

Seminario | Modulo Jean Monnet 2025



AIR transport law, **C**onsumers **A**nd
other **R**elated issues in **E**urope

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Seminario in lingua inglese.

Air passengers' rights: EU Regulation 261/2004 and case law.



Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on [compensation and assistance to passengers](#) in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91

> entered into force on 17 February 2005

**2024
Interpretative
Guidelines on
Regulation (EC)
No 261/2004**

Regulation (EC) No 261/2004

(4) Objective: The Community should therefore **raise the standards of protection** set by that Regulation of 1991 both to strengthen the **rights of passengers** and to ensure that air carriers operate under harmonised conditions in a **liberalised market**

(14) As under the **Montreal Convention**, **obligations** on operating air carriers should be **limited or excluded** in cases where an event has been caused by **extraordinary circumstances** which could not have been avoided even if all reasonable measures had been taken.

Such circumstances may, in particular, occur in **cases** of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.

Subject (Art. 1)

This Regulation lays down, under the conditions specified herein,
minimum rights for passengers

compensation

refund or
alternative flight

assistance

in case of:

denied
boarding

flight
cancellation

flight delay

Instances covered by the Reg.

This regulation establishes **passengers' rights** if:

they are denied boarding against their will;

their flight is delayed;

their flight is cancelled.

On **condition** that the passengers have a confirmed reservation on the flight concerned and, except in the case of cancellation, present themselves for check-in at the time indicated in advance or, if no time is indicated, not later than 45 minutes before the published departure time.

not apply to passengers travelling:

- free of charge or
- at a reduced fare not available directly or indirectly to the public.
- unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier



Scope of application (Art. 3(1))

Any nationality

Here it does not specify
EU or NON-EU carriers

1. This Regulation shall apply:

(a) to **passengers** departing from an **airport** located in the territory of a **Member State** to which the Treaty applies;

(b) to **passengers** departing from an **airport** located in a **third country to** an airport situated in the territory of a **Member State** to which the Treaty applies, **unless** they received benefits or compensation and were given assistance in that third country, **if** the operating air carrier of the flight concerned is a **Community carrier**.

FLIGHT **FROM** AN EU STATE

FLIGHT **FROM** A THIRD STATE
TO AN EU STATE

+ IF NO ASSISTANCE IN THE THIRD
COUNTRY

+ AIR **CARRIER** OPERATING THE FLIGHT
IS **COMMUNITY**

Location in any MS

(Art. 2) "**Community carrier**" means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers.

Scope: Which carrier? Which route?

EU Carrier	Non-EU carrier
EU to EU flight	EU to EU flight
EU to NON-EU flight	EU to NON-EU flight
Non-EU to EU flight	

Conditions (Art. 3(2))

Paragraph 1 shall apply on condition that passengers:

(a) have a **confirmed reservation** on the flight concerned and, except in the cases of cancellation referred to in Article 5, present themselves for check-in:

- in the manner set out and at the time previously indicated in writing (including electronically) by the air carrier, tour operator or authorised travel agent, or if no time is indicated,
- at the latest forty-five minutes before the published departure time; **or**

(a) were **transferred** by an air carrier or tour operator from the flight for which they held a reservation to another flight, regardless of the reason.

Exclusions (Art. 3(3))

This Regulation does not apply to

- passengers travelling free of charge
- or travelling at a reduced fare not accessible, directly or indirectly, to the public.



However, it **applies** to passengers holding tickets issued under a frequent flyer programme or other commercial programmes of air carriers or tour operators.

see Judgment of the Court of 16 January 2025, Case C-516/23, *Qatar Airways*

The first alternative of the first sentence of Article 3(3) of Regulation (EC) No 261/2004 must be interpreted as meaning that **a passenger does not travel free of charge**, within the meaning of that provision, where, in order to make his or her reservation, that passenger had to pay only air transport taxes and charges.

The second alternative of the first sentence of Article 3(3) of Regulation No 261/2004 must be interpreted as meaning that **a passenger does not travel at a reduced fare** not available directly or indirectly to the public, within the meaning of that provision, where that passenger reserved his or her ticket in the context of a promotional campaign which was limited in time and in terms of the quantity of tickets offered and which was aimed at a specified professional category.

Specification (Art. 3(5))

This Regulation shall apply to any **operating air carrier** carrying passengers referred to in paragraphs 1 and 2.

Where **an operating air carrier that has not entered into a contract with a passenger** complies with the obligations under this Regulation, it shall be deemed to be acting on behalf of the person who has entered into a contract with that passenger.

(Article 2) "**operating air carrier**" means an air carrier that operates or intends to operate a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;



The operating air carrier is always **liable** even in cases where the ticket was sold by another air carrier!

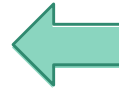
Denied boarding (Art. 4)

*Overbooking
vs no-show*

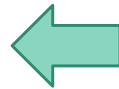
Carrier's Obligation



Rights of the
passenger
(benefits + assistance,
reimbursement or alternative
flight)



Rights of the passengers
(compensation + assistance,
reimbursement or alternative flight and
board/accommodation)



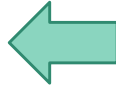
1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for **volunteers** to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be **assisted in accordance with Article 8**, such assistance being additional to the benefits mentioned in this paragraph.

2. **If** an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then **deny boarding to passengers against their will**.

3. If boarding is denied to **passengers against their will**, the operating air carrier shall immediately compensate them in accordance with **Article 7** and assist them in accordance with **Articles 8 and 9**.

Flight Cancellation (Art. 5)

Passenger rights
(assistance, reimbursement or
alternative flight Art. 8)



Passenger rights
(board/accommodation assistance
Art. 9(1)(a) and (2))



Passenger rights
(board/accommodation assistance
Art. 9(1)(b) and (c))



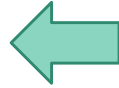
1. In case of cancellation of a flight, the passengers concerned shall:

(a) be offered **assistance** by the operating air carrier in accordance with Article 8; **and**

(b) be offered **assistance** by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, **in event of re-routing** when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the **assistance** specified in Article 9(1)(b) and 9(1)(c); **and**



Passenger rights
(art. 7)



- **NO** when informed AT LEAST 2 weeks before departure;
- **NO** when informed 2 weeks/7 days before departure
+ offered new flight within 2 hours before original departure and arrival within 4 hours after original arrival
- **NO** when informed LESS than 7 days before departure + offered new flight within 1 hour before original departure with arrival within 2 hours after original arrival

(c) have the right to **compensation** by the operating air carrier in accordance with Article 7, unless:

- (i) they are **informed** of the cancellation at least **two weeks** before the scheduled time of departure; or
- (ii) they are **informed** of the cancellation **between two weeks and seven days** before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or
- (iii) they are **informed** of the cancellation **less than seven days** before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

Passenger rights
(information on alternatives)



NO COMPENSATION
IN THE EVENT OF
EXCEPTIONAL
CIRCUMSTANCES

Burden of proof
of the carrier (proving that
he informed the
passenger)

2. When passengers are informed of the cancellation, an explanation shall be given concerning **possible alternative transport**.

3. An operating air carrier shall **not** be obliged to pay **compensation** in accordance with Article 7, if it can prove that the cancellation is caused by **extraordinary circumstances** which could not have been avoided even if all reasonable measures had been taken.

4. The **burden of proof** concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.

Delay (Art. 6)

+2 hours
EU / THIRD COUNTRY FLIGHT < 1500
km

+3 hours
EU / EU FLIGHT > 1500 km
EU / THIRD COUNTRY FLIGHT 1500-
3500km

+4 hours
Other EU / THIRD COUNTRY FLIGHTS

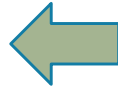
1. When an operating air carrier reasonably expects a flight to be **delayed beyond its scheduled time of departure**:

(a) for two hours or more in the case of flights of 1500 kilometres or less; or

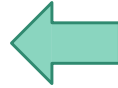
(b) for three hours or more in the case of all intra-Community flights of more than 1500 kilometres and of all other flights between 1500 and 3500 kilometres; or

(c) for four hours or more in the case of all flights not falling under (a) or (b),

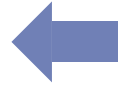
Obligations of the
carrier



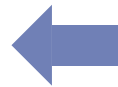
Passenger rights
(assistance)



POSTPONEMENT
> 24 HOURS



DELAY > 5
HOURS



passengers shall be **offered by the operating air carrier**:

(i) the **assistance** specified in Article 9(1)(a) and 9(2); **and**

(ii) when the reasonably expected time of departure is **at least the day after** the time of departure previously announced, the **assistance** specified in Article 9(1)(b) and 9(1)(c); **and**

(iii) when the delay is **at least five hours**, the **assistance** specified in Article 8(1)(a).

