

EN
E-000021/2019
Answer given by Ms Bulc
on behalf of the European Commission
(7.3.2019)

1. The Commission has clarified the principles of 'extraordinary circumstances' as defined by Article 5 of Regulation (EC) No 261/2004¹ (hereinafter "the Regulation") in its Interpretative Guidelines.² The Court of Justice of the European Union ('CJEU') concluded that the Regulation lays down two cumulative conditions for an event to be classified as "extraordinary": a) it must not, by its nature or origin, be inherent in the normal exercise of the activity of the airline, and b) it must be beyond the airline's actual control. The mere fact that recital 14 of the Regulation mentions that such circumstances may arise, in particular, in the event of a strike does not mean that a strike is necessarily and automatically a cause of exemption from the obligation to pay compensation. On the contrary, it is necessary to assess, on a case-by-case basis, whether the two conditions mentioned above are fulfilled.³ It is for the national authorities to conduct this case-by-case analysis on the basis of the facts at hand locally and applying the provisions of the Regulation. This does not affect the right of passengers and air carriers to seek legal redress from courts under procedures of national law.
2. As the Commission replied in question E-005380/2018⁴, the CJEU has clarified that a technical problem which comes to light during aircraft maintenance or is caused by failure to maintain an aircraft cannot be regarded as 'extraordinary circumstances' and therefore does not absolve the airline from its responsibility to pay compensation. This being said, whether other maintenance related issues can be referred to by the airline as 'extraordinary circumstances' in order to exempt itself from paying compensation to passengers under the EU air passenger rights rules, in particular under the Regulation, cannot be answered in the abstract but requires a case-by-case assessment.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004R0261>

² Point 5 of Interpretative Guidelines on Regulation (EC) No 261/2004, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016XC0615%2801%29>

³ Joined Cases C-195/17 Krüsemann and Others, ECLI:EU:C:2018:258, paragraphs 32 and 34, C-549/07, Wallentin-Hermann, ECLI:EU:C:2008:771, paragraph 22.

⁴ http://www.europarl.europa.eu/doceo/document/E-8-2018-005380-ASW_EN.html