



**An air carrier which is unable to prove that a passenger was informed of the cancellation of his flight more than two weeks before the scheduled time of departure is required to pay compensation to that passenger**

*This applies not only when the contract for carriage was concluded directly between the passenger and the air carrier, but also when it was concluded through an online travel agency*

Mr Krijgsman booked a flight through an online travel agency for a return flight from Amsterdam Schiphol (Netherlands) to Paramaribo (Surinam), operated by the airline Surinaamse Luchtvaart Maatschappij (SLM). The outbound flight was scheduled to depart on 14 November 2014. On 9 October 2014, SLM informed the travel agency that that flight had been cancelled. On 4 November 2014, Mr Krijgsman was informed of that cancellation by the travel agency.

Relying on the EU Regulation on compensation for passengers in the event of cancellation of flights,<sup>1</sup> Mr Krijgsman sought payment from SLM of the flat-rate sum of €600. That regulation provides, inter alia, that passengers concerned have a right to receive compensation from the air carrier unless they were informed of the cancellation of the flight at least two weeks before the scheduled time of departure.

SLM nonetheless refused to pay compensation to Mr Krijgsman on the ground that the information on the change to the date of departure had been communicated to the travel agency on 9 October 2014.

For its part, the travel agency informed Mr Krijgsman that it refused to accept any liability, given that its area of responsibility extended only to the conclusion of contracts between passengers and air carriers, and that it was therefore not responsible for changes to flight schedules. According to the travel agency, the responsibility for informing passengers in such situations fell to the air carrier, to whom the passenger's email address had been sent in the booking file.

Mr Krijgsman subsequently applied to the rechtbank Noord-Nederland (District Court, Northern Region, Netherlands) for an order requiring SLM to pay the compensation. Taking the view that the EU Regulation does not specify the conditions under which an air carrier is required to inform passengers in the event of the cancellation of a flight in cases where the contract for carriage was entered into through a travel agency or a website that court decided to refer the matter to the Court of Justice.

In today's judgment, the Court points out that, under the Regulation, it falls to the air carrier to prove that it has informed passengers of the cancellation of the flight in question and to prove the period within which it did so.

If the air carrier is unable to prove that the passenger concerned was informed of the cancellation of his flight more than two weeks before the scheduled time of departure, that air carrier must pay the compensation specified in the Regulation.

---

<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, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

The Court points out that such an interpretation applies not only when the contract for carriage has been entered into directly by the passenger concerned and the air carrier, but also when that contract has been entered into through a third party such as an online travel agency.

However, the Court notes that the discharge of obligations by the air carrier pursuant to the Regulation is without prejudice to its right 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. The Regulation does not in any way restrict the air carrier's right to seek compensation from a tour operator or other person with whom that air carrier has a contract.

---

**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.

---

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

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

Press contact: Holly Gallagher ☎ (+352) 4303 3355

Pictures of the delivery of the Judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106