HPP ASIANAJOTOIMISTO

Matti Komonen
Mikko Sundström
26 September 2018

COORDINATION BETWEEN REGULATIONS ON AIR AND MARITIME TRANSPORT AND ACTING ON SOMEONE ELSE'S BEHALF DEFINED IN THE ACT ON TRANSPORT SERVICES

Legal analysis, prepared by HPP Asianajotoimisto Oy
English translation commissioned by FICORA (prepared by AAC Global).
In case of discrepancy, the original Finnish version shall prevail.

HPP ASIANAJOTOIMISTO

CONTENTS

1 INTRODUCTION

1.1 Assignment

The Finnish Communications Regulatory Authority (FICORA) ordered an expert report from HPP Attorneys Ltd ("HPP") regarding coordination between national regulations on air and maritime transport and regulations on acting on someone else's behalf, as stipulated in part III, chapter 2, section 2a of the Act on Transport Services (320/2017).

The report ordered from HPP is related to the Lippu project established by the Ministry of Transport and Communications. FICORA is acting as the responsible authority in the project, and the other parties involved are the Finnish Transport Agency and the Finnish Transport Safety Agency (Trafi). The purpose of the report is to support the preparation of official guidelines during 2018. The report will be published on the website of the responsible authorities to the extent agreed upon separately.

1.2 Scope of the assignment

The report focuses on the transport of passengers by air and sea.

Considering regulations on acting on someone else's behalf and that acting on someone else's behalf were referred to as authorisations in legal terms when making preparations for the new law, the report does not include situations where an operator acting on someone else's behalf provides transport services in their own name and does not simply bring a passenger and mobility service provider together, i.e. act on behalf of the passenger. These types of situations may also be regulated under the Act on Travel Service Combinations. Moreover, this report does not cover payment services or the clearing of ticket charges.

This report does not exhaustively respond to all questions related to acting on someone else's behalf. In part, these are highly subject to interpretation due to new international legal provisions. As there is no existing application practice regarding the questions being studied, courts of law ultimately resolve any questions about interpretation.

This report is based on material related to legal preparations and other generally available information about the subject, background information FICORA and other responsible authorities presented to HPP, and the meeting held on 27 April 2018. Codes of practice for travel chains (FICORA's publications 004/2017 J), the related legal analysis and general material included in the Lippu project have been taken into account when preparing this report.

This report does not examine the permissibility of regulations from the points of view of data protection and competition law. According to the view of HPP, the valid legislation on competition, which may be applica-

ble alongside any special regulations, must be complied with regarding the obligation to open up application programming interfaces (APIs) and any resulting exchange of information between competitors. The legislation on competition may set limits for the transmission and exchange of specific information between transport services and providers of integrated mobility services. This may be particularly significant, as it is assumed that transport service providers can also act as providers of integrated mobility services at their discretion.

1.3 Structure of the report

Legislation on acting on someone else's behalf is completely new, apparently also at the international scale. Statements issued during the preparation of the legislation on acting on someone else's behalf indicate that the obligation to open up APIs has, in particular, apparently been unclear to transport service companies and other issuers of statements[1]. Therefore, this report needs to start by examining the goals of legislators and what acting on someone else's behalf means according to legislators, in section 2. This examination is carried out section by section.

Section 3 discusses the international application of the Act on Transport Services, particularly concerning acting on someone else's behalf. This examination deals expressly with international transport, since foreign airlines and shipping companies do not offer transport services in Finland alone, at least to any significant extent considered in this report.

International application involves very difficult and multidimensional questions purely about national regulations and their relationship with international regulations. International application cannot solely be assessed on the basis of the general application provision of the Act on Transport Services. Instead, the perspectives of international private law and the Court of Justice of the European Union (CJEU) are also needed.

The CJEU guarantees the right to freely provide air and maritime transport services. Having a completely new obligation to open up APIs, including agreement obligations, is considered to reduce this right, even though the EU aims to combine tickets from different modes of transport. However, no EU legislation relating to acting on someone else's behalf exists.

Regulations on transport services focus strongly on each mode of transport separately. The majority of the regulations are based on the EU and international associations, i.e. the International Maritime Organization regarding maritime transport and the International Civil Aviation Organization regarding air transport. In sections 4 and 5, regulations on

[1] See, for example, statement FCCA/441/03.02/2017 of 1 June 2017 from the Finnish Competition and Consumer Authority.

air and maritime transport at an international, EU and national level are discussed. This examination focuses largely on strictly regulated air transport. These stricter regulations are justified, also considering the popularity and characteristics of air transport. Based on statements issued on the Government proposal, it should also be assumed that international questions related to acting on someone else's behalf mainly concern air transport. This report shows that international regulations do not address situations similar to acting on someone else's behalf.

Section 6 of this report describes personal relationships in acting on someone else's behalf and related regulations, including questions related to international choice of law and partly to the jurisdiction of courts of law, based on air and maritime transport.

1.3.1 Particular questions addressed in this report

The assessment of coordination in section 7 aims to respond to the four questions presented by the party requesting the statement. The responses indicate that the challenges associated with coordination are not related to international regulations on air and maritime transport, but concern the interpretation of regulations on acting on someone else's behalf. This report regards the following questions as particularly relevant:

1) Considering that the scope of application of the Act on Transport Services is very broad, how does the requirement for acting on someone else's behalf apply to airlines and shipping companies that are not domiciled in Finland?

2) User accounts vs. loyal customer programmes? On what grounds can a loyal customer programme be a user account, as that data should also be made openly available in accordance with the justification of the law?

3) Scope of authorisations regarding acting on someone else's behalf: cancellations, changes in terms and conditions and requirements derived from international agreements, and other such questions?

4) The role of service platforms and aggregators (e.g. Amadeus) from the point of view of the Act on Transport Services: can these also be parties governed by the obligation to provide service to parties acting on someone else's behalf?

1.4 Key concepts used in this report

The Act on Transport Services and the codes of practice for travel chains include a high number of new terms and definitions. The new obligation to open up APIs applies not only to transport service companies, but also to brokering and dispatch services and integrated mobility

services. This report does not discuss any differences in the definition of these types of concepts, as this report is based on the tripartite relationship of passenger – operator acting on someone else's behalf – airline/shipping company (and its ticket/payment system operator), as referred to in part III, chapter 2, section 2a of the Act on Transport Services.

In this report, the term "API agreement" refers to an agreement that an operator acting on someone else's behalf and a transport service company (airline/shipping company) sign on the opening up of application programming interfaces.

2 ACTING ON SOMEONE ELSE'S BEHALF

2.1 Goals and structure of regulations in general

Provisions on acting on someone else's behalf were added to the Act on Transport Services under act 301/2018, which came into force on 1 January 2019. The provision on the scope of application of part I, chapter 1, section 1 of the Act on Transport Services entered into force on 1 July 2018.

The provisions on acting on someone else's behalf obligate mobility service providers to, at the passenger's request, open up an electronic service API based on a passenger's customer account relationship with another service provider with which the passenger has a customer account relationship, so that integrated mobility services can be provided for the customer using their customer information.

The glossary on passenger transport services, guide 1/2018 from the Finnish Transport Agency, defines the concepts of acting on someone else's behalf and API as follows:

> Acting on someone else's behalf. Using different services on a customer's behalf as requested by the customer. The Act on Transport Services obligates a provider of mobility services or integrated mobility services or a party in charge of a ticket and payment system acting on their behalf to allow parties to act on someone else's behalf. This means that a provider of mobility services or integrated mobility services must be provided with open access to systems to acquire ticket products or other products providing the right to use mobility services on behalf of a service user at the service user's request, using the identification and user information existing in the service user's user account.
>
> Application programming interface (API). An external interface of a data system, through which programs can make requests and exchange information, i.e. "communicate

with one another". An API can be a data API only, through which another system can read data (e.g. timetables and routes). A function-based API allows system data to be changed through the API (e.g. buying a ticket or booking a seat). An API is considered to be an open API if it has been openly documented and can be openly tested and deployed.

2.1.1 Government proposal

In Government proposal 145/2017, provisions on acting on someone else's behalf are described in general as follows:

- During the second stage of the act, it will be necessary to expand the opportunity to add tickets of other modes of transport, different mobility services, such as vehicle rental services, different serial or seasonal products and discounts, to a travel chain or an integrated mobility service. The provisions prepared during the first stage of the act help to generate individual one-time travel chains, while the proposed provisions prepared during the second stage aim to promote the provision of integrated services similar to monthly packages, for example.

- A completely new section would be added to the chapter to enable the connection of a person's customer account in mobility services to a service package, such as an integrated mobility service. In this way, customers would be able to flexibly control their different customer accounts and form them into easy-to-use packages.

- A provider of brokering and dispatch services or integrated mobility services could also control the validity of different seasonal products according to customer needs.

- For customers, the question is that they could take care of their various customer accounts as a "one-stop shop" service model.

- In acting on someone else's behalf, a provider of dispatch and brokering services or integrated mobility services would use services in place of the customer at the customer's request[2].

- A provider of dispatch and brokering services or integrated mobility services would not receive any rights that the customer does not have.

[2] The expression of "use services in place of the customer" is slightly misleading in that it can generally be understood as acting in one's own name (similarly to succession or transfer), and not as acting on behalf of and in the name of the customer with the customer's authorisation.

- The proposed provisions would not have any impact on product prices, as such, and customers would be able to obtain products on the same grounds as before.

- The proposed provisions are based on a similar model to that created by means of the EU Payment Services Directive (PSD2).

- In a legal sense, this mainly deals with authorisations. The proposed provisions do not deal with this legal framework, but stipulate the method of allowing acting on someone else's behalf in electronic systems, i.e. basically through APIs.

- The starting point of acting on someone else's behalf is that a person has existing customer or user accounts in a service subject to the open API obligation and in the service of the service provider entitled to open access to the API.

- The provisions require that a person has an existing user account, to which specific personal data has been added.

- They do not require that a digital service be created. Rather, they deal with an existing API or other electronic service channel.

- If a party is within the scope of brokering and dispatch services, the provider of brokering and dispatch services can open up APIs on behalf of the party.

- According to a general principle, an API concerning a single subject only needs to be opened up once.

- A service provider that only provides the services referred to in section 2 and is obligated to open up an API for these services does not need to open up the API again for the same services in accordance with section 2a.

- As before, individual travel services, such as the purchase of flight tickets alone, would not be within the scope of application of the act.

