



Judgment of the Court in Case C-108/26 RX | D (Air traffic management decision)

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Delayed flight: an air traffic management decision does not, in itself, constitute an extraordinary circumstance enabling the carrier to avoid its obligation to pay compensate the passenger

For the first time, the Court of Justice sets aside a judgment given by way of a preliminary ruling by the General Court, finding that the interpretation adopted therein adversely affects the unity and consistency of EU law

In July 2023, a passenger was due to travel from Izmir (Türkiye) to Warsaw (Poland). His flight arrived more than three hours late. The aircraft used had previously operated another flight between Katowice (Poland) and Izmir and had itself been delayed following an air traffic management decision. That decision was linked to airspace restrictions in Hungary and Romania put in place due to adverse weather conditions. Furthermore, after the aircraft's arrival in Izmir, a technical fault was found which took more than two hours to repair.

As the passenger had assigned his right to compensation to a specialised company, that company claimed compensation of €400 from the air carrier.

The Polish court hearing the case found that, if the loss of time connected with air traffic management were deducted from the total delay, the flight from Izmir to Warsaw would have arrived less than three hours late, with the result that the passenger would not be entitled to compensation. It therefore sought to ascertain under what conditions a decision relating to the management of such traffic may constitute an 'extraordinary circumstance' for the purposes of EU law ¹ which could exempt the carrier from the obligation to pay compensation.

In its judgment of 21 January 2026 ², the General Court of the European Union ³ ruled that such a decision is not inherent in the normal exercise of the activity of an air carrier and that, in principle, it is beyond the carrier's actual control, irrespective of the reason for it, unless the carrier contributed to its adoption. According to the General Court, it is the decision itself, and not the reasons for it, that is decisive, in so far as it is the decision that externally affects the performance of the flight. Consequently, the General Court held that such a decision may constitute an 'extraordinary circumstance' even where it did not, on its own, cause a delay of at least three hours.

On the proposal of the First Advocate General, the Court of Justice decided to partially review ⁴ the General Court's judgment on account of a serious risk of the unity or consistency of EU law being affected.

In its judgment today, the Court finds that the interpretation adopted by the General Court indeed adversely affects the unity and consistency of EU law. Consequently, it sets aside the General Court's judgment to the extent that it was the subject of the review.

The Court considers that **not every air traffic management decision can, in itself, be classified as an 'extraordinary circumstance'**. Air carriers are necessarily, as a matter of course and on a regular basis, faced with that type of decision when carrying out of their activity. To establish the existence of 'extraordinary circumstances', **it is necessary to identify the event that led to the adoption of the air traffic management decision of the air carrier** and to ascertain, on a case-by-case basis, whether that event, by its nature or origin, is not inherent in the normal exercise of the activity of the carrier and is beyond its actual control.

Consequently, **it is not sufficient for a carrier to rely on the decision in question in order to be exempted from its obligation to pay compensation. It must demonstrate that that decision was taken on account of a circumstance which was itself of an extraordinary nature.**

In substituting its own answer for that of the General Court, the Court of Justice points out that, in the present case, the air traffic management decision was taken on account of restrictions in the Hungarian and Romanian airspace imposed due to adverse weather conditions. **Such conditions may constitute extraordinary circumstances where they are of such severity as to prevent the flight concerned from being operated safely and in accordance with the schedule originally planned.** Indeed, in such a scenario, they are not inherent in the normal exercise of the activity of the air carrier and are beyond its actual control. It is for the national court to ascertain whether that was indeed the case here.

Furthermore, the Court observes that an event may constitute an 'extraordinary circumstance' even if it did not, on its own, cause a flight delay of at least three hours. Where the delay on arrival results both from such an event and from another circumstance, the duration of the delay caused by the extraordinary circumstance must be deducted from the total delay in order to determine whether the passenger is entitled to compensation.

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 EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Preliminary rulings by the General Court may, exceptionally, be reviewed by the Court of Justice, on a proposal from the First Advocate General, where there is a serious risk of the unity or consistency of EU law being affected. If no such proposal is made within one month of the ruling by the General Court, that ruling will become final. However, if the First Advocate General makes a proposal for review, it will be necessary to wait for the outcome of the proceedings before the Court of Justice either in order for the ruling by the General Court to become final or in order for the ruling by the Court of Justice to be substituted for the ruling by the General Court.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, 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 presentation of the facts and the legal context refers to the relevant period and is based on the case file.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ Article 5(3) of [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.

² Judgment of 21 January 2026, *D (Air traffic management decision)*, [T-134/25](#).

³ Since 1 October 2024, the General Court has had jurisdiction to rule on requests for preliminary rulings relating to six specific areas, including compensation and assistance for passengers in the event of denied boarding, delay or cancellation of transport services (see also press release No [125/24](#)).

⁴ The review concerns only the answers given by the General Court to the first and second questions raised by the national court. It is not for the Court of Justice to substitute its own answer for the grounds of the General Court's examination of the third and fourth questions which have not been the subject of review.