

(Reference for a preliminary ruling – Air transport – Regulation (EC) No 261/2004 – Article 6 – Concept of ‘delay of a flight’ – Postponement of a flight announced in advance by the air carrier with confirmation of the new departure and arrival times – Article 5(1)(c) and Article 7(1) – Right to compensation for passengers in the event of delays of three hours or more in the arrival of the flight – Concept of ‘scheduled time of arrival’ – Determination of the length of the delay)

In Case C-558/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Landshut (Regional Court, Landshut, Germany), made by decision of 31 July 2024, received at the Court on 16 August 2024, in the proceedings

Corendon Airlines Turistik Hava Tasimacilik AS

v

Myflyright GmbH,

THE COURT (Eighth Chamber),

composed of O. Spineanu-Matei, President of the Chamber, S. Rodin and N. Piçarra (Rapporteur), Judges,

Advocate General: T. Čápeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Corendon Airlines Turistik Hava Tasimacilik AS, by S. Hendrix, Rechtsanwältin,
- Myflyright GmbH, by J.-P. von Hagen, Rechtsanwalt,
- the European Commission, by B.-R. Killmann and N. Yerrell, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5(1)(c) and Article 7(1) 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, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

2 The request has been made in proceedings between Corendon Airlines Turistik Hava Tasimacilik AS (‘Corendon Airlines’), an air carrier, and Myflyright GmbH, a company providing legal assistance to air passengers, concerning a claim for compensation brought on the basis of Regulation No 261/2004 following a long delay of a flight in arrival at its final destination.

Legal context

3 Recitals 1, 2 and 4 of Regulation No 261/2004 state:

‘(1) Action by the [European] Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.

(2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.

...

(4) The Community should therefore raise the standards of protection set by [Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport (OJ 1991 L 36, p. 5)] both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.’

4 Under Article 2 of Regulation No 261/2004, entitled ‘Definitions’:

‘For the purposes of this Regulation:

...

(l) “cancellation” means the non-operation of a flight which was previously planned and on which at least one place was reserved.’

5 Article 5 of that regulation, entitled ‘Cancellation’, provides, in paragraph 1 thereof:

‘In case of cancellation of a flight, the passengers concerned shall:

...

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:

...

(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.’

6 Article 6 of that regulation, entitled ‘Delay’, provides, in paragraph 1:

‘When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

(a) for two hours or more in the case of flights of 1500 kilometres or less; or

(b) for three hours or more in the case of all intra-Community flights of more than 1500 kilometres and of all other flights between 1500 and 3500 kilometres; or

...

passengers shall be offered by the operating air carrier:

(i) the assistance specified in Article 9(1)(a) and 9(2); and

(ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and

(iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).’

7 Article 7 of that regulation, entitled ‘Right to compensation’, provides, in paragraph 1:

‘Where reference is made to this Article, passengers shall receive compensation amounting to:

...

(b) EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres;

...’

The dispute in the main proceedings and the questions referred for a preliminary ruling

8 Four air passengers with a booking confirmation from Corendon Airlines for a flight departing from Munich (Germany) at 10:20 (local time) and arriving in Antalya (Türkiye) at 14:20 (local time) on 2 August 2022 received, on the day before their departure, a new booking confirmation for that flight from the tour operator concerned, informing them that the scheduled departure time of that flight was postponed to 11:20 (local time), which would result in the arrival time of that flight being postponed to 15:20 (local time).

9 On 2 August 2022, the flight did not depart, however, until 14:37 (local time), and the passengers in question finally arrived at their destination at 18:16 (local time).

10 Myflyright, to which those passengers assigned their rights to compensation, brought an action before the Amtsgericht Erding (Local Court, Erding, Germany), seeking compensation totalling EUR 1 600, or EUR 400 per passenger, on the basis, inter alia, of Articles 5 and 7 of Regulation No 261/2004.

11 By judgment of 30 August 2023, that court upheld that action, holding that the postponement of flight times by one hour did not constitute a ‘cancellation’ within the meaning of Article 2(l) of Regulation No 261/2004, but rather a delay the duration of which had to be determined on the basis of the initial flight times.

12 Corendon Airlines brought an appeal against that judgment before the referring court, the Landgericht Landshut (Regional Court, Landshut, Germany), claiming that, in the present case, the duration of that delay should be determined on the basis of the flight times set out in the new booking confirmation, and not the initial flight times.