2.1.2 Transport and Communications Committee

The Transport and Communications Committee (Ministry of Transport and Communications 3/2018) has assessed provisions on acting on someone else's behalf as follows:

- The Committee considers the proposed provisions on acting on someone else's behalf to be good and necessary concerning the generation of travel chains and the availability of different ticket products. In terms of the practical implementation of acting on someone else's behalf, the Committee would like to emphasise the

importance of cooperation between different parties and the significance of the coordinating role of the authorities.

- Then again, the proposal has also been criticised, for example, in that, according to some operators in the field, acting on someone else's behalf should primarily be based on agreements between parties and not on binding legislation.

- According to the report conducted, new parties entering the market are not in an equal negotiating position compared with larger parties. At this stage, this requires the application of legal provisions to promote service development. The Committee also considers that a fair, reasonable and non-discriminatory charge can be collected for acting on someone else's behalf.

- The Transport and Communications Committee holds that an opportunity to assess reliability, similar to the proposed model, is practically necessary considering clearly problematic situations and, for practical reasons, the provisions also need to be flexible. However, the Committee considers it very important that the lack of reliability is only appealed to in exceptional cases, when there are apparent reasons to do so. Parties must openly define the criteria, on the basis of which they apply these provisions.

- The provisions of the first stage of the Act on Transport Services and the proposed provisions on acting on someone else's behalf aim to offer more opportunities for new parties to enter the market. These provisions are minimum provisions and, therefore, closer cooperation between parties relies on contractual arrangements between them. The Committee has added a provision to the proposal for acting on someone else's behalf, according to which access to an API or system must be provided without any conditions limiting their use. This provision corresponds with the wording of section 2 of the said chapter of the Act on Transport Services.

- The proposed provisions on acting on someone else's behalf mainly concern operations between two providers of mobility services or integrated mobility services.

- As a result of the generation of new transport services, the Committee finds it necessary to pay special attention to the fulfilment of passengers' rights, for example, in various multimodal travel chains. In this respect, it will be necessary to closely monitor the development of services and any problems faced by consumers, slowly emerging decision-making practices, and the development of the EU legislation. As service models are becoming more varied and services offering different travel chains are becoming more common, monitoring serves to assess if there are any problems regarding the responsibilities of different parties, also considering consumers, and if legal provisions need to be changed in this respect.

Therefore, the provisions are based on the PSD2. However, relationships between parties are not regulated in detail. Contrary to and unlike in the PSD2, acting on someone else's behalf requires that parties reach agreement on the provision of open access to APIs. This means that the provision of open access to APIs has been regulated to be basically mandatory, without setting any regulations on obligations and, in particular, responsibilities related to open access.

The provisions on acting on someone else's behalf are assessed, subsection by subsection, in the following on the basis of the material related to legal preparations:

2.2 Opening up an API to access user account information, section 2a, subsection 1

The content of this subsection is as follows:

> A provider of mobility services or integrated mobility services or a party responsible for a ticket and payment system acting on their behalf must provide another provider of mobility services or integrated mobility services with open access to the sales interface of their ticket and payment system or, if required, provide access to the system via another electronic service channel and allow the provider of mobility services or integrated mobility services entitled to access the system to acquire ticket products or other products entitling the holder to use mobility services on behalf of the service user at the service user's request, using the identification and user information existing in the service user's user account.

2.2.1 Government proposal

On the basis of the Government proposal, the subsection concerns the following situation:

- The proposed subsection 1 applies to all different modes of transport, meaning that air and maritime transport tickets would be within the scope of the provision.

- This concerns two types of use cases.

- In the first case, a service provider subject to the open access obligation provides open access to their API, through which a provider of brokering and dispatch services or integrated mobility services can acquire ticket products. In this case, it must be possible to use the information existing in a user account. If required, the party obligated to provide open access must provide access to the information existing in a user account via another electronic service channel if the information in the user account is not directly con-

nected to the channel through which tickets or other travel products are sold.

- A user account can be such that ticket or travel products cannot be directly acquired through it, but its information can be used when acquiring products. This information may include information related to customer loyalty discounts.

- In the second case, a service may already include an interface through which customers can acquire tickets using their user accounts. In this case, the service provider subject to the open access obligation may not need to open up a new API. Instead, it can provide the provider of brokering and dispatch services or integrated mobility services with access to the existing API.

2.3 Opening up an API to acquire a personal ticket product, section 2a, subsection 2

The content of this subsection is as follows:

> The issuer of a ticket that includes a discount, compensation or a special condition related to mobility services must provide a provider of mobility services or integrated mobility services with access to the system via an API or another electronic service channel and, in this way, enable the provider of mobility services or integrated mobility services entitled to access to acquire tickets that entitle the holder to the use of the discount, compensation or the special condition or other products entitling the holder to the use of the service, using the service user's identification and user information existing in the service. If the data controller of the register related to the grounds for determining the discount, compensation or the special condition is a party other than the ticket issuer, the data controller and ticket issuer must together ensure that information related to the grounds is available to the extent as is necessary in order to allow acting on someone else's behalf.

2.3.1 Government proposal

On the basis of the Government proposal, the subsection concerns the following situation:

- The proposed subsection 2 concerns situations where a ticket product is acquired at a discount tied to a specific person. This may concern a monthly ticket, the discount of which is tied to a person's habitual residence or status as a student or pensioner.

- This subsection may also concern user accounts through which customers can acquire ticket products.

- In addition, this provision covers situations where information about the grounds for determining a discount is maintained by another party. In this case, the party maintaining the grounds for determining a discount is not required to maintain direct contact with the party entitled to act on someone else's behalf, and it does not need to open up an API for such parties.

- However, the provision obligates parties maintaining grounds for determining discounts and ticket issuers to ensure together that information about the grounds for determining discounts is available when using services. In the future, it will be possible to check such information between systems in real time, but this is not required in the provision.

- Discounts tied to a specific person will remain personal, and it will not be possible to assign them to anyone else. The provision of the proposed subsection 2 is essential considering the development of full-scale integrated mobility services. It is also essential from users' points of view in that, if monthly tickets with discounts cannot be added to integrated service packages, this arrangement cannot offer sufficient benefits or a sufficiently full user experience to users.

2.4 Verifying the identity of customers, section 2a, subsection 3

The content of this subsection is as follows:

> In conjunction with the transactions on someone else's behalf referred to in subsections 1 and 2 above, personal data can only be processed to the extent necessary to verify the identity and to carry out the transaction on someone else's behalf. In addition to what is stipulated elsewhere in this act, it must be possible to verify the identity in a particularly reliable way when a relationship with a party acting on someone else's behalf is established or changed substantially. It must also be possible to verify the identity in conjunction with a transaction on someone else's behalf.

2.4.1 Government proposal

On the basis of the Government proposal, the subsection concerns the following situation:

- When establishing and significantly changing a customer relationship, the identity should be verified with particular thoroughness. In addition, the identity should be verified in conjunction with each transaction on someone else's behalf. Several technological solutions, such as identifiers, certificates or pseudonyms, can be used.

- Initially, the purpose is not to transfer personal data from one user account to the next.

- When a service transaction begins, the service provider that is provided with access transmits a unique identifier to the person obligated to provide access. During the subsequent exchange of computer-readable messages, information about ticket products or other products entitling holders to use mobility services can be returned by using a ticket purchase transaction identifier without needing to transfer the passenger's personal data as an identifier.

- In addition, personal data may need to be transferred during a service transaction if it needs to be attached to the ticket product or other product entitling the holder to the use of mobility services (e.g. name, basis for a discount or similar).

- Because this deals with a transaction on someone else's behalf requested by the customer, personal data can be processed based on consent or contractual grounds.

- In Finland, the currently deployed role and authorisation information service of the national data exchange layer can be used for this purpose.

- Unlike in the PSD2, no strong identification would be required.

2.5 Trust-based relationship between service providers, section 2a, subsection 4

The content of this subsection is as follows:

> The access to the API or system referred to in subsection 1 and 2 above must be provided without any conditions limiting their use. However, the provider of mobility services or integrated mobility services referred to in subsection 1 above and the party in charge of a ticket and payment system acting on their behalf and the issuer of a ticket that carries a discount, compensation or a special condition related to mobility services as referred to in subsection 2 have the right to assess the reliability of the provider of mobility services or integrated mobility services entitled to access in accordance with pre-defined assessment criteria and conditions. Access to data cannot be refused if the party requiring access has a permission, approval, auditing or certification granted by an authority or a third party authorised by an authority for the specific purpose, or its operations have otherwise been shown to correspond with generally used standards or generally accepted conditions in the field. If access is refused, the reasons for the refusal must be properly explained to the party requiring access.

A service provider obligated to open up an API in accordance with subsections 1 and 2 and a provider of mobility services or integrated mobility services using the API must work together to enable the practical arrangements required. Access must be sufficiently extensive so that providers of mobility services and integrated mobility services can offer their services accessibly and effectively.

2.5.1 Government proposal and an addition by the Transport and Communications Committee

The Transport and Communications Committee added a provision to the subsection, according to which access to an API or system must be provided without any conditions limiting their use.

On the basis of the Government proposal, the subsection concerns the following situation:

- It is necessary to establish a trust network between providers of mobility services and integrated mobility services similar to that established between providers of strong electronic identification services by means of the legislation, so that the arrangement can be scaled.

- The aim is to establish trust and a trust network by practical means, and by using the new chapter 5, section 1 added to part III of the act. This section obligates providers of brokering and dispatch services and integrated mobility services to notify Trafi about their services and their contact details.

- However, because no standard service definitions exist, it is necessary that a service provider that opens up an API to enable acting on someone else's behalf can assess the reliability of a third party in accordance with pre-defined assessment criteria and conditions. However, access to information cannot be refused if the party requiring access has permission, approval, auditing or certification granted by an authority or a third party authorised by an authority for the specific purpose, or its operations have otherwise been shown to correspond with generally used standards or generally accepted conditions in the field.

- If access is refused, the reasons for the refusal must be properly explained to the party requiring access.

- The criteria must be fair, reasonable and non-discriminatory in accordance with section 4.

2.6 Cooperation obligation between service providers, section 2a, subsection 6

The content of this subsection is as follows:

> A service provider obligated to open up an API in accordance with subsections 1 and 2 and a provider of mobility services or integrated mobility services using the API must work together to enable the practical arrangements required. Access must be sufficiently extensive so that providers of mobility services and integrated mobility services can offer their services accessibly and effectively.

2.6.1 Government proposal

On the basis of the Government proposal, the subsection concerns the following situation:

- The proposed subsection 6 includes a similar cooperation obligation as part III, chapter 2, section 2, subsection 3 of the Act on Transport Services.

- Unlike in a PSD2 arrangement, the starting point of the provision is that an arrangement anyway requires that parties reach agreement on different practical matters.

