish law by the merenkulun ympäristönsuojelulaki (No 1672/2009) (Law relating to the protection of the environment in relation to maritime transport)**
- **Chapter 3 of that law, entitled 'Oil discharge fine', provides in Paragraph 1(1):an oil discharge fee shall be imposed on foreign ships in transit for any violation of the discharge prohibition in Finland's [EEZ], only if the discharge causes considerable damage or risk of damage to Finland's shoreline or to the interests pertaining thereto, or to the natural resources in Finland's territorial sea or within Finland's [EEZ].'**

Diapositiva 25

Facts

- **The Bosphorus Queen is a dry cargo vessel registered in Panama. According to the Finnish Border Protection Authority the vessel discharged oil into the sea while transiting through Finland's EEZ on 11 July 2011. The discharge was made at the outer edge of that EEZ approximately 25 to 30 km from the Finnish coast, in the Baltic Sea which is a special area under MARPOL. The oil spread over some 37 km in a strip roughly 10 metres wide. No clean-up measures were taken in respect of the oil spill, which was not observed to have reached the coastline and not found to have caused any damage.**
- **The Border Protection Agency imposed a fine of EUR 17,112 on the owners of the vessel for the oil spill, on the ground that that oil spill had caused major damage or a threat of major damage to Finland's coastline or related interests, or to resources of its territorial sea or EEZ. The fine was imposed under the Finnish legislation implementing Directive 2005/35/EC on ship-source pollution.**
- **The owners of the vessel brought an action before the Finnish court seeking annulment of the decisions relating to the provision of security and the imposition of an oil spill fine.**
- **In its judgment of 30 January 2012, the first instance court considered that it had been shown that Bosphorus Queen had released at least 900 litres of oil, and given the environmental impact assessment, the court held that for the purposes of Finnish law on environmental protection in maritime transport, the oil spill caused a threat of major damage. On those grounds, the maritime court dismissed the action. Following appeals, the Supreme Court referred the question on the correct construction of the relevant provisions of the European Court of Justice (ECJ).**

Diapositiva 26

Questions referred for a preliminary ruling

- The referring court has put numerous questions to the Court regarding, in particular, the proper construction, as a matter of EU law, of Article 220(6) of UNCLOS (and by extension, Article 7(2) of Directive 2005/35). Although approaching the issue from various angles, the questions referred essentially concern two interrelated issues pertaining to the circumstances in which a coastal State may assert jurisdiction in its EEZ: namely, the interests covered by coastal State jurisdiction and the evidence required to justify the adoption of enforcement measures against a vessel in transit.
- the questions raised by the referring court will be addressed:
- (1) the interests covered by coastal State jurisdiction in the EEZ under Article 220(6) of UNCLOS and Article 7(2) of Directive 2005/35 (Questions 1 to 4);
- (2) the evidence required under Article 220(6) of UNCLOS and Article 7(2) of Directive 2005/35 in order for the coastal State to instigate proceedings against a foreign vessel (Questions 5 to 7 and 9 and 10);
- (3) the discretion of Member States under Article 7(2) of Directive 2005/35 (Question 8).
  - More exactly: the referring court wanted to know in essence how to interpret the expressions clear objective evidence', 'coastline or related interests', 'resources of the territorial see or eez', 'significant pollution' as well as other practical aspects about the consequences of a violation of the convention and of the Directive.

Diapositiva 27

The Judgment of ECJ

- The CJEU held:(1) The EU as a party to UNCLOS, had jurisdiction to interpret its provisions. UNCLOS had primacy over secondary EU legislation. The EU was not a party to the 1969 Intervention Convention but could take account of it as it formed part of the relevant rules for interpreting UNCLOS.
- (2) The relevant EU legislation was art.7(2) of Directive 2005/35 which incorporated into EU law the provisions of art.220(6) with almost identical wording, and had to be interpreted in accordance with art. 220(6).
- (3) Article.220(6) provides: " Where there is clear objective evidence that a vessel navigating in the [EEZ] or the territorial sea of a State has, in the [EEZ], committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or [EEZ], that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws." Paragraph 3 of art.220 refers to "violations of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards."
- The coastal state's powers under paragraph 6 were subject to clear objective evidence both of the commission of a violation under paragraph 3 and also of the consequences of that violation.

Diapositiva 28

The Judgment of ECJ

- (4) The reference to 'coastline or related interests' in art. 220(6) and art 7(2) of Dir 2005/35 could be interpreted as having the same meaning as the definition of these terms in art II(4) of the 1969 Intervention Convention, bearing in mind UNCLOS also applied to non-living resources. 'Resources' referred to harvested species and living species associated with them or which depended on them.
- (5) It was not necessary to take account of the concept of 'significant pollution' referred to in art. 220(5) when assessing the consequences of a violation under art. 220(6). In assessing the extent of damage caused or threatened to the resources or related interests of the coastal state account should be taken of, inter alia of
  - – the cumulative nature of the damage on several or all of those resources and related interests and the difference in sensitivity of the coastal State with regard to damage to its various resources and related interests;
  - – the foreseeable harmful consequences of discharge on those resources and related interests, not only on the basis of the available scientific data, but also with regard to the nature of the harmful substance(s) contained in the discharge concerned and the volume, direction, speed and the period of time over which the oil spill spreads

Diapositiva 29

The Judgment of ECJ

- The specific geographical and ecological characteristics and sensitivity of the Baltic Sea area have an effect on the conditions of applicability of Article 220(6) would have an effect on this assessment.
- (6) Although art 1(2) of Dir 2005/35 allowed Member States to impose more stringent measures, it did not allow them to impose more stringent measures in accordance with international law that those laid down in Article 7(2) which authorised coastal states to take measures equivalent in scope to those laid down in Art. 220(6).

❖**Comment**

- **This ECJ decision offers useful guidance on circumstances in which a coastal State may assert jurisdiction in its EEZ namely, the interests covered by coastal State jurisdiction, and on the evidence required to justify the adoption of enforcement measures against a vessel in transit.**

6. Presentation / Presentazione

Narjes Rezaeifar
(student's matriculation No 1908566)

AIR TRANSPORT: MONTREAL CONVENTION. LIABILITY OF AIR CARRIERS FOR CHECKED BAGGAGE

Student examined the following judgment of the Court of Justice of the European Union 12 April 2018, Finnair Oyj v Keskinäinen Vakuutusyhtiö Fennia, (Case C-258/16) related to the interpretation of Article 31 of the Convention for the Unification of Certain Rules for International Carriage by Air, concluded at Montreal on 28 May 1999 and approved by Council Decision 2001/539/EC of 5 April 2001. The legal issue is related to the air carrier liability for loss of personal items from a checked baggage. This issue arose within a dispute between Finnair Oyj, an airline company, and Keskinäinen Vakuutusyhtiö Fennia, an insurance company.

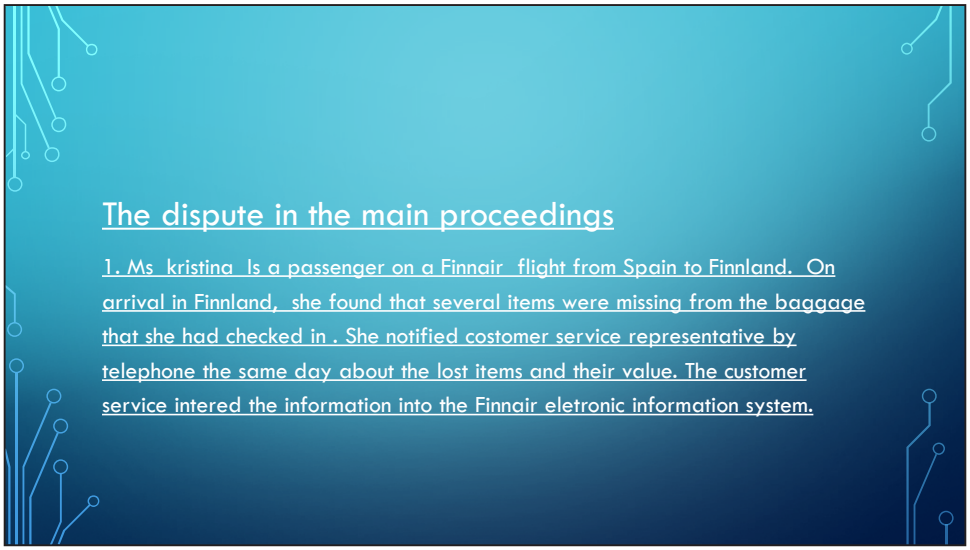
TRASPORTO AEREO: LA CONVENZIONE DI MONTREAL. LA RESPONSIBILITÀ DEI VETTORI AEREI PER IL BAGAGLIO REGISTRATO

La studentessa ha esaminato la seguente decisione della Corte di giustizia dell'Unione europea: 12 aprile 2018, Finnair Oyj c. Keskinäinen Vakuutusyhtiö Fennia, (Case C-258/16) riguardante la questione della responsabilità del vettore aereo per danni da perdita di effetti personali da bagaglio, che era sorta nell'ambito di una controversia tra un vettore aereo, Finnair Oyi, e un assicuratore, Keskinäinen Vakuutusyhtiö Fennia. Tale sentenza attiene all'interpretazione dell'art. 31 della Convenzione per l'unifica-

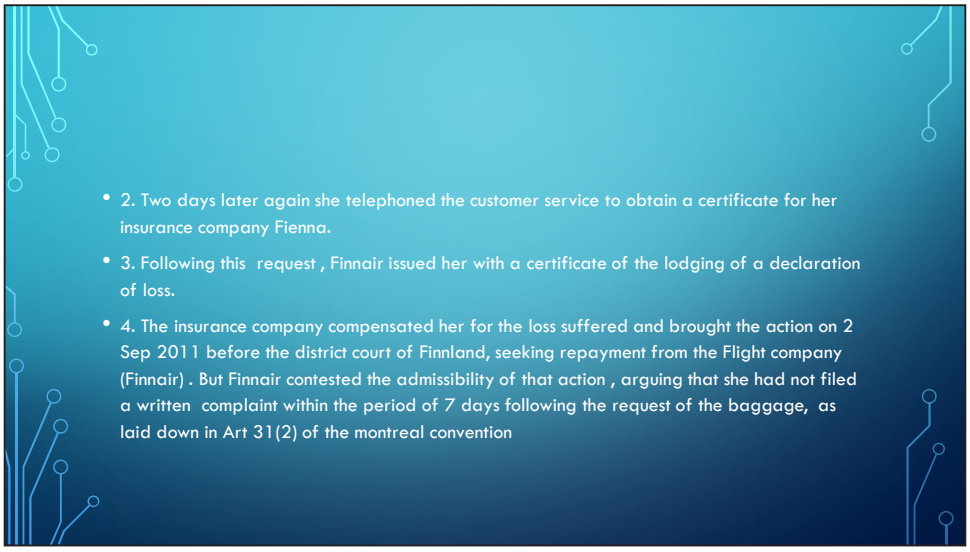
zione di alcune norme relative al trasporto aereo internazionale, firmata a Montreal il 28 maggio 1999 e approvata con decisione del Consiglio 2001/539/CE del 5 aprile 2001.

