Consumer Protection

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### **BOOKING FLIGHTS ONLINE**

### **A study was conducted to determine whether or not the online booking of flights complies with all legal provisions that on the one hand, ensure price transparency and that, on the other hand, prevent surcharges that lead to the discrimination of certain means of payment such as credit cards. Further, it was determined whether optional additional costs for luggage that is to be checked are indicated and whether additional services such as insurance are pre-set.**

Margit Handschmann

The booking of a round-trip flight for two people between Vienna and Berlin at the most favourable price found was simulated between 28 and 31 July 2015 at ten service providers, namely seven travel booking portals (eDreams, Opodo, Expedia, Ebookers, fluege.de, Restplatzbörse and TUI) and three airlines (AUA, Lufthansa and Air Berlin/Flyniki).

**The key findings**

Only AUA and Lufthansa complied with all the legal provisions. These two airlines charged no additional costs for credit card payment and indicated the final price immediately, which also contained one checked bag. TUI and Restplatzbörse likewise levied no additional charges for credit card payment and they, too, indicated the final price immediately. However, in the search result neither of these companies included information about the costs of the piece of luggage that was not contained in the price. FlyNiki/Air Berlin and Ebookers provided the final price immediately, but both also charged extra for credit card payment and both failed to provide immediate information about the costs of a piece of luggage to be checked.

The four remaining service providers – fluege.de, eDreams, Expedia and Opodo – charged extra for payment with a common credit card and the final price they gave was also not correct. It was correct only if payment was rendered with unusual means of payment such as Entropay or VisaElectron. The two service providers fluege.de and eDreams also failed to include the costs of a piece of luggage to be checked.

**Violation of Austrian Payment Services Act**

Austrian Airlines, Lufthansa, TUI and Restplatzbörse were the only service providers that did not charge **extra for the use of common means of payment** such as credit cards, which are very popular in online bookings. That means only four of these service providers comply with Article 27 para 6 of the Austrian Payment Services Act, which stipulates that it is not permitted to charge for certain payment services. The remaining six service providers – Air Berlin, Ebookers, Opodo, Expedia, fluege.de and eDreams – all charged additional fees for payment with common credit cards, in some cases also for payment with other means of payment such as PayPal or direct debit. The additional costs for two people for a round-trip flight totalled from € 8.90 (Opodo) to as high as € 99.96 (fluege.de, including service fee). In June, AK lodged a suit under the Austrian Act on Unfair Competition (UWG) against Travel24.com AG. This suit is pending at the court of first instance and also asserts, inter alia, that this firm is in violation of the Austrian Payment Services Act.

**Violation of the price indication provisions under EU Regulation 1008/2008**

**Indication of the final price including all costs that are unavoidable and foreseeable**

* Only Austrian Airlines, Lufthansa, flyniki/Air Berlin, TUI, Restplatzbörse and Ebookers indicated the **total price of the flight** alreadythe first time the air fare was indicated. Thus, only six of ten service providers complied with the price indication provisions of the EU Regulation already in the search result, thereby indicating the total price including charges and surcharges, processing fees, service fees and any additional costs for the use of a common means of payment. According to Art 23 of the EU Regulation 1008/2008 of 24 September 2008 all costs that are unavoidable and foreseeable must be visible from the first price indication on and be figured into the final price.
* The remaining four service providers, Opodo, Expedia, fluege.de and eDreams indicated the air fare reported in the search result but without including the costs incurred for use of a common means of payment. They therefore violate the duty provided for in the EU Regulation to indicate the final price. So, the indicated price was possible only if payment was made by means Entropay for Opodo and eDreams and by means of Visa Electron for Expedia. Entropay and Visa Electron are both prepaid credit cards, which are not common means of payment in Austria. For fluege.de, payment at the indicated price was possible only with MasterCard Gold, which is also not a common means of payment.