2.7 Fair and reasonable conditions for parties acting on someone else's behalf, section 4.1

The content of this section is as follows:

> Access to information and data systems through open APIs as referred to in sections 1, 2 and 2a above and the support services, terms of use, software, licences and other services required for enabling access must be offered using fair, reasonable and non-discriminatory terms and conditions.

2.7.1 Government proposal

On the basis of the Government proposal, the subsection concerns the following situation:

- The support services, terms of use, licences, software and other services required for carrying out arrangements must be fair, reasonable and non-discriminatory.

- The arrangements do not need to be available free of charge, but the charges collected must also be in accordance with the terms and conditions stipulated in section 4.

2.8 Mandatory provisions of the Act on Transport Services and the necessity to enter into an agreement

The Act on Transport Services sets out fairly comprehensive regulations on transport services. The Act on Transport Services applies to transport services, related personal licences and the transport register.

The Act on Transport Services includes clear official provisions in many parts, but also provisions on contractual relationships subject to private law, as is the case regarding the API agreement and the necessity to enter into an agreement.

However, the Act on Transport Services does not include any express mandatory provisions on an API agreement between parties subject to private law. In comparison, it is stated that express mandatory provisions exist in the following fairly new provisions:

- Payment Services Act, section 7: Any contractual terms that differ from the provisions of this act to the detriment of the user of the payment service are deemed void unless otherwise provided below.

- Act on Strong Electronic Identification and Electronic Signatures, section 3: Any contractual terms that differ from the provisions of this act to the detriment of the consumer are deemed void unless otherwise provided below.

- Package Travel Act, section 4: Any contractual terms that differ from the provisions of this act to the detriment of the traveller are deemed void, unless otherwise provided below.

- Act on Travel Service Combinations (901/2017, entered into force on 1 July 2018), section 6: Any contractual terms that differ from the provisions of this act to the detriment of the traveller are deemed void, unless otherwise provided below.

In these situations, mandatory provisions protect consumers and passengers. The objective of the Act on Transport Services is to make the passenger the focus by enabling the generation of travel chains. The relationship between an operator acting on someone else's behalf and a transport service provider, above all, is a contractual relationship between companies in situations where contractual relationships are not basically regulated and there is no necessity for the contractual parties to enter into an agreement[3]. When acting on someone else's behalf and the obligation to enter into an API agreement basically apply to all companies related to the production of transport, brokering and dispatch, and integrated mobility services, the scope of application is very broad.

Legislators have fairly good opportunities to stipulate exceptions to the freedom of agreement, which is not expressly secured in the Constitution of Finland, but is protected to some extent. In particular, retroaction regarding existing agreements is protected and there must also be acceptable reasons for imposing a necessity to enter into an agreement[4].

[3] See the PSD2, in which no contractual relationship is specifically required. See also codes of practice for travel chains (pp. 16–17), restricting the freedom of agreement.
[4] Alma Talent Fokus: Basic rights, introduction and section 11:

The necessity to enter into an agreement is usually associated with a public duty or position stipulated in the legislation, the production of public services or other similarly weighty reasons. In this case, the Constitutional Law Committee has not apparently considered the necessity to enter into an agreement to be problematic.

In comparison, it is noted that transport laws based on international conventions have been stipulated to be mandatory so as to standardise provisions on responsibilities regarding international transport and, above all, freight carriers.

Notwithstanding the aforementioned, the starting point of this report is that provisions on opening up APIs and the cooperation obligation are basically mandatory, at least at a national level. Even if a provision were meant to be applicable and mandatory at a national level, it does not mean that the provision would be mandatory at an international level, i.e. it would be necessarily applicable, regardless of any international obligations binding on Finland.

3 INTERNATIONAL APPLICATION OF THE ACT ON TRANSPORT SERVICES

3.1 Scope of application of the Act on Transport Services

The scope of application of the Act on Transport Services (301/2018) is stipulated in part I, chapter 1, section 1 of said act:

> This act applies to transport services, related personal licences and the transport register.
>
> This act applies to service providers that are domiciled in Finland or otherwise within the scope of Finnish legal practices. In addition, this act applies to providers of transport services whose transport service has its place of departure

---

"The freedom of agreement is not specifically secured in the Constitution, but is protected to some extent through provisions on the protection of property. Primarily, retroaction regarding contractual relationships between private parties subject to property law by means of regular acts is prohibited.
"However, legal action contrary to laws or good practices or otherwise unreasonable legal action is not protected by the Constitution (e.g. Constitutional Law Committee 3/1982 and 13/1986). The right to take reasonable legal action can be regulated by means of regular acts, regardless of retroaction (Constitutional Law Committee 3/1982)."
"In addition to the permanence of property rights based on existing agreements, provisions on the protection of property also protect the freedom of agreement of private people to some extent, i.e. their right to enter into subsequent agreements (see Government Proposal 309/1993, p. 62/II and, for example, Constitutional Law Committee 41 and 54/2006 and 3/2008). However, in the light of the Constitutional Law Committee's practices, it seems evident that freedom of agreement regarding the future is not protected as strongly as rights based on existing agreements. In other words, legislators are deemed to have a reasonably extensive power to regulate questions related to agreement rights considering the future. Regular laws can, for example, regulate the types of legal actions, their proceedings and permitted and forbidden conditions (Constitutional Law Committee 3/1982). Furthermore, imposing a necessity to enter into an agreement is considered to be a legislative action in harmony with the protection of property when the regulation is based on an acceptable reason and the arrangement does not violate the relativity requirement (Constitutional Law Committee 33/2002)."

or place of destination in Finland or passes through Finland.

Subsection 2 stipulates the international application of the act. According to the subsection, the definition of a service provider's business location and, in particular, the provision of the service provider's transport services in Finland is not expected to result in any general problems with interpretation. When a passenger orders an international transport service in Finland, it is generally always assumed that the transport service at least has its place of departure or destination in Finland. In particular, this is the case when acting on someone else's behalf, in which passengers need an account-based relationship with the provider of transport services. Then again, the fact that the destination of a transport service is in Finland does not always mean that the service was ordered in Finland. The meaning of "service passes through Finland" is slightly unclear, at least in terms of acting on someone else's behalf. Basically, the question only concerns the place of departure and destination, i.e. a situation where a mode of transport comes to Finland to pick up or drop off passengers.

In addition, these connections are often significant when assessing which country's laws are applicable based on international private laws. Instead, the question of when *a service provider is otherwise within the scope of Finnish law* may result in problems with interpretation.

3.1.1 Service provider otherwise within the scope of Finnish law

The Government proposal does not stipulate when a service provider (transport service or related brokering and dispatch service) is within the scope of Finland's legal practices for reasons other than their place of business.

A similar expression is in the scope of application of the Personal Data Act. According to section 4 of the Personal Data Act, the act applies to the processing of personal data where the data controller is established in the territory of Finland *or otherwise subject to Finnish law*, and in certain other situations stipulated separately in the act. The Government proposal for the Personal Data Act gives Finnish embassies in other countries as an example.

Being within the scope of Finnish law must be deemed, in accordance with the principle of a state's regional jurisdiction, to mean, above all, that the act applies to natural and legal persons acting in Finland's territory. The sovereignty of a state also extends to the airspace above its land and water areas.[5] A service provider can also be within the scope of Finnish law and, in particular, within the scope of application of Finnish laws when it targets marketing activities at Finland in the Finnish language.

[5] Kari Hakapää: Uusi kansainvälinen oikeus ("New International Law") (Talentum 2010), p. 431.

3.2 Application of provisions subject to international private law

The Act on Transport Service is a purely national act. It is not based on EU legislation or any international regulations.

Section 2.8 above states that the Act on Transport Services includes not only official regulations, but also contractual provisions subject to private law. It has been stated that the mandatory nature of an API agreement has not been expressly stipulated. These questions are relevant when assessing the international reach of provisions on acting on someone else's behalf. Strict criteria are set for provisions deemed to be internationally mandatory. It should also be noted that, if the line between provisions subject to private law and those subject to public law is not always clear at a national level, it is less clear at an international level.[6]

Subsection 2 of the section concerning the scope of application of the Act on Transport Services does not expressly address provisions subject to international private law that obligate Finland. Furthermore, the Government proposal does not offer any section-specific justification concerning the scope of application[7], but apparently the express consideration of international regulations was also addressed during the preparatory stage, as a specific draft included the following sentence[8]:

> This section does not restrict the application of Finnish legal provisions subject to international private law.

However, the exclusion of this sentence does not alter the fact that, in an international situation where the relationships between parties sub-

---

[6] Risto Koulu: Kansainvälinen varallisuusoikeus pääpiirteittäin ("Main Features of International Property Law") (Talentum 2005), p. 28:
"Defining directly applicable provisions is one of the major questions in terms of international property law. Of course, legislators can expressly order that a specific provision also applies to a foreigner that meets specific criteria, i.e. make it an internationally mandatory provision. So far, such orders have been rare, particularly when it comes to national legislation.
"However, legislators normally leave the internationally mandatory nature of the provisions they have issued to be undecided or, euphemistically speaking, to be decided by the legal system. This is often the best solution: during preparations, it is difficult to assess the international reach of the proposed provision, and an express order takes the discretionary power away from courts of law. After all, a provision ordered to be directly applicable also applies to international cases, even though this is not actually necessary. Then again, leaving this undecided has structural weaknesses. In this option, administrators of law need to stipulate what provisions (normally a separate act, even an act from another country) they must provide with the status of a directly applicable provision. There is consensus that the decision on directly applicable provisions must be made separately in each individual case. Therefore, an individual provision may be internationally mandatory in one court procedure, but not in another. Only very general guidelines can be indicated for decision-making processes at courts of law."

[7] The Finnish Freight Forwarding and Logistics Association also noted this in its statement: "The FIFFLA would like to point out that the draft proposal does not include any detailed justification for the aforementioned section. Even though the wording of the section is relatively clear, it does not, however, clearly stipulate how, for example, foreign airlines or providers of brokering and dispatch services will be obligated, in practice, to fulfil legal obligations in Finland. The FIFFLA considers it to be important that Finnish legislation does not place Finnish freight forwarding companies in a weaker competitive position than its foreign competitors in markets subject to international competition. New obligations applied to Finnish freight forwarders and logistics companies alone increase the costs and administrative work of these companies, which reduces their competitive position relative to their foreign competitors in terms of Finland's imports and exports."

