



C/2023/43

9.10.2023

**Request for a preliminary ruling from the Sąd Okręgowy w Warszawie (Poland) lodged on 3 July
2023 — D. SA v P. SA**

(Case C-411/23, D.)

(C/2023/43)

Language of the case: Polish

Referring court

Sąd Okręgowy w Warszawie

Parties to the main proceedings

Applicant: D. SA

Defendant: P. SA

Questions referred

1. Does an engine design defect revealed by the manufacturer constitute an 'extraordinary circumstance' and does it come within the scope of 'unexpected [flight safety] shortcomings' within the meaning of recitals 14 and 15 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, ⁽¹⁾ if the carrier knew about the potential design defect several months before the flight?
2. If the defect in the design of the engine referred to in [Question] 1 constitutes an 'extraordinary circumstance' within the meaning of recitals 14 and 15 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, do 'all reasonable measures' as mentioned in recital 14 and in Article 5(3) of Regulation No 261/2004 refer to the expectation that the air carrier should take into account the likely revelation of a design defect in the aircraft engine and take preventive steps in order to have back-up aircraft at the ready for the purpose of Article 5(3) of Regulation No 261/2004 in order to relieve it of the obligation to pay the compensation provided for in Article 5(1)(c) and Article 7(1) of that regulation?

⁽¹⁾ OJ 2004 L 46, p. 1.