The failure to indicate correctly the final price on payment with common means of payment constitutes a violation of the EU Regulation. In the case C-573/13 involving Air Berlin, the European Court of Justice (ECJ) clarified that the first display of search results covering multiple flights must include the final price for all flights displayed and not just for the selected flight. This is true of any form of publication, i.e. also for prices indicated in table form. In a suit under the Austrian Act on Unfair Competition (UWG) that AK lodged against fluege.de, the Higher Regional Court of Vienna (OLG Wien) handed down the legally binding ruling on this point that it does not suffice to offer a free option allowing payment with a non-common credit card. Indeed, the costs incurred by a payment with common credit cards must also be included in the final price to be reported according to the Regulation.

**Indication of optional additional costs and costs for a piece of luggage to be checked**

* Only Austrian Airlines, Lufthansa and Opodo charged no **costs for luggage to be checked**. For these three service providers, free luggage was included in the price for the cheapest flight listed (as of the survey period July 2015; in the meantime, Austrian Airlines and Lufthansa have an Economy Light fare category, which no longer includes a free piece of luggage).
* For the remaining seven service providers, no free piece of luggage was included in the cheapest price indicated. That means the optional additional costs under the EU Regulation would have had to have been indicated the first time the air fare was shown. This duty was not met by any of the service providers. At Expedia, users could at least go via a meaningfully designated link at the search results to a place where costs were indicated and not just free luggage rules as with the other service providers.
* As the cheapest fare categories increasingly exclude free luggage, the next expensive one up that still contains free luggage is in the meantime the cheaper category. At Air Berlin, this was the case already at the time of the study even though the cost for a piece of luggage then was only € 15 per leg. In the meantime, it has been increased to € 35. Lufthansa and Austrian Airlines also introduced a new Economy Light fare, which no longer includes any free luggage. The cost of checking luggage is currently € 15 per leg; the next higher category that includes free luggage is currently € 20 more expensive. For passengers who are indifferent about the additionally included seat reservation and the rebooking option for € 65, the additional online booking of luggage in connection with the cheapest fare is currently somewhat less expensive than Economy Classic. However, if travellers wait until check-in at the airport to add luggage, they pay € 30 per bag and leg.

**Pre-setting of insurance**

* All service providers except Expedia offered one or more **insurance products** (e.g. cancellation protection, travel insurance, etc.). **Insurance was not pre-set for any of the service providers, which would not have been permitted under the EU Regulation anyway.** However, the insurance on offer did have to be explicitly rejected at four of the service providers, namely fluege.de, Opodo, Ebookers and Air Berlin.
* At fluege.de, Opodo and Expedia, a pop-up window pointing out the importance of taking out insurance appeared if no insurance agreement was concluded. At fluege.de, there were nine pop-up windows for two insurance products and two insurance-like products. They contained warnings about the high costs that can be incurred if a person fails to take out insurance. If users did not want to take out insurance and clicked on “No”, a prompt appeared again asking whether they were really certain. Fluege.de offers four different insurance products, three of which are annual contracts – with an inadmissible automatic extension of contract – and the annual premium more or less doubles in the second year. AK lodged an action as a representative association against BD 24 Berlin owing to the inadmissible extension-of-contract clause. The repeated offering of insurance that consumers do not want might also be deemed an aggressive business practice, which is unfair competition under the Austrian Act on Unfair Competition (UWG). In Germany, the trial court handed down a ruling against Opodo, indicating that travel insurance is not allowed to be foisted upon consumers by means of a misleading booking approach.

**Price comparison of the final prices indicated in the search findings with the final prices ultimately to be paid**

* Precisely the service providers who were cheapest in the search results turned out being relatively expensive by comparison. A comparison of seven service providers whose indicated air fare did not include free luggage showed that the cheapest service providers in the search results were eDreams with an air fare for two of € 232.42 followed by fluege.de, Expedia and Air Berlin with an air fare of € 256.42. TUI placed second to last with an air fare of € 298.02 and Restplatzbörse placed last with € 300.42.

If one compares the prices on payment with the cheapest means of payment among the seven service providers, Air Berlin takes first place with € 256.42 followed by Expedia (€ 276.42) and Ebookers (€ 278.54). fluege.de ranks last with a price € 336.38; the air fare reported for it in the search increased by 31.18 per cent. The initially cheapest air fare offered by eDreams rose in price to € 280.42, i.e. increasing by 20.65 per cent compared with the air fare in the search results.