2. **In any event**, the **assistance** shall be offered within the time limits set out above with respect to each distance bracket.

Right to compensation (Art. 7)

1. Where reference is made to this Article, passengers shall receive compensation amounting to:

(a) EUR 250 for all flights of 1500 kilometres or less;

(b) EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres;

(c) EUR 600 for all flights not falling under (a) or (b).

250 euro

EU/third country flight \leq 1500 km

400 euro

EU/EU FLIGHT > 1500 km

EU/third country flight 1500-3500 km

600 euro

OTHER FLIGHTS

2. When **passengers** are offered **re-routing** to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

(a) by two hours, in respect of all flights of 1500 kilometres or less; or

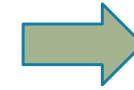
(b) by three hours, in respect of all intra-Community flights of more than 1500 kilometres and for all other flights between 1500 and 3500 kilometres; or

(c) by four hours, in respect of all flights not falling under (a) or (b),

the operating air carrier may reduce the compensation provided for in paragraph 1 **by 50 %**.

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.



HALF COMPENSATION

Compared to the original arrival time, the **new arrival time** does not exceed

2 hours

EU/third country flight =/< 1500 km

3 hours

EU/EU FLIGHT > 1500 km

EU/third country flight 1500-3500 km

4 hours

OTHER FLIGHTS

1. Where reference is made to this Article, passengers shall be offered the **choice between**:


(a) - **reimbursement** within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,

- a **return flight** to the first point of departure, at the earliest opportunity;

(b) **re-routing**, under comparable transport conditions, to their final destination at the earliest opportunity; or

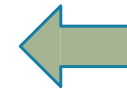
(c) **re-routing**, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.

Right to reimbursement or re-routing (Art. 8)

- 
- a) Refund + return flight
 - b) First possible alternative flight
 - c) Next alternative flight

2. Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under [Directive 90/314/EEC](#) [then [2015/2302](#)].

3. When, **in the case where a town, city or region is served by several airports**, an operating air carrier offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the **cost of transferring** the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.



Obligation of the carrier
to pay for the transfer

Right to care (Art. 9)

1. Where reference is made to this Article, passengers shall be offered free of charge:

(a) **meals and refreshments** in a reasonable relation to the waiting time;

(b) **hotel accommodation** in cases

- where a stay of one or more nights becomes necessary, or

- where a stay additional to that intended by the passenger becomes necessary;

(c) **transport** between the airport and place of accommodation (hotel or other).

2. In addition, passengers shall be offered **free of charge two telephone calls**, telex or fax messages, or e-mails.

3. In applying this Article, the operating air carrier shall pay particular attention to the **needs of persons** with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.

Upgrading and downgrading (Art. 10)

1. If an operating air carrier places a passenger in a **class higher** than that for which the ticket was purchased, it may **not request any supplementary payment**.

2. If an operating air carrier places a passenger in a **class lower** than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), **reimburse**

(a) 30 % of the price of the ticket for all flights of 1500 kilometres or less, **or**

(b) 50 % of the price of the ticket for all intra-Community flights of more than 1500 kilometres, except flights between the European territory of the Member States and the French overseas departments, and for all other flights between 1500 and 3500 kilometres, **or**

(c) 75 % of the price of the ticket for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French overseas departments.

paid in cash, by electronic bank transfer, with bank deposits or cheques, or, subject to the signed agreement of the passenger, with travel vouchers and/or other services

Further compensation (Art. 12)

1. This Regulation shall apply **without prejudice to a passenger's rights to further compensation**. The compensation [Art. 7] granted under this Regulation may be deducted from such compensation.
2. Without prejudice to relevant principles and rules of national law, including case-law, paragraph 1 shall not apply to passengers who have voluntarily surrendered a reservation under Article 4(1).

(Recital 22) Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law.

2024 Revised Limits of Liability Under the Montreal Convention 1999

Pursuant to the 2024 review of the limits of liability conducted by ICAO under Article 24 of the *Convention for the Unification of Certain Rules for International Carriage by Air*, done at Montreal on 28 May 1999 (Doc 9740) (Montreal Convention 1999), the revised limits of liability established under Articles 21 and 22 of the said Convention in Special Drawing Rights (SDRs), effective as of 28 December 2024, are as set out in the fourth column of the following table:

<i>Montreal Convention 1999</i>	<i>Original limit (SDRs)</i>	<i>Revised limit (SDRs) as of 28 December 2019</i>	<i>Revised limit (SDRs) as of 28 December 2024</i>
Article 21	100 000	128 821	151 880
Article 22, paragraph 1	4 150	5 346	6 303
Article 22, paragraph 2	1 000	1 288	1 519
Article 22, paragraph 3	17	22	26

Euro 188,764.67

Euro 7,833.71

Euro 1,887.90

Euro 32.31

Compensation in case of delay?

CJ judgment of 19 November 2009, C-402/07, Sturgeon

Although the 2004 regulation provides only that passengers whose flight has been cancelled and who have been re-routed to their destination are entitled to compensation if they lose three hours or more in relation to the duration of that flight as originally planned,

the Court held in 2009 that passengers whose flight has been delayed for three hours or more (beyond its scheduled **time of arrival**) are also entitled to compensation.

There is, the Court ruled, no justification for treating passengers whose flight has been delayed any differently when they also reach their destination **with a delay of at least three hours**.

Delay of 3 hours or more after the
scheduled arrival time

Exceptions: extraordinary circumstances

(not entitled to compensation)

circumstances which could not have been avoided even if all reasonable measures had been taken.

Such circumstances may, in particular, occur in cases of
political instability,
meteorological conditions incompatible with the operation of the flight concerned,
security risks,
unexpected flight safety shortcomings and
strikes that affect the operation of an operating air carrier
(see **Recital 14**)

CJ judgment of 17 September 2015, C-257/14, van der Lans

The Court has held that a **collision of mobile boarding stairs with an aircraft**, as well as, in principle, **unforeseen technical problems**, such as a breakdown or the replacement of a prematurely defective component, do not constitute extraordinary circumstances.

Airlines cannot therefore be released from their obligation to pay compensation given that the functioning of an airplane inevitably gives rise to technical problems which are not beyond the actual control of the air carrier, who is required to ensure that it is maintained.

CJ order of 14 November 2014, C-394/14, Siewert and Others

The Court has indicated that **certain technical problems** can be regarded as constituting **extraordinary** circumstances

such as **hidden manufacturing defects** affecting the safety of aircraft that are already in service or

damage caused to airplanes by acts of sabotage or terrorism.



Unforeseeable
situations

CJ judgment of 31 January 2013, C-12/11, *McDonagh* judgment of 4 May 2017, C-315/15, *Pešková and Peška*

The Court has recognised that the closure of part of European airspace following the **eruption of the Eyjafjallajökull volcano in Iceland** constituted an **extraordinary** circumstance, as did a **collision between an airplane and a bird** and the time spent by a duly authorised expert in performing the security checks required as a consequence of that collision.



Unforeseeable
situations



Following the **COVID-19 outbreak** and introducing measures to cope with the impact of the crisis, the European Commission adopted:

Commission **Notice Interpretative Guidelines** on EU passenger rights regulations in the context of the developing situation with Covid-19

Commission **Recommendation** (EU) 2020/648 of 13 May 2020 on **vouchers** offered to passengers and travelers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic

Exceptional
circumstance >
reimbursement of
the tickets

CJ, judgment of 26 June 2019, Case C-159/18, *André Moens v. Ryanair Ltd.*

the **presence of petrol** on a runway of an airport which led to its closure and, consequently, the long delay of a flight to or from that airport, falls within the concept of ‘**extraordinary circumstances**’ within the meaning of that provision (art. 5), **when the petrol in question does not originate from an aircraft of the carrier that operated that flight.**

..and must be regarded as a circumstance which **could not have been avoided even if all reasonable measures had been taken** within the meaning of that provision (art. 5).

