



C/2025/2364

28.4.2025

**Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 7 January  
2025 – OF and NY v Marabu Airlines OÜ**

**(Case C-119/25, Marabu Airlines)**

(C/2025/2364)

*Language of the case: German*

**Referring court**

Amtsgericht Hamburg

**Parties to the main proceedings**

*Applicants:* OF, NY

*Defendant:* Marabu Airlines OÜ

**Questions referred**

1. Must the second sentence of Article 12(1) of Regulation (EC) No 261/04 <sup>(1)</sup> be interpreted as meaning that the air carrier may offset claims for compensation under Article 7 of the Regulation with claims for damages, more specifically compensation claims under travel legislation for reduced performance, general damage claims and claims for damages on the grounds of wasted holiday leave, even if those claims vis-à-vis a third party, such as a package tour operator, are not intended to compensate for the loss of time and inconvenience resulting from cancellations, long delays of at least 3 hours or denied boarding against the will of passengers which affected all passengers equally, but relate to greater losses, such as partial non-performance of paid travel services (staying overnight on the Mediterranean coast, meals, entertainment services, etc.) or wasted paid holiday leave?
2. Would it be compatible, in particular, with the objective of the Air Passenger Rights Regulation to ensure a high level of protection for air passengers if, beyond the loss of time and the inconvenience caused by cancellation, long delay or denied boarding against their will, passengers who suffered other damages not suffered by other passengers on the same flight were not compensated for the intangible inconvenience and loss of time or, as the case may be, were no longer fully compensated if their substantive rights regarding further adverse effects vis-à-vis third parties, such as package tour operators, were to be set off against their compensation payment (and vice versa)?
3. Would it be compatible, in particular, with primary EU law and, in that regard, with the principle of equal treatment, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified, to interpret the second sentence of Article 12(1) of Regulation (EC) No 261/04 as meaning that, in the event of cancellation, denied boarding against the passenger's will or a long delay of at least 3 hours, certain passengers are ultimately entitled to full compensation for the resulting inconvenience and for the loss of time in accordance with Article 7 of Regulation No 261/2004, whereas other passengers are not, and that the passengers not entitled are those who have suffered additional damages for which another party is liable, such as reduced performance of service under a package contract, damages under a package contract, including damages resulting from wasted holiday leave, since in that case the compensation payment may be deducted from such damages?

<sup>(1)</sup> 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).

4. Would it be compatible with the meaning and purpose of Directive (EU) 2015/2302 <sup>(2)</sup> of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 2015, p. 1-33), ('the Package Travel Directive'), with the meaning and purpose of Articles 4(3), 5(1) and the second sentence of Article 12(1) of the Air Passenger Rights Regulation and with the principle of equal treatment under European law, to interpret point 1 of the first sentence of Paragraph 651p(3) of the German Civil Code as meaning that the traveller must also allow the organiser to deduct the amount that he or she has received in accordance with Regulation (EC) No. 261/04 by way of compensation for inconvenience and the loss of time, where the claims vis-à-vis the organiser relate not to compensation for inconvenience and loss of time due to cancellation, long delay or denied boarding against the passenger's will, but to additional damage which occurred in the case of the passenger concerned, unlike in the case of other passengers on the same flight who have not suffered such damage and for whom the compensation only compensates for inconvenience and loss of time as such, or, conversely, would it be compatible with the meaning and purpose of the Package Travel Directive if, in such cases, the air carrier deducted a payment received from the package organiser for shortcomings in the travel services received that go beyond the inconvenience suffered by all passengers from its obligation to pay compensation?
5. Would there be overcompensation within the meaning of the protective purpose of Article 12(1) of the Regulation if a passenger were to receive compensation not only for the inconvenience suffered, like all other passengers, as a result of the cancellation, denied boarding against his or her will or long delay in accordance with Article 7 but also the compensation provided for by national law, which relates to the consequences which go beyond the inconvenience suffered by all air passengers, or instead would the result of deduction in such a situation, by whichever party, constitute undercompensation for the inconvenience a passenger has suffered, together with all the other passengers, as a result of the cancellation, denied boarding against his or her will or long delay, since, in such a case, that passenger would ultimately no longer obtain full compensation for the inconvenience which he or she had suffered with all the other passengers. In such a case, he or she either would not have received full compensation from the air carrier in the first place (if deducting in one direction) or would not have received full statutory compensation from the package travel companies and would have to spend part of the compensation payment to make up for the disruption to the performance of the service (if deducting in the other direction).

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<sup>(2)</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ 2015 L 326, p. 1).