

Seminario - Modulo Jean Monnet 2024



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

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8 marzo 2024

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Seminario in lingua inglese.

Air passengers' rights: EU Regulation 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

(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.

Scope:

This regulation applies to:

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

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.

Within the
EU (EU or
non-EU
air carrier)

From a non-
EU airport to
an EU
country, if
EU air
carrier

From an EU
airport to a
non-EU
country, if
EU air
carrier

Which flights do EU 261/2004 cover?

Travel itinerary

From EU to EU

EU carrier

COVERED

Non-EU carrier

COVERED

From EU to non-EU

COVERED

COVERED

From out of EU to EU

COVERED

NOT COVERED

From out of EU to non-EU

NOT COVERED

NOT COVERED

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



Denied boarding (Art. 4)

When an air carrier reasonably expects to deny boarding on a flight, it first calls for volunteers to surrender their reservations in exchange for certain benefits.

If an insufficient number of volunteers come forward to allow the remaining passengers to board the flight, the air carrier may then deny boarding to passengers against their will, in which case it must compensate them.

Air carriers give priority to persons with reduced mobility and any persons accompanying them.

In the event of a flight cancellation or denied boarding, **passengers affected have the right to:**

- **reimbursement** of the cost of the ticket within seven days or a return flight to the first point of departure or re-routing to their final destination;
- **care** (refreshments, meals, hotel accommodation, transport between the airport and place of accommodation, two free telephone calls, telex or fax messages, or e-mails);
- **compensation** totalling:
 - €250 for all flights of 1,500 kilometres or less;
 - €400 for all intra-EU flights of more than 1,500 kilometres, and
for all other flights between 1,500 and 3,500 kilometres;
 - €600 for all other flights.

Cancellation (Art. 5)

In the event of the cancellation of a flight, the passengers concerned must be offered:

- **care** (refreshments, meals, hotel accommodation, transport between the airport and place of accommodation, two free telephone calls, telex or fax messages, or e-mails);
- **reimbursement** of the cost of the ticket within seven days or a **return flight** to the first point of departure or re-routing to their final destination;
- **compensation** totalling:
 - €250 for all flights of 1,500 kilometres or less;
 - €400 for all intra-EU flights of more than 1,500 kilometres, and for all other flights between 1,500 and 3,500 kilometres;
 - €600 for all other flights.

Delays (Art. 6)

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),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.

Article 7 Right to compensation

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

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

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

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

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

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 %**.

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.

Ordinary
maintenance
activities

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 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.

How delays are to be calculated as well as the impact of connecting flights on delays?

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.

Change Search Parameters

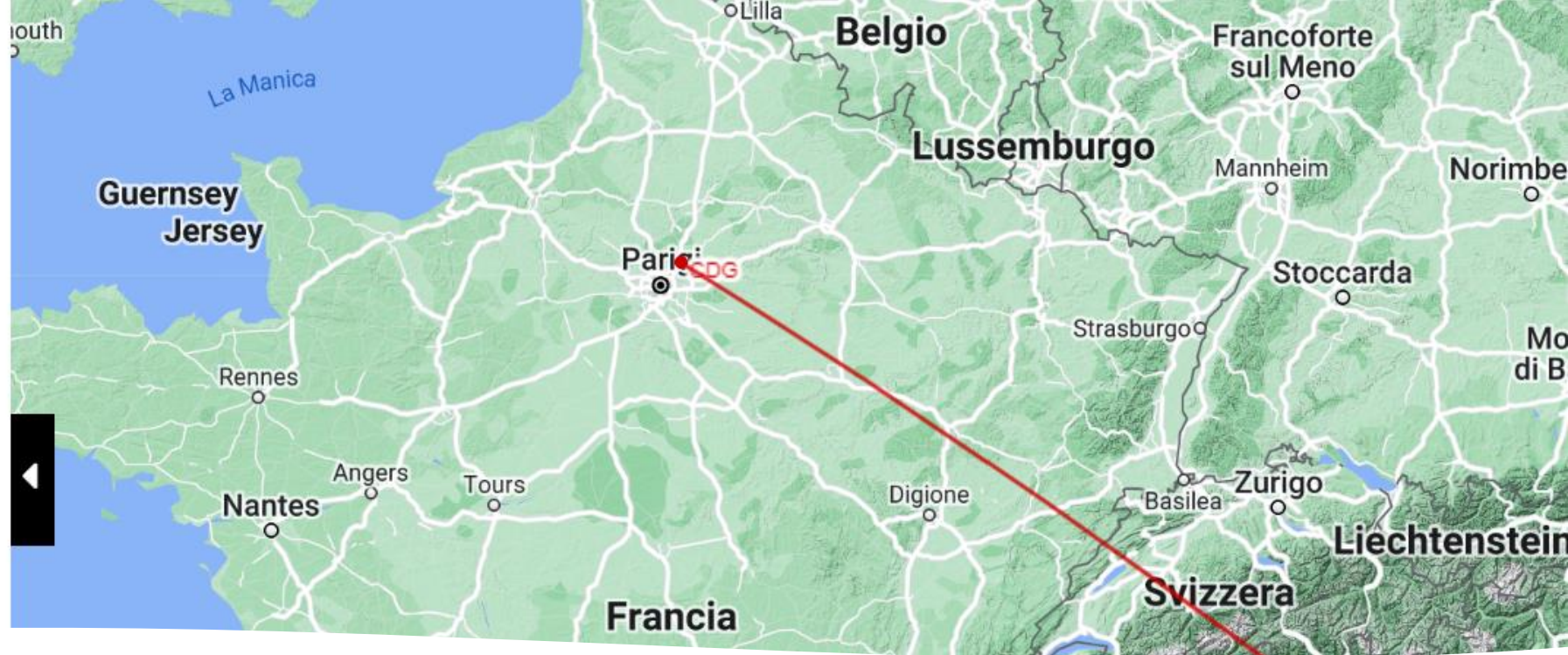
BERGAMO / ORIO AL SE... LIME | BGY
 45°40'26"N, 9°42'15"E