Diapositiva 1

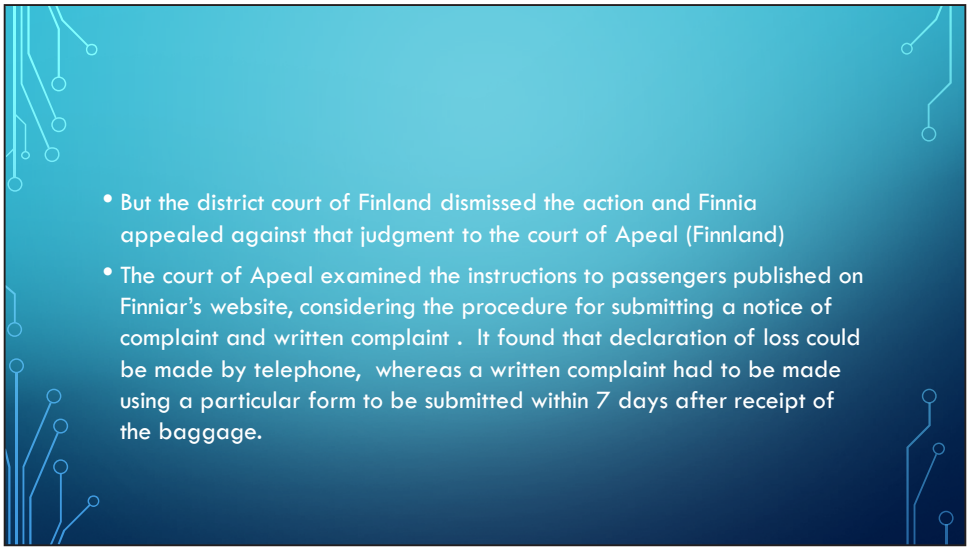
Diapositiva 2



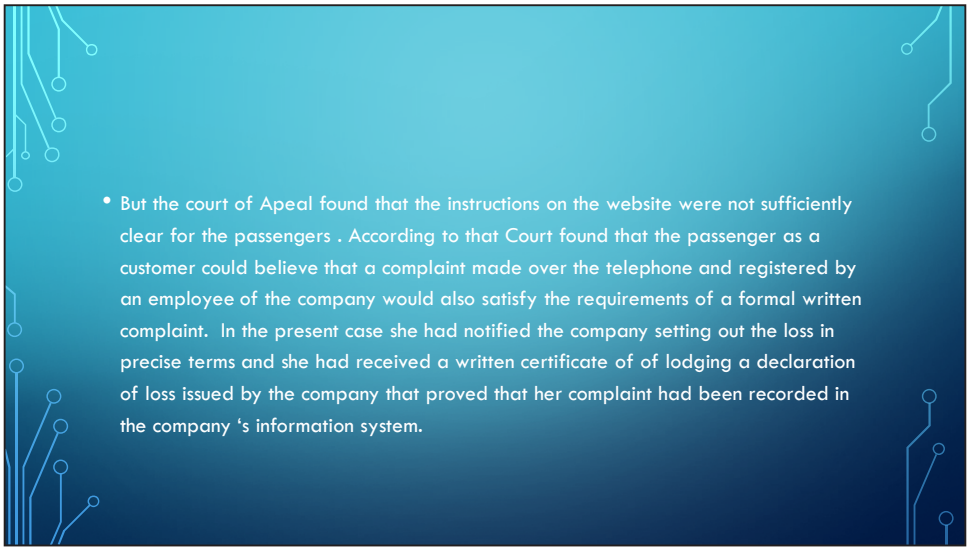
Diapositiva 3



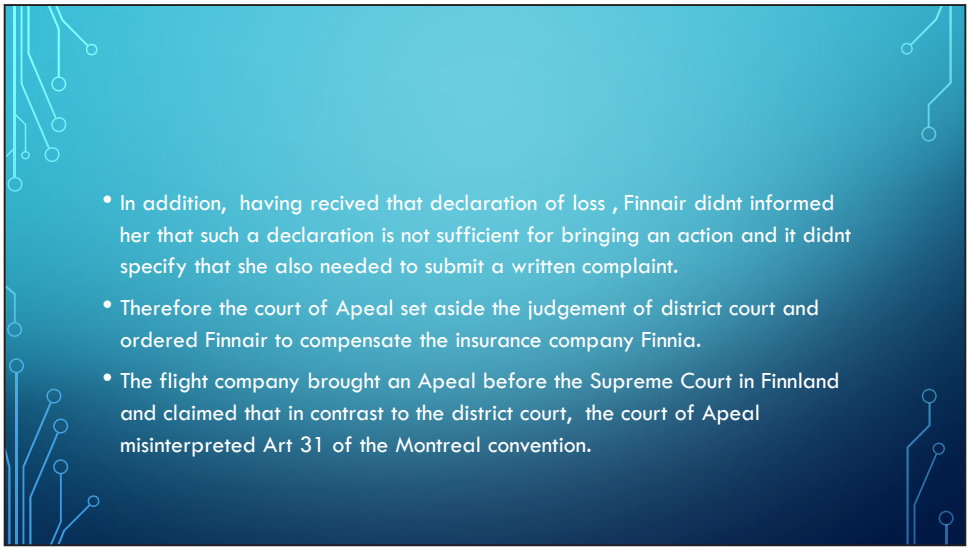
Diapositiva 4



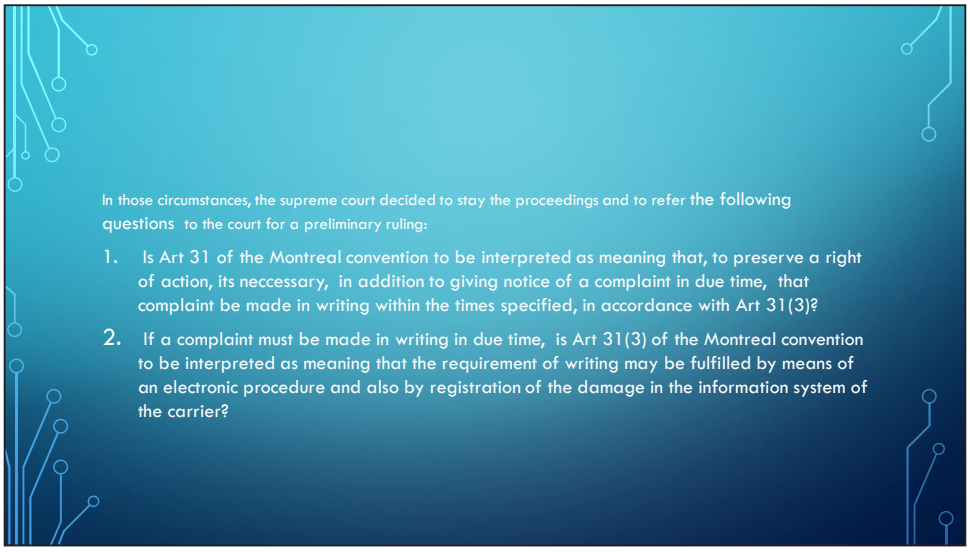
Diapositiva 5



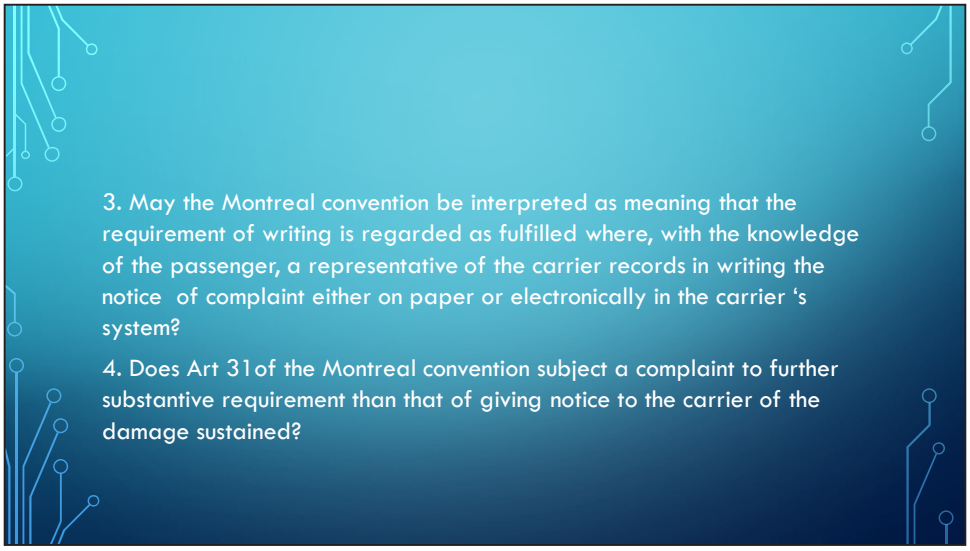
Diapositiva 6



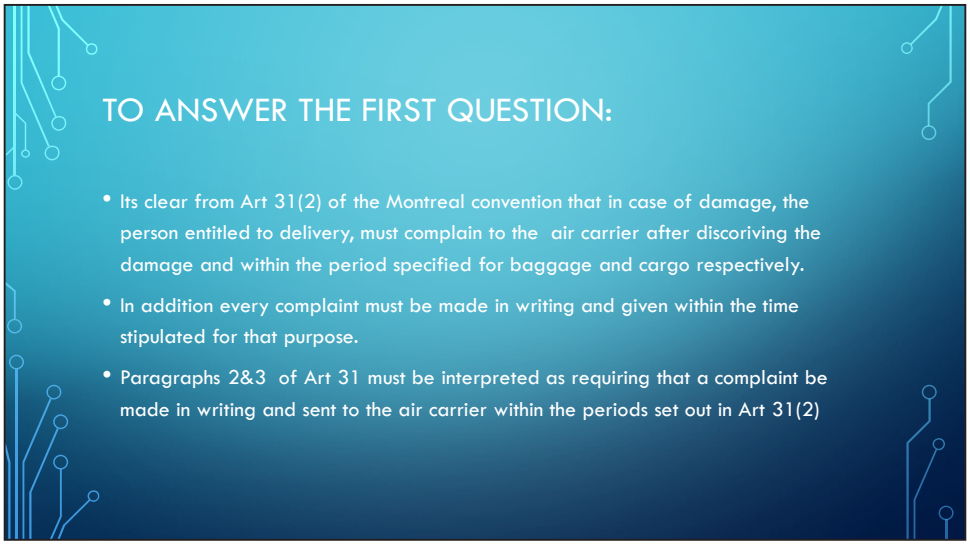
Diapositiva 7



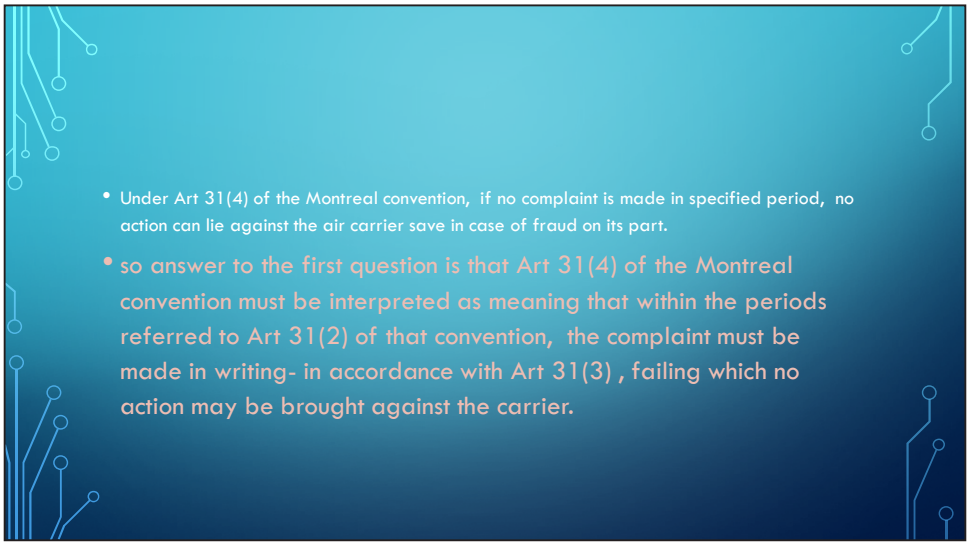
Diapositiva 8



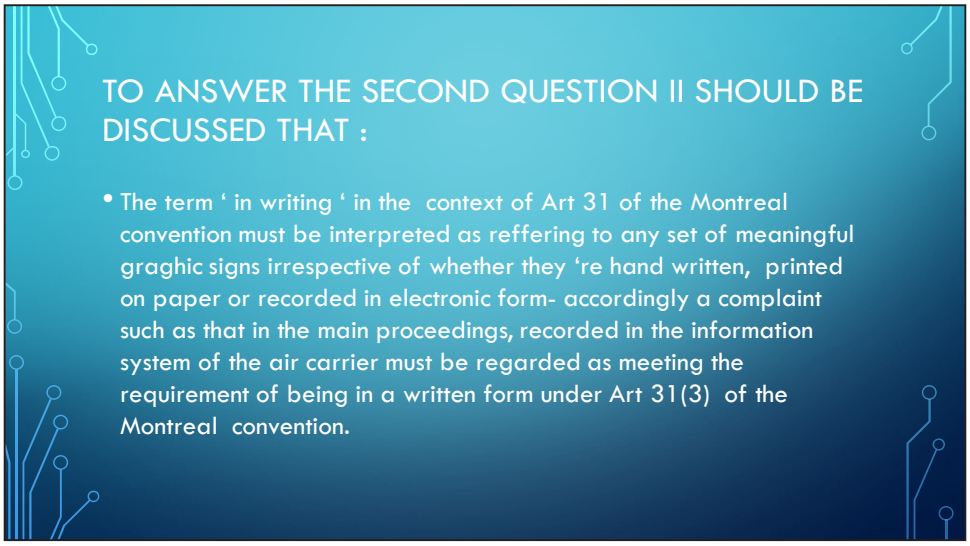
Diapositiva 9



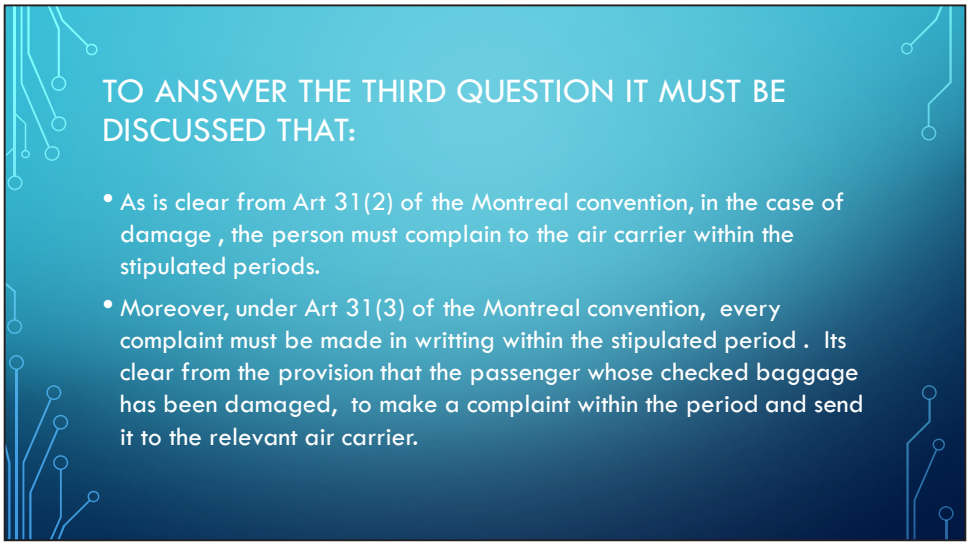
Diapositiva 10



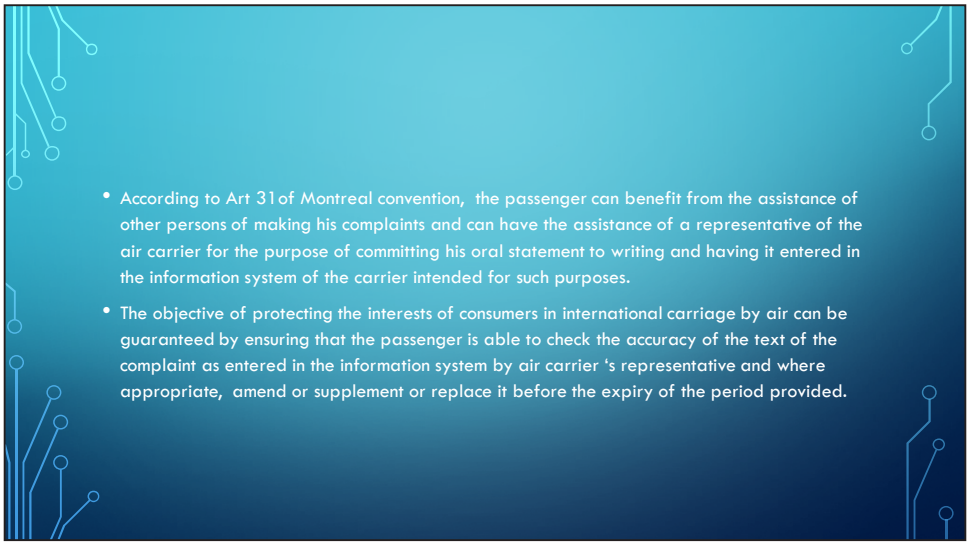
Diapositiva 11



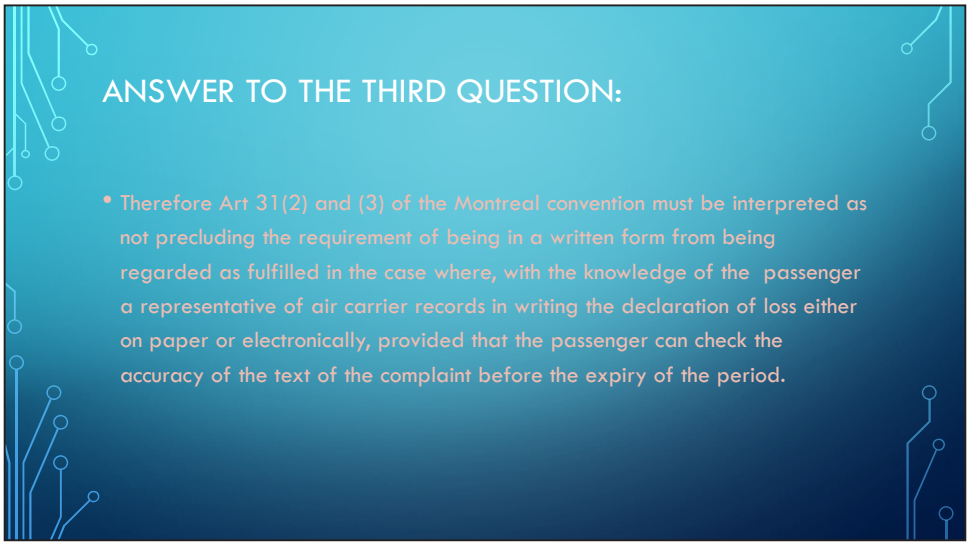
Diapositiva 12



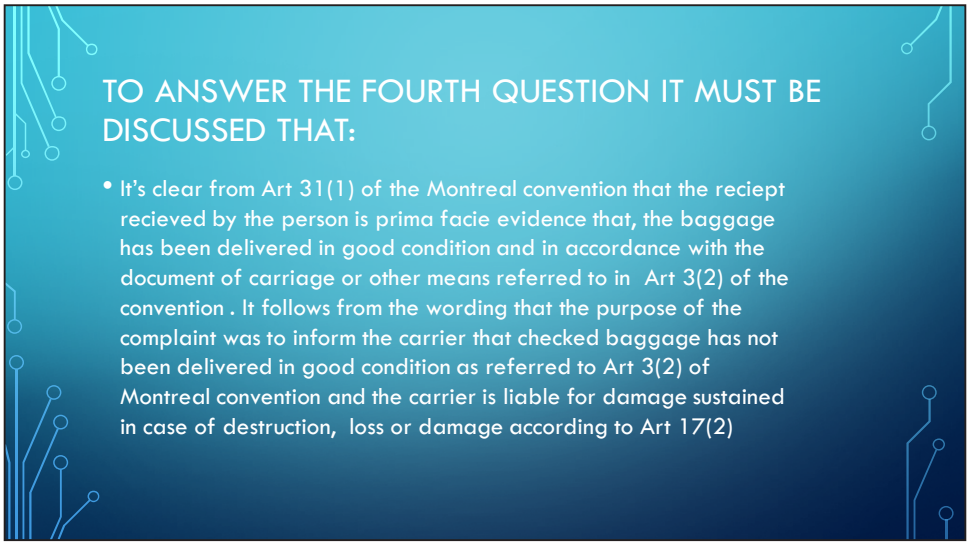
Diapositiva 13



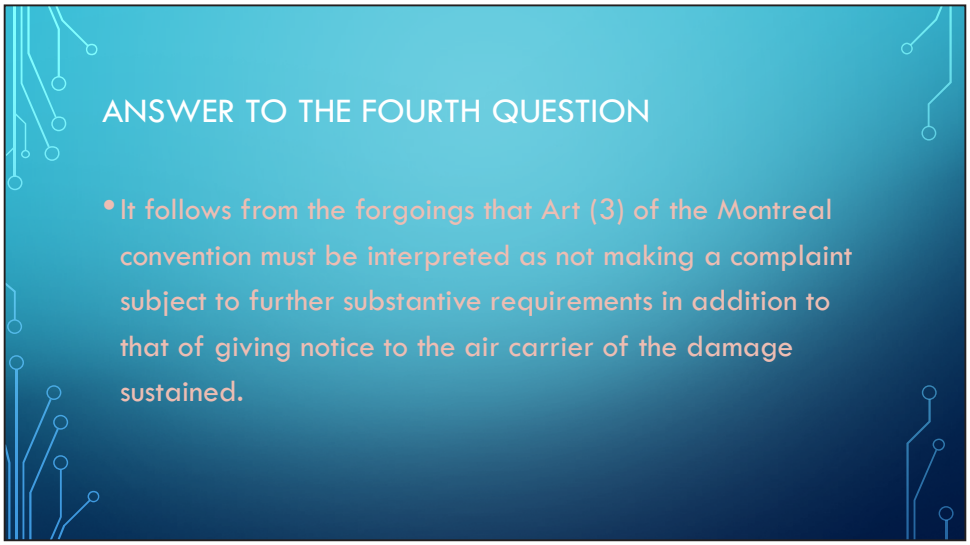
Diapositiva 14



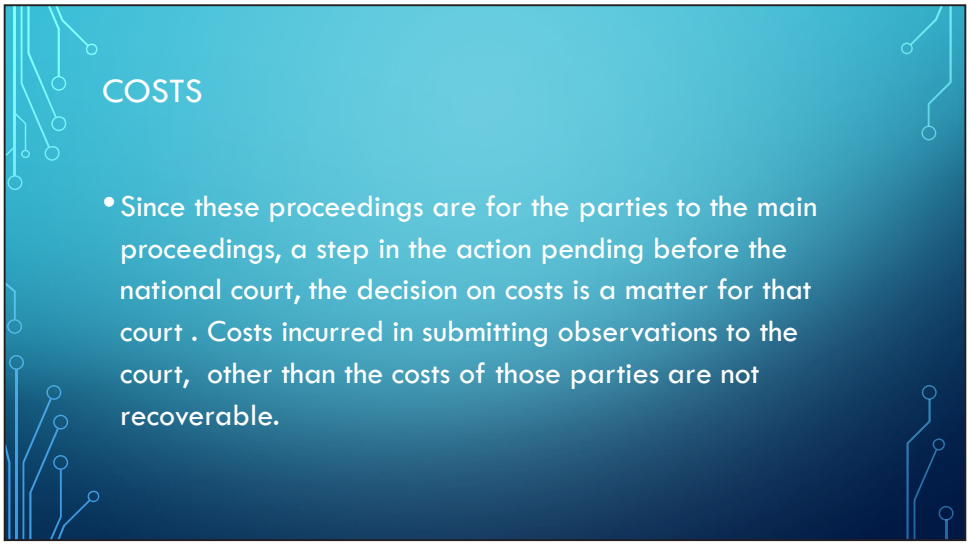
Diapositiva 15



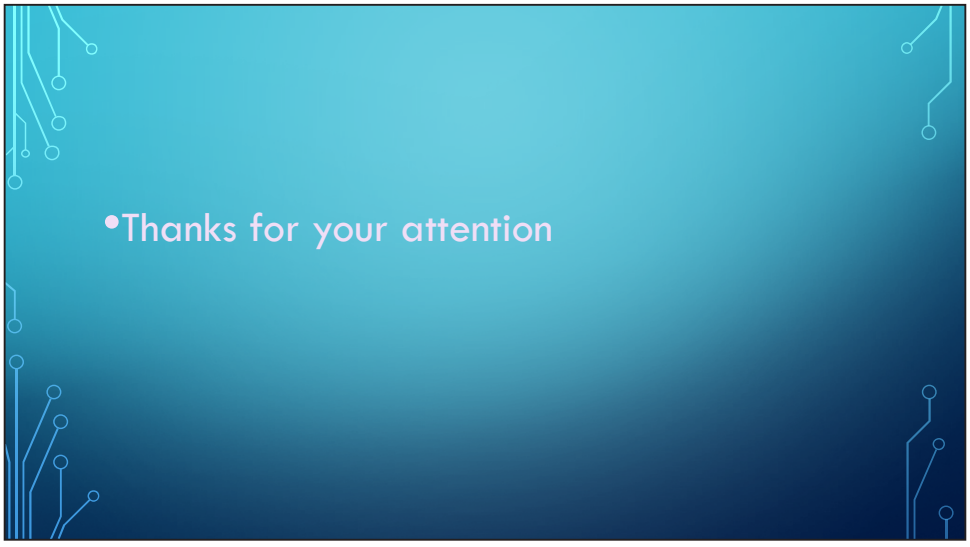
Diapositiva 16



Diapositiva 17



Diapositiva 18



Diapositiva 19

7. Presentation / Presentazione

Pegah Tashakkori
(student's matriculation No 1916177)

EU AIRPORT SLOT COORDINATOR'S INDEPENDENCE

Student focused on the issue related to independence of the airport slot coordinator focusing on the interpretation of the Article 4.2 of Council Regulation (EEC) No 95/93, on common rules for the allocation of slots at Community airports, given by the Court of Justice of the European Union in the following judgment: 2 June 2016, European Commission v Portuguese Republic (Case C-205/14).

L'INDIPENDENZA DEL COORDINATORE EUROPEO DELLE BANDE ORARIE

La studentessa ha approfondito la questione dell'indipendenza funzionale e finanziaria del coordinatore aeroportuale, soffermandosi sull'interpretazione dell'art. 4.2. del Regolamento (CEE) n. 95/93 del Consiglio, del 18 gennaio 1993, relativo a norme comuni per l'assegnazione di bande orarie negli aeroporti della Comunità, che la Corte di giustizia dell'Unione europea ha dato nella seguente sentenza: 2 giugno 2021, Commissione europea c. Repubblica Portoghese (Causa C-205/14).

Diapositiva 1

Slot allocation process Judgment : case c 205 14 eu commission vs Portuguese republic

By : Pegah Tashakkori

Diapositiva 2

SLOT ALLOCATION PROCESS

Why do airlines meet to discuss slot allocations?

Since 1947airlines have met regularly to discuss their slot allocations planned for the following season in order to improve interline connections and handling arrangements. Primarily through bilateral discussions, they voluntarily adjusted their slots where it was in their mutual interest to do so

Diapositiva 3

Why is the slot planning process so important?

- The slot planning process is the essential back bone to allow the industry to plan operations to the world's most congested airports, avoiding what would otherwise be chaos. Working with governments and regulators to promote and align policy with the WASG.

Diapositiva 4

Slot allocation growth

- The continuous growth in air transport in recent decades has increased pressure on the capacity available for aircraft movements. Following the creation of a single market for aviation in the 1990s, there was a need for a regulation on slots. These are defined as permission to use the full range of airport infrastructure necessary to operate an air service on a specific date and time for landing or take-off.

Diapositiva 5