If one compares the prices of the seven service providers in connection with payment with a common credit card, Air Berlin and Expedia tie for first place with a price of € 276.42, followed by eDreams (€ 290.85), TUI (€ 298.02), Restplatzbörse and Ebookers (€ 300.42 and € 300.54). Last place goes once again to fluege.de with an air fare of € 356.38. That means the flight is nearly one-third (28.93 per cent) more expensive than the two cheapest service providers.

Among the three service providers that include free luggage in the indicated air fare, Opodo emerges on top, namely in terms of the air fare indicated in the search results (€ 276.42) as well as in the air fare with the cheapest common means of payment (€ 285.32) and a common credit card (€ 285.32). Lufthansa und Austrian Airlines are considerably more expensive. The price indicated in the search results amounted to € 398.42 whereas the price was € 388.42 using the cheapest means of payment and € 398.42 with a common credit card.

If one takes into account for the service providers whose air fare did not include free luggage the costs of € 60 (€ 15 per leg and piece of luggage) that Air Berlin charged for one piece of luggage at the time of the study and the costs of € 64 indicated by eDreams and compares the results with payment using a common credit card with the three service providers whose air fare did include free luggage, then Opodo is the cheapest service provider with a final price of € 285.32, followed by Air Berlin and Expedia with a price of € 336.42 each. The most expensive service provider in this case, too, is fluege.de, at € 416.38; the flight is 45.93 per cent more expensive than the one offered by the cheapest service provider. Lufthansa and Austrian Airlines are somewhat cheaper, with an air fare of € 398.42 each.

**Legal basis**

**Article 23 of EU Regulation 1008/2008 of 24 September 2008**

All costs that are unavoidable and foreseeable must be calculated into the first indication of the final price. In addition, the final price must be broken down into its components. In the case C-573/13 involving Air Berlin, the European Court of Justice (ECJ) clarified that the first display of search results covering multiple flights must include the final price for all flights displayed and not just for the selected flight. This is true of any form of publication, i.e. also for prices indicated in table form. In a suit under the Austrian Act on Unfair Competition (UWG) that AK lodged against fluege.de, the Higher Regional Court of Vienna (OLG Wien) handed down the legally binding ruling on this point that it does not suffice to offer a free option allowing payment with a non-common credit card. The costs incurred by a payment with common credit cards must also be included in the final price to be reported according to the Regulation.

* **Optional additional costs** and costs for a piece of luggage to be checked must be made know at the start of the booking procedure in a clear, transparent and non-ambiguous way.
* It is inadmissible to have pre-set **travel insurance** that must be deactivated. This also holds true for intermediaries who arrange flights, as ruled by the European Court of Justice (ECJ) (C 112/11, Ebookers). Additional services such as travel insurance are only allowed to be offered on an opt-in basis. Under Article 6c of the Austrian Consumer Protection Act (KschG), the conclusion of an insurance contract would only come about with legal effect if the consumer explicitly agrees to conclude it, which is not the case if the consumer must first reject a pre-setting.

**Article 27 para 6 Austrian Payment Services Act**

The Austrian Federal Payment Services Act (ZaDiG) is additionally relevant for costs incurred when a traveller pays with certain means of payment (usually credit cards). According to Article 27 para 6 of the Austrian Federal Payment Services Act (ZaDiG), it is not permitted to charge fees for the use of certain means of payment. By contrast, it would be permissible for the customer to be granted a discount for the use of certain means of payment.

**The results in detail:**

**1. Was the total price already indicated the first time the air fare was shown (in the search results)?**

**For Lufthansa and AUA,** **the final prices of the flights were indicated with the first search results and included taxes, charges and surcharges. The costs of a piece of luggage to check were also included.**

**TUI** and **Restplatzbörse** also included all costs at the outset in the total price and did not charge extra for means of payment. However, these two failed to make the additional indication of the price for a piece of luggage, which was not included in the total price.