CJ judgment 17 April 2018, Joined Cases C-195/17, *Krüsemann e a.*

Article 5(3) must be interpreted as meaning that the spontaneous absence of a significant part of the flight crew staff ('wildcat strikes'), which stems from the surprise announcement by an operating air carrier of a restructuring of the undertaking, following a call echoed not by the staff representatives of the company but spontaneously by the workers themselves who placed themselves on sick leave, is **not** covered by the concept of '**extraordinary circumstances**' within the meaning of that provision.

CJ, judgment of 13 June 2024, Case C-411/23, D. S.A. (assignee of the rights of J. D) v. P. S.A. (American air carrier)

the detection of a **hidden defect in the design of the engine** of an aircraft which is to operate a flight is covered by the concept of ‘**extraordinary circumstances**’, **even where the engine manufacturer had informed the air carrier of the existence of a defect of that kind several months before the flight concerned.**

an **air carrier** may, as part of ‘all [the] reasonable measures’ which it is required to take in order to prevent the occurrence and the consequences of an ‘extraordinary circumstance’, such as the detection of a hidden defect in the design of the engine of one of its aircraft, **adopt a preventive measure** consisting of **having a back-up fleet of aircraft on standby**, **provided that that measure is technically and economically feasible in the light of the carrier’s capacities at the relevant time.**

CJ, judgment 16 May 2024, C-405/23, *Touristic Aviation Services Ltd* (Maltese air carrier)

the fact of there being **an insufficient number of staff of the airport operator** responsible for the operations of loading baggage onto planes may constitute an ‘**extraordinary circumstance**’ within the meaning of that provision.

However, in order to be exempted from its obligation to pay compensation to passengers provided for in Article 7, the **air carrier** whose flight has experienced a long delay on account of such an extraordinary circumstance **is required to show** that that circumstance **could not have been avoided even if all reasonable measures** had been taken and that **it adopted measures appropriate** to the situation to avoid the consequences thereof.

CJ, judgment 13 June 2024, C-385/23, *Finnair* (Tank design defect)

the occurrence of an **unexpected and unprecedented technical failure** affecting a new aircraft model recently put into service *which results in the air carrier cancelling a flight* is covered by the concept of ‘**extraordinary circumstances**’,

where the manufacturer of that aircraft recognises, after that cancellation, that that failure was caused by a **hidden design defect** concerning all aircraft of the same type and impinging on flight safety.

CJ, judgment of 4 April 2019, Case C- 501/17, *Germanwings GmbH v. Wolfgang Pauels*

damage to an aircraft tyre caused by a foreign object, such as loose debris, lying on an airport runway falls within the notion of ‘**extraordinary circumstances**’.

However, in order to be released from its obligation to pay passengers compensation under Article 7 of Regulation No 261/2004, **an air carrier** whose flight has been subject to long delay due to such ‘extraordinary circumstances’ **must prove that it deployed all its resources** in terms of staff or equipment and the financial means at its disposal in order to avoid the changing of a tyre damaged by a foreign object, such as loose debris, lying on the airport runway from leading to long delay of the flight in question.

CJ, judgment of 11 May 2023 in Joined Cases C156/22 to C-158/22, TAP Portugal (Death of co-pilot)

the **unexpected absence** – due to illness or death of a crew member whose presence is essential to the operation of a flight – which occurred shortly before the scheduled departure of that flight, **does not fall within the concept of ‘extraordinary circumstances’**.

CJ, judgment of 6 October 2021, Case C-613/20, *Eurowings*

strike action intended to assert workers' demands with regard to salary and/or social benefits, which is entered into upon a call by a trade union of the **staff of an operating air carrier** **in solidarity** **with strike action which was launched against the parent company** of which that air carrier is a subsidiary, *which is observed by a category of the staff of that subsidiary whose presence is necessary to operate a flight and which continues beyond the period originally announced by the trade union which called the strike, in spite of the fact that an agreement has been reached in the meantime with the parent company*, is **not** covered by the concept of '**extraordinary circumstances**'.

Conditions to claim compensation

CJ judgment of 25 January 2024, Case C-474/22, *Laudamotion GmbH v flightright GmbH*

proceedings between Laudamotion GmbH, an air carrier, and flightright GmbH, a legal assistance company to which an air passenger has assigned his rights against Laudamotion, concerning compensation claimed as a result of the long delay of a flight on which that passenger had a confirmed reservation.

Article 3(2)(a) of Regulation (EC) No 261/2004

must be interpreted as meaning that, *in order to be entitled to the compensation provided for in Article 5(1) and Article 7(1) of that regulation* **in the event of a long delay of a flight**, namely a delay of three hours or more after the arrival time originally scheduled by the air carrier, **an air passenger must have presented himself or herself for check-in in good time or, if he or she has already checked in online, must have presented himself or herself at the airport in good time to a representative of the operating air carrier.**

CJ, judgment of 25 January 2024, Case C-54/23, *WY v Laudamotion GmbH, Ryanair DAC*

proceedings between WY, an air passenger, and Laudamotion GmbH and Ryanair DAC concerning the refusal of those two carriers to compensate that passenger for the **delayed arrival of a flight for which he had a confirmed reservation**.

Article 5(1) and Article 7(1) of Regulation (EC) No 261/2004 must be interpreted as meaning that

the right to compensation, within the meaning of those provisions, cannot be enjoyed by an **air passenger** who, on account of a risk of a long delay in arrival at the final destination of the flight on which he or she has a confirmed reservation, or even on account of sufficient evidence of such a delay, has himself or herself booked an alternative flight and has reached the final destination with a delay of less than three hours after the originally scheduled arrival time of the first flight.

How delays are to be calculated?

CJ judgment of 4 September 2014, C-452/13, Germanwings

The Court held that the **actual arrival time** of a flight is **the point in time at which at least one of the doors of the aircraft is opened**.

It is only when passengers are authorised to leave the aircraft that they can carry on their activities without interruption.

CJ judgment of 4 May 2017, C-315/15, *Pešková and Peška*

The Court has indicated that, when a flight is delayed owing to both extraordinary circumstances and other circumstances for which the airline is responsible,

the **delay caused by the extraordinary circumstance** must **be deducted from the total delay** of the flight on arrival.

If, after that time has been deducted, the delay of the flight on arrival amounts to **three hours or more**, then the passengers are entitled to compensation.

CJ judgment of 26 February 2013, C-11/11, Folkerts

The Court held that the payment of compensation is not conditional on the existence of a delay at the time of departure.

In order for compensation to be due, a **passenger need only have been subject to a delay of three hours or more on arrival at his final destination**,

regardless of whether the cause of the delay was the departing flight or a possible connecting flight.

CJ judgment of 13 October 2011, C-83/10, Sousa Rodríguez and Others

In the case where an airplane never reached its destination and was **forced to return** to the airport of departure without the passengers being able to take that flight again,

the Court has ruled that the **flight** should be regarded as having been **cancelled**, even if the passengers were re-routed towards their destination on another flight.

Since the original flight is considered to have been cancelled, passengers can claim **compensation** in such cases.

CJ judgment of 4 October 2012, C-22/11, *Finnair*

The Court has also held that the **notion of denied boarding** is not limited solely to cases of overbooking.

Thus, the fact that extraordinary circumstances — such as a **strike** — have arisen, which lead an airline to **reorganise flights subsequent to a cancelled flight**, does not justify the airline in denying boarding to passengers who have booked a seat on those later flights.

An airline that reallocates a passenger's seat to a person whose flight has been affected by a strike is therefore wrongfully denying boarding to that passenger, with the result that that passenger is entitled to **compensation**.

CJ judgment of 31 January 2013, C-12/11, *McDonagh*

Should an airline **fail** to meet its obligations to provide assistance and take care of expenses,

passengers can claim **reimbursement of the sums** that prove necessary, appropriate and reasonable to make up for the shortcomings of the airline.

The Court has also indicated that, while the existence of extraordinary circumstances relieves airlines of their obligation to pay compensation, it **does not relieve them of their obligation to provide assistance and care.**

How to claim other damages?

Article 12

Further compensation

1. This Regulation shall apply **without prejudice to a passenger's rights to further compensation**. The compensation granted under this Regulation may be deducted from such compensation.
2. Without prejudice to relevant principles and rules of **national law**, including case-law, paragraph 1 shall not apply to passengers who have voluntarily surrendered a reservation under Article 4(1).

CJ judgment of 13 October 2011, C-83/10, *Sousa Rodríguez and Others*

The Court ruled that, in the event that the flat-rate compensation provided for by the 2004 regulation **does not fully cover the material and non-material damage** suffered by passengers, the latter are **entitled to claim the difference** from the airline within the limits set by international and national law.