- In 1993, common rules for the allocation of slots at EU airports were introduced in order to ensure that airlines have access to the busiest EU airports on the basis of principles of neutrality, transparency and non-discrimination (*Based on the principles governing the system of slot allocation (IATA Worldwide Scheduling Guidelines)*). The slots are allocated solely by independent coordinators and airlines must use 80 per cent of their allocated slots, or risk losing them in the years following. This is known as the "use it or lose it" rule. EU rules also promote the access of new airlines to airports.

Diapositiva 6

- In 2004 additional rules were introduced by the EU. These changes primarily helped to make the slot system more flexible in terms of both allocation and use and they also strengthened the coordinator's role and the monitoring of compliance.
- In 2007 and 2008 the Commission adopted communications on the application of the Slot Regulation. The communications clarified certain points in order to ensure a better application of the rules in force. They also promoted an increase the efficient use of the available airport capacity by providing guidelines for the exchange of slots for money, known as "secondary trading". The communication also dealt with independence of coordinators and facilitating new entrants,. Finally, the Commission stated that it would continue to monitor the functioning of the Slot Regulation and it would reflect on whether the rules need to be amended,
- Further analysis carried out in 2010-2011 on how the current Slot Regulation is working has shown that the allocation system could be improved. Consequently the Commission proposed, in December 2011, a 'recast' of the Slot Regulation

Diapositiva 7

Was it functional?

- Air transportation in the European Union is said to have been liberalised since 1997, after several years of transition. However, important obstacles to effective competition have remained ever since. The most important impediment to competition is the lack of airport capacity at the congested airports in Europe.
- In 1993, a regulatory system was set up in order to deal with slot allocation, slots being defined as the scheduled time of arrival or departure available or allocated to an aircraft movement on a specific date. The system was modelled after the international practice as applied within the framework of the IATA and was based on the principle of grandfathering of slots. To avoid the regime becoming an insurmountable barrier to entry, a pool was created of unused slots which had to be allocated by preference to new entrants.
- Slots acquired a particular position within the application of EC competition law to the airline industry and the Commission started using them as a competitive instrument in its decision-making concerning the sector. In the course of its decisional practice the Commission has shown increasing flexibility with regard to slot divestiture as a structural remedy and has more recently also taken into account the particular economics of the airline business relating to network effects.
- However, because the allocation system does not price the slots at their marginal social cost, this results in economically inefficient outcomes. The lack of slot mobility caused by the grandfathering rule prevents both allocative efficiency and effective competition from being attained.

