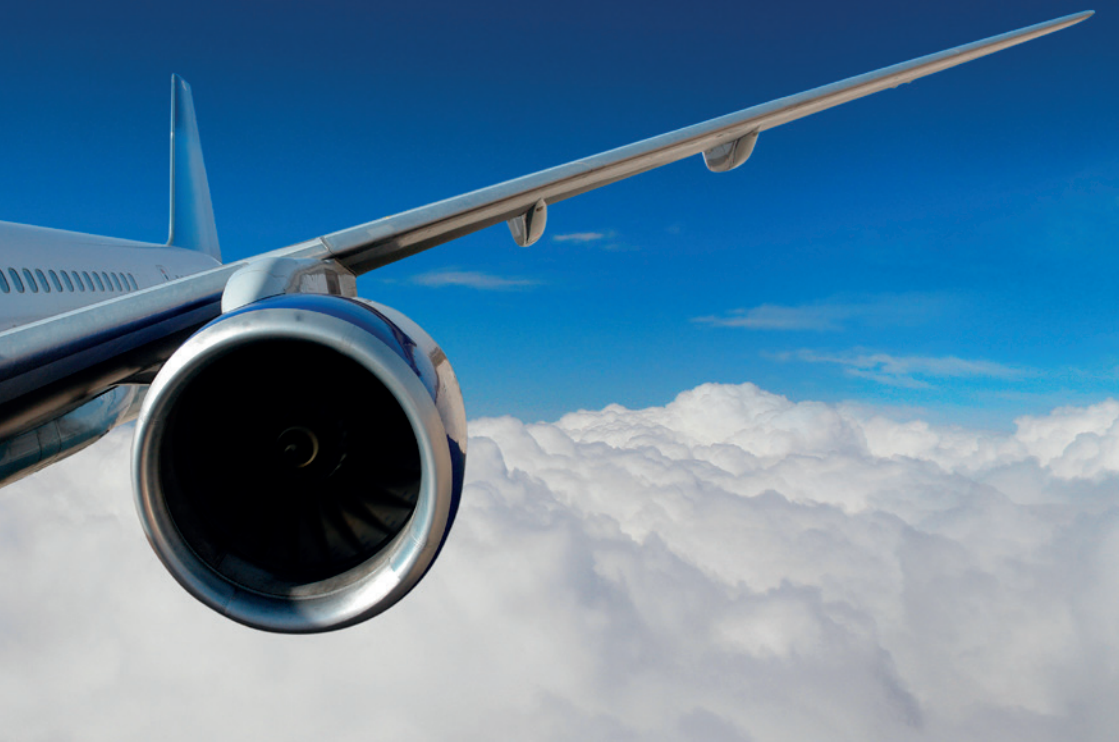




COURT OF JUSTICE  
OF THE EUROPEAN UNION

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# THE COURT OF JUSTICE AND THE RIGHTS OF AIR PASSENGERS



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## INTRODUCTION

Since 1952, the Court of Justice of the European Union (CJEU) has ensured that EU law is complied with and that it is properly applied in the Member States. Over the course of time, it has delivered judgments that have strengthened European integration while conferring ever more extensive rights on citizens. The following pages set out a number of leading Court judgments on the rights of air passengers.



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## GENERAL PRINCIPLES



**Three billion passengers travel by air every year. In 2004, the European Union adopted a regulation on the rights of air passengers departing from or arriving at an airport located in a Member State (Regulation No 261/2004). The Court of Justice is regularly asked to interpret that regulation in order to ensure its uniform application in all Member States. In particular, the Court has answered a recurring question: in which cases and under what conditions must an airline compensate passengers?**

Although the 2004 regulation provides only that passengers whose flight has been cancelled and who have been re-routed to their destination are entitled to compensation if they lose three hours or more in relation to the duration of that flight as originally planned, the Court held in 2009 that passengers whose flight has been delayed for three hours or more are also entitled to compensation. There is, the Court ruled, no justification for treating passengers whose flight has been delayed any differently when they also reach their destination with a delay of at least three hours.