The Court has thus declared that passengers should be able to receive full compensation for the damage they have suffered, subject to the aforementioned limits.

*The meaning of ‘further compensation’, used in **Article 12** of Regulation No 261/2004, must be interpreted to the effect that it allows the national court to **award compensation**, under the conditions provided for by the Convention for the unification of certain rules for international carriage by air or national law, for damage, **including non-material damage**, arising from breach of a contract of carriage by air.*

CJ Order of 28 May 2020, Case C-153/19, *DER Touristik*

Article 12 must be interpreted as meaning that it does not preclude a passenger, already compensated under the Article 7 of that regulation, may be compensated by means of a right to a reduction in the price of the trip he has against a tour operator, provided for by the law of the Member State concerned,

to the extent that the latter compensation is granted for **individual damage** which originates in one of the situations provided for in Article 1(1) of the regulation, which is for the referring court to determine.

Which is the competent judge?

To claim further compensation: action before national courts, but in which State?

- In practice: negotiations/mediations to find an agreement, otherwise judicial action!

This is a case with transnational implications

- Private international law rules (conflict of jurisdiction rules)
- EU law applies: **Regulation 1215/2012** on jurisdiction in civil and commercial matters (> final aim: mutual recognition of decisions)
 - Provisions that determine the competent judicial authority before which you can bring an action
 - Specific provisions according to the different matter

Common rules of jurisdiction

General rule: *Forum rei* = the place where the defendant is domiciled

Special rules:

- (Art. 7) in matters relating to a contract: the place of performance of the obligation in question;
 - sale of goods: the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
 - provision of services: the place in a Member State where, under the contract, the services were provided or should have been provided;
- in matters relating to tort, delict or quasi-delict: the place where the harmful event occurred or may occur;
- operations of a branch, agency or other establishment: the place where the branch, agency or other establishment is situated;
- insurer: its domicile
- **consumers** and employees: their place of their domicile,
 - This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.
- exclusive jurisdiction (e.g. in the case of real estate)
- + party autonomy

Vulnerable
parties

Actions against an operating air carrier for compensation falls within the concept of ‘**matters relating to a contract**’ within the meaning of Article 7(1)(a) of Regulation No 1215/2012.

➤ Namely, **provision of services (transport)**: where there are several places at which services are provided **in different Member States**, the **place of performance** must, in principle, be understood as the place with the closest connecting factor between the contract and the court having jurisdiction, which, as a general rule, will be at the place of the **main provision of services**.

➤ **Place of departure or of arrival**

CJ judgment of 7 March 2018, C-274/16, C-447/16 and C-448/16, *flightright and Others*

CJ judgment of 9 July 2009, C-204/08, *Rehder*

in relation to a **direct flight** operated **between two Member States** by the airline with which the passenger concerned has a contractual relationship, the Court has held that **the place of arrival and the place of departure of the aircraft must be considered**, in the same respect, as the place of provision of the services which are the subject of an air transport contract, so that the **court having jurisdiction**, under the second indent of Article 7(1)(b) of Regulation No 1215/2012, **to deal with a claim for compensation** founded on that transport contract and on Regulation No 261/2004 is that, **at the applicant's choice**, which has territorial jurisdiction over the **place of departure or place of arrival of the aircraft**, as those places are agreed in that contract.

As regards a **flight with a connection**, consisting of a confirmed single booking for the entire journey and divided into several legs on which transport is performed by two different air carriers, the Court has also held that the ‘place of performance’, within the meaning of that provision, can be

both the place of departure of the first leg of the journey

(**order of 13 February 2020, flightright, C-606/19**)

and the place of arrival of the last leg of the journey

(**judgment of 7 March 2018, flightright and Others, C-274/16, C-447/16 and C-448/16**)

and that is regardless of whether the claim for compensation brought on the basis of Regulation No 261/2004 is brought against the air carrier operating the leg in question or against the air carrier with which the passenger concerned has a contractual relationship but which is not the air carrier operating that leg.

2 Spanish passengers

Contract with Air Dolomiti

First leg: Verona (Italy) to Munchen (Germany), Air carrier Air Dolomiti (Italian)

Second leg: Munchen (Germany) to Madrid (Spain), Air carrier Iberia (Spanish)

Delay of 4 hours of the first air carrier

Action before Spanish court

Against second air carrier

CJ judgment 11 July 2019, C-502/18, *CS and others v České aerolinie*

in the case of **connecting flights**, where there are two flights that are the subject of a single reservation, departing from an airport located within the territory of a **Member State** and travelling to an airport located **in a non-Member State** via the airport of another non-Member State,

- **EU airport (EU air carrier) > non EU airport > (2nd flight - 3h delay – non EU air carrier) non EU airport**

- **EU airport (non EU air carrier) > non EU airport > (2nd flight - 3h delay – non EU air carrier) non EU airport**

a passenger who suffers a **delay** in reaching his or her destination of **3 hours or more**, the cause of that delay arising in the second flight, operated, under a code-share agreement, by a carrier established in a non-Member State,

may bring his or her action for compensation under that regulation against the Community air carrier that performed the first flight.

Action against **EU carrier** (first flight)

CJ judgment 26 March 2020, C-215/18, *Libuše Králová v. Primera Air Scandinavia*

a passenger on a flight which has been **delayed for three hours** or more may bring an action for compensation under Articles 6 and 7 of the regulation **against the operating air carrier**,

even if that passenger and that air carrier have **not** entered into a **contract** between them

and the flight in question forms **part of a package tour** covered by Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (at that time).

➤ an **action for compensation** brought pursuant to Regulation No 261/2004 by a passenger against the operating air carrier comes within the concept of '**matters relating to a contract**', within the meaning of that provision, even if no contract was concluded between those parties and the flight operated by that air carrier was provided for by a package travel contract, also including accommodation, concluded with a third party.

➤ **Articles 15 to 17** of Regulation No 44/2001 must be interpreted as meaning that an action for compensation brought by a passenger against the operating air carrier, with which that passenger has not concluded a contract, **does not** come within the scope of those articles relating to special jurisdiction over **consumer contracts**.

CJ, judgment of July 11, 2019, C-502/18, CS and others v. České aerolinie a.s.

Dispute against non-EU carrier, departure from EU and destination in non-EU country

11 passengers each booked a flight from **Prague (Czech Republic)** to **Bangkok (Thailand)** via **Abou Dhabi (United Arab Emirates)** with **České aerolinie (Czech carrier)**.

first leg of the connecting flight, operated by **České aerolinie** from **Prague to Abou Dhabi**

second leg, operated under an interline agreement (code-sharing) by **Etihad Airways (Arab)**, which is not a 'Community carrier' within the meaning of Article 2(c) of Regulation 261/2004, from Abou Dhabi to Bangkok, **was delayed** on arrival by 488 minutes (approx. 8 hours).

In the case of a **connecting flight**, consisting of two flights and covered by a **single reservation**, departing from an airport situated in the territory of a **Member State** and arriving at an airport situated in a **third country** via the airport of another **third country**,

- **First flight:** Departure from a EU airport (EU air carrier) > non-EU airport
- **Second flight:** non-EU airport > non-EU airport (**3 hour delay**)

a passenger **delayed** for not less than three hours at his final destination by the **second flight**, insured, under a code-sharing agreement, by an **air carrier** established in a **third country**, **may bring a claim for compensation under that regulation against the Community air carrier which operated the first flight.**

- **Ok action vs EU air carrier (first flight)**

How to claim compensation

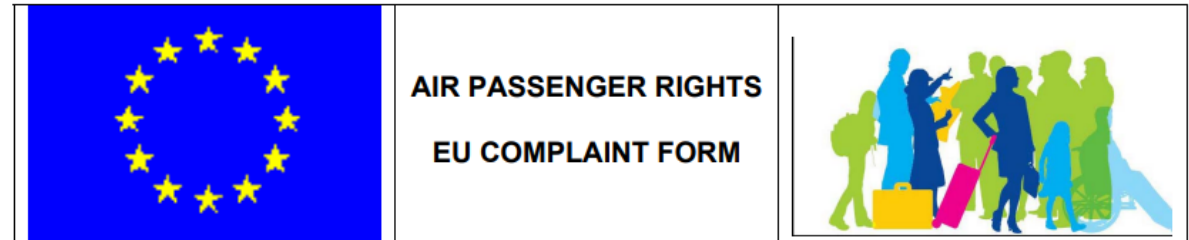
(see nat law on the limitation of actions)

1) Online form on the airline website

2) National authority
ENAC (in Italy)

<https://www.enac.gov.it/en/passengers/passengers-rights/Passengers%27s-rights-in-case-of-denied-boarding-cancellation-or-long-delay-of>

3) ADR



THIS FORM CAN BE USED TO LODGE A COMPLAINT WITH AN AIRLINE AND/OR A NATIONAL ENFORCEMENT BODY.

