



Press and Information

Court of Justice of the European Union

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Luxembourg, 22 April 2021

Judgment in Case C-826/19  
WZ v Austrian Airlines AG

## **The mere diversion of a flight to a close-by airport does not grant a right to flat-rate compensation**

*However, the air carrier must, on its own initiative, offer the passenger to bear the cost of transfer either to the destination airport for which the booking was made or, where appropriate, to another close-by destination agreed with the passenger*

An Austrian Airlines passenger is seeking from that air carrier flat-rate compensation of €250 for the diversion of his flight between Vienna and Berlin. While the flight was initially supposed to land in Berlin Tegel airport, it finally landed in Berlin Schönefeld airport with a delay of nearly an hour. Austrian Airlines did not offer the passenger any onward transport, nor did it offer to bear the cost of transferring the passenger between those two airports. Whereas Berlin Tegel airport is situated in the *Land* of Berlin, Berlin Schönefeld airport is situated in the neighbouring *Land* of Brandenburg.

Austrian Airlines contends that the mere diversion to a close-by airport does not grant a right, as in the case of a cancellation or a long delay in arrival (three hours or more), to flat-rate compensation of €250, 400 or 600. <sup>1</sup> Additionally, according to that air carrier, the delay was due to extraordinary circumstances, namely significant meteorological difficulties prevailing at the time of the antepenultimate rotation of the aircraft.

The *Landsgericht Korneuburg* (Regional Court, Korneuburg, Austria), before which proceedings have been brought, asks the Court of Justice to interpret the Air Passenger Rights Regulation. <sup>2</sup> That regulation provides that, where a flight is diverted to an airport alternative to that for which the booking was made but which serves the same town, city or region, the air carrier is to bear the cost of transferring the passenger from that alternative airport of arrival either to that for which the booking was made or to another close-by destination agreed with the passenger.

In today's judgment, the Court holds that **the diversion of a flight to an airport serving the same town, city or region <sup>3</sup> does not grant the passenger a right to compensation for cancellation of a flight.**

In order for the airport of substitution to be regarded as serving the same town, city or region, that airport must not necessarily be situated in the same territory (in an administrative sense) as the town, city or region in which the airport for which the booking was made is situated. What matters is that it is in close proximity to that territory.

**By contrast, the passenger is, as a rule, entitled to flat-rate compensation where the passenger reaches his or her final destination, that is either the destination airport for which the booking was made or another close-by destination agreed with the passenger,**

<sup>1</sup> Depending on the distance bracket.

<sup>2</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).

<sup>3</sup> However, apart from that scenario, a flight diverted to an airport which is not the destination airport for which the booking was made cannot be regarded as having been operated, with the result that that flight must, as a rule, be considered to be a cancelled flight, capable of conferring entitlement to compensation.

**three hours or more after the original planned arrival time.** In order to determine the extent of the delay in arrival, reference should be made to the time at which the passenger arrives, at the end of the transfer, either at the airport for which the booking was made or, where appropriate, at another close-by destination agreed with the air carrier.

The Court specifies in that context that, in order to be released from its obligation to pay compensation to passengers in the event of a long delay in arrival of a flight, **the air carrier may rely on an extraordinary circumstance which affected not that delayed flight but an earlier flight** operated by that air carrier by means **of the same aircraft** in the context of the antepenultimate rotation of that aircraft, **provided that** there is a direct causal link between the occurrence of that circumstance and the long delay of the later flight.

**Furthermore, the Court finds that it is for the air carrier to offer, on its own initiative, to bear the cost of transfer either to the destination airport for which the booking was made or, where appropriate, to another close-by destination agreed with the passenger.**

**If the air carrier fails to comply with its obligation to bear that cost, the passenger is entitled to reimbursement of the sums expended that, in the light of the specific circumstances of each case, are necessary, appropriate and reasonable** in order to remedy the failure of the air carrier. However, breach of the obligation to bear the cost of transfer does not entitle the passenger to flat-rate compensation of €250, 400 or 600.

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

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