

Parties to the main proceedings

Applicant: Germanwings GmbH

Defendant: Amend

Question referred

Is it compatible with the principle of the separation of powers in the European Union if, in order to remedy what would otherwise be unequal treatment, Regulation No 261/2004 ⁽¹⁾ is interpreted as meaning that a passenger who is affected by a mere delay of more than three hours is entitled to compensation under Article 7 of the Regulation, although the Regulation provides for this only in the case of denied boarding or cancellation of the booked flight but, in the event of delay, restricts the passenger's claims to assistance under Article 9 of the Regulation and, if the delay is for more than five hours, also assistance under Article 8(1)(a) of the Regulation?

⁽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 2004 L 46, p. 1.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 10 August 2011 — Jutta Leth v Republic of Austria, Land Niederösterreich

(Case C-420/11)

(2011/C 319/17)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Jutta Leth

Defendants: Republic of Austria, Land Niederösterreich

Question referred

Is Article 3 of Council Directive 85/337/EEC of 27 June 1985, ⁽¹⁾ in the version of Council Directive 97/11/EC of 3 March 1997, ⁽²⁾ and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 ⁽³⁾ ('EIA Directive') to be interpreted as meaning that

1. the term 'material assets' covers only their substance or also their value;

2. the environmental impact assessment serves also to protect an individual against pecuniary damage as a result of a decrease in the value of his property?

⁽¹⁾ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ 1985 L 175, p. 40.

⁽²⁾ Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, OJ 1997 L 73, p. 5.

⁽³⁾ Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC — Statement by the Commission, OJ 2003 L 156, p. 17.

Action brought on 1 September 2011 — European Commission v Portuguese Republic

(Case C-450/11)

(2011/C 319/18)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: M. Afonso and L. Lozano Palacios, Agents)

Defendant: Portuguese Republic

Form of order sought

- Declare that, by applying the special VAT scheme for travel agents to travel services sold to persons other than travellers, as provided for by Decree-Law No 221/85 of 3 July 1985, the Portuguese Republic has failed to fulfil its obligations under Articles 306 to 310 of the VAT Directive. ⁽¹⁾
- Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that, in so far as the Portuguese Republic applies the special scheme in question to the services supplied by travel agents to other travel agents or to other persons liable to VAT other than travellers, its application of that scheme is not consistent with the provisions of the European Union legislation in that field, since in accordance with the VAT Directive the special scheme must be applied only to services supplied to travellers.

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).