Diapositiva 8

Judgment of the Court (First Chamber) of 8 July 2010.
European Commission v Portuguese Republic

Diapositiva 9

- **Judgment**
- By its application, the European Commission asks the Court to declare that, by not ensuring that the coordinator for the allocation of slots is functionally and financially independent, the Portuguese Republic has failed to fulfil its obligations under Article 4(2) of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ 1993 L 14, p. 1), as amended by Regulation (EC) No 545/2009 of the European Parliament and of the Council of 18 June 2009 (OJ 2009 L 167, p. 24) ('Regulation No 95/93').

Diapositiva 10

Legal context

- *EU law*
- The second, fifth, sixth, eighth and tenth recitals of Regulation No 95/93 are worded as follows:
- '... the allocation of slots at congested airports should be based on neutral, transparent and non-discriminatory rules;
- ...
- ... the Member State responsible for the coordinated airport should ensure the appointment of a coordinator whose neutrality should be unquestioned;
- ... transparency of information is an essential element for ensuring an objective procedure for slot allocation;
- ...
- ... it is Community policy to facilitate competition and to encourage entrance into the market, ... these objectives require strong support for carriers who intend to start operations on intra-Community routes;
- there should also be provisions to allow new entrants into the Community market

Diapositiva 11

- Article 2 of that regulation sets out, inter alia, the following definitions:
- ‘For the purpose of this Regulation:
- “slot” shall mean the permission given by a coordinator in accordance with this Regulation to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator in accordance with this Regulation;
- ...
- “coordinated airport” shall mean any airport where, in order to land or take off, it is necessary for an air carrier or any other aircraft operator to have been allocated a slot by a coordinator, with the exception of State flights, emergency landings and humanitarian flights;
- ...
- “managing body of an airport” shall mean the body which, in conjunction with other activities or otherwise, has the task under national laws or regulations of administering and managing the airport facilities and coordinating and controlling the activities of the various operators present at the airport or within the airport system concerned;

Diapositiva 12

- 4 Article 4 of that regulation, entitled ‘The schedules facilitator and the coordinator’, is worded as follows:
- ‘1. The Member State responsible for a ... coordinated airport shall ensure the appointment of a qualified natural or legal person as ... airport coordinator ... after having consulted the air carriers using the airport regularly, their representative organisations and the managing body of the airport and the coordination committee, where such a committee exists. The same ... coordinator may be appointed for more than one airport.
- 2. The Member State responsible for a ... coordinated airport shall ensure:
- ...
- (b) the independence of the coordinator at a coordinated airport by separating the coordinator functionally from any single interested party. The system of financing the coordinators’ activities shall be such as to guarantee the coordinator’s independent status;
- (c) that the coordinator acts according to this Regulation in a neutral, non-discriminatory and transparent way.

Diapositiva 13

- The coordinator shall be the sole person responsible for the allocation of slots. He shall allocate the slots in accordance with the provisions of this Regulation and shall make provision so that, in an emergency, slots can also be allocated outside office hours.
- 6. ... The coordinator shall monitor the conformity of air carriers' operations with the slots allocated to them. These conformity checks shall be carried out in cooperation with the managing body of the airport and with the air traffic control authorities and shall take into account the time and other relevant parameters relating to the airport concerned. ...
- ...
- 8. The coordinator shall on request and within a reasonable time make available free of charge for review to interested parties, in particular to members or observers of the coordination committee, either in written form or in any other easily accessible form, the following information

Diapositiva 14

- (a) historical slots by airline, chronologically, for all air carriers at the airport,
- (b) requested slots (initial submissions), by air carriers and chronologically, for all air carriers,
- (c) all allocated slots, and outstanding slot requests, listed individually in chronological order, by air carriers, for all air carriers,
- (d) remaining available slots,
- (e) full details on the criteria being used in the allocation.'

Diapositiva 15

Article 5(1) of Regulation No 95/93 provides:

- 'At a coordinated airport, the Member State responsible shall ensure that a coordination committee is set up. The same coordination committee may be designated for more than one airport. Membership of this committee shall be open at least to the air carriers using the airport(s) in question regularly and their representative organisations, the managing body of the airport concerned, the relevant air traffic control authorities and the representatives of general aviation using the airport regularly.

Diapositiva 16

Portuguese law

- Article 1(2) and (4) of that decree-law appoints Aeroportos de Portugal SA ('ANA') as the national coordinator for the allocation of slots at coordinated airports. ANA, a commercial company governed by private law, is also the managing body of the Portuguese airports.
- Article 5 of that decree-law, entitled 'Independence', provides:
- '1. In carrying out its functions as national ... coordinator in respect of the allocation of slots, ANA ... shall ensure that this activity is independent of its activity as an airport manager by means of appropriate separation.
- 2. For the purposes of the preceding paragraph, ANA ... shall guarantee that independence, at least at a functional level, and shall keep specific accounts relating to slot coordination activities, which shall be strictly separate from the accounts relating to other activities.'
- Article 8 of Decree-law No 109/2008, entitled 'Supervision and monitoring', is worded as follows:
- The Instituto Nacional de Aviação Civil IP [National Institute for Civil Aviation, Portugal] shall be responsible for supervising and monitoring the allocation of slots and monitoring their use by air carriers.

Diapositiva 17

- Furthermore, it shall be the task of the National Institute for Civil Aviation to ensure compliance with the conditions and requirements in respect of independence laid down in Article 5; to that end, it may instruct an independent auditor to establish that there are no financial flows between the provision of slot coordination services and the other activities.'

Diapositiva 18

- Article 9 of that decree-law, entitled 'Infringements', provides:
- ' For the purposes of the application of the scheme relating to civil aviation infringements, approved by Decree-law No 10/2004 of 9 January 2004, the following shall constitute very serious infringements:
- (a) the absence of functional separation, on the part of ANA ..., between the activity of airport manager … and the activity of national coordinator in respect of the allocation of slots;
- (b) the absence of separate accounts, on the part of ANA ..., in respect of the activities connected with slot coordination and the other activities;
- ...'
- Article 10 of Decree-law No 109/2008, relating to how infringements are dealt with, provides:
- '1. It shall be the task of the National Institute for Civil Aviation to initiate and conduct infringement proceedings relating to the infringements covered by this decree-law and to apply the corresponding fines and ancillary penalties.

Diapositiva 19

The pre-litigation procedure

- On the basis of information relating to the allocation of slots in the airports located in Portugal, the Commission sent a letter of formal notice to the Portuguese Republic on 30 April 2012 in which it claimed that a department that had been created within the structure of ANA to carry out the tasks which are part of the function of the coordinator for the allocation of slots ('the DCNS') did not satisfy the requirements of independence laid down in Article 4(2) of Regulation No 95/93.
- The Commission stated, inter alia, that, since the DCNS was a division of ANA, there was no functional separation within the meaning of Article 4(2)(b) of that regulation. Furthermore, it maintained that the financing of the DCNS was not such as to guarantee its independent status. It stated that such independence could be ensured only by means of accounts and a budget which are specific to the DCNS. According to the Commission, the DCNS was financed entirely by ANA and the slot-allocation charge provided for in Article 11 of Decree-law No 109/2008 had never been introduced.

Diapositiva 20

- The Portuguese Republic responded by letter of 19 July 2012. In that letter it referred to Article 5 of Decree-law No 109/2008, according to which ANA is to ensure that its activity as an airport manager is independent of its functions as coordinator for the allocation of slots.
- According to the Portuguese Republic, the DCNS, although it is an integral part of ANA, carries out the activity of coordinator in an independent manner since it has its own human resources and keeps accounts that are separate from those of ANA. It maintains that the coordinator's independent status is therefore guaranteed at both the functional and financial level

Diapositiva 21

- As it took the view that that response was not satisfactory, the Commission sent the Portuguese Republic a reasoned opinion on 25 January 2013, in which it reiterated the complaint it had already made and requested that Member State to submit its observations within two months of receipt of that opinion.
- The Portuguese Republic responded to that reasoned opinion on 27 March 2013, reaffirming its original point of view. However, acknowledging the necessity, after the privatisation of ANA, of setting up a new body to be responsible for the coordination of slots, it stated that it was going to ensure that that new body was created. At a later stage it provided a summary note concerning the creation of that body.
- As it took the view that the responses to the reasoned opinion were not satisfactory, the Commission brought the present action.

Diapositiva 22

THE ACTION

- The Commission submits that the Portuguese Republic does not ensure that the coordinator for the allocation of slots is functionally and financially independent, contrary to what is laid down by Article 4(2) of Regulation No 95/93.

Diapositiva 23

ARGUMENTS OF THE PARTIES

- In the context of its first complaint, the Commission complains that the Portuguese Republic has not ensured that the coordinator is independent by separating it functionally from any single interested party in accordance with Article 4(2) of Regulation No 95/93

- It submits that, having regard to the purpose of that regulation, that provision must be interpreted broadly. It maintains that, in that context, the independence of the coordinator is designed to ensure that discrimination is prevented as well as that the coordinator is impartial, that information is transparent, that the benefits of liberalisation are not unevenly spread, that there is no distortion of competition, that the management of slots is efficient and that new operators have access to the European Union market.

Diapositiva 24

- According to the Commission, the term 'independence' means that the coordinator must have a status which enables it to carry out its activities with complete freedom and autonomy, without having to take any instructions or being put under any pressure. It maintains that it is apparent from the coordinator's central role in the allocation of slots that the mere risk of not being able to act with complete freedom is enough to hinder the independent performance of the coordinator's activities

Diapositiva 25

The Commission states that, as regards the requirement of functional separation, the expression 'any single interested party', within the meaning of Article 4(2)(b) of Regulation No 95/93, which must be interpreted broadly, refers not only to air carriers, which are directly affected by the coordinator's decisions, but also to any person who may have an interest in the way in which the coordinator allocates slots in a coordinated airport. It points out, in that regard, that the managing body of the airport concerned, which may have such an interest, based, for example, on the benefit derived from slot-coordination activities, in the form of airport charges, must, as such, be regarded as an interested party, without it being necessary to prove that such an interest exists. The Commission maintains that it is therefore essential for the coordinator to be independent of that managing body

Diapositiva 26

- The Commission submits that, in the present case, Decree-law No 109/2008 lays down only a general rule designed to ensure the independence of the coordinator. According to the Commission, pursuant to that decree-law, since ANA itself is the coordinator, it must also be the guarantor of the independence between the activities of the coordinator and those of the managing body. In that regard, the Commission claims that the Portuguese Republic was not able to state, first, in which way ANA had ensured that the activities of the DCNS, which is an integral part of ANA and shares its personnel and premises, was independent of ANA itself and, secondly, which guarantees existed in that regard.

Diapositiva 27

- Moreover, the Commission states that the Código português das sociedades comerciais (the Portuguese Code on commercial companies) provides that the board of directors of a public limited company, such as ANA, manages its activities, which means that the report and annual accounts of a department of that public limited company, such as the DCNS, are examined by that board of directors, with the result that the DCNS cannot carry out its activities independently of and separately from that company.

Diapositiva 28

- The Portuguese Republic maintains that the DCNS satisfies the requirements of Article 4(2) of Regulation No 95/93. It submits that ANA, as a managing body, cannot be regarded as an interested party from which the DCNS should be separate and, since Regulation No 95/93 does not define who is to be classified as an interested party, it is necessary to carry out an assessment on a case by case basis, which the Commission did not envisage

Diapositiva 29

- It takes the view that, in the present case, the classification of ANA as an interested party requires that its interest, direct or indirect, in the slot-allocation process must be determined and specifically assessed. However, it maintains that ANA, the airport managing body, benefits only indirectly from the activity of coordinating slots and solely as regards the collection of airport charges, which depend on the number of users. It submits that, as a result, it is unlikely that ANA individually favours any of the airport's users when it does not derive any benefit from this. It states that it would be different if ANA held shares in the capital of an air carrier, which is not the case

Diapositiva 30

- It maintains that even if ANA could be regarded as an interested party, the Portuguese Republic guarantees the independence of the coordinator, provided for in Article 4(2)(b) of Regulation No 95/93. According to that Member State, that provision does not require the coordinator to be a separate legal entity from the managing body of the airport, but simply requires functional separation. It takes the view that there is indeed functional separation between ANA and the DCNS since the DCNS has genuine technical, functional, organisational and managerial autonomy as regards the activities connected with the allocation of slots and that its decisions are therefore in no way subject to any assessment or approval by ANA.

Diapositiva 31

FINDINGS OF THE COURT

- Under the first sentence of Article 4(2)(b) of Regulation No 95/93, the Member State concerned must ensure 'the independence of the coordinator ... by separating the coordinator functionally from any single interested party'.
- 32 Accordingly, it is necessary to ascertain, in the context of the first complaint, whether ANA, as the airport managing body, must be regarded as an 'interested party' within the meaning of that provision and, if so, whether the Portuguese Republic has provided the guarantees necessary to ensure that the coordinator is functionally separate from that interested party.

Diapositiva 32

- It must be pointed out at the outset that Regulation No 95/93 does not contain any definition of the concept of the 'functional separation' of the coordinator or of that of the 'interested party' from which the coordinator must be separate. In order to ascertain the scope of those concepts, it is therefore important to take into account not only the wording of the first sentence of Article 4(2)(b) of Regulation No 95/93 and the objective of the independence of the coordinator in relation to any single interested party within the meaning of that provision, but also the requirements laid down in Article 4(2)(c) of that regulation. That provision states that it is necessary that 'the coordinator acts according to this Regulation in a neutral, non-discriminatory and transparent way' and those three factors thus form an integral part of the independent nature of the function of the coordinator.

Diapositiva 33

As regards, in the first place, the neutrality of the coordinator, it is apparent from the fifth recital of Regulation No 95/93 that that neutrality must be 'unquestioned'. It is established that such a requirement must be guaranteed in relation to any single interested party.

In the second place, it must be pointed out that, in accordance with the sixth recital of Regulation No 95/93, transparency of information 'is an essential element for ensuring an objective procedure for slot allocation'.