For **flyniki and Air Berlin** as well as **Ebookers** a total price was indicated that contained the costs of paying with a common means of payment (online transfer or giropay; for flyniki also direct debit and PayPal). However, both service suppliers bill surcharges if payment is made by credit card. Neither of the above two service providers indicated the price for one piece of luggage, which was not contained in the total price. At **fluege.de**, **Edreams, Opodo and Expedia**, the indicated total price does not contain all costs incurred when payment is made with a common means of payment and further costs kept being added in the course of the booking procedure for the use of a common means of payment such as credit cards. That means no additional costs are incurred for Expedia only if payment is made by means of Visa Electron. For Opodo and eDreams, only payment with Visa Entropay incurs no extra costs. Visa Electron as well as Visa Entropay are prepaid cards from Visa, whereby Visa Entropay is apparently offered on the English market. For **fluege.de** only payment with a fluege.de MasterCard Gold incurs no extra costs; a service fee is even charged for direct debit payments. As neither the prepaid credit cards in Austria nor the fluege.de MasterCard Gold are common means of payment, the service providers are in breach of their duty to indicate all costs whose incurrence is unavoidable and foreseeable.

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| **Carrier/intermediary** | **Total price correctly indicated “Yes/No”** |
| **eDreams.de** | No, the final price increases by as much as € 58.43 for two people for all common means of payment. |
| **opodo.at** | No, the final price increases by € 8.90 for two people for all common means of payment. |
| **fluege.de** | No, the final price increases by as much as € 99.96 for two people for all common means of payment; even a direct debit incurs a service fee of €79.99. |
| **ebookers.at** | Yes, payment with SOFORT bank transfer (common means of payment?) is free of charge. |
| **expedia.at** | No, the final price increases by as much as € 20 for two people for all common means of payment. |
| **tui.at** |  Yes, neither the payment with common credit cards nor with SOFORT bank transfer leads to an increase in the final price. |
| **restplatzboerse.at** | Yes, payment with common credit cards is possible; no increase in the final price. |
| **lufthansa.com** | Yes, there is no increase in final price regardless of means of payment; final price is discounted if payment is made by means of debit cards or SOFORT bank transfer. |
| **austrian.com** | Yes, payment with common credit cards leads to no increase in the final price; the final price is discounted if payment is made by SOFORT bank transfer. |
| **airberlin.com/flyniki.com** | Yes, there is no increase in final price in the case of payment by direct debit, PayPal and giropay. |

**2. Which service providers charge a fee for payment with non-cash means of payment such as credit cards, direct debit and online bank transfer, and thereby violate Article 27 para 6 of the Austrian Payment Services Act (ZaDiG)?**

Six service providers, namely eDreams, Opodo, fluege.de, Ebookers, Expedia and Air Berlin, charge additional costs for payment with credit cards, in individual cases also for payment with direct debit or PayPal and thereby violate the Austrian Payment Services Act.

The highest additional costs were incurred at fluege.de. Thus, the roundtrip flight for two people at fluege.de increased in price by nearly €100 upon payment with a conventional credit card. At fluege.de and eDreams, it was striking that a payment with a common credit card not only incurred costs indicated as costs for the means of payment but apparently also further costs with varying designations.

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| **Carrier/intermediary** | **Extra costs for means of payment for two people** |
| **eDreams.de** | Up to €38.44 plus €19.99 in costs of payment, i.e. € 58.43 for payment with common credit cards; additional costs totaling €48 also with SOFORT bank transfer. |
| **opodo.at** | € 8.90 for payment with common credit cards |
| **fluege.de** | Up to € 20.00 plus € 79.96 service fee, i.e. € 99.96 for payment with common credit cards; also service fee of € 79.96 for direct debit. |
| **ebookers.at** | € 22.00 for payment with common credit cards; also for PayPal € 5.57. |
| **expedia.at** | € 20.00 for payment with common credit cards. |
| **tui.at** | 0.00 |
| **restplatzboerse.at** | 0.00 |
| **lufthansa.com** | 0.00 |
| **austrian.com** | 0.00 |
| **airberlin.com/flyniki.com** | € 20.00 for payment with common credit cards and with Air Berlin credit cards. |