Passenger rights in case of
denied boarding, downgrading, cancellation or long delay of their flight
under Regulation (EC) 261/2004

INSTRUCTIONS


1) *Passengers who believe they have a valid complaint against an airline¹ regarding denied boarding, downgrading, cancellation or long delay to a given flight should first submit such a complaint to the airline operating the flight concerned. This form may be used for that purpose. Please keep a copy of this form for your records.*

2) *Should the airline fail to provide you with a reply within 6 weeks of receipt or, if you are not satisfied with their reply, this form (a copy of the original form sent to the airline may be used) should be sent to the national enforcement body² in the Member State³ where the incident took place.*

3) *If the incident took place at an airport of departure outside the EU, you may contact the national enforcement body in the Member State of flight destination.*

https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index_en.htm

Claim your rights

If you think your rights have not been respected, there are several forms of redress you can use. **However you should always send your complaint to the airline first.** You can also consult your local [European Consumer Centre](#)  for help and advice on problems related to air passenger rights.

Complain to the airline



Complain to national authorities



Use Alternative Dispute Resolution Entities (ADR) / Online Dispute Resolution (ODR)



Going to court



...important: collect proofs!

✈ DEPARTURES					18:03
TIME	DESTINATION	FLIGHT	GATE	REMARKS	
18:08	NEW YORK	AC 103	13	GATE CLOSING	
18:16	BERLIN	CI5723	22	GATE CLOSING	
18:38	LONDON	MU5984	12	BOARDING	
18:49	TOKYO	JL 608	14	BOARDING	
19:07	HONG KONG	CX6471	25	ON TIME	
19:18	MADRID	IB3941	03	DELAYED	
19:29	SYDNEY	LH5021	17	ON TIME	
19:35	TORONTO	KA 197	11	ON TIME	
19:44	PARIS	AF5870	02	DELAYED	



check the arrival
time at your final
destination

Keep all your travel documents and
receipts

Complaint against the air carrier to claim compensation

What is the **time-limit** for filing a complaint with the air carrier?

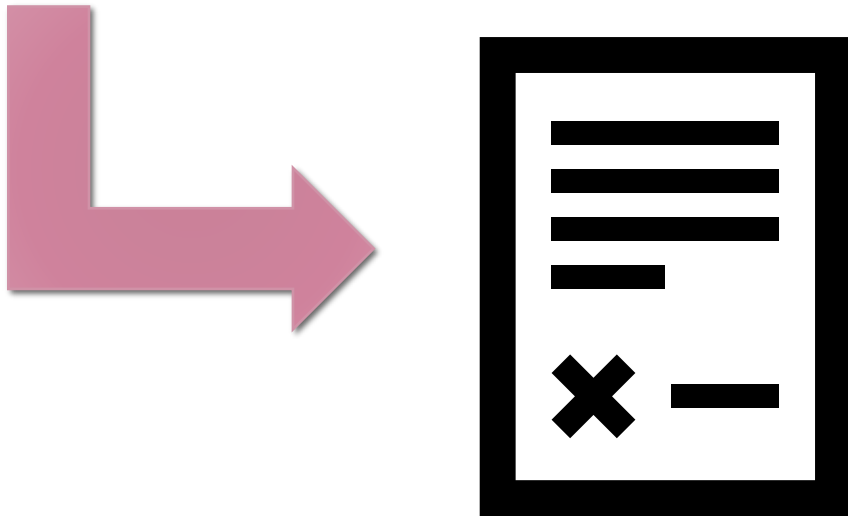
- limitation period to be determined **according to the national law** applicable to the dispute, since **nothing is specified by Regulation No 261/2004**.
 - Recourse to the provisions of the 1999 Montreal Convention must be excluded.
- diversity of scope.

see Court of Justice, judgment of 22 November 2012,
Case C-139/11, *Cuadrench Moré*

The compensation measure laid down in Articles 5 and 7 of Regulation No 261/2004 **falls outside the scope** of the Warsaw and Montreal Conventions.

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

- the **time-limits** for bringing actions for compensation under Articles 5 and 7 of that regulation are determined **in accordance with the rules of each Member State** on the limitation of actions.



BUT in the air carriage contract concluded between a passenger and the airline, which is usually characterised by transnational elements, are included **clauses, terms and conditions**, prepared by the airline and accepted by the passenger when purchasing travel tickets.

CONTRACT

- Terms and conditions agreed by the parties



Formal and substantial validity of the contract

- **artt. 10 e 11 of Regulation n. 593/2008, Rome I**



When the contract is **VALID**

- It is necessary to check whether there are **provisions in that contract** to resolve any issues concerning the rights granted to passengers by Regulation No 261/2004, such as the **time limit** within which a complaint may be lodged.

Within the contract there's a **clause on time-limits**

- **accepted** by the passenger upon conclusion of the contract, i.e. at the time of purchase



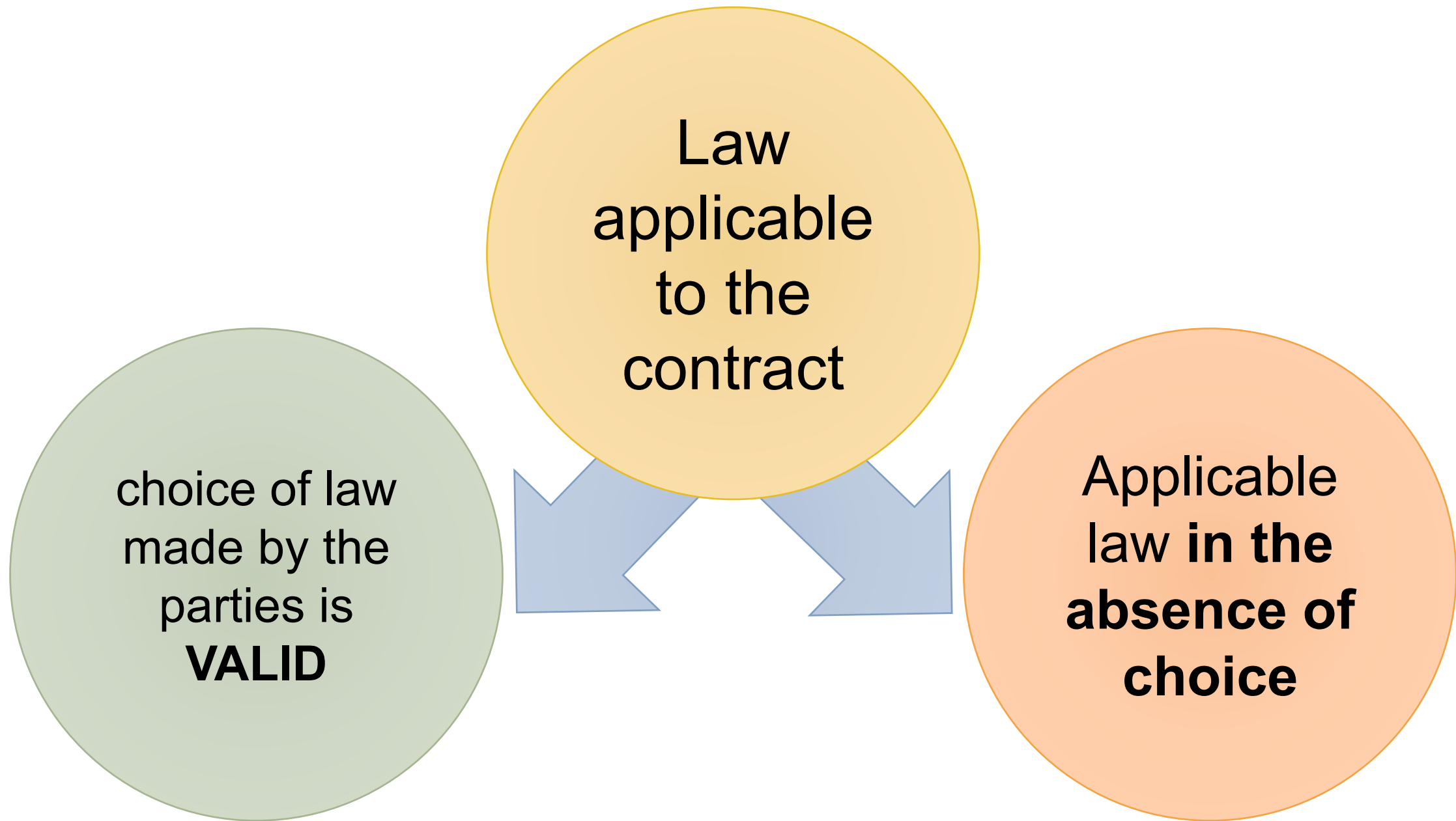
This time-limit must be observed!

