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Judgment of the Court of Justice in Case C-344/04

*International Air Transport Association and European Low Fares Airline Association v
Department for Transport*

**THE REGULATION ON COMPENSATION AND ASSISTANCE FOR AIR
PASSENGERS IS VALID**

The measures prescribed by the regulation in order to achieve the objective of strengthening protection for passengers whose flights are cancelled or subject to long delay are compatible with the Montreal Convention¹ and do not infringe the principle of proportionality

In February 2004 the European Parliament and the Council adopted a regulation² concerning compensation and assistance to passengers from air carriers in the event of denial of boarding and of cancellation of, or long delay to, flights.

Under that regulation, in the event of **cancellation** of a flight the air carrier is to offer passengers a choice between reimbursement of the cost of the ticket and re-routing to their final destination. The passengers are also entitled to free ‘care’ (meals and refreshments, telephone calls and, in some circumstances, hotel accommodation) and to compensation the amount of which varies according to flight distance. Compensation is not payable if the air carrier informs the passenger of the cancellation at least two weeks before the time of departure, offers the passenger satisfactory re-rerouting or can prove that the cancellation is due to extraordinary circumstances.

¹ The Convention for the Unification of Certain Rules for International Carriage by Air (‘the Montreal Convention’) was approved by decision of the Council of 5 April 2001 (OJ 2001 L 194, p. 38).

² 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 (OJ 2004 L 46, p. 1).

In the event of **delay** to a flight beyond a length of time that varies according to distance, passengers are to be provided with ‘care’. They are to be offered reimbursement in all cases where the delay is five hours or more.

The International Air Transport Association (IATA), a body comprising 270 airlines from 130 countries, which carry 98% of scheduled international air passengers worldwide, and the European Low Fares Airline Association (ELFAA), which represents the interests of 10 low-fare airlines from nine European countries, contested the United Kingdom’s implementation of the regulation before the High Court of Justice of England and Wales. They raised before the High Court questions concerning the validity of the regulation, in particular of the provisions relating to cancellations, delay and compensation. The High Court referred those questions to the Court of Justice of the European Communities.

With regard to the compatibility of the regulation with the Montreal Convention, the Court of Justice establishes that this international Convention, which regulates, amongst other things, the liability of air carriers in the event of delay, binds the Community. The Court holds that the Convention merely governs the conditions under which, after a flight has been delayed, passengers may bring actions **for damages by way of redress on an individual basis** against the carrier liable for damage resulting from that delay. On the other hand, the assistance and ‘care’ for passengers prescribed by the Community regulation in the event of a long delay to a flight constitute **standardised and immediate compensatory measures**. They are not among the measures whose institution is regulated by the Convention **and cannot therefore be considered inconsistent with the Montreal Convention**.

With regard to the procedural defect which, according to IATA and ELFAA, vitiated the regulation’s adoption, **the Court rejects** the argument alleging that the Conciliation Committee, convened in the course of the co-decision procedure because the Council did not agree to the amendments proposed by the Parliament, exceeded the powers conferred upon it.

With regard to compliance with the obligation to state reasons and observance of the principle of legal certainty, the Court states that the provisions of the regulation that are at issue lay down precisely and clearly the obligations owed by air carriers, clearly disclose the essential objective pursued and are unambiguous. They are therefore not invalid by reason of breach of the principle of legal certainty or of the obligation to state reasons.

With regard to observance of the principle of proportionality, the Court reviews whether the measures prescribed by the regulation are manifestly inappropriate for attaining the objective of strengthening protection for passengers who suffer cancellation of, or long delay to, flights, by redressing certain damage in an immediate and standardised manner. It finds that the measures prescribed in the event of cancellation or delay are in themselves capable of immediately redressing some of the damage suffered by those passengers and therefore enable the objective to be attained. Their extent varies according to the significance of the damage suffered by the passengers. Finally, the compensation which passengers may claim when they have been informed of a flight cancellation too late does not appear manifestly inappropriate to the objective pursued, given the existence of a ground for exemption upon which carriers may rely and of the conditions restricting the application of this obligation on carriers. The amount of the compensation also does not appear excessive and essentially amounts to an update of the level of

compensation laid down by a previous regulation, taking account of inflation since its entry into force.

With regard to observance of the principle of equal treatment, the Court holds that the situation of undertakings operating in each of the different transport sectors is not comparable. Passengers whose flights are cancelled or subject to a long delay are in an objectively different situation from that of passengers on other means of transport in the event of incidents of the same nature.

On the other hand, the damage suffered by passengers of air carriers in the event of cancellation of, or a long delay to, a flight is similar whatever the airline with which they have a contract and is unrelated to the pricing policies operated by the airline. Accordingly, **it was incumbent upon the Community legislature to treat all airlines identically.**

The Court concludes, therefore, that its examination has revealed no factor of such a kind as to affect the validity of the provisions of the regulation that are at issue.

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Languages available: CS, DE, EN, ES, EL, FR, HU, IT, NL, PL, PT, SK

The full text of the judgment 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 judgment is delivered.

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