The Court indicated in that same judgment that, when a flight is cancelled or significantly delayed, airlines may be released from their obligation to pay compensation if they prove that the cancellation or delay was due to extraordinary circumstances that were beyond their actual control and that could not have been avoided even if all reasonable measures had been taken ([judgment of 19 November 2009, Sturgeon, C-402/07](#)).





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## EXTRAORDINARY CIRCUMSTANCES



## **Airlines are not obliged to compensate passengers in the event of 'extraordinary circumstances'. The Court has been asked over time to clarify and flesh out that concept.**

The Court has held that a collision of mobile boarding stairs with an aircraft, as well as, in principle, unforeseen technical problems, such as a breakdown or the replacement of a prematurely defective component, do not constitute extraordinary circumstances. Airlines cannot therefore be released from their obligation to pay compensation given that the functioning of an airplane inevitably gives rise to technical problems which are not beyond the actual control of the air carrier, who is required to ensure that it is maintained ([judgment of 17 September 2015, van der Lans, C-257/14](#)). The Court has, however, indicated that certain technical problems can be regarded as constituting extraordinary circumstances (such as hidden manufacturing defects affecting the safety of aircraft that are already in service or damage caused to airplanes by acts of sabotage or terrorism) ([order of 14 November 2014, Siewert and Others, C-394/14](#)).

The Court has also recognised that the closure of part of European airspace following the eruption of the Eyjafjallajökull volcano in Iceland constituted an extraordinary circumstance, as did a collision between an airplane and a bird and the time spent by a duly authorised expert in performing the security checks required as a consequence of that collision ([judgment of 31 January 2013, McDonagh, C-12/11](#); [judgment of 4 May 2017, Pešková and Peška, C-315/15](#)).



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**DELAYS**

**On several occasions, the Court has been led to clarify its case-law on flights delayed by three hours or more. In particular, it has been called on to explain how delays are to be calculated as well as the impact of connecting flights on delays.**

The Court held in 2014 that the actual arrival time of a flight is the point in time at which at least one of the doors of the aircraft is opened. It is only when passengers are authorised to leave the aircraft that they can carry on their activities without interruption ([judgment of 4 September 2014, Germanwings, C-452/13](#)). The Court has also indicated that, when a flight is delayed owing to both extraordinary circumstances and other circumstances for which the airline is responsible, the delay caused by the extraordinary circumstance must be deducted from the total delay of the flight on arrival. If, after that time has been deducted, the delay of the flight on arrival amounts to three hours or more, then the passengers are entitled to compensation ([judgment of 4 May 2017, Pešková and Peška, C-315/15](#)).

In 2013, the Court also held that the payment of compensation is not conditional on the existence of a delay at the time of departure. In order for compensation to be due, a passenger need only have been subject to a delay of three hours or more on arrival at his final destination, regardless of whether the cause of the delay was the departing flight or a possible connecting flight ([judgment of 26 February 2013, Folkerts, C-11/11](#)). Furthermore, the Court indicated, in 2017, that the distance of the flight that determines the amount of compensation covers solely, in cases of air journeys with connecting flights, the direct distance between the first point of departure and the final destination and must be calculated on the basis of the 'great circle' method ([judgment of 7 September 2017, Bossen and Others, C-559/16](#)).





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## CANCELLATIONS AND DENIAL OF BOARDING

**As with delays, the Court has been confronted with particular cases in which it has been asked to rule on whether the flight had been cancelled or whether the airline had wrongfully denied boarding to a passenger.**

In the case where an airplane never reached its destination and was forced to return to the airport of departure without the passengers being able to take that flight again, the Court has ruled that the flight should be regarded as having been cancelled, even if the passengers were re-routed towards their destination on another flight. Since the original flight is considered to have been cancelled, passengers can claim compensation in such cases ([judgment of 13 October 2011, Sousa Rodríguez and Others, C-83/10](#)).