- **after verifying its legitimacy** under the national law applicable to the contract and, in particular, any **mandatory consumer protection rules** from which the vexatious nature of the clause in question might derive.

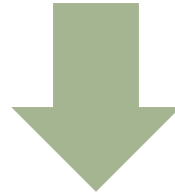


≠ there are **NO provisions on time-limits**

- **On the basis of the national law applicable to the contract**, the time limit for the claim must be established



When it is **one of the laws** specified in Article 5(2)(2) of the Rome I Regulation on contracts of carriage



choice of law
made by the
parties is
VALID

The parties may choose as the law applicable to a contract for the carriage of passengers in accordance with Article 3 only the law of the country where:

- (a) the passenger has his habitual residence; or
- (b) the carrier has his habitual residence; or
- (c) the carrier has his place of central administration; or
- (d) the place of departure is situated; or
- (e) the place of destination is situated.

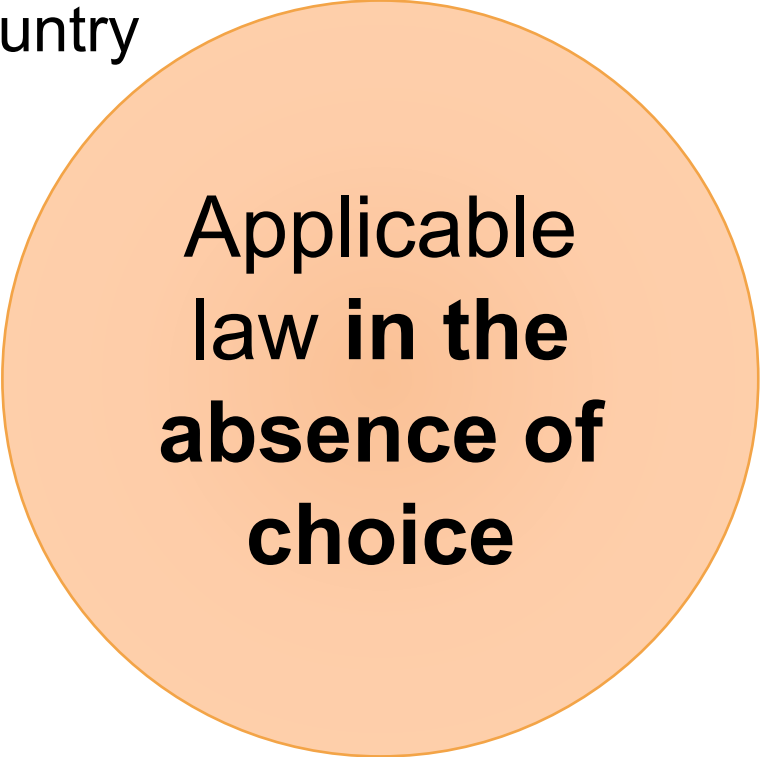
Art. 5(2) Rome I

To the extent that the law applicable to a contract for the carriage of passengers has not been chosen by the parties in accordance with the second subparagraph, the law applicable shall be the **law of the country where the passenger has his habitual residence**, provided that either the place of departure or the place of destination is situated in that country.

If these requirements are not met, the law of the country where **the carrier has his habitual residence** shall apply.

Art. 5(3)

Where it is clear from all the circumstances of the case that the contract, in the absence of a choice of law, is manifestly **more closely connected** with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.



Applicable
law in the
**absence of
choice**



The provisions of **Article 6** of the Rome I Regulation devoted to the **consumer** are not relevant, even if it concerns a contract concluded between a passenger and a professional, **since Article 6 itself is without prejudice to Article 5**, which therefore prevails irrespective of the vulnerable situation of the passenger.

Determined the **national law**

whose substantive law is to be applied to the dispute concerning the right to monetary compensation



Look for the **provisions on time-limits** to be applied to claim concerning right to compensation arising out of air transport contracts

Italian law

Navigation Code Part II on Air
Navigation Chapter III on the carriage of
persons and baggage

Art. 949ter refers, for the
forfeiture of rights arising under
the contract of carriage of
persons, to the international
rules set out in **Art. 941** above,
while it excludes that the rules
regulating **prescription** are
applicable to the same rights..

= for the purposes of determining
the prescription
The community rules and
international regulations referred
to in the art. do not apply. 941

What comes into
consideration is **art. 1 of
the Navigation Code** (it
provides for the applicability by
analogy of other provisions of the
Navigation Code)



art. 418 cod. nav.

«[t]he rights deriving from the contract for the carriage of persons and unregistered baggage are barred after **six months** from the passenger's arrival at the destination or, in the case of non-arrival, from the day on which the passenger should have arrived. (...)

In transports that begin or end outside Europe or the countries bordering the Mediterranean, the limitation of the rights indicated in the previous paragraphs is fulfilled after the lapse of **one year**".

In accordance with the Italian law (when is the law applicable to the contract and the disputes arising out of it – e.g. compensation under Reg. 261/2004:

for requests for compensation, the limitation period (which starts from the day of arrival at the passenger's destination or, in case of non-arrival, from the day on which he should have arrived)

- is **six months** when concerns flights operated by European or non-European air carriers departing from an airport located in Italian territory with destination in an EU or non-EU country,
- while it is **one year** when the flight is operated by a European carrier departing from an airport located in a third country with destination an Italian airport.



Time-limit to lodge an action for further compensation

Art. 12 reg. 261/2004 > national law of the Member States

All MS bound by the **Montreal Convention 1999**

Art. 35 two-year limitation

Jurisdiction for action for further compensation: **Art. 33**, which indicates alternative jurisdiction titles:

- the domicile of the carrier or the principal place of business,
- or the place where it owns a company which concluded the contract,
- or the place of destination.

CJ, judgment of 29 September 2022, LOT (*Indemnisation imposée par l'autorité administrative*)

Article 16 of Regulation (EC) No 261/2004 must be interpreted as meaning that

the **Member States** have the **power to authorise the national body** responsible for the enforcement of that regulation **to compel an air carrier to pay compensation**, *within the meaning of Article 7 of that regulation*, **due to passengers under that regulation**, **where an individual complaint has been made to that national body by a passenger**, **provided that it is open to that passenger and that air carrier to bring proceedings before the courts.**

Case study

CJ judgment of 21 December 2021, case C-263/20, *Airhelp Limited v Laudamotion GmbH*

The main proceedings between **Airhelp Limited** (a German claims management company) and the **Austrian air carrier Laudamotion GmbH** concern the latter's refusal to compensate air passengers, who had assigned their rights to Airhelp, for having **brought forward their flight**.

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 Two air passengers reserved, through an online booking platform, a flight from Palma de Mallorca (Spain) to Vienna (Austria), operated by the air carrier Laudamotion (Austrian air carrier).

When making the reservation on that booking platform, those passengers entered their private email addresses and telephone numbers.

That platform then reserved the flight with Laudamotion in the names of the passengers, generating an electronic address specific to that reservation. That address was the only contact address available to Laudamotion.

10 The reserved flight, which was initially scheduled to depart on 14 June 2018 at 14.40, was brought forward by the operating air carrier to 8.25 on the same day, corresponding to the flight being brought forward by more than six hours.

11 Airhelp, to which the two passengers assigned any right to compensation arising out of Regulation No 261/2004, brought an **action** before the Bezirksgericht Schwechat (District Court, Schwechat, Austria). It claimed that the operating air carrier was liable to pay the two passengers a total sum of **EUR 500** under Article 7(1)(a) of that regulation since the flight in question had been brought forward by more than six hours and the passengers had not been notified of that fact until four days before the scheduled departure, on 10 June 2018, via the booking platform.