[8] The addition is included in the unofficial summary of the Act on Transport Services, which presents parts I and II.

ject to private law are not only limited to Finland, the application of Finnish legislation and also the Act on Transport Services may, at least to a specific extent, depend on international obligations binding on Finland and also on provisions on the international choice of law subject to private law.

In practice, the most important provision on the international choice of law is Regulation (EC) 593/2008 on the law applicable to contractual obligations (the "Rome I Regulation") when the applicable provisions are not based on international conventions, above all, concerning transport law, as is usually the case when acting on someone else's behalf. The Rome I Regulation stipulates provisions on the choice of law for all situations significant considering provisions on acting on someone else's behalf, even though there is much room for interpretation in them. These cover consumer and transport agreements, and also situations where such a classification cannot be made[9].

In comparison, it should be noted that the legislation subject to transport law based on international general agreements is usually mandatory by nature, and its purpose is to impose internationally standardised provisions on responsibilities for freight forwarders.

3.3 Necessity to enter into an agreement and EU laws on the provision of services

The Act on Transport Services obligates service providers to open up their APIs and, therefore in practice, also to enter into a contractual relationship. It should be noted that, depending particularly on what this obligation is ultimately like in practice, its imposition on foreign service providers can be considered to restrict the freedom of establishment subject to EU laws and the freedom of service provision.

For example, in case C-518/06 (Commission of the European Communities v Italian Republic), the CJEU held that the necessity to enter into a motor liability insurance agreement in accordance with Italian legislation, when applied to all insurance companies, including those domiciled in another member state but operating in the aforementioned member state, restricts the freedom of establishment and the freedom to provide services ratified in Articles 43 EC and 49 EC. Such an action restricts the access of the parties concerned to enter the market, particularly when the action not only obligates insurance companies to cover all insurance risks for which insurance is applied for, but also to apply restraint to their prices. Because the necessity to enter into an agreement results in significant accommodation needs and costs for these companies, according to the Court, it reduces the attractiveness of entry into the market in the member state in question and reduces the ability of

[9] To simplify the case, this report does not discuss international situations where the Rome I Regulation is not applicable. Such situations may concern, for example, US airlines. The USA is not party to the Convention on the Law Applicable to Contractual Obligations (the "Rome Convention").

the companies to compete effectively with established companies immediately after entering these markets.

According to the CJEU, the necessity to enter into an agreement, however, secures the goal set for it, i.e. social protection and the payment and receipt of indemnities for traffic accidents, and therefore the imposition of the necessity to enter into an agreement did not exceed what is necessary to reach this goal.

With regard to provisions on acting on someone else's behalf in the Act on Transport Services, it has not been assessed, at least on the basis of the available material related to the preparation of the act, whether the necessity to enter into an agreement is based on a compelling reason subject to public interests as required in EU laws, or whether the necessity exceeds what is necessary in order to reach the goal set. In any case, such an assessment is made more difficult by the general nature of the provision and the assumption that no similar provision exists in other member states. It would be particularly problematic if national parties were able to open up their APIs more easily than foreign parties, for example, by using the role and authorisation information service of the national data exchange layer in Finland.

However, the acceptability of Finland's requirements is partly supported by the fact that the EU has for a long time sought to build integrated ticket systems that combine different modes of transport[10]. The EU has had an active role in the generation of multimodal travel chains and in opening up APIs, even though no legislation similar to the Act on Transport Services exists.[11] Ultimately, the CJEU decides whether national provisions are in line with EU laws.

---

[10] See the communication from the Commission of 16 February 2005, COM(2005) 46 Final, on strengthening passenger rights within the European Union: "(48) It should be a simple matter for passengers to combine several modes of transport in one journey, but the traditional method of organising transport by sectors constitutes a barrier to intermodality. The traveller is too often dissuaded from combining different means of transport for the same journey and encounters difficulties for example in obtaining information and ordering tickets where the journey involves different modes. However, the first examples of integrated ticketing already exist in Germany and Switzerland; similarly, passengers using the combined Thalys-Air France service purchase their ticket in a single transaction. As already emphasized in the White Paper on European transport policy for 2010: 'To facilitate transfers from one network or mode to another, encouragement needs to be given to the introduction of ticketing systems which are integrated.' A recent expert report identified the technical feasibility of going further than is the case at present and greatly extending the possibilities of combined and integrated ticketing. The Commission will meet representatives of airlines and railway companies in order to obtain a voluntary undertaking on their part to set up integrated ticketing system."

[11] See, for example, the following laws and projects:
Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (the "ITS Directive").
Commission's Europe on the Move project, 31 May 2017: "Digitisation can also help to make transport and logistic operations more efficient by better integrating the different transport modes. To support this, the Commission is today proposing specifications for EU-wide multimodal travel information services. It will allow passengers to combine transport modes so that they can follow the best route, for instance by using a single app on their smartphone."

3.4 The CJEU's Uber judgement

The CJEU judgement in case C-434 *Asociación Profesional Elite Taxi v Uber Systems Spain, SL* issued on 20 December 2017 shows that the position of a provider of brokering and dispatch services similar to an operator acting on someone else's behalf can be assessed based on highly different provisions, depending on the case. The CJEU stated:

> "… an intermediation service consisting of connecting a non-professional driver using his or her own vehicle with a person who wishes to make an urban journey is, in principle, a separate service from a transport service consisting of the physical act of moving persons or goods from one place to another by means of a vehicle. It should be added that each of those services, taken separately, can be linked to different directives or provisions of the FEU Treaty on the freedom to provide services, as contemplated by the referring court."

However, the CJEU assessed Uber's brokering and dispatch services as a whole and classified it as a transport service, not as an information society service, emphasising the non-professional and non-independent position of the driver on the following grounds:

> "Article 56 TFEU, read together with Article 58(1) TFEU, as well as Article 2(2)(d) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, and Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, to which Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') refers, must be interpreted as meaning that an intermediation service such as that at issue in the main proceedings, the purpose of which is to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons who wish to make urban journeys, must be regarded

> as being inherently linked to a transport service and, accordingly, must be classified as 'a service in the field of transport' within the meaning of Article 58(1) TFEU. Consequently, such a service must be excluded from the scope of Article 56 TFEU, Directive 2006/123 and Directive 2000/31."

In this report, it is not possible to thoroughly assess the application of directives and corresponding national laws or whether acting on someone else's behalf related to the brokering and dispatch of professional air and maritime transport services are inseparably connected to transport services, so that they need to be assessed as transport services. This definition probably is not significant when assessing coordination between regulation on acting on someone else's behalf and air and maritime transport, but the question should be raised. What types of services for acting on someone else's behalf are stipulated by means of EU laws probably is not significant when assessing the application of Article 5 of the Rome I Regulation on transport agreements.

4 REGULATION ON AIR TRANSPORT

4.1 International regulatory system

The Finnish regulatory system governing civil aviation is increasingly part of EU jurisdiction. EU laws are currently issued by means of regulations. This means that regulations apply as such to air transport in all EU member states. In general, separate national executive laws are still needed regarding the responsibilities of national authorities and other national arrangements.

With regard to civil aviation, EU regulations typically concern the finances of operators, the protection and safety of aviation, the environment, social aspects related to air transport, the rights of air passengers, EU relationships and air navigation services.

The EU and the United States are parties to the EU–US Open Skies Agreement[12], which opens transatlantic flights to airlines from both parties. Finland ratified the agreement in decree 41/2008[13].

In addition, the EU and other countries (e.g. Israel) have entered into other international agreements. These treaties and agreements do not

[12] Decision 2007/339/EC, Official Journal of the European Union L 134/12, 5 May 2007. Further negotiations over the "second-stage" treaty were started in 2008, and the second-stage treaty was signed in 2010. The documents related to the second stage are based on the first-stage treaty and cover new opportunities to make investments and enter markets.

[13] Decree of the President of the Republic on the temporary application of the act on the enforcement of the provisions of the air transport treaty between the European Community and its member states and the United States of America, 41/2008.

cover cabotage[14], and certain restrictions may have been imposed regarding the ownership of airlines.

4.1.1 ICAO and IATA

The increased popularity of air transport during recent decades has forced countries to reach agreement on practices applied to cross-boundary air transport. The global response was the Chicago Convention on International Civil Aviation, signed in 1944, on the basis of which the International Civil Aviation Organization (ICAO) was established.[15] The goal and purpose of the ICAO is to develop the principles and technologies of international aviation, and to promote the planning and development of international air transport. In addition, the ICAO focuses on the development of international aviation safety.

The system of the International Air Transport Association (IATA) is based on the establishment of the IATA in 1945.[16] The purpose of the IATA is to represent the air transport industry in relation to political decision-making bodies and to increase understanding of the benefits of air transport for national and global economies. In addition, the IATA is responsible for interaction with regulatory air transport authorities. The IATA also produces large-scale services and standardisation for airlines, focusing on aviation safety, air transport proceeds, procurement chains and environmental protection.

The IATA also has an active role in the distribution of ticket products through its New Distribution Capability (NDC) programme. It promotes the distribution of tickets from its member airlines to travel agencies. The significance of the NDC programme in terms of obligations to provide service for those acting on someone else's behalf is described below.

4.1.2 Conventions on air transport

The system of the Warsaw/Montreal Conventions on international air transport has mainly been built so that the 1929 Warsaw Convention on the Unification of Certain Rules Relating to International Carriage by Air was followed by the Hague Protocol in 1955, which was then followed by the Montreal Protocol and the Montreal and Guadalajara Conventions. In 1999, member states of the ICAO signed the Montreal Convention for the Unification of Certain Rules for International Carriage by Air.

The purpose of these conventions is, for example, to unify regulations on the international transport of passengers, luggage and goods, and

[14] Cabotage is the transport of goods or passengers between two places in the same country by a transport operator and/or vehicle from another country. The international practice, for example, in air transport agreements is to prohibit cabotage in the territory of another party.

[15] Currently, the Chicago Convention has been ratified by 191 countries, and it is a specialised agency of the UN.

[16] The IATA was preceded by the International Air Traffic Association, which was established in the Hague in 1919, when the world's first regular scheduled flights were flown. The IATA has roughly 240 members from 120 countries.

they particularly focus on defining the responsibilities of different parties regarding the transport of people and goods by air.

4.2 EU regulatory system

4.2.1 Internal markets

The legislation governing the single market for air transport sets provisions on the granting of transport licences, the monitoring of airlines and their entry in the market. Regulation (EC) No 1008/2008 is a key regulation. Regulations aim to safeguard the general competitiveness of the air transport market, high-quality services and open competition and prices.