13 However, the referring court considers that the duration of the delay at issue in the main proceedings must be determined on the basis of the originally scheduled arrival time, since, for the passengers concerned, all that matters is whether the flight arrived late in relation to that time. In the referring court’s view, to take into consideration the arrival time of the flight indicated in the new booking confirmation, in order to determine the length of the delay, in addition to being a ‘purely formal approach’, is contrary to the objective of Regulation No 261/2004, which is intended to ensure, inter alia, a high level of protection for passengers affected by the cancellation or a long delay of their flight. In addition, such an approach would allow the air carrier to delay the arrival time of a flight without being held responsible, by issuing new booking confirmations at the last minute indicating flight postponements.

14 In those circumstances, the Landgericht Landshut (Regional Court, Landshut) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Where a flight is postponed and a new [booking confirmation] is issued for it, must the assessment of whether there is a “long” delay in the arrival at the final destination be based on the originally scheduled arrival time or the arrival time indicated in the new booking confirmation?

(2) If the changed arrival time is decisive:

(a) Should account be taken of how long before the original departure time the passenger is informed that the flight has been postponed? In particular, should account be taken of whether the time limits for the new arrival time referred to in Article 5(1)(c) of Regulation [No 261/2004] have actually been complied with, so that the operating air carrier may be released from its obligation to pay compensation?

(b) If so, does the passenger have a right to compensation under Articles 5 and 7 of Regulation [No 261/2004], if, on the basis of the original arrival time, there is a long delay in arrival and, if so, under what conditions?’

Consideration of the questions referred

The first question

15 By its first question, the referring court asks, in essence, whether Article 5(1)(c) and Article 7(1) of Regulation No 261/2004 must be interpreted as meaning that, in the event of postponement of the departure and arrival times of a flight, announced in advance by an air carrier and accompanied by the issue of a new booking confirmation to the passengers concerned, the duration of the delay in arrival suffered by those passengers must be determined on the basis of the originally scheduled arrival time or the arrival time indicated in the new booking confirmation.

16 It should be noted, in the first place, that the concept of ‘delay’ of a flight is not defined by Regulation No 261/2004, unlike that of ‘cancellation’, to which Article 5 of that regulation relates and which is defined in Article 2(l) of that regulation as ‘the non-operation of a flight which was previously planned and on which at least one place was reserved’.

17 As regards the concept of ‘delay’ of a flight, the Court has held that there is a ‘delay’, within the meaning of Article 6 of Regulation No 261/2004, where a flight is operated in accordance with the original planning, but its actual departure time is later than the originally scheduled departure time (see, to that effect, judgment of 19 November 2009, *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716, paragraph 32). It has also held that it would be contrary to the customary interpretation of the terms of Regulation No 261/2004 and to its scheme to take the view that a flight which has been postponed, but is otherwise unchanged, constitutes a ‘cancellation’ within the meaning of Article 2(l) of that regulation (see, to that effect, judgment of 21 December 2021, *Corendon Airlines*, C-395/20, EU:C:2021:1041, paragraph 22).

18 Moreover, the Court has specified that Regulation No 261/2004 does not make the classification as a ‘cancelled’ flight, within the meaning of Article 5, or as a ‘delayed’ flight, within the meaning of Article 6, dependent solely on the prior announcement that the departure of the flight concerned will be postponed (see, to that effect, judgment of 21 December 2021, *Corendon Airlines*, C-395/20, EU:C:2021:1041, paragraph 21).

19 In the present case, it is apparent from the order for reference that the passengers concerned were informed, the day before their departure, that the departure of their flight had been postponed and that a new booking confirmation was sent to them, indicating new times, without any change in the airports of departure or arrival or in their flight number. Those factors thus characterise a ‘delay’ within the meaning of Article 6 of Regulation No 261/2004, as interpreted in paragraphs 17 and 18 of the present judgment.

20 In the second place, Articles 5 and 7 of Regulation No 261/2004, read in the light of recital 2 of that regulation and the principle of equal treatment, must be interpreted as meaning that passengers whose flights are delayed may, first, be treated in the same way as passengers whose flights are cancelled for the purposes of the application of the right to compensation provided for in Article 7(1). Secondly, those passengers may rely on that right to compensation where they suffer, on account of a flight delay, an irreversible loss of time equal to, or in excess of, three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier (see, to that effect, judgment of 25 January 2024, *Laudamotion and Ryanair*, C-54/23, EU:C:2024:74, paragraphs 19 and 21 and the case-law cited).