Diapositiva 34

- In the third place, in order to enable the coordinator to pursue effectively the objectives of Regulation No 95/93, the objectivity of the procedure for slot allocation requires the tasks which that regulation confers upon the coordinator to be carried out without the coordinator being subject to any pressure.
- The functional approach of the independence of the coordinator is therefore characterised, inter alia, by the obligation to allocate slots objectively and transparently to each person who requests the allocation of such slots.

Diapositiva 35

- As regards the concept of 'interested party', the Commission maintains that that concept has to be given a wide meaning in such a way that it covers an extensive circle of persons, including an airport managing body.

By contrast, the Portuguese Republic submits that whether a party may be classified as an interested party must be assessed on a case-by-case basis, on the basis of a specific inspection, with the result that it is for the Commission to show that, in the present case, the managing body has an interest in the allocation of slots

Diapositiva 36

- That latter argument must be rejected at the outset. In view of the purpose of the first sentence of Article 4(2)(b) of Regulation No 95/93 of ensuring the unquestioned neutrality of the coordinator, it must be held that that provision seeks to preclude any risk of the coordinator not carrying out its tasks in an independent manner.
- In those circumstances, it must be held that 'interested party' must be understood as meaning any entity the interests of which might be affected by the allocation of slots. As the Commission submits, that is the case with regard to the managing bodies of airports

Diapositiva 37

- as the Commission submits, the managing body of an airport may have an interest in the slots being allocated to a certain air carrier, even if it has no direct or indirect shareholding in the capital of that air carrier, and such an interest may arise, for example, out of contracts for the lease of space in the airport concluded between a certain air carrier and the managing body or out of the latter's wish for the airport in question to become a hub for a certain air carrier.
- Consequently, it must be held that ANA, as the airport managing body in Portugal, must be regarded as an 'interested party' within the meaning of Article 4(2)(b) of Regulation No 95/93.

Diapositiva 38

- It must be pointed out that, according to Decree-law No 109/2008, it is ANA, which is responsible for carrying out both the functions of coordinator and those of airport managing body, that, under Article 5(1) and (2) of that decree-law, ensures that the activity of coordinator is independent of its activity as an airport manager by means of appropriate separation and that it is also ANA which guarantees that independence, at least at a functional level. Furthermore, that decree-law establishes, in Article 8 thereof, the body responsible for supervising and monitoring the allocation of slots and defines, in Articles 9 and 10 thereof, serious infringements and the way in which that body must deal with those infringements.

Diapositiva 39

- the Portuguese Republic submits, ANA has never brought any pressure to bear in practice and that the National Institute for Civil Aviation, as the regulatory body for the civil aviation sector in Portugal, has never received the slightest complaint relating to the actions of the coordinator, such factual claims are ineffective as regards whether the Portuguese Republic has laid down the rules of law necessary to ensure that the coordinator is independent of any single interested party

Diapositiva 40

- Consequently, since Decree-law No 109/2008 has not laid down sufficiently specific rules of law to ensure 'the independence of the coordinator ... by separating the coordinator functionally from any single interested party', within the meaning of the first sentence of Article 4(2)(b) of Regulation No 95/93, the Commission's first complaint must be held to be well founded

Diapositiva 41

The second complaint, concerning the system of financing the coordinator

- Article 4(2)(b) of Regulation 95/93 requires the system of financing the coordinator's activities to be such as to guarantee the coordinator's independent status. That means, according to the Commission, that the coordinator should keep separate accounts, manage separate budgets and, in particular, that the financing of its activities should not be contingent on interested parties or solely on one interested party, in the present case the managing body of the airport. The Commission submits that, in the present case, the financing of the coordinator is exclusively contingent on that body and its budget is approved by that body. Furthermore, the Commission maintains that, even though the coordinator constitutes a specific cost centre, all of its expenses are borne by the managing body, which does not make it possible to conclude that the system of financing the coordinator is independent of that body

Diapositiva 42

- According to the Portuguese Republic, a system of financing such as to guarantee the coordinator's independent status, as required by Article 4(2)(b) of Regulation No 95/93, is merely an indicator which makes it possible to measure the degree of the coordinator's independence and not a fundamental legal requirement. It maintains that the fact that the slot-allocation charge has not been introduced does not therefore make it possible to conclude that the DCNS lacks independence

Diapositiva 43

FINDING OF THE COURT

- In the present case, ANA is an interested party, as is apparent from paragraph 44 of this judgment. It is therefore necessary for the DCNS to have its own accounts, budget and financial resources in order to ensure that it carries out its functions as coordinator in accordance with Regulation No 95/93, without any influence from ANA.
- However, there is, in particular, no mechanism for financing by means of own resources in the present case. It is common ground that the Portuguese legislation does not provide for such a mechanism and that the resources of the DCNS come exclusively from ANA

Diapositiva 44

- Furthermore, the Portuguese Republic does not dispute that the adoption of the coordinator's operational budget and annual accounts falls within the exclusive competence of ANA's board of directors. As regards the Portuguese Republic's argument that the DCNS constitutes a specific cost centre, that fact alone is not capable of affecting the conclusion that the coordinator is entirely financed by an interested party, in the present case by ANA. Consequently, the system of financing the coordinator's activities is not such as to guarantee the coordinator's independent status as required by the second sentence of Article 4(2)(b) of Regulation No 95/93.

Diapositiva 45

The ancillary claims of the Portuguese Republic

- Accessorily, the Portuguese Republic asks the Court to declare, first, that 'in Portugal, the current coordinator ensures that the requirements relating to functional independence laid down in Article 4(2)(b) of Regulation No 95/93 are complied with' and, secondly, that 'the Portuguese Republic has fulfilled its obligations under Regulation No 95/93'.
- As regards those claims, it must be held that, in the context of an action for failure to fulfil obligations, the Court does not have jurisdiction to deal with an application other than that submitted by the Commission. Those claims must therefore be rejected as inadmissible

Diapositiva 46

- In the light of all of the foregoing, it must be held that, by failing to ensure that the coordinator for the allocation of slots is independent by separating the coordinator functionally from any single interested party and by failing to ensure that the system of financing the coordinator's activities is such as to guarantee the coordinator's independent status, the Portuguese Republic has failed to fulfil its obligations under Article 4(2) of Regulation No 95/93.

Diapositiva 47

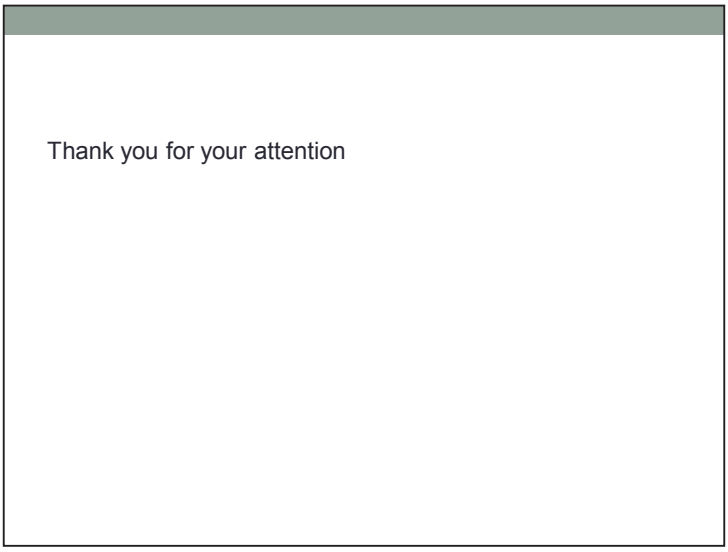
COSTS

- Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Portuguese Republic's failure to fulfil its obligations has been established, the Portuguese Republic must be ordered to pay the costs.
- On those grounds, the Court (Fifth Chamber) hereby:

Diapositiva 48

-
- **1. Declares that, by failing to ensure that the coordinator for the allocation of slots is independent by separating the coordinator functionally from any single interested party and by failing to ensure that the system of financing the coordinator's activities is such as to guarantee the coordinator's independent status, the Portuguese Republic has failed to fulfil its obligations under Article 4(2) of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, as amended by Regulation (EC) No 545/2009 of the European Parliament and of the Council of 18 June 2009;**
- **2. Orders the Portuguese Republic to pay the costs.**

Diapositiva 49



8. Presentation / Presentazione

Turkana Suleymanova - Aigul Saparova
(student's matriculation No 1925045 and 1910314)

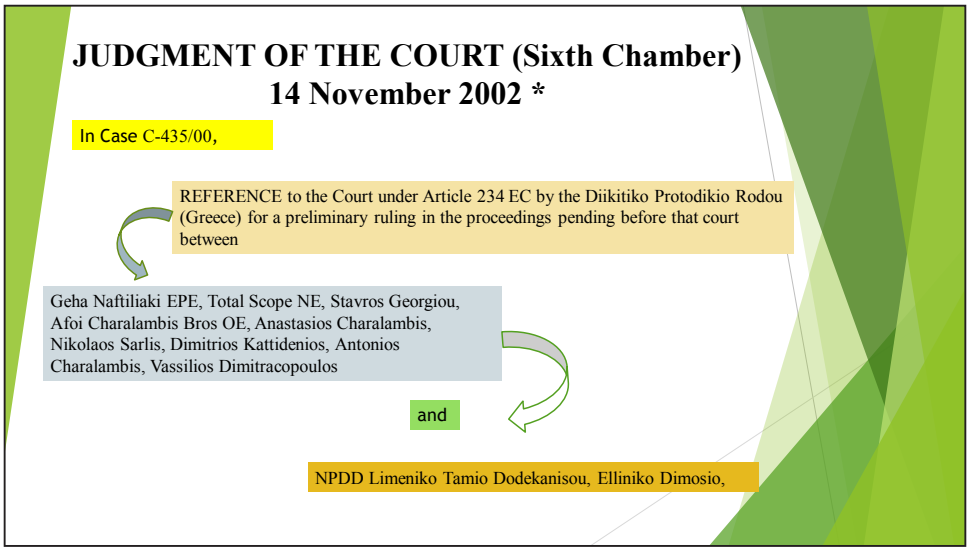
FREEDOM TO PROVIDE MARITIME TRANSPORT SERVICES WITHIN THE EUROPEAN UNION

Students dealt with the principle of freedom to provide services to maritime transport services within the European Union. The implementation of this principle was carried out through an analysis of the following judgment of the Court of Justice of the European Union: 14 November 2002, Geha Naftiliaki EPE and others v NPDD Limeniko Tamio Dodekanisou, Elliniko Dimosio (Case C-435/00). This judgment concerns on the interpretation of Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries.

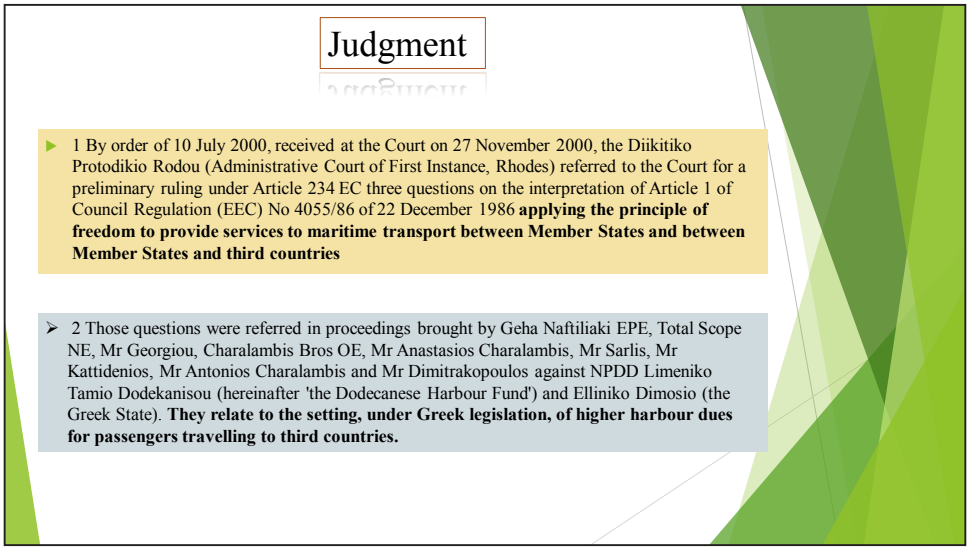
LA LIBERA PRESTAZIONE DEI SERVIZI MARITTIMI NELL'UNIONE EUROPEA

Le studentesse hanno esaminano il principio della libera prestazione di servizi del trasporto marittimo nell'Unione europea. La questione dell'applicazione di tale principio è stata affrontata mediante l'analisi della seguente sentenza della Corte di giustizia dell'Unione europea: 14 novembre 2002, Geha Naftiliaki EPE e altri c. NPDD Limeniko Tamio Dodekanisou, Elliniko Dimosio (Causa C-435/00). La suddetta sentenza attiene all'interpretazione dell'art. 1 del Regolamento (CEE) n. 4055/86 del Consiglio, del 22 dicembre 1986, che applica il principio della libera prestazione dei servizi ai trasporti marittimi tra Stati membri e tra Stati membri e Paesi terzi.