Distance	Heading	Travel Time
354 nm, 655 km	307° (NW)	0:00 h

Scheduled Flights: None

CHARLES DE GAULLE IN... LFPG | CDG
 49°0'46"N, 2°32'59"E

Distance	Travel Time
354 nm, 655 km	0:00 h



CJ judgment of 7 September 2017, C-559/16, Bossen and Others

The Court indicated that the **distance of the flight** that determines the amount of compensation covers solely, **in cases of air journeys with connecting flights,**

the direct distance between the first point of departure and the final destination and must be calculated on the basis of the 'great circle' method.

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, Finnair, C-22/11

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, Sousa Rodríguez and Others, C-83/10

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 the Court (Eighth Chamber) 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**.

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

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, EU:C:2020:101, paragraph 36)

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, EU:C:2018:160, paragraph 73),

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.

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 > 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**.

Cases about luggages

CJ judgment of 6 May 2010, Walz, C-63/09

the Court has been called on to specify the **maximum amount** that passengers can claim as compensation for the material and non-material damage that they have suffered as a result of the destruction or loss of their luggage. The Court has also addressed the question of whether airlines can charge passengers for the price of transporting luggage.

Under the 1999 Montreal Convention, an airline's liability in cases of destruction or loss of luggage is limited to approximately 1 300 euros. The Court has indicated that that ceiling covers all types of damage, that is to say, both material and non material damage. The Court has taken the view that the **compensation ceiling applies to the total damage suffered by each passenger, irrespective of the nature of the damage.**

CJ judgment of 18 September 2014, Vueling Airlines, C-487/12

The Court has recognised that the **price of transporting luggage** can be charged in addition to the price of the plane ticket, which is what most low-cost airlines do. However, the Court has indicated that **cabin luggage cannot be subject to a price supplement**, given that it must be regarded as a **necessary item** for the carriage of passengers.

How to claim compensation

(within 2 years from the date of departure...but 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	



hen		Cancelled
gzhou	71	Delayed
ao	25	Boarding
hen	67	Delayed
zhusu		

check the arrival
time at your final
destination

Keep all your travel documents and
receipts

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. 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 for the final test:

- 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' (*judgment of 4 July 2018, Wirth and Others, C-532/17, EU:C:2018:527, paragraph 19 and the case-law cited*).

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** (*judgment of 13 October 2011, Sousa Rodríguez and Others, C-83/10, EU:C:2011:652, paragraph 29*).

22 It 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.

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*).

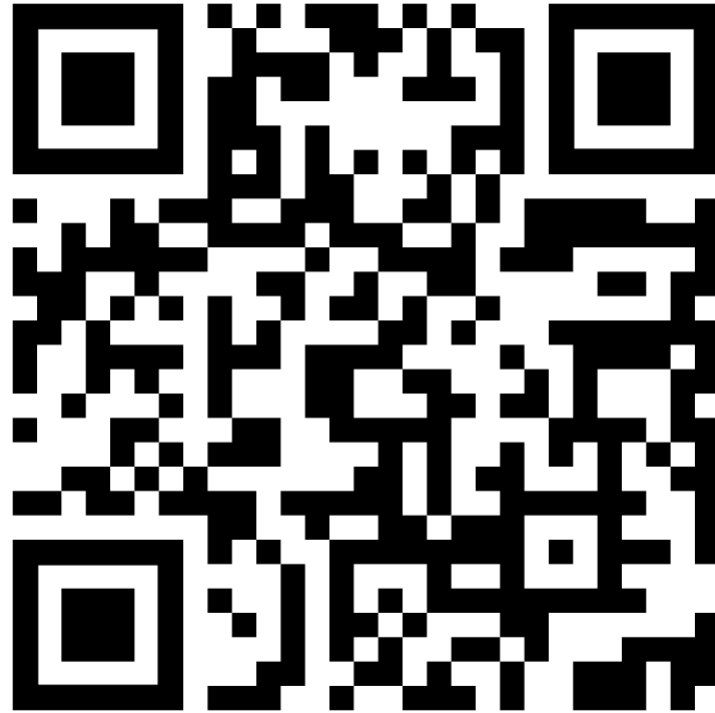
55 Since that article refers expressly to third parties, it follows that Regulation No 261/2004 does not make the right of the operating air carrier to seek compensation conditional on the existence of a contract binding that carrier and the intermediary to which the air passenger had recourse in order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

Answer the questions!



<https://forms.gle/iqr4fPeB8d65Nm cv6>