In addition, the European Aviation Safety Agency (EASA), established in 2002,[17] is responsible for regulating aviation safety. Its key goal is to establish and maintain a uniform and high level of civil aviation safety in the EU. The EASA is also committed to promoting EU aviation policy and improving the general performance of civil aviation, as well as to facilitating the free movement of people, goods, services and capital in the internal aviation market.

In the EU, air transport operators have the right to engage in air transport operations in the community territory, and member states cannot set any licence or approval as a condition for engaging in air transport operations. Furthermore, the freedom to engage in air transport operations cannot be restricted by bilateral agreements between member states. Restrictions can be imposed based on bilateral agreements between a member state and a third country, provided that they do not restrict competition, that they are not discriminatory and that they do not impose higher restrictions than are necessary. However, safety criteria set for air transport (possibly also at local level) must be met in all situations.

Articles 56–62 of the Treaty on the Functioning of the European Union[18] defines the free movement of services in the EU. These regulations prohibit any restrictions that apply to the freedom of a citizen of a member state located in a member state other than the state receiving services to offer services in the EU.

The brokering and dispatch services referred to in the Act on Transport Services are services referred to in these articles, and they can also be transport services as referred to in Article 58[19]. It cannot be excluded that the requirement to open up the sales interface of a ticket and payment system and the necessity to enter into an agreement could be

[17] The EASA was established under Regulation (EC) No 1592/2002, which was later repealed. Currently, its operations are mainly based on Regulation (EU) 2018/1139.
[18] Official Journal No C 326, 26 October 2012, pp. 1–390.
[19] See section 3.4 and the judgement of the CJEU in the Uber case.

deemed to be an actual obstacle to the free movement of services as intended in EU regulations.

4.2.2 Obligation to provide service to parties acting on behalf of someone else and the EU–US Open Skies Agreement

Article 17 of the EU–US Open Skies Agreement includes the following contractual clause regarding computer reservation systems:

> 1. Computer reservation systems (CRS) vendors operating in the territory of one Party shall be entitled to bring in, maintain, and make freely available their CRSs to travel agencies or travel companies whose principal business is the distribution of travel-related products in the territory of the other Party provided the CRS complies with any relevant regulatory requirements of the other Party.
>
> 2. Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more stringent requirements with respect to CRS displays (including edit and display parameters), operations, practices, sales, or ownership than those imposed on its own CRS vendors.
>
> 3. Owners/operators of CRSs of one Party that comply with the relevant regulatory requirements of the other Party, if any, shall have the same opportunity to own CRSs within the territory of the other Party as do owners/operators of that Party.

This Article 17 aims to ensure that the freedom of transatlantic air transport is also fulfilled regarding parties that maintain reservation systems, such as general distribution system (GDS) operators. It cannot be fully excluded that an operator would consider the obligation to open up APIs in relation to acting on someone else's behalf to reduce the right provided by Article 17 to bring in, maintain and make freely available their CRSs to travel agencies or travel companies.

4.2.3 Obligation to provide service to parties acting on behalf of someone else and internal regulations on the industry in the EU

Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community does not include any direct provisions on the fulfilment of the obligation to provide service for those acting on someone else's behalf, similarly to Regulation (EC) No 261/2004 on common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. However, these regulations may be significant, for example, regarding the implementation of communication carried out through APIs while acting on someone else's behalf in order to ensure that passengers can obtain all the information required for their travel through these APIs, insofar as new services are such that this information is transmitted via an opera-

tor acting on someone else's behalf and not directly between an airline and air passenger.

Correspondingly, Regulation (EC) No 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air must be taken into account, particularly from the point of view of data transmission in APIs. According to Article 6 of the aforementioned regulation, "Air carriers, their agents and tour operators shall take all measures necessary for the receipt, at all their points of sale in the territory of the member states to which the Treaty applies, including sale by telephone and via the Internet, of notifications of the need for assistance made by disabled persons or persons with reduced mobility." Because an operator acting on someone else's behalf is acting based on an assignment from a passenger and on their behalf, and it is not representing an airline, these obligations do not apply to operators acting on someone else's behalf. However, this does not mean that the transmission of this type of information from passengers to airlines could not be agreed upon. Nevertheless, the starting point is that airlines communicate directly with passengers.

Regulation (EC) No 80/2009 on a Code of Conduct for computerised reservation systems partly includes similar provisions as the EU–US Open Skies Agreement and, according to it, air transport operators based in the Community or third countries should be treated equally regarding CRS services. This aim is to maintain effective competition. Users must also be provided with equal displays to these reservation systems, and they should include similar information about participating transport operators. The impact of this regulation on acting on someone else's behalf cannot be assessed in detail in this report. However, it is highly probable that it does not set relevant provisions in this respect. The existence of the regulation should still be noted in the practical implementation of integrated mobility services and APIs for acting on someone else's behalf.

Regulation (EC) No 2111/2005, known as the "Black List Regulation", requires that air passengers must be provided with information about the air transport operator operating their flight. When making a reservation, the contracting party responsible for air transport must notify the passenger of the air transport operator(s) that will operate the flight, irrespective of how the reservation is made. Because an operator acting on someone else's behalf is acting based on a passenger's assignment and on their behalf, and is not representing an airline, the airline cannot disclose, and in practice does not disclose, information to the operator acting on someone else's behalf but to the passenger in accordance with mandatory provisions. However, this does not mean that the disclosure of this information to the operator acting on someone else's behalf could not be agreed upon in a tripartite relationship.

4.3 National regulatory system

Even though the EU increasingly regulates air operations, also in Finland, national laws have not been fully abandoned. However, national laws are restricted to fields and questions that are not relevant for this report.[20]

4.4 Acting on someone else's behalf

Air transport operations typically include various authorisation, representation and agency relationships, i.e. acting on someone else's behalf. Above all, these result from the international operating environment. In passenger transport, travel agencies have typically acted as intermediaries. However, these services on someone else's behalf have not been regulated, and they have been based on agreements and national laws applied separately to agreements. Regulations on air transport have mainly not addressed multimodal travel chains.

Even though the general practice has been for a service provider to act on behalf of an airline, similarly customers and passengers have been able to authorise other parties to act on their behalf at any stage of the signing and fulfilment of the transport agreement. A good example of this situation is the CJEU judgement concerning the customer complaint provisions of the Montreal Convention in case C-258/16 *Finnair Oyj v Keskinäinen Vakuutusyhtiö Fennia*, in which the CJEU stated the following:

> 42 Although the responsibility for making a complaint lies exclusively with the passenger, it cannot in any way be inferred from the wording of Article 31 of the Montreal Convention that the passenger is nevertheless deprived of the liberty to benefit from the assistance of other persons for the purposes of making his complaint.
>
> 43 Any interpretation to the contrary would, moreover, run counter to the objective of protecting the interests of the consumer in respect of carriage by air, as stated in the third paragraph of the preamble to the Montreal Convention, which must be taken into account in accordance with the Court's case-law cited in paragraph 21 above.
>
> 44 The option open to a passenger to have recourse to the assistance of other persons also enables him, as in the case in the main proceedings, to secure the assistance of a representative of the air carrier for the purposes of committing his oral statement to writing and having it en-

[20] For example, military aviation, official aviation (customs, police, Finnish Border Guard) and various forms of recreational aviation.

tered in the information system of the carrier intended for such purposes.

When applying for compensation for delays from airlines, there are even specific service providers, which was the situation in the judgement issued by the CJEU in case C-274/16 *flightright* on 7 March 2018. In the case, passengers had transferred their right to apply for compensation for delayed flights to a company called flightright GmbH[21].

As presented above, regulations on air transport do not include directly relevant provisions concerning acting on someone else's behalf. It is assumed that air passengers are named and identified in all situations and throughout the reservation and travel process in accordance with the regulations of the ICAO and the EASA. In particular, it should be noted that not all possible obligations are directly related to the reservation process. Instead, they can also have an indirect impact on the actual travel service production launched as a result of the reservation process.

5 REGULATION ON MARITIME TRANSPORT

5.1 International regulatory system

Maritime transport is an international form of transport, and regulations governing it are typically international. The regulations mainly cover the safety of maritime transport and related environmental aspects, but also transport of passengers and goods by sea and the right to engage in maritime operations. Basically, no licences are required to engage in maritime operations.

International regulations are based on the conventions of the UN International Maritime Organization (IMO). The most important of these are the 1982 United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, and the International Convention for the Prevention of Pollution from Ships.

With regard to the transport of goods, relevant regulations are laid down in the 1978 United Nations Convention on the Carriage of Goods by Sea (the "Hamburg Rules") prepared by the IMO, which Finland has not yet ratified. However, its system and terminology are used in chapter 13 of the Maritime Act, prepared in cooperation with other Nordic countries. In its place, the convention in effect in Finland is the Protocol to amend the International Convention for the unification of Certain Rules of Law Relating to Bills of Lading, signed at Brussels on 25th August 1924 (9/1985) (the "Hague–Visby Rules"), which was drawn up in 1968, as well as related rules prepared in 1979 (10/1985).

[21] flightright GmbH is a company specialising in the collection of compensation for delays. Its fee is 25 per cent of the compensation paid to passengers (see www.flightright.com).

Responsibilities for the transport of passengers and luggage are stipulated in chapter 15 of the Maritime Act, which is largely based on the 1974 Athens Convention and, with regard to quantities concerning the freight carrier's limitation of liability, to the 1990 protocol, even though Finland is not a party to the Athens Convention. The 1974 Athens Convention was amended by the protocol negotiated within the IMO in 2002. The Athens Convention concerns a freight carrier's liability to pay compensation for loss regarding international transport in which the place of departure and place of destination are located in two different countries in accordance with the transport agreement, or in a single country if the route passes through a port in a different country in accordance with the transport agreement. The Athens Convention concerns an agreement entered into by or on behalf of a freight carrier under a transport agreement, applying to the transport of passengers, or passengers and their luggage, by sea. The provisions on responsibilities of the Athens Convention also apply to freight carriers acting as subcontractors.

Provisions on the choice of law regarding passenger transport agreements are described later in this report.

5.2 EU regulatory system

Most EU regulations on maritime transport are related to the safety of maritime transport in different ways. The need for regulations has arisen from marine accidents. Passenger ships arriving in EU ports are governed by obligations to register individuals in accordance with Directives 98/41/EC, 2017/2109/EU and 2010/65/EU.

The key objective of the EU is to secure the free movement of people, goods and services within the EU territory. National transport is not separated from international transport in the internal maritime transport market in the EU. With regard to maritime transport services, freedom of movement is protected by the following regulations:

- Council Regulation (EEC) No 4055/86 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries.

- Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).

- Council Regulation (EEC) No 1356/96 on common rules applicable to the transport of goods or passengers by inland waterway between Member States with a view to establishing freedom to provide such transport services.

