



Passengers on connecting flights must be compensated when their flight arrives at the final destination at least three hours late

The fact that the original flight was not delayed beyond the limits laid down by EU law does not affect the right to compensation

The Air Passenger Compensation Regulation¹ generally grants passengers assistance during a delay to their flight. In its judgment in *Sturgeon and Others*², the Court of Justice held moreover that passengers whose flights are delayed may also be compensated, even though the regulation expressly grants a right to compensation only when flights are cancelled, provided that they reach their final destination three hours or more after the scheduled arrival time. Such fixed compensation, of between €250 and €600 depending on the distance of the flight, is determined on the basis of the last destination at which the passenger's arrival will be delayed after the scheduled time.

Mrs Folkerts held a reservation to fly from Bremen (Germany) to Asunción (Paraguay), via Paris (France) and São Paulo (Brazil). The departure of the flight from Bremen to Paris, operated by the company Air France, was delayed and the aircraft took off with a delay of approximately two and a half hours beyond the scheduled departure time. Consequently, Mrs Folkerts missed her connecting flight in Paris for São Paulo, also operated by Air France, which then re-booked her on to a later flight to the same destination. Because of her late arrival in São Paulo, Mrs Folkerts missed the original connecting flight to Asunción and arrived there 11 hours after the arrival time originally scheduled.

Since Air France was ordered to pay Mrs Folkerts damages, including, in particular, a sum of €600 under the regulation, that company brought an appeal on a point of law before the Bundesgerichtshof (German Federal Court of Justice). That court asks the Court of Justice whether an air passenger may be compensated where departure of his flight was delayed for a period of less than three hours, but arrival at the final destination was at least three hours later than the arrival time originally scheduled.

In its judgment today, the Court notes, first of all, that the purpose of the regulation is to grant minimum rights to air passengers when faced with three different types of situation, namely, when they are denied boarding against their will, when their flights are cancelled and, lastly, when their flights are delayed.

Next, the Court refers to its case-law according to which passengers whose flights are subject to long delay – that is delay equal to or in excess of three hours – are entitled to compensation, like those passengers whose original flights have been cancelled and whom an air carrier is not able to offer re-routing in accordance with the conditions laid down in the regulation, given that they suffer an irreversible loss of time and, hence, a comparable inconvenience (*Sturgeon and Others*, *Nelson*

¹ 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).

² Joined Cases [C-402/07](#) and [C-432/07](#) *Sturgeon and Others*; see also Press Release No [102/09](#).

and Others)³. Since that inconvenience materialises, in the case of delayed flights, on arrival at the final destination, a delay must be assessed in relation to the scheduled arrival time at that destination, that is, at the destination of the last flight.

Consequently, in the case of directly connecting flights, the fixed compensation must be determined according to the delay beyond the scheduled time of arrival at the final destination, understood as the destination of the last flight taken by the passenger concerned.

The opposite approach would constitute an unjustified difference in treatment, inasmuch as it would effectively treat passengers of flights arriving at their final destination three hours or more after the scheduled arrival time differently depending on whether their flights were delayed beyond the scheduled departure time by more than the limits set out in the regulation, even though their inconvenience linked to an irreversible loss of time is identical.

The Court makes clear in that regard that the fixed compensation to which a passenger is entitled under the regulation, when his flight reaches the final destination three hours or more after the scheduled arrival time, is not dependent on the conditions giving entitlement to the measures of assistance and care being met, those conditions being applicable where a flight is delayed at departure.

As regards the financial consequences for air carriers, the Court notes that such consequences may be mitigated, first of all, when an air carrier can prove that the long delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, that is, circumstances which are beyond the air carrier's actual control (*Wallentin-Hermann*)⁴. Next, the discharge of obligations pursuant to the regulation is without prejudice to air carriers' rights to seek compensation from any person who caused the delay, including third parties (*Nelson and Others*). Lastly, the amount of compensation, fixed at €250, €400 and €600 depending on the distance of the flights concerned, may still be reduced by 50% in accordance with the regulation, where the delay is, in the case of a flight of more than 3,500 kilometres, less than four hours. The Court also notes that the objective of consumer protection, and therefore the protection of air passengers, may justify even substantial negative economic consequences for certain economic operators.

Therefore, the Court answers that **a passenger on directly connecting flights must be compensated when he has been delayed at departure for a period below the limits specified in the regulation, but has arrived at his final destination at least three hours later than the scheduled arrival time. That compensation is not conditional upon there having been a delay at departure.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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³ Joined Cases [C-581/10 and C-629/10](#) *Nelson and Others*, see also Press Release No [135/12](#).

⁴ Case [C-549/07](#) *Wallentin-Hermann*; see also press release No [100/08](#).