



In the case of long delay of a flight, the air company which must pay the compensation owed to passengers is not the air company which leased the aircraft and its crew, but the air company which decided to perform the flight

Mr Wolfgang Wirth and other passengers reserved a flight from Hamburg (Germany) to Cancún (Mexico) with the air company TUIfly. In order to operate that flight, TUIfly used the aircraft and crew of another air company, Thomson Airways, under a 'wet lease'. In that regard, the booking confirmation stated that the bookings were issued by TUIFly, but that the flight was 'operated' by Thomson Airways.

Since the flight was significantly delayed, Mr Wirth and the other passengers claimed from Thomson Airways the compensation to which they considered themselves entitled under the Regulation on Air Passenger Rights.¹ Thomson Airways refused to pay compensation on the ground that it was not the operating air carrier for the purposes of that regulation.² According to Thomson Airways, given that TUIFly bore the operational responsibility for the performance of the flight, the claim for compensation must be brought against the latter air company only.

It is in that context that the Landgericht Hamburg (Regional Court, Hamburg, Germany) asks the Court of Justice to clarify the concept of an 'operating air carrier'.

In today's judgment, the Court holds that **an air company which decides to perform a particular flight, including fixing its itinerary, and, by so doing, offers to conclude a contract of air carriage with members of the public must be regarded as the operating air carrier.** The adoption of such a decision means that that air company bears the responsibility for performing the flight, including, inter alia, any cancellation or significantly delayed time of arrival.

Accordingly, **an air company**, such as, in this case, Thomson Airways, **which leases an aircraft, including its crew, under a wet lease to another air company, but does not bear the operational responsibility for the flight, cannot be regarded as the operating air carrier** for the purposes of that regulation. It is irrelevant in that regard that the booking confirmation of the flight issued to passengers states that the flight is operated by the former air company.

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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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 According to the regulation, compensation must be paid by the 'operating air carrier'.

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

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