With regard to the freedom to provide maritime transport services, it cannot be excluded that obligations to provide service for those acting

on someone else's behalf would restrict this right, if acting on someone else's behalf were actually considered to restrict access to the market without acceptable grounds (see section 4.2.1 above).

Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway regulates the minimum protection of sea passengers regarding the following questions:

a) non-discrimination between passengers with regard to transport conditions offered by carriers;

b) non-discrimination and assistance for disabled persons and persons with reduced mobility;

c) the rights of passengers in cases of cancellation or delay;

d) minimum information to be provided to passengers;

e) the handling of complaints;

f) general rules on enforcement.

The regulation does not prevent passengers from applying for compensation in accordance with national laws for losses resulting from the cancellation of or delays in transport services from a national court of law, also based on Council Directive 90/314/EEC on package travel, package holidays and package tours. Furthermore, the regulation cannot affect the rights of passengers stipulated in the aforementioned directive. The regulation on the rights of passengers should not apply to situations where package travel is cancelled for reasons other than the cancellation of a passenger transport service or cruise.

Because an operator acting on someone else's behalf is acting based on a passenger's assignment and on their behalf, and is not representing a shipping company, these obligations imposed on shipping companies do not apply to operators acting on someone else's behalf. However, this does not mean that the transmission of this information via the operator acting on someone else's behalf could not be agreed upon in a tripartite relationship. Nevertheless, the starting point is that shipping companies communicate directly with passengers.

Responsibilities of passenger transport operators in the case of accidents is regulated in Regulation (EC) No 392/2009 (the "Athens Regulation"). The regulation added immaterial provisions on the transport of passengers and their luggage by sea of the 2002 Athens Convention and the IMO's enforcement guidelines of the Athens Convention to EU laws. The regulation also includes provisions that supplement the Athens Convention. In addition to international transport, the regulation expands the application of the provisions of the Athens Convention to maritime transport within member states using vessels of a specific size

category, since national transport is not separated from international transport in the internal maritime transport market in the EU.

5.3 National regulatory system

In addition to international agreements and EU regulations, maritime transport is regulated at national level. National regulations are mainly limited to technical safety regulations on domestic transport. Part II, chapter 9 of the Act on Transport Services stipulates the right to engage in maritime operations in Finland's territorial waters.

In Finland, the responsibilities of freight carriers for personal injury, losses due to delays and damage to luggage are stipulated in chapter 15 of the Maritime Act (674/1994). This chapter was originally prepared in cooperation with other Nordic countries, and its harmonised provisions apply to all the Nordic countries.

The Athens Convention and related amendments to the Maritime Act and the Package Travel Act entered into force on 5 September 2017, at the same time as the Athens Convention entered into force regarding Finland.

The largest difference between the Athens Regulation and the Nordic maritime laws is that the Athens Regulation does not regulate losses incurred by passengers due to delays, but only standard compensation paid for delays. Therefore, losses resulting from delays are regulated further in chapter 15 of the Maritime Act, insofar as this is necessary in addition to the regulation on the rights of sea passengers. Any provisions of the Maritime Act that conflict with the Athens Regulation and the regulation on the rights of sea passengers have been overturned.

The Maritime Act also addresses the Rome I Regulation, on the basis of which the law applicable to transport agreements is stipulated.

5.4 Acting on someone else's behalf

As presented above, regulations on maritime transport do not include directly relevant provisions concerning acting on someone else's behalf. Regulations on maritime transport have not mainly addressed multimodal travel chains.

Maritime transport operations typically involve different authorisation, representation and agency relationships, i.e. acting on someone else's behalf. This is necessary simply because different intermediaries, such as representatives, agents and brokers, have been needed and are needed in the international operating field to bring together service providers, customers and authorities located in different countries. In passenger transport, travel agencies have typically acted as these types of intermediaries. However, these services acting on someone else's behalf have not been regulated, and they have been based on agree-

ments and national laws applied separately to agreements. Even though the general practice has been that a service provider has acted on behalf of a shipping company, similarly customers and passengers have been able to authorise other parties to act on their behalf at any stage of the signing and fulfilment of the transport agreement.

6 COORDINATION

With regard to regulations on air and maritime transport, the conclusion is that industry-specific regulations do not include directly relevant provisions on acting on someone else's behalf, and challenges in coordination are based on the following basic challenges in acting on someone else's behalf:

- New regulations (PSD2 modelling)
- Difficulties in interpreting regulations and their general nature
- The necessity to enter into an agreement without any precise guiding laws
- The obligation to negotiate and cooperate, and content requirements for agreements
- International application

6.1 Tripartite relationships in acting on someone else's behalf

According to the Government proposal, acting on someone else's behalf mainly comprises authorisation in legal terms, but provisions do not cover this legal framework, as they stipulate ways to act on someone else's behalf in electronic environments. Correspondingly, authorisations and acting on someone else's behalf involve three different relationships:

1. The relationship between the client and counterparty: Legal acts occur between these two parties. An authorisation is also a legal act between these two parties, even though it is basically a unilateral expression of will. When a party is acting on someone else's behalf, the client is a passenger and the counterparty is an airline or shipping company. In practice, these have an electronic customer account relationship, often based on customer loyalty, on the basis of which a ticket is acquired.

2. The relationship between the client and an authorised party: This can be referred to as a basic relationship. When a party is acting on someone else's behalf, this is an electronic account relationship between a passenger and an operator acting on someone else's behalf.

3. The relationship between an authorised party and the counterparty, within the scope of which an agreement is practically signed: When a party is acting on someone else's behalf, this is a contractual relationship between an operator acting on someone else's behalf and an airline or shipping company (API agreement). This is regulated in section 2a of the Act on Transport Services.

These different relationships in air and maritime transport are assessed below, also taking into account international dimensions, for example, regarding applicable laws and, in section 5.4, the jurisdiction of courts of law.

6.2 Passenger – airline/shipping company

Acting on someone else's behalf mean that an operator acts on behalf of the passenger in situations where an electronic customer account relationship or another electronic agreement-based service channel exists between the passenger and airline or shipping company. In practice, this is a loyal customer programme that is used by nearly all airlines and shipping companies. A loyal customer programme is an agreement signed between a consumer passenger and an airline or shipping company, whereby the company commits to providing the passenger with various benefits under certain conditions in exchange for customer loyalty and the processing of the passenger's personal data.

Such a contractual relationship is not regulated in international conventions, EU laws or the Act on Transport Services. The passenger's account relationship or the loyal customer programme do not constitute a transport agreement and, therefore, international regulations on transport agreements and regulations on the choice of law do not apply to them. Instead, a loyal customer programme is typically a consumer agreement governed, for example, by the provisions of the Consumer Protection Act on marketing (chapter 2) and reasonable terms and conditions (chapter 3).

Loyal customer programmes from airlines and shipping companies usually consist of unilateral agreement terms and conditions of service providers that regulate the rights of passengers to receive benefits, bonuses and points, for example, when making reservations. The terms and conditions of loyal customer programmes may include restrictions on how and where reservations need to be made and paid in order to accumulate points or obtain other benefits. It would be problematic in terms of acting on someone else's behalf if such terms and conditions of customer loyalty agreements restricted opportunities for acting on someone else's behalf or made it less attractive to passengers. Then again, it would be equally problematic if provisions on acting on someone else's behalf restricted the application of the terms and conditions of agreements.

6.2.1 Applicable laws

Article 6 of the Rome I Regulation concerns the choice of law in consumer agreements. Not only does the Consumer Protection Act refer to the Rome I Regulation, it also stipulates that laws applied to contractual obligations referred to in the act are stipulated in accordance with the Rome Convention, including when the contractual obligation is not within the scope of application of the Rome Convention[22]. In other words, national laws expand the scope of application of the Rome Convention.

According to Article 6 of the Rome I Regulation, consumer agreements are governed by the laws of the country in which the consumer has their habitual residence, provided that the service provider pursues their activities in that country or directs their activities to that country, and that the agreement falls within the scope of such activities. With regard to acting on someone else's behalf, this usually always means the laws of Finland[23]. However, if these conditions are not fulfilled, for example, because the consumer's habitual residence is not in Finland, the laws of the country in which the airline or shipping company is domiciled or even of the country to which the agreement is most closely connected can be applied based on Article 4[24].

Contracting parties can choose the law applied to the consumer agreement in accordance with Article 3. However, the mandatory provisions of the Consumer Protection Act mean that consumers can choose between the laws of their home country and those agreed upon according to which offer better consumer protection. In loyal customer programmes, airlines or shipping companies may choose the laws of their own country to be applicable, which may not necessarily be binding on consumers who live in Finland.

---

[22]Consumer Protection Act, chapter 4, section 5: A choice-of-law term according to which the contract is subject to the law of a state outside the European Economic Area shall not prevail over the provisions of a member state of the European Economic Area on unreasonable contract terms, applicable but for the term in question, if the provisions offer a more effective protection of consumers against unreasonable contract terms than does the law that would be applied on the basis of the choice-of-law term.
Consumer Protection Act, chapter 12, section 1f: In so far as it is not otherwise provided in this Act or another Act, the law applicable to contractual obligations referred to in this Act shall be chosen on the basis of the Rome Convention of 19 June 1980 on the Law Applicable to Contractual Obligations. Even if the contractual obligations referred to in this Act do not fall within the scope of the Convention, the Convention shall be applied insofar as appropriate.

[23] Similarly, the competent court of law is stipulated as consumer protection. See Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), section 4, and jurisdiction in matters concerning consumer agreements.

[24] Article 19, habitual residence:
1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.
The habitual residence of a natural person acting in the course of his business activity shall be his principal place of business.
2. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such a branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

When a passenger and an airline or shipping company enter into a transport agreement (apart from package travel[25]), Article 5 on contracts of carriage apply to the agreement in place of Article 6. However, the Rome I Regulation does not apply when a convention subject to transport laws applies, such as the Montreal or Athens Convention[26]. In addition, according to the Nordic practice, the Finnish Maritime Act always applies to the transport of passengers by sea when the transport is connected to the Nordic countries.

According to Article 5 of the Rome I Regulation, passenger transport agreements are governed by the laws of the country in which the passenger has their habitual residence, provided that the place of departure or place of destination is located in that country. If these requirements are not met, the laws of the country in which the freight carrier's habitual residence is located will apply. For passengers who live in Finland, this means that the laws of Finland nearly always apply. However, the laws may be chosen differently for passengers living in another country.

