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EUROPEISKA GEMENSKAPERNAS DOMSTOL

## Press and Information

### PRESS RELEASE No 74/05

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Advocate General's Opinion in Case C-344/04

*The Queen, on the application of International Air Transport Association, European Low Fares Airline Association & Hapag-Lloyd Express GmbH v Department of Transport*

#### **ADVOCATE GENERAL GEELHOED SUGGESTS THAT THE REGULATION ON COMPENSATION AND ASSISTANCE TO AIR PASSENGERS IS VALID**

*The Advocate General has dismissed all the arguments put forward by the International Air Transport Association and the European Low Fares Airline Association.*

In February 2004, the European Parliament and Council adopted a Regulation setting out the compensation and assistance to be granted to air passengers who were denied boarding, or whose flights were delayed or cancelled<sup>1</sup>.

In the case of denied boarding passengers are entitled to rerouting to their final destination or reimbursement of the ticket, care (meals, hotel accommodation and phone calls or emails etc. where necessary) and compensation. Compensation varies according to the length of the flight: EUR 250 for flights under 1500 km; EUR 400 for flights within the Community of more than 1500 km and between 1500 and 3500 km for other destination; and EUR 600 for all other flights.

In the event of cancellation, passengers have the right to reimbursement or rerouting and care. Compensation is only payable if the cancellation takes place within two weeks of the scheduled departure, the passenger cannot be satisfactorily rerouted, and the airline cannot prove that the cancellation is caused by unavoidable, extraordinary circumstances.

If a flight is delayed for more than a specified time depending on the length of the flight, passengers must be offered care. If the delay extends to more than 5 hours passengers must also be offered reimbursement.

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<sup>1</sup> 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 (OJ 2004 L 46, p. 1)

The International Air Transport Association (IATA), an organisation representing 270 airlines between them carrying 98% of scheduled air passengers, and the European Low Fares Airline Association (ELFAA), representing 10 low-fares airlines challenged the UK implementation of this Regulation, specifically the provisions relating to delay and cancellation, before the High Court of Justice (England & Wales). The High Court decided to refer a number of questions concerning the validity of the Regulation raised by the claimants to the Court of Justice of the European Communities.

Today, **Advocate General Geelhoed has suggested to the Court that the Regulation be considered valid.**

Advocate General Geelhoed **rejects** the claims of IATA and ELFAA **that the Regulation is contrary to the Montreal Convention**, an international convention regulating, *inter alia*, the liability of air carriers for delay. The Advocate General argues that, whilst the Community is party to, and bound by, the Convention, the Regulation is not contrary to the Convention, but rather, complementary. The Montreal Convention regulates the kind of claims for damages that can be brought before the courts, whereas the Regulation seeks to assist stranded passengers, regardless of whether there is any damage or fault on the part of the carriers.

The Advocate General also considers that there were **no procedural defects** in the adoption of the Regulation and that there has been **no breach of the principle of legal certainty and the obligation to state reasons.**

IATA and the ELFAA argued that the lack of an "extraordinary circumstances" defence in the event of delay or cancellation rendered the Regulation disproportionate. The Advocate General disagrees, stating that the objective of the Regulation is to provide immediate assistance to stranded passengers. There is no doubt, in the view of the Advocate General, that the **obligations imposed on the air carriers are** a suitable and **proportionate** means of reducing the trouble and inconvenience to passengers resulting from delays or cancellations.

As regards the **discrimination** alleged by the ELFAA between both airlines and other modes of transport, and low-cost airlines and premium-fare carriers, Advocate General Geelhoed **dismisses these arguments.** According to the Advocate General there is an obvious difference between air travel and other modes of transport which justifies this different treatment. Furthermore, airline companies are free to choose their own business model and to set their own prices. A decision by an airline to pursue a low-fares model should not result in them being privileged under the law. Rules on consumer protection must be of general application irrespective of the price paid for the ticket.

Finally the Advocate General considers that the three different levels of **compensation**, essentially updated figures from a previous Regulation to take account of inflation, are **proportionate** to the inconvenience suffered by the passengers and therefore **fair.**

**IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: FR, DE, EN, ES, HU, IT, PT*

*The full text of the Opinion may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day of delivery.*

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