



9.7.2020

NOTICE TO MEMBERS

Subject: Petition No 0537/2019 by M.B. (German) on air passengers' rights

1. Summary of petition

The petitioner is of the opinion that the current passengers' rights are unsatisfactory when it comes to the calculation of compensation payments for delays, as they are calculated based on the eventual arrival time. The petitioner gives as an example a departure delay of 3 hours, which is compensated by the air company by reducing flight time, in order to avoid paying compensation. The petitioner claims that the corresponding EU legislation on delays by air companies is applied on both airports of departure and arrival.

2. Admissibility

Declared admissible on 5 November 2019. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 9 July 2020

The EU rules on air passenger rights provide for certain rights for passengers whose flights are delayed at departure or upon arrival.

Under Regulation (EC) No 261/2004¹, if a flight is delayed at departure, passengers have the right to assistance, to reimbursement and a return flight, depending on the duration of the delay and the distance of the flight (Article 6). In accordance with the caselaw of the Court of Justice of the European Union and in particular Joined Cases C-402/07 and C-432/07, Sturgeon, passengers may also receive compensation in cases of arrival at the final destination with a

¹ 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 L 46, 17/2/2004, p.1.

delay of 3 hours or more unless the delay was due to extraordinary circumstances.

Delays at departure and delays on arrival are different occurrences and give rise to different rights for passengers. If a flight is delayed at departure, it is in the passenger's interest that the airline tries to minimise the overall delay to the journey. At the same time, the airline has to care for the passenger by providing assistance (meals, refreshments and possibly accommodation) whilst also allowing the passenger to cancel his/her flight in cases of a delay at departure of 5 hours or more. Independently from any delay at departure, an airline is obliged to pay compensation to passengers who arrive at their final destination with a delay of 3 hours or more as compared to their scheduled time of arrival.

To oblige airlines to pay compensation for delays of only one hour has never been envisaged. In fact, following the adoption in 2013 of the Commission proposal to revise Regulation (EC) No 261/2004², the positions on the threshold for compensation payment expressed in the legislative process range between a minimum threshold of 3 hours and 5 hours for short distance flights. The discussion of the Commission's 2013 proposal has been on hold during the past years but had been reopened under the Finnish Council presidency; work continued under the Croatian presidency.

Conclusion

The Commission would emphasise that EU rules on air passenger rights do indeed apply in cases of delay both at the airport of departure and the airport of arrival. Delays at departure and delays at arrival involve different inconveniences for air passengers and are thus treated differently. Changing the compensation threshold to only one hour appears unrealistic in the present context.

² COM(2013) 130 final.