Parties can only choose the laws of the country in which the passenger has their habitual residence, or in which the freight carrier is domiciled or has its central administration, or in which the place of departure or place of destination is located to be applied to a passenger transport agreement. However, if all factors related to the situation mean that, due to the lack of a legal reference, the agreement is clearly related more closely to another country than that referred to in paragraphs 1 and 2, the laws of this other country will apply.

Based on the aforementioned, provisions of international private law mean, for example, that a loyal customer programme and also a transport agreement based on and made using the loyal customer programme can be governed by the laws of another country. However, as conventions and EU laws have made the rights of passengers and the responsibilities of freight carriers uniform based on transport agreements, the selection of applicable laws may not ultimately have any significant or relevant meaning.

6.3 Passenger – operator acting on someone else's behalf

The second authorisation relationship is the basic relationship between the client and a representative. Usually, this is an assignment-based contractual relationship. In acting on someone else's behalf, a provider

---

[25] Paragraphs 1 and 2 shall not apply to:
a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;
b) a contract of carriage other than a contract relating to package travel within the meaning of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.

[26] See, for example, Article 17 (Competent jurisdiction) of the Athens Convention.
"1. An action arising under Articles 3 and 4 of this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention, and subject to the domestic law of each State Party governing proper venue within those States with multiple possible forums."

of brokering and dispatch services or integrated mobility services acting on behalf of a passenger represents the passenger in the service transaction as requested and authorised by the passenger.

The key tasks and responsibilities of the operator acting on someone else's behalf mean that they open up the API together with the airline or shipping company, and they then acquire tickets for air or marine transport, or other products entitling the holder to the use of a transport or mobility service, via an electronic interface or another service channel for the passenger, by using information included in the passenger's customer account, such as their personal customer bonuses or points. The obligation to open up an API does not apply to additional services from airlines and shipping companies, even though it may be difficult to separate transport and mobility service products from other products.

The operator acting on someone else's behalf is not party to a loyal customer programme or transport agreement, and it is not responsible, in any way, for the fulfilment of these agreements. The operator acting on someone else's behalf does not gain any rights that the customer does not have. This means that the terms and conditions of the loyal customer programme may restrict the rights of an operator acting on someone else's behalf. Furthermore, a passenger cannot provide the operator acting on their behalf with any other or more extensive rights than they have towards the airline or shipping company.

On the basis of conventions on transport laws, customer complaints and other similar claims must be presented directly to the airline or shipping company. EU regulations on the rights of passengers obligate airlines and shipping companies to provide information and other assistance to passengers. When an operator acting on someone else's behalf does not act on behalf of and in the name of the airline or shipping company but exclusively on behalf of the passenger, the operator acting on someone else's behalf cannot basically be the recipient of the aforementioned information.

The tasks and responsibilities of operators acting on someone else's behalf are stipulated in accordance with the commissioning agreement. Therefore, nothing prevents an agreement, on the basis of which the operator acting on someone else's behalf maintains all contact with the transport service provider, including customer complaints, on behalf of the passenger.[27] As presented above, such practices and operating models already exist regarding standard applications for compensation collected from airlines for delays.[28] Correspondingly, the disclosure of information and notifications provided by airlines and shipping companies to the operator acting on someone else's behalf can be agreed up-

[27] With regard to the transport of goods, the intermediary is often referred to as a "forwarder", and responsibilities are defined in accordance with the general conditions of the Nordic Association of Freight Forwarders.

[28] Considering the transmission of payments, the requirements set out in the Payment Services Act must also be taken into account.

on in the tripartite relationship required for acting on someone else's behalf as presented above.

Acting on someone else's behalf requires that there is a contractual relationship between the passenger and an operator acting on someone else's behalf, and an electronic customer account relationship or other electronic service channel is part of this. It can also be a loyal customer programme but, in practice, it inevitably concerns a standard agreement that stipulates the rights and obligations of the operator acting on someone else's behalf regarding service transactions, i.e. the purchase and administration of tickets.

Furthermore, such a relationship is not regulated in international conventions, EU laws or the Act on Transport Services. The provisions of the laws of Finland are based on chapter 2 of the Contracts Act, which defines authorisations, and chapter 18 of the Commercial Code, which defines assignees and agents.

In general, apart from business travel, the relationship between a passenger and an operator acting on the passenger's behalf is a consumer relationship, in which case the commissioning agreement is governed by the Consumer Protection Act. It should be stated that the liability of an intermediary defined in chapter 12, section 1 of the Consumer Protection Act is not applicable, based on its wording and particularly based on its preparation, since the section does not apply to the brokering and dispatch of services other than movable property and services within the scope of chapter 8 of the Consumer Protection Act. The brokering and dispatch of transport and mobility services are not services referred to in this section. In addition, this section is not applicable, since the operator acting on a passenger's behalf acts in the name of the passenger, not of the airline or shipping company (such as a travel agency).[29] However, it should be stated that the significance of the intermediary provision is currently emphasised and its interpretation is more difficult, since technologies have given birth to completely new intermediary models, including service platforms. A good example of this is the judgement of the CJEU in the Uber case.

According to part III, chapter 5, section 2 of the Act on Transport Services, providers of brokering and dispatch services and integrated mobility services have a specific obligation to provide information.

> In addition to what has been stipulated elsewhere in laws on the rights of passengers, providers of brokering and dispatch services and integrated mobility services must, when entering into an agreement, provide passengers with information about who the passengers can turn to in dif-

[29] See Supreme Court of Finland:1993:30: "A ordered a journey arranged by company C from travel agency B, making a payment for it to B, which then remitted the payment to C. B, as the intermediary, was not responsible towards A for the repayment of the price of the journey resulting from C being unable to arrange the journey due to bankruptcy."

ferent phases of the travel chain if the service provided is not in accordance with the confirmation received.

6.3.1 Applicable laws

As presented above, the laws applied to an assignment-based relationship between a passenger and an operator acting on someone else's behalf are determined on the basis of Article 6 of the Rome I Regulation, which stipulates that the laws in the country in which the consumer has their habitual residence apply (see section 6.2.1). Article 5 on contracts of carriage does not apply. However, it should be assumed that a commissioning agreement does not usually have any international dimensions, since an operator acting on someone else's behalf normally provides their services in the consumer's habitual place of residence.

6.4 Operator acting on someone else's behalf – airline or shipping company

The relationship between an operator acting on someone else's behalf and an airline or shipping company is the primary object of provisions on acting on someone else's behalf. Initially, it is not based on an existing agreement but, unlike in the PSD2, a contractual relationship is required in order to open up APIs.

The key tasks and responsibilities of an airline or shipping company in transactions on someone else's behalf mean that they provide the operator acting on someone else's behalf, in cooperation with the operator acting on someone else's behalf, effectively and with reasonable conditions, access to the interfaces used by the passenger, typically a loyal customer programme, or that they open up a new API for the operator acting on someone else's behalf to the ticket sales channel, or, if required, that they enable access to another electronic service channel if the information included in the loyal customer programme, such as information about bonuses, is not directly connected to the ticket sales channel.

The terms and conditions of acting on someone else's behalf must be fair, reasonable and non-discriminatory. In this respect, reference is made to FICORA's codes of practice for travel chains. Section 15.3 of the codes of practice apply to dispute resolution, regarding which it should be noted that the international jurisdiction of a court of law is determined, for example, on the basis of Regulation (EU) No 1215/2012. In terms of acting on someone else's behalf, the applicable court of law can be considered to be determined, unless separately agreed upon, on the basis of the habitual place of residence of the counterparty or the place in a member state in which the API was opened up or needed to be opened up. This can be difficult to define in the case of electronic services.

Insofar as the operator acting on someone else's behalf has been provided with rights to act on behalf of and in the name of the passenger in

an assignment relationship (such as receive statutory notifications), these need to be communicated and agreed between all parties, so that the authorisation relationship remains clear.

For example, airlines may provide their ticket and payment systems and sales channels intended for their customers in a number of different ways. This is a completely separate question, discussed in section 6.4.1, dealing with the position, while acting on someone else's behalf, of an international operator that is responsible for a ticket and payment system on behalf of an airline or shipping company.

6.4.1 Applicable laws

Cooperation agreements signed between foreign airlines or shipping companies involve many unclear points, not least because the Act on Transport Services, regardless of its potentially mandatory provisions, may not be applicable to international operators.

In the case of a consumer agreement and not a transport agreement, the laws applied to an agreement relationship between an airline or shipping company and an operator acting on someone else's behalf are determined on the basis of Articles 3 and 4 of the Rome I Regulation. Article 5 on contracts of carriage does not apply.

To the extent that the law applicable to the agreement has not been chosen in accordance with Article 3, the law governing the agreement will be determined on the basis of the habitual domicile of the service provider in accordance with Article 4(1)(b). Where the agreement is not covered by Article 4(1) or where the elements of the agreement would be covered by more than one of paragraphs (a) to (h) of Article 4(1), the agreement will be governed by the law of the country where the party required to effect the characteristic performance of the agreement has their habitual residence.

With regard to the obligation to open up an API, it is possible to hold that the service provider is an airline or shipping company whose obligation to open up an API is also the characteristic performance of the agreement. However, if the agreement is more naturally connected to another country, the laws of that country will apply. Therefore, it is possible, if not even probable, based on the Rome I Regulation that, even without a legal reference, the laws applied to a foreign airline or shipping company are different to those of Finland.

The position of an operator that is in charge of a ticket and payment system on behalf of an airline or shipping company on the basis of an agreement and the related provisions on acting on someone else's behalf are completely separate questions. Such an operator and the governing contractual relationship are typically international by nature, and it may not be possible to extend the Act on Transport Services to such an operator.

The mandatory nature of provisions on acting on someone else's behalf has not been regulated separately. Nationally mandatory provisions are not automatically internationally mandatory and, therefore, supersede otherwise applicable laws. Considering the purpose and novelty of the provisions, it is possible that they do not meet the high standards set for internationally mandatory provisions in the Rome I Regulation, among others.[30]

7 RESPONSES TO QUESTIONS

7.1 Considering that the scope of application of the Act on Transport Services is very broad, how does the requirement for acting on someone else's behalf apply to airlines and shipping companies that are not domiciled in Finland?

This question can be assessed from many different angles. In summary, it can be stated that, depending on the situation in terms of international transport, the application of the provisions to airlines and shipping companies domiciled outside Finland can be challenging or even impossible.

General responses to this question have been provided for each mode of transport in sections 4.4 and 5.4 above. International provisions on air and maritime transport do not explicitly restrict acting on someone else's behalf, i.e. the use of services on behalf of the passenger. On the contrary, different authorisation and intermediary situations are common in the international operating environment. A good example of this is the operating model of travel agencies. As electronic services are continuously developing, as APIs have also been opened, but only on the basis of agreements.

