



European Low Fares Airline Association

news

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ELFAA Announce Legal Challenge of punitive EU Legislation on Air Passenger Compensation for Cancellations and Long Delays

BRUSSELS – May 4, 2004 – The 11 members of the European Low Fares Airline Association (ELFAA) initiated a legal challenge in the High Court in London against the recently approved EU Regulation for passenger compensation for denied boarding, cancellations and long delays of flights. This regulation imposes punitive penalties on airlines for certain delays and cancellations that are beyond their control and also forces airlines to pay the cost of hotel accommodation, meals, drinks, taxis, phone calls etc., in **all** cases of cancellation and long delay even when caused by weather, air traffic control problems, airports, strikes etc.

Wolfgang Kurth, President of ELFAA and CEO of the German low fares airline Hapag-Lloyd Express said: ‘It is unfortunate that our members have been forced to challenge this ill-conceived and unfair legislation. The legislation will not only be ineffective in addressing the serious problem of overbooking, a practice not engaged in by low fares airlines, but it imposes penalties on airlines for delays and cancellations over which they have no control – something which is in direct conflict with an already existing international agreement. The legislation is particularly damaging to low fares airlines as there is no linkage of the penalties imposed to the fares paid and our members will be forced to provide services to passengers that are not included in the low fares package and are neither paid for nor expected by our passengers. It is also discriminatory as it does not apply to competing forms of transport such as trains and ferries. The effect of the regulation will be to deny consumers the choice to travel at the lowest possible fares.’

ELFAA members have lobbied the European Commission, European Parliament and European Council of Ministers on these points and also made it clear that passengers already have the option of protecting themselves from unforeseen delays and cancellations by purchasing travel insurance. “ It is disappointing that this Regulation has been adopted without any proper evaluation of the current situation and what the impact is likely to be on both airlines and their passengers.” said Mr. Kurth.

Therefore the High Court in London is called to refer this challenge to the European Court of Justice which is the only court competent to overturn this unfair and discriminatory legislation that does not address the underlying problems and is, according to ELFAA, not in the consumer’s best interest as it will lead to higher fares and less choice.



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NOTE TO THE EDITORS.

1. As ELFAA has no standing to be able to make a challenge directly to the European Court of Justice, it is necessary to request that a national court refers the issue to the European Court. Having carefully considered their options, ELFAA decided to bring our case to the UK court.
2. IATA filed a case, also in the UK court, on 21 April. ELFAA has filed a separate case because although several of the points are similar, ELFAA's case argues on facts particular to its members and also on additional points. A request has been made for the 2 cases to be heard at the same time.
3. The legal arguments in ELFAA's case are:
 - a. The requirements of the regulation do not meet the standards of the fundamental principle of proportionality. The requirements do not bear any relationship to the price of the flight tickets. As a matter of fact, the regulation risks putting in jeopardy the low fares airlines model that has made it possible for many European passengers to travel by air. The regulation could have ensured the protection of passengers by allowing them to choose whether they want to purchase insurance to cover the risks of flight cancellation or delay.
 - b. The regulation discriminates unduly against low fares airlines in comparison with other airlines and other competing modes of passenger transport, such as rail, ferries and bus/coach. The regulation unduly imposes the same requirements on low fares airlines as on traditional airlines even where the average prices of low fares airlines are much lower than those of traditional airlines and passenger expectations are not the same.
 - c. The legislative procedure that led to the adoption of the regulation infringed the EC Treaty's procedural requirements with respect to the provisions on cancellation. The Council's common position included provisions stating that air carriers should have the defense of extraordinary circumstances in relation to claims for reimbursement, re-routing and assistance. The European Parliament did not make any amendments to these provisions in its second reading. The Conciliation Committee exceeded its jurisdiction by removing these provisions at the last hour of the conciliation discussions. ELFAA submits that this is a violation of the basic procedural requirements of



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the EC Treaty that are intended to ensure that EC legislation is adopted in a democratic manner.

- d. The regulation is in contravention with the Montreal Convention, which provides that airlines are not held liable for delay if they prove that they took all measures that could reasonably be required to avoid the delay, or it was impossible for them to take such measures. The European Community has signed and adopted the Convention. The European Community must respect International Agreements to which it is legally bound.
 - e. The regulation lacks any reasoning and fails to provide any legal certainty to low fares airlines and their customers. The recitals of the regulation and its legislative history provide no reasoning that adequately explains how the requirements of the Regulation can meet the goal of protecting air passengers. In addition, the requirements of the regulation are in contradiction with its recitals and with other EC legislation.
4. ELFAA is represented by Christopher Vajda, QC and Michael Bowsher of Monckton Chambers, instructed by Georg Berrisch and Richard Mattick of Covington & Burling, Brussels and London.

ELFAA Members include: Air Berlin, BasiqAir, Transavia, Flybe, Sky Europe, Ryanair, Sverige Flyg, Volareweb, Sterling, Hapag-Lloyd Express and WIZZ Air.

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