21 That delay of three hours, as a condition for obtaining compensation, was defined taking into account the fact that Article 5(1)(c)(iii) of Regulation No 261/2004 allows air carriers, in the specific context of the re-routing of passengers following a cancellation of a flight at the very last moment, to bring forward the passengers’ departure time by up to one hour and to defer their arrival by up to two hours (see, to that effect, judgment of 23 October 2012, *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraph 31).

22 It thus follows from the two preceding paragraphs that, when the delay in arrival of a flight is equal to, or in excess of, three hours, the passengers concerned are entitled to compensation on the basis of Article 7 of Regulation No 261/2004, like passengers whose original flight has been cancelled and to whom an air carrier is not able to offer re-routing in accordance with the conditions laid down in Article 5(1)(c)(iii) of that regulation, given that they also suffer an irreversible loss of time (judgment of 4 September 2014, *Germanwings*, C-452/13, EU:C:2014:2141, paragraph 19 and the case-law cited).

23 In the present case, it should be noted that, if the duration of the delay suffered by the passengers concerned in arriving at their destination is determined on the basis of the originally scheduled arrival time, those passengers will be able to rely on a right to compensation, in so far as, as is apparent from the order for reference, they have suffered a delay of more than three hours by comparison with the originally scheduled time of arrival. By contrast, if the duration of that delay were to be determined on the basis of the arrival time indicated in the new booking confirmation, those passengers would not be able to claim such compensation, given that, in that situation, the delay in arrival would be less than three hours.

24 Nothing in the wording of the provisions of Regulation No 261/2004 whose interpretation is sought precludes the duration of the delay suffered by passengers in arriving at their final destination from being determined on the basis of the time of departure initially agreed between those passengers and the air carrier at the time of the booking of the flight concerned, irrespective of the subsequent unilateral postponements of the departure and arrival times of that flight and of the issue of new booking confirmations by that carrier.

25 That method of determining the duration of the delay in question is supported, first, by the objectives of Regulation No 261/2004 of ensuring a high level of protection for passengers, taking full account of the requirements of consumer protection in general, as set out in recital 1 of that regulation. Secondly, it is supported by recital 4 of that regulation, which sets out the intention of the legislature to ‘raise’ the standards of protection set by the previous regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.

26 By contrast, to determine the duration of the delay in question on the basis of the arrival time set out in the new booking confirmation would amount to allowing the air carrier concerned unilaterally to change, by the mere issue of such a confirmation, the time of departure of the flight, even though that time was contractually agreed between the passengers and that air carrier at the time of the booking. That would run counter to the primary objective pursued by Regulation No 261/2004, consisting in ensuring a high level of protection for air passengers, an objective which requires that the rights conferred on those passengers be interpreted broadly (see, to that effect, judgment of 29 February 2024, *Eventmedia Soluciones*, C-11/23, EU:C:2024:194, paragraph 33).

27 Contrary to what Corendon Airlines maintains, the announcement in advance to the passengers concerned of the postponement of the departure and arrival times of their flight by an email from the air carrier, sent the day before the flight, cannot call into question the classification of that postponement as a delay, while it is not excluded that such an announcement may, as the case may be, limit the extent of the inconvenience suffered by those passengers.

28 In the light of all the foregoing considerations, the answer to the first question is that Article 5(1)(c) and Article 7(1) of Regulation No 261/2004 must be interpreted as meaning that, in the event of postponement of the departure and arrival times of a flight, announced in advance by an air carrier and accompanied by the issue of a new booking confirmation to the passengers concerned, the duration of the delay in arrival suffered by those passengers must be determined on the basis of the originally scheduled arrival time.

The second question

29 Having regard to the answer given to the first question, there is no need to answer the second question.

Costs

30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

Article 5(1)(c) and Article 7(1) 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, and repealing Regulation (EEC) No 295/91,

must be interpreted as meaning that, in the event of postponement of the departure and arrival times of a flight, announced in advance by an air carrier and accompanied by the issue of a new booking confirmation to the passengers concerned, the duration of the delay in arrival suffered by those passengers must be determined on the basis of the originally scheduled arrival time.

[Signatures]