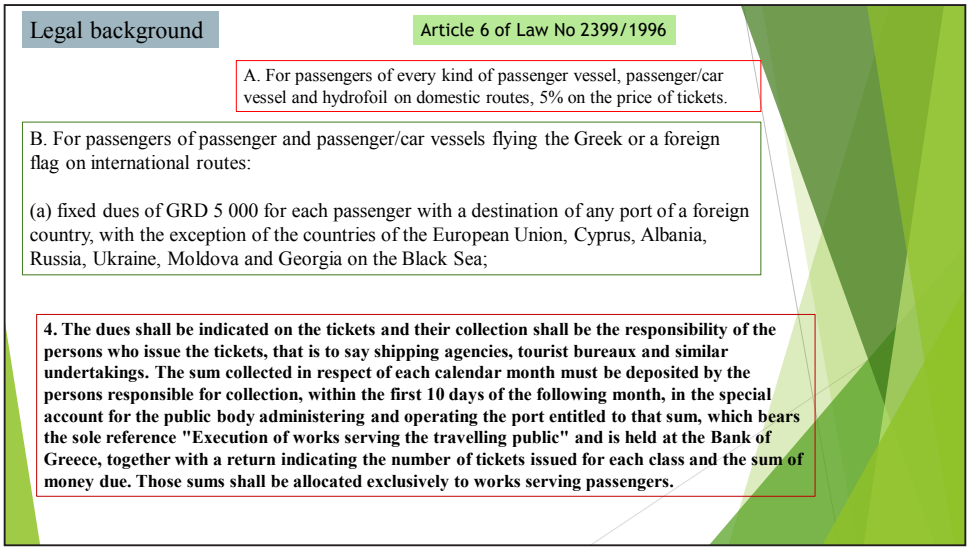
Diapositiva 1



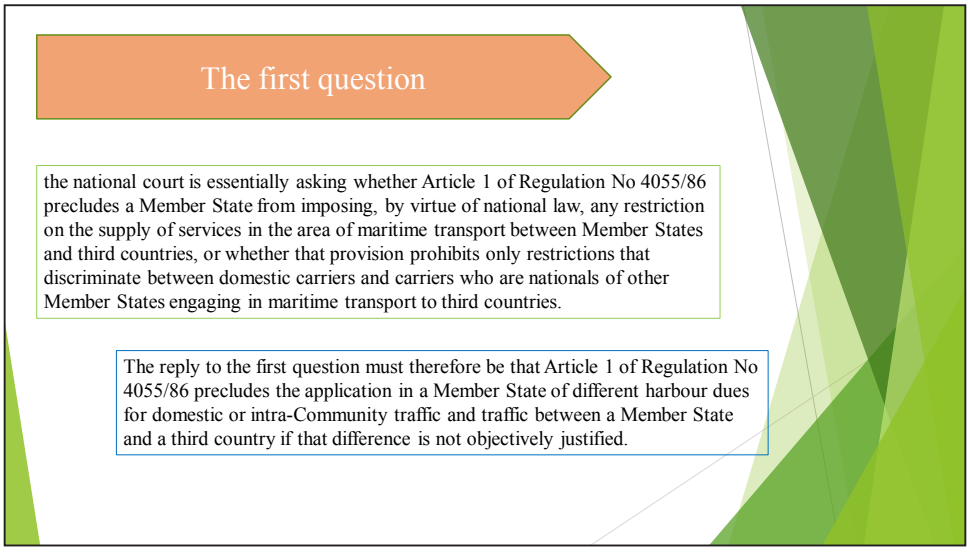
Diapositiva 2



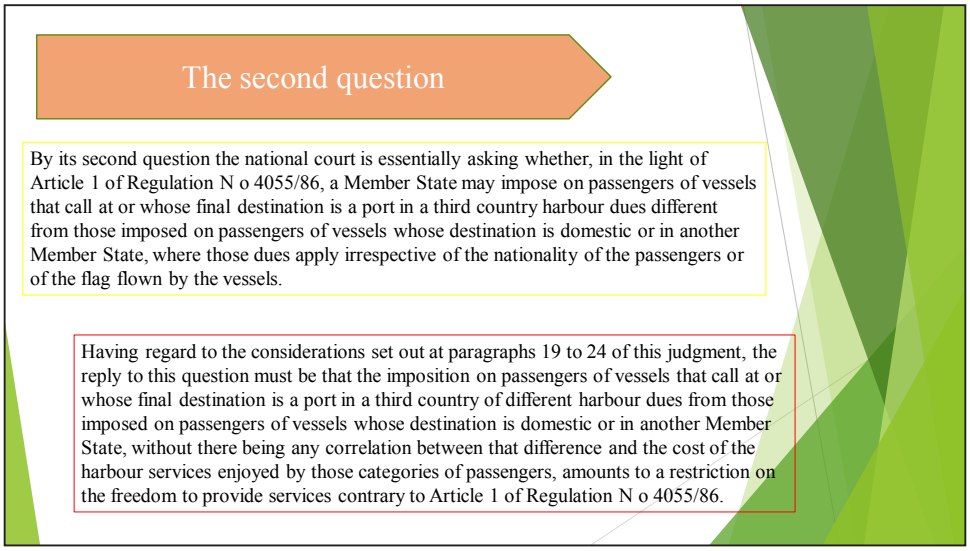
Diapositiva 3



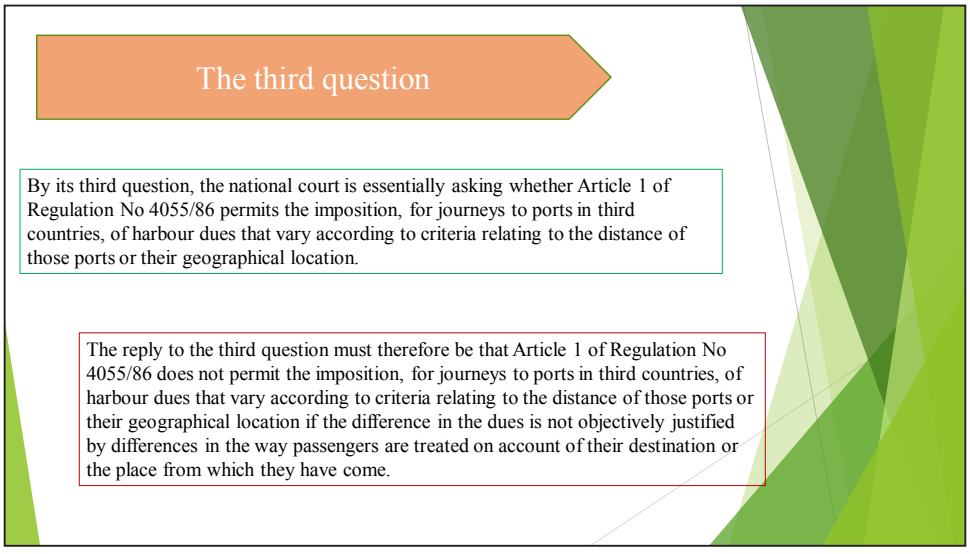
Diapositiva 4



Diapositiva 5



Diapositiva 6



Diapositiva 7

Costs

The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

1. Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries precludes the application in a Member State of different harbour dues for domestic or intra-Community traffic and traffic between a Member State and a third country if that difference is not objectively justified.

Diapositiva 8

2. The imposition on passengers of vessels that call at or whose final destination is a port in a third country of different harbour dues from those imposed on passengers of vessels whose destination is domestic or in another Member State, without there being any correlation between that difference and the cost of the harbour services enjoyed by those categories of passengers, amounts to a restriction on the freedom to provide services contrary to Article 1 of Regulation No 4055/86.

3. Article 1 of Regulation No 4055/86 does not permit the imposition, for journeys to ports in third countries, of harbour dues that vary according to criteria relating to the distance of those ports or their geographical location if the difference in the dues is not objectively justified by differences in the way passengers are treated on account of their destination or the place from which they have come.

Diapositiva 9

Conclusion

In the light of the foregoing considerations, it is submitted that the first and second questions be answered as follows:

(1) Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries precludes national legislation which is liable to prohibit, impede or render less attractive the provision of services within the scope of that regulation even if the national legislation applies without distinction on the ground of the nationality of the persons providing the services or of the persons for whom they are intended and applies to the provision of transport services between a Member State and a third country, to the extent that the restriction is not justified by overriding reasons in the general interest, suitable for attaining the objective which it pursues and necessary and proportionate in the light of that objective.

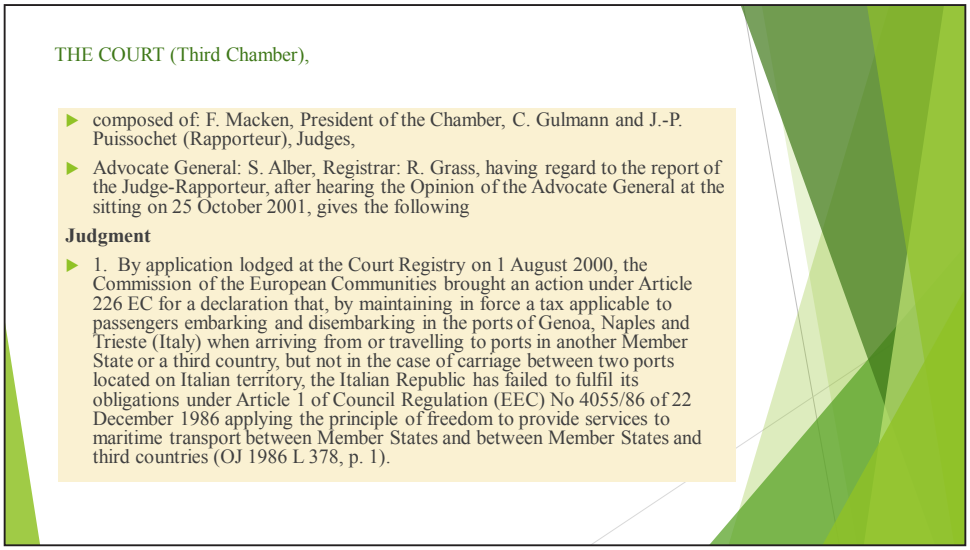
Diapositiva 10

Commission of the European Communities v Italian Republic

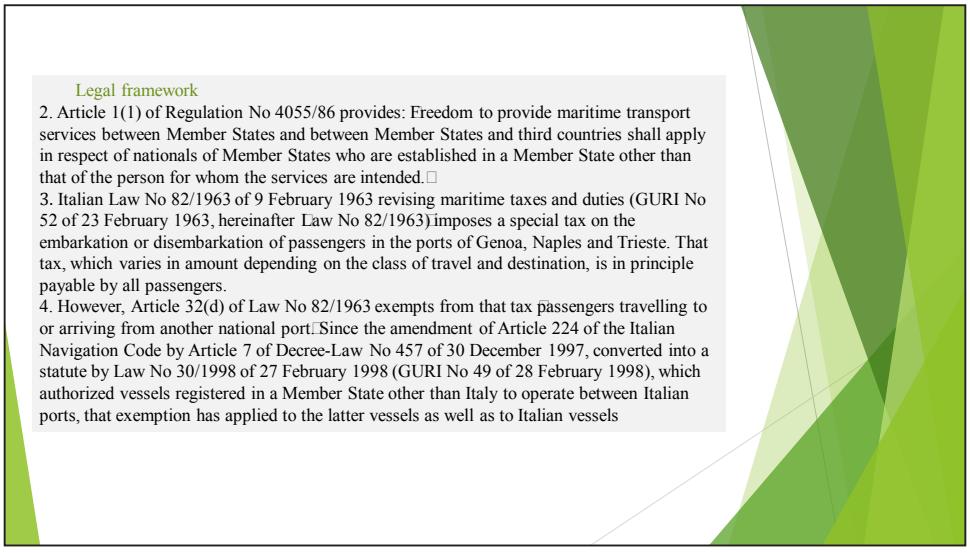
Case C-295/00

- **Judgement of the court (third chamber)**
- (Failure by a Member State to fulfil its obligations - Infringement of Article 1 of Regulation (EEC) No 4055/86 - Disembarkation/embarkation tax payable by passengers - Tax not applicable to passengers travelling between ports on Italian territory) In Case C-295/00,
- **Commission of the European Communities,** represented by E. Traversa and B. Mongin, acting as Agents, with an address for service in Luxembourg, applicant, v
- **Italian Republic,** represented by U. Leanza, acting as Agent, assisted by G. De Bellis, avvocato dello Stato, with an address for service in Luxembourg, defendant,
- APPLICATION for a declaration that, by maintaining in force a tax applicable to passengers embarking and disembarking in the ports of Genoa, Naples and Trieste (Italy) when arriving from or travelling to ports in another Member State or a third country, but not in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1),

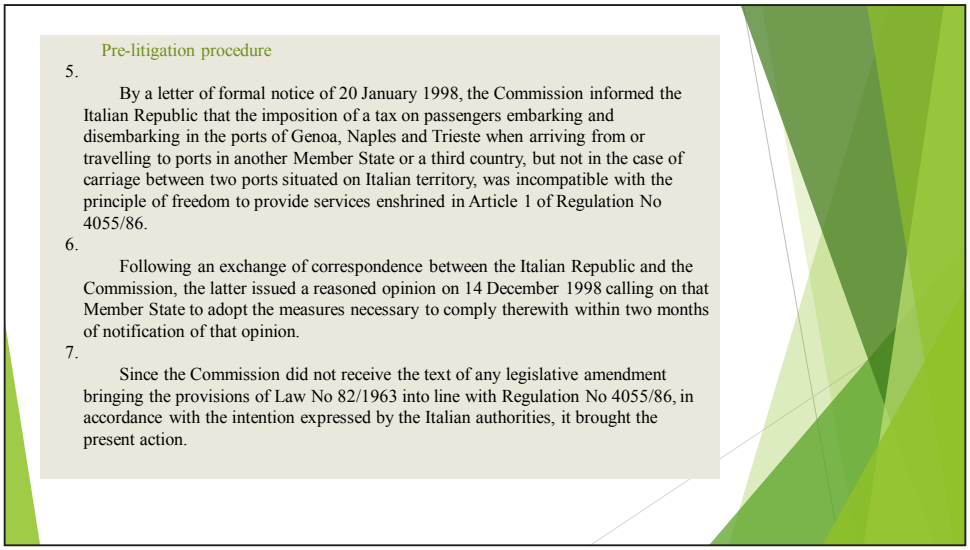
Diapositiva 11



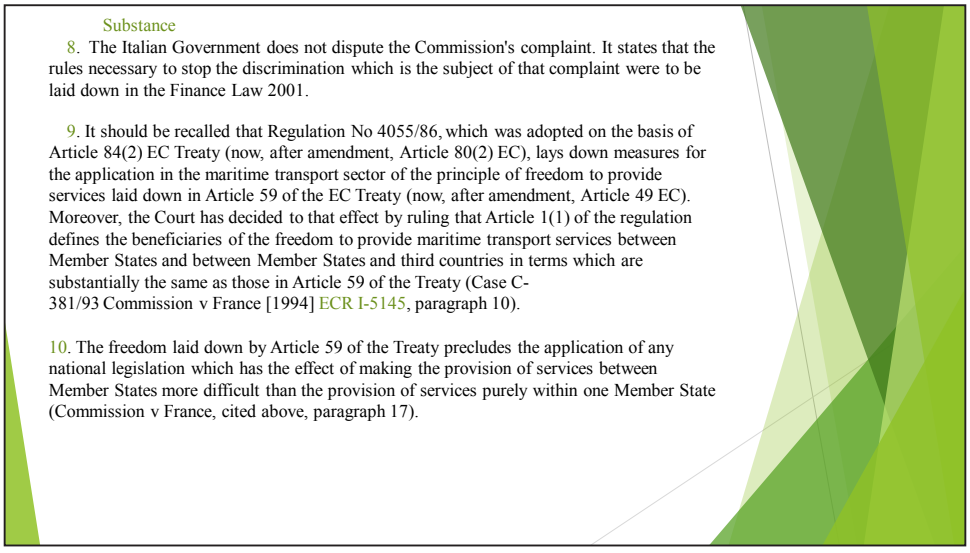
Diapositiva 12



Diapositiva 13



Diapositiva 14



Diapositiva 15

11. Consequently, the provision of maritime transport services between Member States cannot be subject to stricter conditions than those to which analogous provisions of services at domestic level are subject (Commission v France, cited above, paragraph 18).