The Court has also held that the notion of denied boarding is not limited solely to cases of overbooking. Thus, the fact that extraordinary circumstances — such as a strike — have arisen, which lead an airline to reorganise flights subsequent to a cancelled flight, does not justify the airline in denying boarding to passengers who have booked a seat on those later flights. An airline that reallocates a passenger's seat to a person whose flight has been affected by a strike is therefore wrongfully denying boarding to that passenger, with the result that that passenger is entitled to compensation ([judgment of 4 October 2012, Finnair, C-22/11](#)).



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## THE OBLIGATIONS OF AIRLINES



**Under the 2004 regulation, airlines must pay compensation to passengers whose flight has been cancelled or delayed or to whom they have wrongfully denied boarding. The regulation provides for flat-rate compensation of between 250 and 600 euros, depending on the distance of the scheduled flight. Furthermore, airlines are under obligations to provide assistance (inter alia, reimbursement of the cost of the ticket or re-routing to the final destination) and to meet certain expenses (meal, accommodation and telecommunications costs). The Court has on several occasions had the opportunity to clarify these obligations.**

In 2011, the Court ruled that, in the event that the flat-rate compensation provided for by the 2004 regulation does not fully cover the material and non-material damage suffered by passengers, the latter are entitled to claim the difference from the airline within the limits set by international and national law. The Court has thus declared that passengers should be able to receive full compensation for the damage they have suffered, subject to the aforementioned limits ([judgment of 13 October 2011, Sousa Rodríguez and Others, C-83/10](#)).

Should an airline fail to meet its obligations to provide assistance and take care of expenses, passengers can claim reimbursement of the sums that prove necessary, appropriate and reasonable to make up for the shortcomings of the airline. The Court has also indicated that, while the existence of extraordinary circumstances relieves airlines of their obligation to pay compensation, it does not relieve them of their obligation to provide assistance and care ([judgment of 31 January 2013, McDonagh, C-12/11](#)).





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## LUGGAGE

**Among the questions concerning luggage, the Court has been called on to specify the maximum amount that passengers can claim as compensation for the material and non-material damage that they have suffered as a result of the destruction or loss of their luggage. The Court has also addressed the question of whether airlines can charge passengers for the price of transporting luggage.**

Under the 1999 Montreal Convention, an airline's liability in cases of destruction or loss of luggage is limited to approximately 1 300 euros. The Court has indicated that that ceiling covers all types of damage, that is to say, both material and non material damage. The Court has taken the view that the compensation ceiling applies to the total damage suffered by each passenger, irrespective of the nature of the damage ([judgment of 6 May 2010, Walz, C-63/09](#)).

The Court has also recognised that the price of transporting luggage can be charged in addition to the price of the plane ticket, which is what most low-cost airlines do. However, the Court has indicated that cabin luggage cannot be subject to a price supplement, given that it must be regarded as a necessary item for the carriage of passengers ([judgment of 18 September 2014, Vueling Airlines, C-487/12](#)).





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## FLIGHT RESERVATIONS

## **The Court has had the opportunity on several occasions to clarify the rules that persons selling air travel must comply with when they make offers available on their websites.**

In 2012, the Court ruled that persons selling air travel do not have the right to include 'flight cancellation' insurance in the price of the ticket by default. Insurance of that kind is an optional price supplement which, under a 2008 regulation on the operation of air services, must be clearly communicated at the start of a booking process and its acceptance by the customer must be on an 'opt-in' basis ([judgment of 19 July 2012, ebookers.com Deutschland, C-112/11](#)).

That 2008 regulation also provides that the final price to be paid must at all times be indicated. The Court therefore drew the conclusion that the final price to be paid must be indicated for each air service offered, including the first time that the price is indicated. The purpose of this requirement is, inter alia, to enable customers effectively to compare the price of air services offered by different air carriers ([judgment of 15 January 2015, Air Berlin, C-573/13](#)).





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