Responses to this question regarding applicable laws have been given in sections 3 and 6 (in section 6.4.1, in particular). Where the question is merely of national provisions that obligate operators to enter into mutual agreements, the situation is not unproblematic on the basis of international private law (such as the Rome I Regulation). According to the provisions of international private law, the laws of Finland are mainly always mandatorily applied to consumer relationships between a passenger and transport company, and between a passenger and an operator acting on someone else's behalf. Moreover, the laws of Finland also uniformly apply to transport agreements (see sections 6.2.1 and 6.3.1).

---

[30] Article 9, overriding mandatory provisions
"1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.
2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.
3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application."

Instead, in the field of acting on someone else's behalf where service providers act as contracting parties and where the situation is not regulated by any convention or EU law, it is possible, or even probable, that the laws of Finland are not applicable when the obligation to provide service for those acting on someone else's behalf applies to airlines and shipping companies domiciled outside Finland. Even if provisions on acting on someone else's behalf were considered to be mandatory at national level, they may not be mandatory at international level.

Responses to this question regarding the free provision of services under EU laws have been given in sections 3.3, 4.2.1 and 5.2. Where the question is merely of national provisions that obligate operators to enter into mutual agreements, the obligation to open up a sales interface may also need to be assessed from the points of view of EU laws and, in particular, provisions on the free movement of services. It cannot be excluded that acting on someone else's behalf and the necessity to enter into an agreement would actually be considered to prevent the free movement of transport services without sufficiently justified grounds.

In the case that the obligation to provide service for those acting on someone else's behalf were, as such, applicable to foreign airlines and shipping companies, there would inevitably be many more challenges in cross-boundary situations related to the assessment of the trust-based relationship, the cooperation obligation, and the terms and conditions of the API agreement than in situations where operations are carried out between Finnish operators. For example, where there are no international common criteria for assessing a trust-based relationship, the question is whether the right to refuse cooperation comes up more easily than when dealing with a Finnish party.

For foreign shipping companies, provisions on acting on someone else's behalf are not applicable if a (Finnish) passenger (on a journey connected to Finland) does not have any loyal customer or account relationship with the shipping company.

7.2 User accounts vs. loyal customer programmes? On what grounds can a loyal customer programme be a user account, as that data should also be made openly available in accordance with the justification of the law?

Responses to this question have partly been given in sections 6.2 and 6.4.

There are many types of loyal customer programmes[31], and the response partly depends on the terms and conditions and characteristics of the loyal customer programme. The terms and conditions of many loyal customer programmes expressly mention electronic accounts.

[31] This report addresses the loyal customer programmes of the following companies: AS Tallink Grupp (Club One), Viking Line Abp (Viking Line Club), Finnlines Plc (Star Club), Finnair Plc (Finnair Plus), Norwegian Air Shuttle ASA (Norwegian Reward), American Airlines Inc. (AAdvantage).

However, how the agreement between a customer and service provider has been named or how the Act on Transport Services uses the concept of “user account” is not crucial, as the relevant question is whether the electronic account relationship mainly fulfils technical and functional requirements in order to enable acting on someone else’s behalf in accordance with the Act on Transport Services.

A loyal customer programme is always based on an agreement between a customer and a mobility service provider. Especially when tickets can be booked and acquired using the user information included in the loyal customer programme and loyal customer benefits (typically points and bonuses), it is justified to consider that this question deals with a user account referred to in the Act on Transport Services. Then again, a loyal customer programme through which mobility services cannot be directly booked but its information can be used when making a reservation can be regarded as a user account. Therefore, all kinds of electronic loyal customer programmes should be regarded as user accounts as referred to in the Act on Transport Services, since they can and should be used when acting on someone else’s behalf. If a loyal customer programme and its data cannot in any way be used when acquiring a ticket, it should not be regarded as a user account as referred to in the Act on Transport Services.

7.3 Scope of authorisations regarding acting on someone else’s behalf: cancellations, changes in terms and conditions and requirements derived from international agreements, and other such questions?

Responses to this question have partly been given in sections 4.4 and 5.4.

Provisions on acting on someone else’s behalf focus on opening up an interface between an operator acting on someone else’s behalf and an airline or shipping company exclusively for the purpose that the operator acting on someone else’s behalf acquires ticket products or other products entitling the holder to the use of a mobility service, at the request and on behalf of a passenger, in a situation where there already is a contractual relationship between the passenger and operator acting on someone else’s behalf, albeit not necessarily and basically a transport agreement.

However, this question deals with the relationship between the passenger and operator acting on someone else’s behalf that has not been regulated in the provisions on acting on someone else’s behalf in the Act on Transport Services.

Similarly to how international conventions subject to transport laws and EU laws do not regulate or limit the rights of passengers to authorise other parties to enter into a transport agreement or otherwise act on their behalf, there are no restrictions regarding the opportunity to au-

thorise other persons to take care of cancellations, changes, customer complaints and compensation claims concerning transport agreements.

Transport laws and EU regulations impose an obligation on airlines and shipping companies to disclose information both before and during travel. This information must be disclosed to the counterparty to the transport agreement, i.e. the passenger. An operator acting on someone else's behalf is not party to the transport agreement and, therefore, this information cannot be disclosed to it without the passenger's consent. Furthermore, provisions on acting on someone else's behalf do not stipulate obligations or rights related to this.

7.4 The role of service platforms and aggregators (e.g. Amadeus) from the point of view of the Act on Transport Services: can these also be parties governed by the obligation to provide service to parties acting on someone else's behalf?

A provider of mobility services or integrated mobility services, or a party in charge of a ticket or payment system on their behalf, must provide another provider of mobility services or integrated mobility services with open access to the sales interface of their ticket and payment system. If a party is within the scope of brokering and dispatch services, the provider of brokering and dispatch services can open up APIs on behalf of the party.

Considering the practical implementation of acting on someone else's behalf, it should be noted that, for example, airlines can implement their ticket and payment systems and sales channels intended for their customers in a number of different ways. Some airlines have, in practice, outsourced their entire ticket and payment system to a GDS operator. These include Amadeus IT Group and Sabre Corporation. For example, the Altéa Suite provided by Amadeus IT Group covers all reservation and payment system functions of a typical network airline, and it is based on communication implemented in accordance with a specific standard. If an airline implements its ticket and payment system as described, this is a situation where the practical fulfilment of the obligation is targeted, at least partially, at the operator in charge of the ticket and payment system on behalf of the provider of mobility services or integrated mobility services. However, there is reason to interpret that an airline must primarily independently ensure that the GDS operator acting as its subcontractor provides the provider of integrated mobility services with proper access to the airline's outsourced system in the name of the airline. The subcontractor that implements the ticket and payment system (GDS operator or similar) cannot, exclusively on the basis of the terms and conditions of assignments, have independent decision-making power regarding whether or not it can provide operators acting on someone else's behalf with access (or stipulate preconditions for access) to the outsourced ticket and payment system implemented by the subcontractor in question, for example, by establishing travel agency identifiers for the operator acting on someone else's behalf in order to use the reservation system produced for the airline in question.

A GDS operator cannot be considered to be a provider of integrated mobility services as referred to in the Act on Transport Services. According to part I, chapter 1, section 2 of the Act on Transport Services, “integrated mobility service” means the brokering and dispatch of transport services for compensation, excluding services where only the service provider’s own services are brokered and dispatched, and also excluding package travel as referred to in the Package Travel Act (1079/1994). Because GDS operators do not broker and dispatch transport services for the public, but mainly act as global distribution channels for airlines towards travel agencies, they can hardly be considered to be within the scope of application of the provisions. Obligations to provide service to parties acting on someone else’s behalf should anyway be imposed directly on airlines and not their subcontractors, even though the wording of the provisions also expressly covers operators that produce ticket and payment systems on behalf of providers of mobility services or integrated mobility services. Extending the obligations of the Act on Transport Services to GDS operators that are not connected to Finland will probably be very challenging in practice.

It is also possible that, in addition to using GDS operators, an airline will offer their ticket products via the New Distribution Capability (NDC) programme maintained by the IATA and the related communication standard. The NDC standard, which is still under development, is particularly intended as a standard between travel agencies and airlines. Its purpose is to increase the visibility of additional services from airlines. Correspondingly, it cannot be considered that, for example, a party that maintains the NDC standard and communication complying with the standard brokers and dispatches transport services for compensation. Therefore, it cannot be regarded as a party governed by an obligation to provide service for those acting on someone else’s behalf.

For the sake of clarity, it is stated that there are also airlines whose ticket products are sold only or partly through their own internal reservation system and their online shop connected to the system. These airlines do not usually outsource their ticket and payment systems, or parts of them, to subcontractors. In this case, the obligation to open up APIs to enable acting on someone else’s behalf as referred to in the Act on Transport Services applies directly to the internal API of the reservation system of the airline in question, and the operating model does not usually involve any parties acting in the role of an intermediary to which the obligation to provide service for those acting on someone else’s behalf could apply, not even indirectly or secondarily.

The Act on Transport Services only requires opening up the sales interface that provides access to the customer account. It does not explicitly require that an API needs to be opened up to all sales channels. Therefore, if an airline sells ticket products via its own digital sales channel, this open access should generally be sufficient. Selling tickets also, for example, via Amadeus does not obligate the airline to open up their Amadeus API. The GDS channel of Amadeus or another operator is

mainly used to provide travel agencies with global visibility of the ticket range. However, the starting point is that ticket products offered to passengers via an API for acting on someone else's behalf cannot have weaker terms and conditions[32].

Foreign airlines that offer their flights in Finland exclusively or mainly via their own online shop may have built their sales system using a relatively simple IT solution, in which different subsystems are interconnected at the online shop level. In this case, the most effective API for acting on someone else's behalf may ultimately be an API with functions that largely correspond to those of the public online shop and are even connected to it.

What has been stated above regarding the alternative sales and distribution channels of airlines also applies to passenger shipping companies. Large foreign cruise lines sell their ticket products via their own internal reservation systems and online shops, but they also use, for example, the aforementioned service providers (Amadeus and Sabre Corporation).

A good example is Uber, which is a mobile app and service platform. It shows available Uber taxis close to the user, from which the user can select any taxi. The journey is paid for using the app. As Uber drivers use their own cars, they are in a different position, as was shown in the judgement issued by the CJEU.

[32] See section 2.1.1 above and the Government proposal: "The proposed provisions as such would not have any impact on product prices, and customers would be able to obtain products on the same grounds as before."