12 Laudamotion disputed the substance of Airhelp's claim on the basis that notification of the flight time being brought forward had been sent, in good time, on 23 and 29 May 2018, to the specific email address provided by the booking platform.

13 The Bezirksgericht Schwechat (District Court, Schwechat) dismissed the action brought by Airhelp, which then lodged an **appeal** against the judgment of that court with the Landesgericht Korneuburg (Regional Court, Korneuburg, Austria), which is the referring court. That court is unsure, in particular, whether the act of bringing forward a flight constitutes 'cancellation' for the purposes of Regulation No 261/2004 and also queries the extent of the obligation on the operating air carrier to provide information.

14 In that regard, the referring court points out that it shares the view of the Bundesgerichtshof (Federal Court of Justice, Germany) that, where a flight is brought forward by a significant amount of time, that constitutes abandonment of the original flight schedule and therefore 'cancellation' within the meaning of Article 2(l) of that regulation.

15 As to the question of whether the passengers in the main proceedings were correctly informed that their flight had been brought forward, the referring court (...) is **unsure whether the national law, Directive 2000/31 or Regulation No 261/2004 should be applied** in order to determine whether the passengers in the main proceedings were correctly informed that their flight had been brought forward.

16 In those circumstances, the Landesgericht Korneuburg (Regional Court, Korneuburg) decided to stay the proceedings and to refer the **following questions** to the Court of Justice for a preliminary ruling:

(1) Are Article 5(1)(c) and Article 7 of [Regulation No 261/2004] to be interpreted as meaning that the passenger has a right to compensation where the original time of departure of 14.40 is **brought forward** to 8.25 on the same day?

(2) Is Article 5(1)(c)(i) to (iii) of [Regulation No 261/2004] to be interpreted as meaning that examination as to whether the passenger is informed of the cancellation is to be conducted solely in accordance with that provision and precludes the application of national law on the receipt of declarations which was enacted in transposition of [Directive 2000/31] and includes a provision whereby declarations are deemed to be received?

(3) Are Article 5(1)(c)(i) to (iii) of [Regulation No 261/2004] and Article 11 of [Directive 2000/31] to be interpreted as meaning that, where a passenger reserved a flight via a booking platform and provided his [or her] telephone number and email address, but the booking platform forwarded to the air carrier the telephone number and an email address that was generated automatically by the booking platform, delivery to the automatically generated email address of the notification that the flight has been brought forward is to be regarded as information or delivery of notification that the flight has been brought forward, even where the booking platform does not forward, or delays forwarding, the air carrier's notification to the passenger?

Questions :

- When is a flight regarded as being cancelled?
- Does the case in the main proceedings (i.e. a flight brought forward by more than six hours) fall within the concept of cancellation of flight?
- When is an air passenger who reserved a flight through an intermediary to be regarded as having been informed?
- Will the Austrian judge grant compensation to the air passengers?

Consideration of the questions referred

The first question

17 By its first question, the referring court asks, in essence, whether Article 2(l) and Article 5(1)(c) of Regulation No 261/2004 must be interpreted as meaning that a flight is regarded as being cancelled where the operating air carrier brings that flight forward by several hours.

18 It should be noted in this regard that the concept of '**cancellation**' is defined in Article 2(l) of Regulation No 261/2004 as meaning '**the non-operation of a flight which was previously planned and on which at least one place was reserved**'.

19 The **concept of 'flight'** is not defined by Regulation No 261/2004. However, according to settled case-law, a flight consists, essentially, in 'an air transport operation, being as it were a "unit" of such transport, performed by an air carrier which fixes its itinerary'.

20 Moreover, the Court has specified, first, that the **itinerary** is an essential element of the flight, as the flight is operated in accordance with the air carrier's pre-arranged planning (*judgment of 19 November 2009, Sturgeon and Others, C-402/07 and C-432/07, EU:C:2009:716, paragraph 30*).

21 Second, it in no way follows from the definition contained in Article 2(1) of Regulation No 261/2004 that, in addition to the fact that the initially scheduled flight was not operated, the 'cancellation' of that flight, within the meaning of that provision, requires the adoption of an **express decision cancelling it**.

22It is true that Article 2(l) and Article 5(1) of that regulation do not state explicitly how a flight which has been brought forward should be treated. However, according to settled case-law, it is necessary, in interpreting a provision of EU law, to consider not only its **wording**, but also the **context** in which it occurs and the **objectives** pursued by the rules of which it is part

(see, to that effect, judgment of 19 November 2009, Sturgeon and Others, C-402/07 and C-432/07, EU:C:2009:716, paragraph 41 and the case-law cited).

23 In that regard, concerning the context of Article 2(l) and Article 5(1) of Regulation No 261/2004, it should be noted that that regulation refers to situations where a flight is brought forward in the context of the **re-routing** provided for in Article 5(1)(c)(ii) and (iii) of that regulation.

Under that latter provision the operating air carrier is required to compensate passengers whose flights have been cancelled unless that carrier informs them of the cancellation within the time limits laid down in that provision and offers re-routing, allowing passengers to depart no more than one to two hours, as appropriate, before the scheduled time of departure and to reach their final destination less than four or two hours, as the case may be, after the originally planned arrival time.

24 It follows that the EU legislature has recognised that, where a flight has been brought forward by a significant amount of time, that may result in serious inconvenience for passengers, in the same way **as a flight delay**, since, where a flight has been brought forward in that way, passengers are unable to use their time as they wish and to organise their trip according to their expectations.

25 That is the case, in particular, where a passenger, having taken all the necessary precautions, is unable to board the aircraft because the flight that he or she has reserved has been brought forward. That is also the case where the passenger is forced to adapt significantly to the new departure time in order to be able to take his or her flight.

(...)

28 (...) the concept of '**cancellation**' must be interpreted as encompassing the situation in which a flight is brought forward by a **significant amount of time**.

29 In that regard, a **distinction** must be drawn between situations in which the bringing forward of a flight does not have any effect, or has a negligible effect, on the ability of air passengers to use their time as they wish, and situations which result in serious inconvenience because the flight has been brought forward by a significant amount of time (...).

30 In order to distinguish a flight which has been brought forward by a significant amount of time from a flight which has been brought forward by a negligible amount of time, inspiration should be drawn from the thresholds laid down in Article 5(1)(c)(ii) and (iii) of Regulation No 261/2004.

31 It should be pointed out that **bringing forward a flight** is different to delaying a flight, for which the Court has held that passengers acquire a right to compensation when they suffer a loss of time equal to or in excess of three hours in relation to the duration originally planned by the air carrier (*see, to that effect, judgment of 19 November 2009, Sturgeon and Others, C-402/07 and C-432/07, EU:C:2009:716, paragraph 57*), since passengers must take steps in order to be able to board the aircraft because the flight which they have reserved has been brought forward.

That difference is also apparent from the fact that the EU legislature, in Article 5(1)(c)(iii) of Regulation No 261/2004, accepts delays of less than two hours, whereas flights may not be brought forward by more than one hour.

32 It is apparent from Article 5(1)(c)(iii) of that regulation that any instance in which a flight has been brought forward by one hour or less may exempt the operating air carrier from its obligation to compensate passengers under Article 7 of that regulation. Accordingly, it must be held that the **reference point** for determining whether a flight has been brought forward by a significant amount of time or a negligible amount of time for the purposes of applying Article 5 of that regulation is whether the flight has been brought forward by more than one hour, by one hour or by less than one hour.

33 That interpretation respects the balancing of the interests of air passengers and of those of the operating air carriers that the EU legislature sought by adopting Regulation No 261/2004

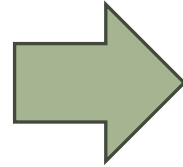
(see, by analogy, judgment of 23 October 2012, Nelson and Others, C-581/10 and C-629/10, EU:C:2012:657, paragraph 39 and the case-law cited).

34 Although that interpretation allows passengers to be compensated for serious inconvenience when a flight is brought forward by a significant amount of time, it relieves operating air carriers of the obligation to pay compensation in the case where they inform air passengers that the flight has been brought forward under the conditions laid down in Article 5(1)(c)(i) to (iii) of that regulation.

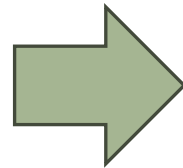
35 In the light of the foregoing, the **answer to the first question** is that Article 2(l) and Article 5(1)(c) of Regulation No 261/2004 must be interpreted as meaning that **a flight is regarded as being 'cancelled' in the case where the operating air carrier brings that flight forward by more than one hour.**

Questions :

- When is a flight regarded as being cancelled?
- Does the case in the main proceedings (i.e. a flight brought forward by more than six hours) fall within the concept of cancellation of flight?



