



**Passengers of a delayed flight may claim compensation from a non-EU air carrier where that carrier operates the entirety of the flight on behalf of an EU carrier**

*The Regulation on Air Passenger Rights does not undermine the principle of complete and exclusive sovereignty of a State over its airspace*

Three air passengers made a single reservation with Lufthansa, via a travel agency, for a flight from Brussels (Belgium) to San José (United States), with a stopover in Newark (United States).

The entirety of the flight was operated by United Airlines, a carrier established in the United States. The three passengers arrived at their final destination with a delay of 223 minutes. The company Happy Flights, now holder of their claim, lodged a claim for compensation against United Airlines before Brussels Company Court (Dutch-speaking), arguing that the Regulation on Air Passenger Rights was applicable.<sup>1</sup>

In its judgment delivered today, the Court of Justice recalls first of all that a flight with one or more connections which was the subject of a single reservation constitutes a whole for the purposes of the right of passengers to compensation provided for by EU law. The applicability of the Regulation on Air Passenger Rights is to be assessed with regard to the place of the flight's initial departure and the place of the final destination of that flight.

Moreover, the Court specifies that the non-EU air carrier (United Airlines), which does not have a contract of carriage with the passengers but which operated the flight, may be liable to pay the passengers compensation. The carrier which, in the course of its passenger carriage activities, decides to **perform a particular flight, including fixing its itinerary, constitutes the operating air carrier**. That carrier is therefore regarded as acting on behalf of the contracting carrier (Lufthansa). The Court however emphasises that the operating air carrier (United Airlines) which is obliged to compensate a passenger retains the right to seek compensation from any person, including third parties, in accordance with the applicable national law.

Regarding the validity of the Regulation on Air Passenger Rights in the light of the principle of customary international law according to which each State has complete and exclusive sovereignty over its airspace, the Court states that a connecting flight **falls within the scope of the regulation** on the ground that the passengers have started their journey from an airport **located in a Member State**. It adds that that applicability criterion **does not undermine** the conditions for the application of the **principle of complete and exclusive sovereignty** of a State over its airspace.

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**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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<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).



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

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