



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Joined Cases C-581/10
Nelson and Others v Deutsche Lufthansa AG and C-629/10 TUI Travel plc
and Others v Civil Aviation Authority

Advocate General Bot proposes that the Court confirm that passengers whose flights are delayed may be entitled to compensation

When they reach their final destination three hours or more after the scheduled arrival time, they may seek flat-rate compensation from the airline

EU law¹ provides that in the event of flight cancellation passengers may receive flat-rate compensation of between €250 and €600. However, it is not expressly provided that passengers whose flights are delayed also have such a right.

In its *Sturgeon* judgment², the Court of Justice ruled that passengers whose flights are delayed may be treated, so far as the right to compensation is concerned, in the same way as passengers whose flights are cancelled. Thus, if they reach their final destination three hours or more after the arrival time as originally scheduled, they may seek flat-rate compensation from the airline, unless the delay has been caused by extraordinary circumstances.

The Amtsgericht Köln (Cologne local court) and the High Court of Justice of England and Wales ask whether the Court of Justice confirms the interpretation of EU law which it gave in *Sturgeon*. In the first case (C-581/10), the German court is hearing an action brought against Lufthansa by passengers concerning a delay as a result of which their flight arrived more than 24 hours after the scheduled arrival time. In the second case (C-629/10), TUI Travel, British Airways, easyJet Airline and the International Air Transport Association (IATA) brought proceedings in the UK following the Civil Aviation Authority's refusal to interpret the EU provisions in such a way as to free airlines from the obligation to compensate passengers in the event of delay.

Advocate General Bot expresses his view on the actual principle of compensation of air passengers whose flight has been delayed by at least three hours. He considers that the airlines have put forward nothing new which might call into question the interpretation of EU law that the Court gave in *Sturgeon*. There is therefore no reason why the Court should reconsider its interpretation. That interpretation is based, amongst other things, on the very objective of the European legislation, which is to ensure a high level of protection for air passengers regardless of whether they are denied boarding or whether their flight is cancelled or delayed, since they are all caused similar serious trouble and inconvenience connected with air transport.

That interpretation is also consistent with the principle of equal treatment, by virtue of which passengers may not be treated differently depending on whether a flight has been cancelled or delayed when they suffer on that account similar damage consisting in a loss of time and thus find themselves in comparable situations so far as the right to compensation is concerned.

The Advocate General suggests that the Court should reply that **passengers whose flights are delayed may rely on the right to compensation where they suffer, on account of a delayed flight, a loss of time equal to or in excess of three hours, that is to say, when they reach**

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 (OJ 2004 L 46, p. 1).

² Joined Cases [C-402/07](#) and [C-432/07](#) (see also Press Release [102/09](#)).

their final destination three hours or more after the arrival time originally scheduled by the air carrier.

Furthermore, the Advocate General takes the view that **EU law is compatible with the principle of proportionality**. Compensating passengers whose flights have been delayed does not, in his view, result in an arbitrary and unduly severe financial burden on air carriers, particularly since the frequency of delays of more than three hours, which confer entitlement to compensation, appears to be limited. Moreover, airlines are not obliged to pay compensation if they can prove that the cancellation or long delay is caused by extraordinary circumstances.

The Advocate General observes that EU law is also **compatible with the Montreal Convention³ and with the principle of legal certainty** which requires that passengers and air carriers should know exactly the extent of their respective rights and obligations.

Finally, the Advocate General considers the submissions of certain airlines, which request that the Court limit the temporal effects of the judgment to be given. They submit that the interpretation given by the Court should not be relied on as the basis for passengers' compensation claims prior to the date of judgment in the present cases, except with regard to passengers who have already brought court proceedings as at that date.

Advocate General Bot recalls that, as a rule, the Court's judgments apply to legal relationships which arose and were established before the judgment ruling on a request for interpretation. He points out that the Court has already had the opportunity, in its judgment in *Sturgeon*, to rule on the question of compensation for passengers whose flights have been delayed and that it did not limit the temporal effects of that judgment. Accordingly, **there is no need to limit the temporal effects of the judgment to be given in the present cases.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. 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 are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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³ Convention for the Unification of Certain Rules for International Carriage by Air, signed in Montreal on 9 December 1999, approved on behalf of the European Community by Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38).