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INFORMATIVE ALERT

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THE THREE KEY TAKEAWAYS FROM THE GENERAL COURT JUDGMENT OF 21 JANUARY 2026: A TURNING POINT IN THE INTERPRETATION OF “EXTRAORDINARY CIRCUMSTANCES” UNDER REGULATION 261/2004

I. Introduction

On 27 December, the interpretation of the concept of “extraordinary circumstances” under Regulation (EC) No 261/2004 has been one of the main sources of controversy in litigation arising from flight delays and cancellations since the adoption of this cornerstone instrument in the field of passenger protection.

The progressive judicial expansion of passengers’ rights, largely driven by the case law of the Court of Justice of the European Union, has resulted in a particularly robust system of protection, albeit one not without tension when confronted with the operational realities of air transport.

Against this background, the recent judgment of the General Court (“GC Judgment”) of 21 January 2026 represents a genuine turning point. The Court addresses, in a direct and systematic manner, three issues of considerable practical significance and introducing substantial novelties: (i) the clear and categorical classification of certain air traffic management decisions as extraordinary circumstances; (ii) the possibility of individualising the causal impact of an extraordinary circumstance within a complex delay caused by multiple factors; and (iii) the legitimacy of relying on extraordinary circumstances arising in previous rotations of the same aircraft.

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The importance of this ruling goes well beyond the specific case, as it provides clear interpretative guidance for the commercial aviation industry in areas traditionally marked by fragmented case law and legal uncertainty, particularly in the context of mass litigation concerning compensation for long delays.

II. Air Traffic Management Decisions as Extraordinary Circumstances

One of the most significant contributions of the GC Judgment of 21 January 2026 lies in the express recognition that certain decisions adopted by air traffic management authorities may, in themselves, constitute extraordinary circumstances for the purposes of Article 5(3) of Regulation 261/2004.

The judgment establishes authoritative case law in a highly relevant area of air transport claims, namely those arising from the frequent delays and cancellations caused by air traffic management decisions that fall outside the airline's sphere of control.

In this respect, the Court sets out a doctrine of lasting importance, as it clearly and unequivocally confirms that situations directly caused by air traffic management decisions which are beyond the airline's control must be classified as extraordinary circumstances.

At the same time, the Court rightly clarifies that not all delays related to air traffic issues qualify as such. Delays which, in reality, stem from the airline's own lack of operational availability at the critical moment of slot allocation or review by air



navigation service providers do not merit the classification of extraordinary circumstances.

This line of reasoning is particularly significant given the absence of prior case law directly addressing this specific issue, beyond judgments that could only be relied upon by analogy, as the Court itself recalls in order to justify its approach (inter alia, CJEU judgment of 26 June 2019, *Moens*, C-159/18).

III. The Causal Relevance of Extraordinary Circumstances in Complex Delays Involving Multiple Consecutive Causes

The judgment of 21 January 2026 is also of particular importance for reaffirming a doctrine which, although previously hinted at by the Court of Justice, had given rise to considerable controversy in practice: the possibility of isolating the causal impact of an extraordinary circumstance within an overall delay caused by multiple concurrent factors and granting it relevance when assessing whether the delay is compensable.

Accordingly, the Court confirms that an extraordinary circumstance may have exonerating relevance even where, taken in isolation, it has caused a delay of less than three hours. Such delay may be deducted from the overall delay suffered by the operation when determining whether the airline is required to compensate passengers or is lawfully exempt from doing so. Where this cause of delay combines with other non-exempting factors and results in a total delay exceeding three hours, the airline may nevertheless establish the absence of liability if it can be demonstrated that, in the absence of the extraordinary circumstance, the final delay would have



remained below the three-hour threshold; that is, by deducting the delay directly attributable to the incident qualifying as an extraordinary circumstance.

By way of example, in the case decided by this judgment, the General Court exempts the airline from liability where the total delay of the flight concerned amounted to three hours and seven minutes upon arrival in Warsaw from Izmir. Although the greater part of that arrival delay—approximately two hours—was caused by a factor legally attributable to the airline, namely a technical defect of the aircraft in Izmir immediately prior to the operation of the flight, the Court attaches decisive importance to the delay with which the aircraft had arrived at that departure airport on the previous rotation, due to a circumstance beyond the airline’s control. That prior flight had been delayed by just over one hour as a result of a circumstance that is legally exonerating for the airline (a delayed departure clearance imposed by air traffic control). The Court considers that this prior delay may be deducted from the total delay of three hours and seven minutes, with the consequence that the delay ultimately attributable to the airline falls below three hours and is therefore not compensable.

In this respect, the judgment expressly confirms and reinforces the doctrine previously laid down by the Court of Justice in a different context, involving a comparable allocation of causal responsibility—namely, the impact of a bird strike as an exonerating circumstance (CJEU judgment of 4 May 2017, *Pešková and Peška*, C-315/15).



IV. Extraordinary Circumstances Arising in Previous Rotations

The GC Judgment of 21 January 2026 also addresses a matter of considerable practical importance in contemporary commercial aviation: the possibility of invoking extraordinary circumstances that did not occur on the delayed flight itself, but rather on a previous rotation operated by the same aircraft, provided that there is a direct causal link between the occurrence of the extraordinary circumstance and the long delay in the arrival of the subsequent flight.

While in the case at hand the Court refers only to the incident that occurred in the immediately preceding rotation—since that was the situation under examination—it had previously left open the possibility that an exemption from liability could arise from incidents occurring several rotations prior to the flight concerned, and not necessarily in the immediately preceding one (CJEU judgment of 22 April 2021, *Austrian Airlines*, C-826/19, which exempted the airline from liability where the extraordinary circumstance had occurred in the “penultimate but one” rotation prior to the flight at issue).

This issue is of major practical relevance in modern commercial aviation, which is characterized by highly intensive fleet utilization by many airlines and by the resulting operational interdependence between consecutively scheduled flights, with a significant impact arising from frequent knock-on delays. From a legal perspective, it also constitutes a substantial contribution to legal clarity and certainty, in the absence of explicit positive regulation on this matter, beyond legislative reform initiatives that have already been proposed and interpretative efforts relating to Regulation 261/2004 itself, which was adopted more than twenty years ago (see Recital 15 of the Regulation,



referring to circumstances that “lead to long delays [...] of one or more flights of the aircraft”).

V. Conclusion

The GC Judgment of 21 January 2026 represents an important milestone in the interpretation of Regulation 261/2004 in relation to flight delays and cancellations. By clarifying the treatment of air traffic management decisions, reaffirming the possibility of individualizing the causal impact of extraordinary circumstances, and consolidating the relevance of incidents occurring in previous rotations, the Court makes a decisive contribution to enhancing the coherence and predictability of the system, to the benefit of the operators involved.

Far from weakening passenger protection, this ruling introduces a necessary balance between such protection and the operational realities of air transport and aligns with the objective of avoiding automatic or decontextualized interpretations of the concept of compensable delay. At the same time, it provides valuable guidance for legal practice in this field and for the work of national courts, which are called upon to apply a regulatory framework that may require further positive clarification of key aspects inherent in the operational and commercial realities of modern aviation.

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