12. Furthermore, it must be recalled that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion (see, in particular, Case C-147/00 Commission v France [2001] ECR I-2387, paragraph 26).

13. In the present case it is not disputed that the Italian Republic did not take the measures necessary to comply with the reasoned opinion within the period prescribed.

14. Accordingly, it must be held that, by maintaining in force a tax applicable to passengers embarking and disembarking in the ports of Genoa, Naples and Trieste when arriving from or travelling to ports in another Member State or a third country, but not in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to fulfil its obligations under Article 1 of Regulation No 4055/86.

Diapositiva 16

Costs

15.

Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful, the Italian Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Declares that, by maintaining in force a tax applicable to passengers embarking and disembarking in the ports of Genoa, Naples and Trieste (Italy) when arriving from or travelling to ports in another Member State or a third country, but not in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries;
2. Orders the Italian Republic to pay the costs

Diapositiva 17

OPINION OF ADVOCATE GENERAL ALBER delivered on 25 October 2001

1. The action brought by the Commission concerns the application of the principle of freedom to provide services to maritime transport. The Commission brought a complaint regarding the collection of harbour taxes in the ports of Trieste, Naples and Genoa for passengers arriving from or travelling to other Member States. The tax is not payable for passengers travelling within Italian territory.

2. Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (hereinafter 'Regulation No 4055/86') introduces the principle of freedom to provide services in the maritime transport sector as from 1 January 1987. Under that regulation, all the rules of the EC Treaty on the freedom to provide services are applicable to maritime transport between Member States.
In the perspective of a single market and in order to permit the realisation of its objectives, that freedom precludes the application of any national legislation which has the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State. As the Court held in Case C-381/93 Commission v France, the collection of separate harbour taxes — according to whether passengers are transported to a national port of the State in question or to a port of another Member State — is an unjustified restriction on the freedom to provide services in maritime transport.

Diapositiva 18

3. Under Italian Law No 82/63 a special tax was brought in for passengers in transit in the ports of Genoa, Naples and Trieste arriving from other Member States in the European Union or from third States. In accordance with Article 7 of Law No 255/91 the tax ranges from a minimum of ITL 400 to a maximum of ITL 6 000. For maritime journeys on national territory no tax is collected in accordance with Article 32(d) of Law No 82/63. That exception has been in force since the issue of Decree Law No 457 of 30 December 1997, converted into Law No 30 of 27 February 1998, both for vessels registered in Italy and for those registered in other Member States in so far as they carry out maritime transport between Italian ports.

4. On 1 August 2000, after the administrative procedure was duly completed, the Commission brought an action against the Italian Republic seeking a declaration that, by maintaining in force a tax payable by passengers disembarking or embarking in the ports of Genoa, Naples and Trieste where those passengers arrive from, or are travelling to, ports in another Member State or a third country, whereas no such tax is levied in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to comply with its obligations under Article 1 of Council Regulation (EEC) No 4055/86. Furthermore, it asked that the Italian Republic be ordered to pay the costs

Diapositiva 19

5. In its defence, lodged on 20 October 2000, the Italian Republic did not dispute its failure to comply with the Treaty. It pointed out that the necessary amendment to Italian law would be included in the finance bill for 2001, which should be approved during the course of 2000.

6. The Court has not yet been informed that the amendment to the legislation has been made. Furthermore, according to settled case-law, any remedy to the failure to comply with an obligation after the time-limit prescribed in the reasoned opinion has expired, fixed in this case at 14 February 1999, does not affect the question whether the action is justified. The subject-matter of the case at issue is established by the reasoned opinion. Even when the default has been remedied after the time-limit prescribed by the second paragraph of Article 226 EC has expired, there is still an interest in pursuing the action in order to establish the basis of liability which a Member State may incur as a result of its default towards other Member States, the Community or private parties
7. Italy does not dispute the failure to comply. Consequently the Court should find in favour of the Commission.

8. The Commission also requested that Italy be ordered to pay the costs. In accordance with Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for.

Diapositiva 20

9. In the light of the reasons set out above, I propose that the Court should give the following reply:

(1) By maintaining in force a tax payable by passengers disembarking or embarking in the ports of Genoa, Naples and Trieste where those passengers arrive from, or are travelling to, ports in another Member State or a third country, whereas no such tax is levied in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to comply with its obligations under Article 1 of Regulation (EEC) No 4055/86.

(2) The Italian Republic is ordered to pay the costs

Diapositiva 21

9. Presentation / Presentazione

Silvia Biancu - Giulio Massimo Grazioli
(student's matriculation No 1945445 and 1945307)

PORT RØDBY CASE

Students analysed the Essential Facilities Doctrine within the EU transport sector considering the Port Rødby case: EC Commission decision 21 December 1993 concerning a refusal to grant access to the facilities of the port of Rødby (94/119/EC). The treatment of this subject-matter was also undertaken examining the judgement of the Italian Council of State, ch. VI, 13 December 2011 No 6525 related to the implementation of the above-mentioned doctrine with respect to dry docks.

LA SENTENZA PORT RØDBY

Gli studenti hanno trattato la cosiddetta Essential Facilities Doctrine nell'ambito del settore del trasporto europeo considerando la *decisione Port Rødby*: Commissione europea 21 dicembre 1993 relativa al rifiuto di accesso alle installazioni del porto di Rødby (94/119/CE). La disamina di tale tematica è stata svolta sulla base della sentenza del Consiglio di Stato, sez. VI, 13 dicembre 2011 n. 6525 attinente all'applicazione di detta dottrina ai bacini di carenaggio.

Diapositiva 1

Port Rodby Case

Silvia Biancu,
Giulio Massimo Grazioli

Diapositiva 2

Structure :

1. Introduction of the topic
2. Essential facility doctrine contextualizing the issue
3. Injured parties and facts

Diapositiva 3

What happened

DSB is a danish public enterprise which owns the Port Robdy.
It makes a maritime carrier from Rodby to Puttgarden, and it is the only enterprise which makes this kind of trip.

Europort AS and **Scan Port gmbh** are 2 private enterprises that need to make the carriage from Rodby to Puttgarden.

→ They ask to **DSB** the possibility to use the port Robdy or to built a new port near the port of Robdy.

DSB didn't want to accord this opportunity to **Europort** and **Scan Port**.

→ The two private enterprises were in competition with DSB. If the later had accorded to others to use its port there would have been economical consequences which would have damaged **DSB**.

Diapositiva 4

The Essential Facilities Doctrine

This doctrine describes a particular claim. It refers to the access to an essential facility in a situation of monopolisation.

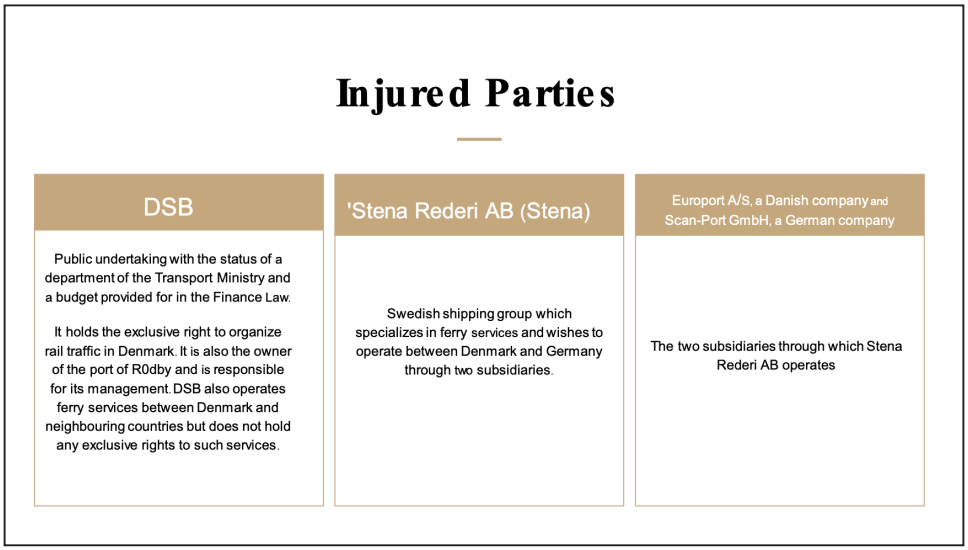
→ Essential Facility Doctrine is generally related to the refusal to deal.

There are specific requirement which have to be respected in order to invoke this doctrine:

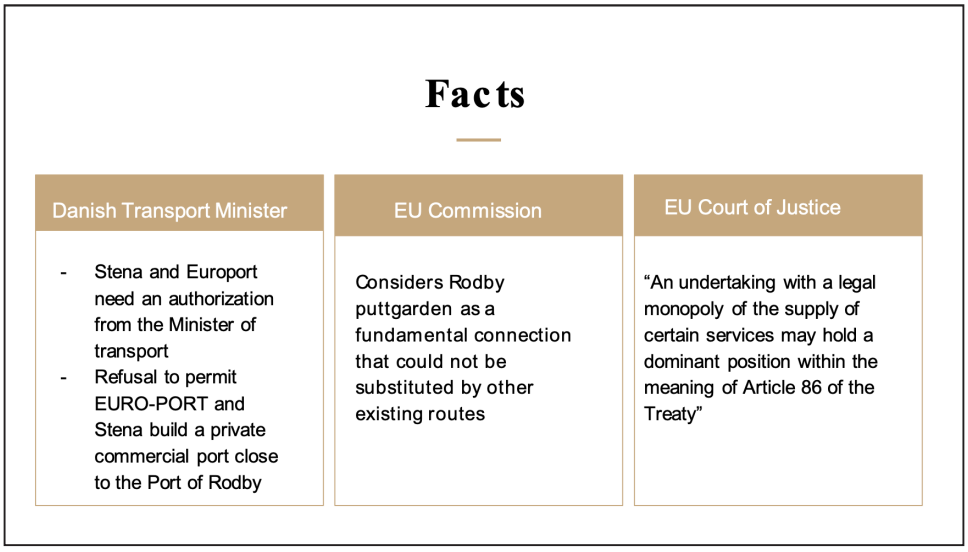
1) The facility has to be controlled by a monopolist.
2) Inability to duplicate the essential facility.
3) Denial of utilisation of facility.
4) Feasibility of providing the facility to competitors.

→ The subject who ask for the facility can even be a competitor of the owner of the resurse.