**3. Are luggage costs indicated as optional additional costs already the first time the air fare is shown?**

* Only Austrian Airlines, Lufthansa and Opodo charged no **costs for luggage to be checked**. For these three service providers, free luggage was included in the price of the cheapest flight listed (as of the survey period July 2015; in the meantime, Austrian Airlines and Lufthansa have an Economy Light fare category, which no longer includes a free piece of luggage).
* For the remaining seven service providers, no free piece of luggage was included in the cheapest price indicated. That means the optional additional costs under the EU Regulation would have had to have been indicated the first time the air fare was shown. This duty was not met by any of the service providers. At Expedia, users could at least click a meaningfully designated link at the search results to arrive at a place with an indication of costs and not just with a general note that luggage surcharges might be incurred or with instructions regarding rules on free luggage provisions, as with the other service providers.
* Several service providers gave more or less clear indications at the search results (e.g. Restplatzbörse, Ebookers) that no free luggage was included or that only carry-ons were included; other service providers did not provide this information until after the flight was selected (e.g. TUI, eDreams). As regards the cost of luggage to be checked, reference was made in some cases to the homepage of the airline (e.g. TUI, Ebookers) and in other cases, no information at all was given (e.g. fluege.de, Restplatzbörse). At fluege.de a pre-setting was possible that only flights with free luggage were to be displayed. However, it was not visible when the cheapest flight was shown, but rather only after scrolling through the page. As a result, it was easily to overlook.
* At eDreams, luggage was able to be additionally booked in the course of the booking procedure for € 16 per person and leg (as of July 2015). It could also be additionally booked in connection with direct booking at Air Berlin for € 15 per person and leg (as of July 2015). In the meantime, one piece of luggage weighing up to 23 kg costs € 35 at Air Berlin. That means if travellers take along a piece of luggage to be checked, it can be cheaper for them to select the next higher fare category FlyDeal that includes one free piece of luggage.
* It can become quite expensive for travellers who overlook the fact that no free luggage is included except carry-ons. Air Berlin charges travellers €15 if they wait until the airport to say they are checking luggage and an additional, quite steep, € 70 per piece of luggage and leg. For a roundtrip flight for two people with one piece of luggage apiece this can cost € 310. The note that no free luggage is included in the cheapest category “JustFly” is not very clear and can be easily overlooked; this can happen even when booking directly at Air Berlin.

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| **Carrier/intermediary** | **One piece of luggage per person for roundtrip flight for two people** |
| **eDreams.de** | Free luggage is not included in the price. There is a link “Price structure”, which if followed, takes the user to price information. There one can find out, inter alia, that surcharges may be incurred for luggage. It is not clear until after the flight is selected and when personal details are entered that luggage must be additionally booked. The costs for this are € 64.00 (€ 16 per leg and person). |
| **opodo.at** | Included in the price. Indication of cost not required. |
| **fluege.de** | Free luggage not included in the price. In the initial listing of the price, there is no indication of costs for one bag to be checked. There is a relevant note only in an information link in fine print for the displayed flights that the price does not include free luggage.  |
| **ebookers.at** | Free luggage not included in the price. In the initial listing of the price, there is no indication of costs for one bag to be checked. Note for the displayed flights that only one carry-on is included. Note regarding additional airline fees only after flight is selected. A link then takes user to the free luggage rules of Air Berlin.  |
| **expedia.at** | Free luggage not included in the price. In the initial listing of the price, there is no indication of costs for one bag to be checked. A link at the search results takes the user to information about the costs: € 15 for the first bag; € 70 for a further bag. |
| **tui.at** | Free luggage not included in the price. In the initial listing of the price, there is no indication of costs for one bag to be checked. Indication of that only after the flight is selected. No indication of extra costs; only link to Air Berlin homepage. |
| **restplatzboerse.at** | Free luggage not included in price. Indication of that already with the search results, but no indication of costs and no link to the homepage of the airline. |
| **lufthansa.com** | Included in the price. Indication of cost not required. |
| **austrian.com** | Included in the price. Indication of cost not required. |

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| **airberlin.com/flyniki.com** | No free luggage contained in the cheapest flight (JustFly category). Neither a clear nor a definite indication that no free luggage is contained in the price. In the initial listing of the price, there is no indication of costs for one bag to be checked either. A user obtains the note about luggage not being free only with the missing luggage symbol or if he or she opens the rate information; there is no indication of costs there either though. Travellers cannot additionally book pieces of luggage until they open the link “additional luggage and sports equipment” in the course of the booking procedure. Costs at the time of the study were € 15 per leg and bag; currently they are € 35. Unlike further additional options such as voluntary insurance, consumers do not obtain information about the price until after opening a link.  |