‘the **non-operation of a flight** which was previously planned and on which at least one place was reserved’.



a flight is regarded as being ‘cancelled’ in the case where the **operating air carrier brings that flight forward by more than one hour.**

YES

The second question

(...) it should be noted that Article 5(1)(c) of Regulation No 261/2004 provides that passengers whose flights have been cancelled have a right to compensation unless they are **informed** of that cancellation under the conditions set out in Article 5(1)(c)(i) to (iii) of that regulation.

42 (...) it is important to point out that Article 5 of that regulation imposes an additional condition on the operating air carrier. It is apparent from paragraph 4 of that article that the **burden of proof** concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight rests with the operating air carrier. Placing that obligation on the operating air carrier helps to ensure the high level of protection for passengers referred to in recital 1 of Regulation No 261/2004.

43 In the present case, it is apparent from the facts in the main proceedings that the reservation was made through an **intermediary**.

Where there is an **intermediary**, Article 5(1)(c) of that regulation in principle precludes the application of a presumption that a communication has been made between the service provider and the recipient of the service in question in order to show that the communication was made to the passenger. If the operating air carrier communicates solely with the intermediary, that is not in itself sufficient for a finding that communication to the passenger has been made.

44 However, **if the passenger expressly authorises** the intermediary to receive the information transmitted by the operating air carrier and that carrier is aware of that authorisation, it must be held that Article 5(1)(c) of Regulation No 261/2004 does not preclude a presumption such as the one arising from the national legislation at issue in the main proceedings [as described above].

45 It is for the referring court to verify that evidence in the light of the circumstances of the main proceedings.

46 In the light of the foregoing, **the answer to the second question** is that **compliance with the requirement to inform** the passenger in good time of the cancellation of his or her flight must be assessed solely in accordance with Article 5(1)(c) of Regulation No 261/2004, read in conjunction with Article 5(4) of that regulation.

The third question

47 By its third question, the referring court asks, in essence, whether Article 5(1)(c)(i) of Regulation No 261/2004 must be interpreted as meaning that an air passenger, who reserved a flight through an intermediary is regarded as having been informed of the cancellation of that flight in the case where the operating air carrier transmitted the information relating to that cancellation to that intermediary, through which the contract of carriage by air was concluded with that passenger, **at least two weeks before** the scheduled time of departure, but that intermediary did not inform the passenger of that cancellation within the period referred to in that provision.

48 That question is based on the premiss that **the passenger has not authorised** the intermediary to receive the information transmitted by the operating air carrier (...).

(...) where the operating air carrier is unable to prove that the passenger concerned was informed of the cancellation of his or her flight at least two weeks before the scheduled time of departure, it is required to pay compensation in accordance with Article 7 of Regulation No 261/2004.

52 In that regard, the Court has already held that that interpretation applies not only when the contract for carriage has been entered into directly between the passenger concerned and the air carrier, but also when that contract has been entered into via a third party such as, as is the case in the main proceedings, an online travel agency (*see, to that effect, judgment of 11 May 2017, Krijgsman, C-302/16, EU:C:2017:359, paragraph 26*).

53 As it follows both from Article 3(5) of Regulation No 261/2004 and from recitals 7 and 12 thereof, the operating air carrier which performs or intends to perform a flight is alone liable to compensate passengers for failure to fulfil the obligations under that regulation including, in particular, the obligation to inform set out in Article 5(1)(c) thereof (*judgment of 11 May 2017, Krijgsman, C-302/16, EU:C:2017:359, paragraph 27*).

54 Nonetheless, it should be noted that the **discharge** of obligations by the operating air carrier pursuant to Regulation No 261/2004 **is without prejudice to its rights to seek compensation, under the applicable national law**, from any person who caused the air carrier to fail to fulfil its obligations, including third parties, as Article 13 of that regulation provides

(see, to that effect, *judgment of 11 May 2017, Krijgsman, C-302/16, EU:C:2017:359, paragraph 29 and the case-law cited*).

55 Since that article refers expressly to third parties, it follows that Regulation No 261/2004 does not make the right of the operating air carrier to seek compensation **conditional** on the existence of a contract binding that carrier and the intermediary to which the air passenger had recourse in order to reserve his or her flight.

56 Having regard to the foregoing, the answer to the third question is that Article 5(1)(c)(i) of Regulation No 261/2004 must be interpreted as meaning that

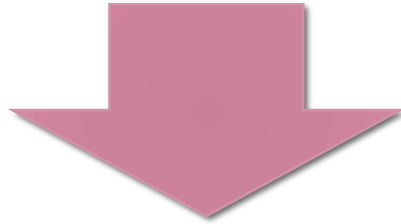
an air passenger who reserved a flight through an intermediary is to be regarded as **not having been informed** of the cancellation of that flight in the case **where**, although the operating air carrier transmitted the information relating to that cancellation to that intermediary, through which the contract of carriage by air was concluded with that passenger, at least two weeks before the scheduled time of departure, **that intermediary did not inform the passenger of that cancellation** within the period referred to in that provision and **that passenger did not expressly authorise** that intermediary to receive the information transmitted by that operating air carrier.

On those grounds, the Court (First Chamber) hereby rules:

1. Article 2(l) and Article 5(1)(c) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that a flight is regarded as being 'cancelled' in the case where the operating air carrier brings that flight forward by more than one hour.
2. Compliance with the requirement to inform the passenger in good time of the cancellation of his or her flight must be assessed solely in accordance with Article 5(1)(c) of Regulation No 261/2004, read in conjunction with Article 5(4) of that regulation.
3. Article 5(1)(c)(i) of Regulation No 261/2004 must be interpreted as meaning that an air passenger who reserved a flight through an intermediary is to be regarded as not having been informed of the cancellation of that flight in the case where, although the operating air carrier transmitted the information relating to that cancellation to that intermediary, through which the contract of carriage by air was concluded with that passenger, at least two weeks before the scheduled time of departure, that intermediary did not inform the passenger of that cancellation within the period referred to in that provision and that passenger did not expressly authorise that intermediary to receive the information transmitted by that operating air carrier.

Question :

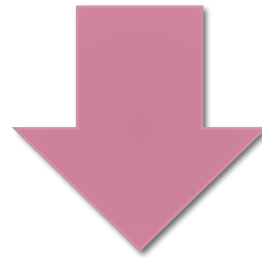
- When is an air passenger who reserved a flight through an intermediary to be regarded as having been informed?



When the **passenger expressly authorises** the intermediary to receive the information transmitted by the operating air carrier and **that carrier is aware of that authorisation**.

Last question :

- Will the Austrian judge grant compensation to the passengers?



YES



Competent judge = place of arrival

Case study #2

JUDGMENT OF THE COURT (First Chamber) [link](#)

18 November 2020

(Reference for a preliminary ruling – Judicial cooperation in civil and commercial matters – Regulation (EU) No 1215/2012 – Contract of transport by air – Jurisdiction clause agreed to by the passenger as a consumer – Claim made by the passenger against the airline – Assignment of that claim to a collection agency – Enforceability of the jurisdiction clause by the airline against the assignee company of that passenger’s claim – Directive 93/13/EEC)

In Case C-519/19,

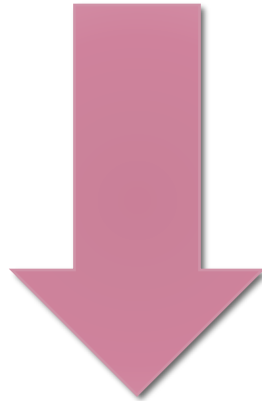
REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Warszawie XXIII Wydział Gospodarczy Odwoławczy (Regional Court, Warsaw, 23rd Commercial Appeals Division, Poland), made by decision of 13 June 2019, received at the Court on 9 July 2019, in the proceedings

Ryanair DAC


v

DelayFix, formerly Passenger Rights sp. z o.o.,

- Air transport contract concluded online with jurisdiction clause
- Claim made by the passenger against the airline
- Assignment of that claim to a collection agency



- Is the jurisdiction clause enforceable by the airline against the assignee company of that passenger's claim ??



Grazie per la
partecipazione!

..5 marzo
ultimo incontro!