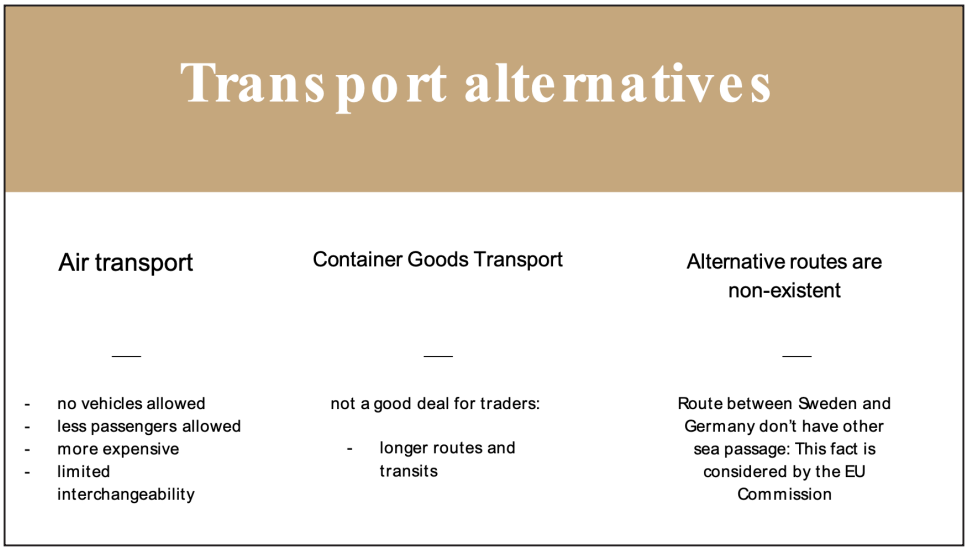
Diapositiva 5



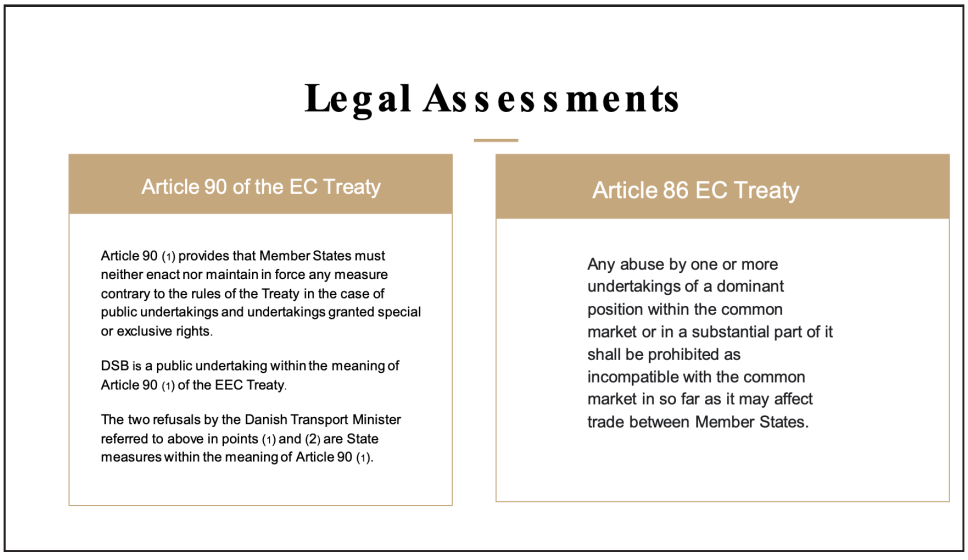
Diapositiva 6



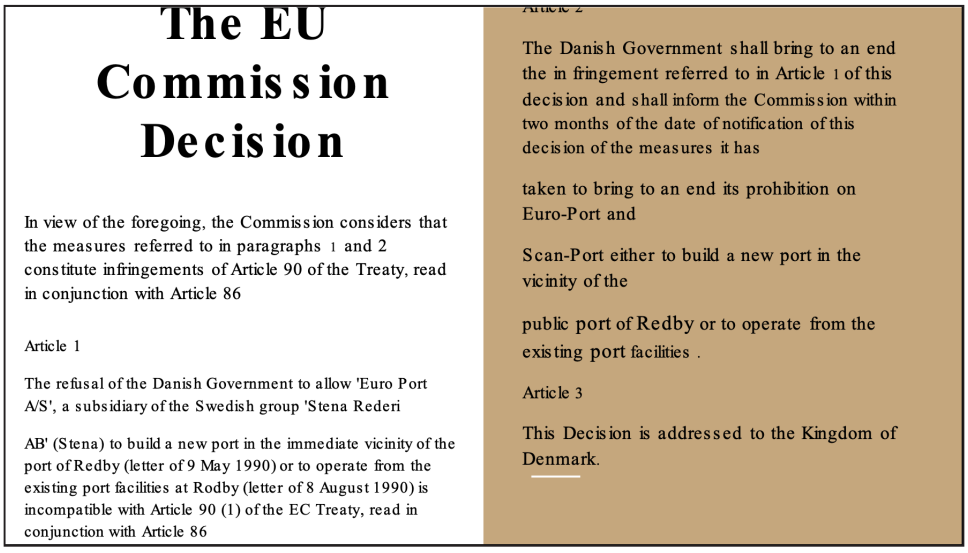
Diapositiva 7



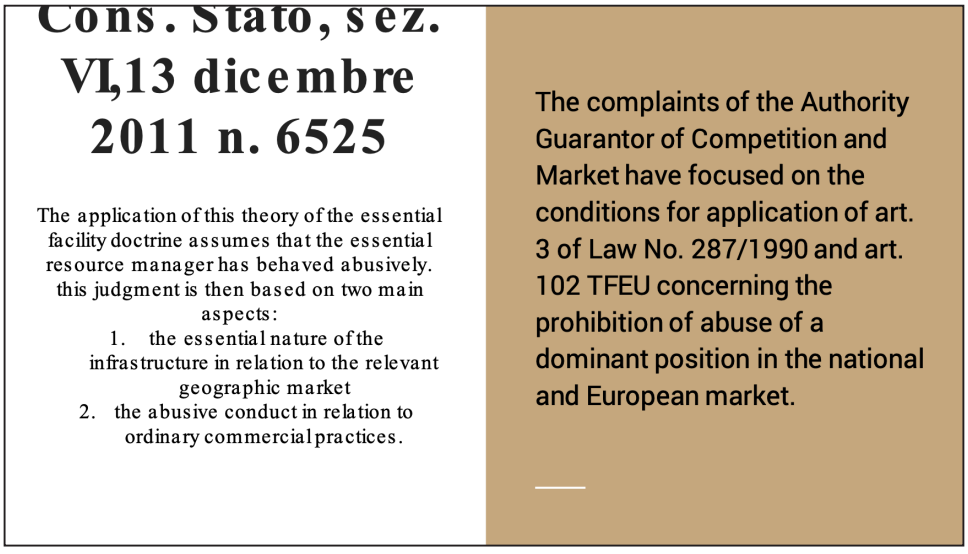
Diapositiva 8



Diapositiva 9



Diapositiva 10



10. Presentation / Presentazione

Crucirescu Victor - Tadevosian Narine
(student's matriculation No 1900222 and 1915470)

EU AIR PASSENGER RIGHTS: COMPENSATION AND ASSISTANCE

Students dealt with the analysis of the air passenger rights. Provisions of Regulation (EC) No 261/2004, establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, are studied. This analysis was based on possible practical cases elaborated by the same students.

I DIRITTI DEI PASSEGGERI NEL TRASPORTO AEREO: COMPENSAZIONE E ASSITENZA

Gli studenti hanno analizzato i diritti dei passeggeri nel trasporto aereo sulla base di disposizioni del Regolamento (CE) n. 261/2004, che istituisce regole comuni in materia di compensazione ed assistenza ai passeggeri in caso di negato imbarco, di cancellazione del volo o di ritardo prolungato. Tale analisi è stata svolta sulla base di possibili casi pratici elaborati dagli stessi studenti.

Diapositiva 1

Jean Monnet Module
"Transportation Law and Court of Justice of the European Union"
(TLCJEU).
Degree Course "European Studies"
(LM-90).
Faculty of Law.
Sapienza University of Rome.

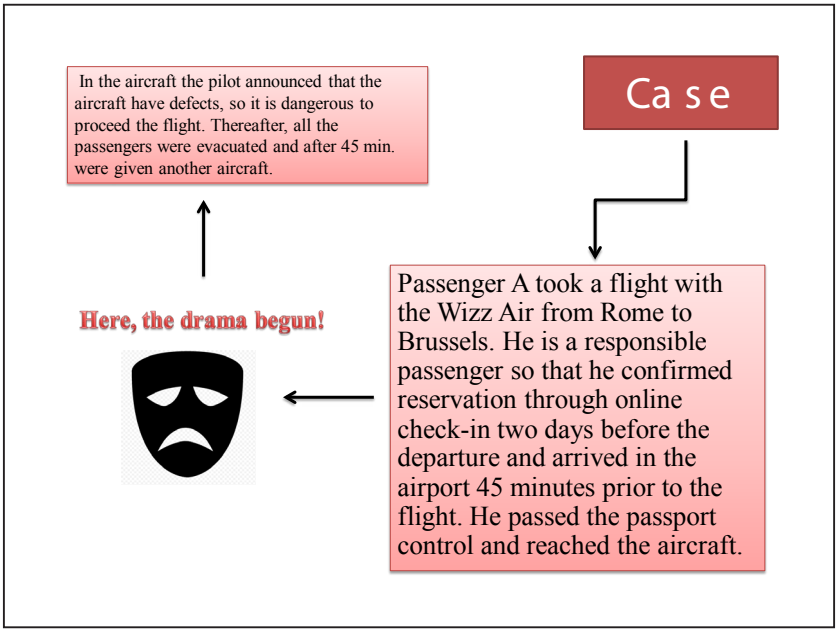
Crucirescu Victor - 1900222
Tadevosian Narine -1915470

Diapositiva 2

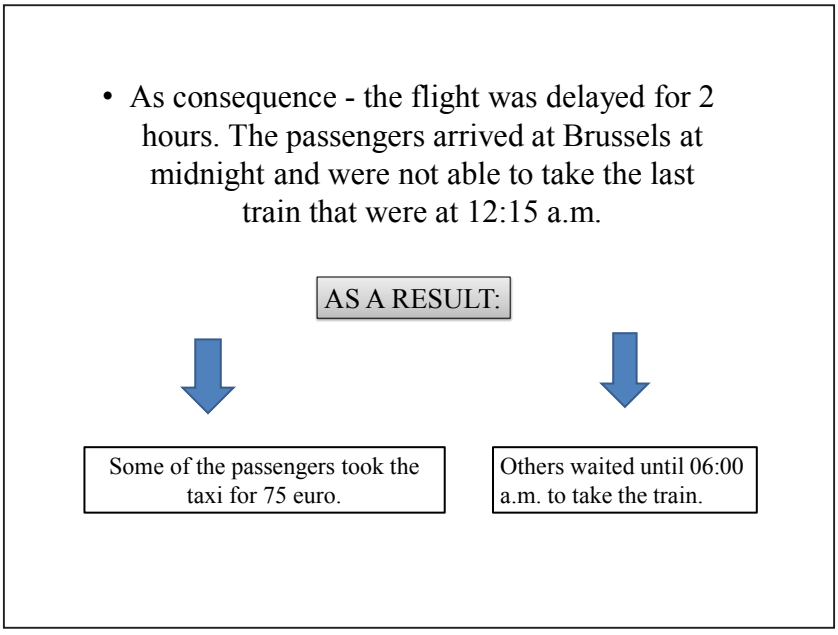
Good evening, dear colleagues!

We are going to represent a real life case to discuss with you, changing some circumstances and relying on specific legislation. We will describe a situation and then ask some questions to go deeper to the core elements of the problems that may occur in our lives.

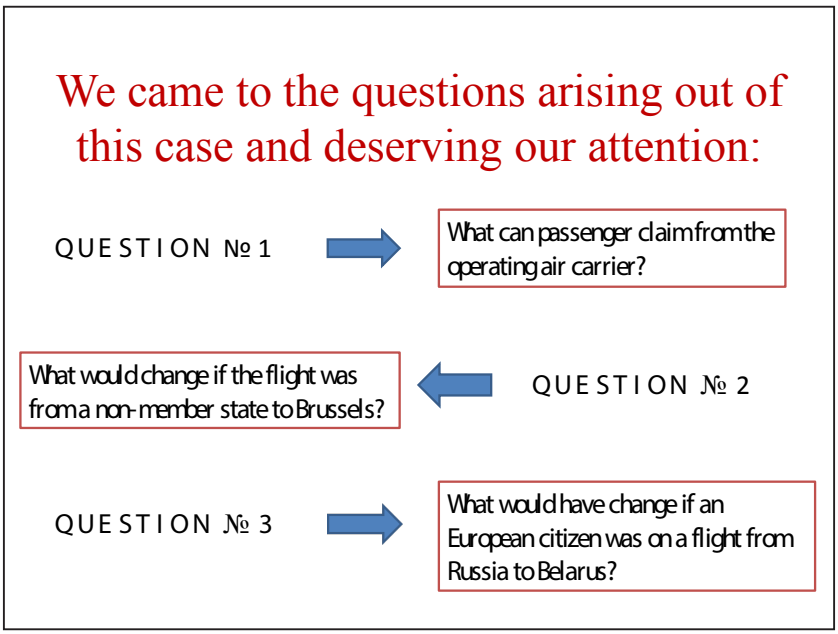
Diapositiva 3



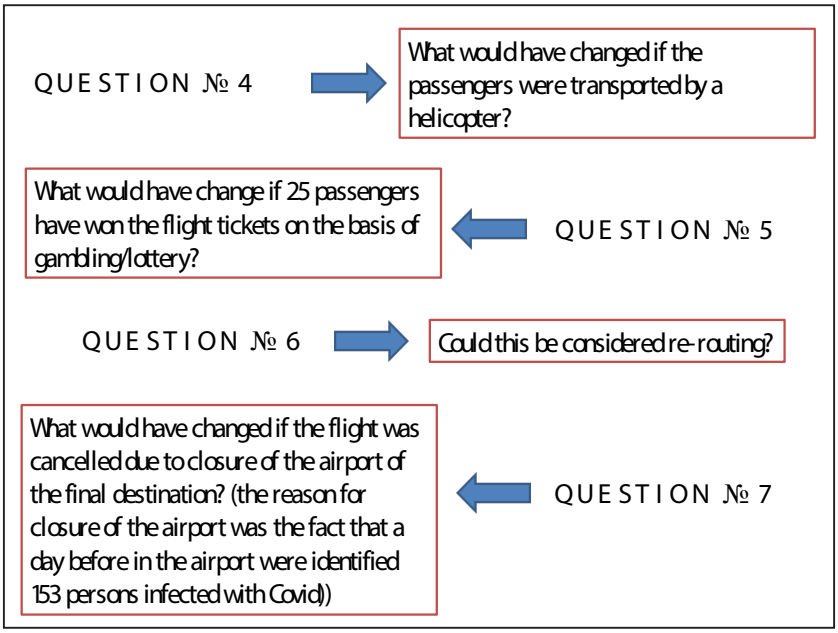
Diapositiva 4



Diapositiva 5



Diapositiva 6



Diapositiva 7

Relevant provisions to every question mentioned above:

Diapositiva 8

Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

- **Article 1 - Subject**

1. This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:

(a) they are denied boarding against their will;

(b) their flight is cancelled;

(c) their flight is delayed.

Diapositiva 9

Article 3 - Scope

- 1. This Regulation shall apply:
- (a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;
- (b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.
- 2. Paragraph 1 shall apply on the condition that passengers:
- (a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,
- - not later than 45 minutes before the published departure time; or
- (b) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.
- 3. This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an air carrier or tour operator.
- 4. This Regulation shall only apply to passengers transported by motorised fixed wing aircraft.

Diapositiva 10

Article 7 - Right to compensation

- 1. Where reference is made to this Article, passengers shall receive compensation amounting to:
- (a) EUR 250 for all flights of 1500 kilometres or less;
- (b) EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres;
- (c) EUR 600 for all flights not falling under (a) or (b).
- 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 1500 kilometres or less; or
- (b) by three hours, in respect of all intra-Community flights of more than 1500 kilometres and for all other flights between 1500 and 3500 kilometres; or
- (c) by four hours, in respect of all flights not falling under (a) or (b),

Diapositiva 11