



C/2023/1107

4.12.2023

Judgment of the Court (Eighth Chamber) of 26 October 2023 (request for a preliminary ruling from the Landgericht Frankfurt am Main — Germany) — FW v LATAM Airlines Group SA

(Case C-238/22, ⁽¹⁾ LATAM Airlines Group)

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 2(j) — Article 3 — Article 4(3) — Compensation of air passengers in the event of denied boarding — Passenger informed in advance that boarding would be denied — No obligation for the passenger to present him or herself for boarding — Article 5(1)(c) — Exceptions to the right to compensation in the event of a flight cancellation — Inapplicability of those exceptions in the event of a pre-emptive denial of boarding)

(C/2023/1107)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant: FW

Defendant: LATAM Airlines Group SA

Operative part of the judgment

1. Article 4(3) 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, read in conjunction with Article 2(j) of Regulation No 261/2004,

must be interpreted as meaning that an operating air carrier which has informed a passenger in advance that, against that passenger's will, it is going to deny him or her boarding in respect of a flight for which he or she has a confirmed reservation, must compensate that passenger, even if he or she did not present him or herself for boarding under the conditions set in Article 3(2) of that regulation.

2. Article 5(1)(c)(i) of Regulation No 261/2004

must be interpreted as meaning that that provision establishing an exception to the right to compensation of passengers in the event of cancellation of a flight does not govern the situation in which a passenger has been informed, at least two weeks before the scheduled time of departure of the flight, that, against that passenger's will, the operating air carrier is going to refuse to carry him or her, so that the passenger concerned must be granted the right to compensation for denied boarding provided for in Article 4 of that regulation.

⁽¹⁾ OJ C 266, 11.7.2022.