**4. Optional travel insurance products**

Even if pre-settings for travel insurance are things of the past, there are still service providers who sell insurance products more or less aggressively. They seek to convince customers that they are exposing themselves to a high risk if they fail to take out the insurance on offer. These service providers also like to give the wrong impression, namely, that the total price of the flight is forfeited in the case of no-shows, which is not correct. If customers fail to take a flight, they can still claim a refund of taxes and fees, which the airline is not required to pay in such a case.

fluege.de is especially aggressive in promoting insurance products and insurance-like service packages, with seven popup windows. There are two popup windows for FlexyFly rebooking protection alone, warmly recommended at a special price of € 3.98 a month (in the first year; then € 7.98 a month in the second year). Travel insurance is also warmly recommended to customers at a monthly rate of € 7.99 (in the first year with an annual payment; in the second year at € 14.99), with an indication of the number of people already ill during a trip. If the user fails to select the product, a further pop-up window on a red background appears with the question: “Is that really a good decision?” If a person has still not opted for one of the two insurance products, he is referred to a subsequent page where the booking is summarized, once again with a reference to an insurance-like product. Against a coloured background and under the headline “Our recommendation to regular customers”, the website recommends the conclusion of an “All-Round Care-Free Package” at a price of € 6.99, which also contains a €14 flight voucher per person. The standard package costs € 4.99. Users not interested in either of the two packages, which are apparently only meant to cover fluege.de fees connected with rebooking and cancellation, must explicitly select “No service package.” If it should come to rebooking and cancellation, at least € 50 in fees from fluege.de are incurred in addition to the costs incurred at the airline.

Users that activate this possibility for not concluding a service package are also informed with popup window on a red backdrop of the importance of the service package and the impending costs. Finally, luggage insurance is offered. Here, too, reference is made to the many travellers whose luggage has already been damaged, lost or stolen.

The special price amounts to € 1.98 a month, whereby this special price only applies in the first year in connection with annual payment; afterwards, the premium is double that amount, at € 3.98. If insurance is not selected, a popup window on a red backdrop appears once again. It indicates the risks of not taking out insurance and notes that € 1.98 per person is only a small amount of money but would help all the more in the case of a claim, which is why it is better to be protected.

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| **Carrier/intermediary** | **What travel insurance products are offered?** |
| **eDreams.de** | Insurance from Europ Assistance for the flight booked.  |
| **opodo.at** | Insurance from Europ Assistance for the flight booked. Warning about the high costs (on average € 275) for not selecting the insurance. Indication that 500,000 flights are late every month. “Continue” button for insurance is clearly highlighted compared with the button “Continue without insurance”.  |
| **fluege.de** | A total of three insurance products from BD 24 Berlin, travel insurance (cancellation, interruption, illness and luggage loss), luggage insurance and rebooking protection. All have a minimum term of one year and indicate the special price indicated for the month only if the annual premium is paid; the premium doubles in the second year or in the case of monthly payment. All insurance products contain an inadmissible automatic extension of contract for an additional year. Further, an all-round care-free package is offered. If insurance products or the service package are not selected, a total of seven pop-up windows appear, pointing out risks and dangers in order to bring about the conclusion of the contract.  |
| **ebookers.at** | Insurance from Allianz Global Assistance for the flight booked. Insurance must be explicitly rejected by activating the button “I dispense with travel protection and bear the financial risk.” |
| **expedia.at** | No travel insurance is offered. |
| **tui.at** | Insurance from Europ Reiseversicherung for the flight booked. |

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| **restplatzboerse.at** | Insurance from Allianz for the flight booked. |
| **lufthansa.com** | Insurance from AIG for the flight booked. |
| **austrian.com** | Insurance from Europ Reiseversicherung for the flight booked. |
| **airberlin.com/flyniki.com** | Insurance from Europ Reiseversicherung for the flight booked. Insurance protection must be explicitly rejected by activating the button “I dispense with the travel protection offered and will pay all costs myself in case of emergency.” |