

## Úrskurður

### **Samgöngustofu nr. 144/2025 vegna kvörtunar um seinkun á flugi Air Baltic nr. BT170 þann 2. júní 2025.**

#### **I. Erindi**

Þann 27. júlí 2025 barst Samgöngustofu (SGS) kvörtun frá A (kvartandi). Kvartandi átti bókað far með flugi nr. BT170 á vegum Air Baltic (AB) kl. 00:30 þann 2. júní 2025 frá Keflavík til Tallin með millilendingu í Riga. Áætlaður komutími var kl. 08:25. Fluginu frá Keflavík seinkaði um 40 mínútur sem varð til þess að kvartandi missti af tengiflugi sínu og raunverulegur komutími á áfangastað var kl. 14:05 eða seinkun um rúmlega fimm og hálfa klst. eftir áætlaðan komutíma.

Kvartandi fer fram á staðlaðar skaðabætur á grundvelli reglugerðar EB nr. 261/2004 um sameiginlegar reglur um skaðabætur og aðstoð til handa farþegum sem er neitað um far og þegar flugi er aflýst eða mikil seinkun verður, sbr. reglugerð nr. 466/2024 um réttindi flugfarþega. Kvartandi fer fram á endurgreiðslu á kostnaði vegna ófullnægjandi þjónustu.

#### **II. Málavextir og bréfaskipti**

SGS sendi AB kvörtunina til umsagnar með tölvupósti þann 28. júlí 2025. Í svari AB, sem barst þann 4. ágúst 2025 kom eftirfarandi fram:

Regarding delayed flight BT170 on the route Keflavik – Riga on June 2nd, 2025 which led to miss connecting flight BT311 Riga -Tallinn.

Airline would like to inform that the Flight was delayed due to aircraft rotation and Air Traffic Control restrictions. The same aircraft YL-CSL at first operated flight BT653 Riga – London on June 1<sup>st</sup>, 2025. The flight from Riga departed with 7 minutes earlier than planned (scheduled time of departure (Departure) – 12.40 (UTC); actual time of departure (AD) – 12.33 (UTC); please see attachment no. 1 – extract form Network Planning System), however due to Air Traffic Control restrictions aircraft could not land as planned and was holding over London (Gatwick) airport (please see attachment no.2 – extract from Flightaware.com) and flight arrived in London 51 minute later than planned (scheduled time of arrival (Arrival) – 15.30 (UTC); actual time of arrival (AA) – 16.21 (UTC); please see attachment no. 1). Due to mentioned restrictions also other arrivals were impacted at London airport (please see attachment no.3 – extract from Flightstats). Information about Air Traffic Control restrictions were published also in social media (please see attachment no.4 – extract from social media). After this delay YL-CSL return flight BT654 London – Riga departed 31 minutes later than planned (scheduled time of departure (Departure) – 16.25 (UTC); actual time of departure (AD) – 16.56 (UTC); please see attachment no.5 – extract from Network Planning System) and arrived in Riga 29 minutes later than planned (schedule time of arrival (Arrival) – 16.25 (UTC); actual time of arrival (AA) – 21.04 (UTC); please see attachment no. 5).

Taking into account mentioned aircraft's YL-CSN next operated flight BT169 Riga – Keflavik departed 30 minutes later than planned (scheduled time of departure (Departure) – 19.45 (UTC); actual time of departure (AD) – 20.15 (UTC); please see attachment no. 6 – extract from Network Planning System) and arrived in Keflavik 41 minutes later than planned (schedule time of arrival (Arrival) – 23.40 (UTC); actual time of arrival (AA) – 00.21 (UTC); please see attachment no. 6). Therefore, Passenger's Flight on June 2<sup>nd</sup>, 2025 also departed with 42 minutes delay. (scheduled time of departure (Departure) – 00.30 (UTC); actual time of departure (AD) – 1.12 (UTC); please see attachment no. 7 – extract from Network Planning System) and arrived in Riga 42 minutes later than planned (schedule time of arrival (Arrival) – 4.05 (UTC); actual time of arrival (AA) – 4.47 (UTC) please see attachment no. 7) which led to miss passengers connecting flight BT311 Riga – Tallinn.

Airline also considered whether to deploy its reserve aircrafts to replace this aircraft, but unfortunately Airline did not have spare aircrafts in Keflavik which could operate the Flight without significant delay. Assigning aircraft from the Airline's fleet in this case would mean that other flights are considerably delayed or even cancelled.

As Airline cannot precisely forecast Air Traffic Controllers restrictions in advance as well as have no influence upon it, Airline has to conclude that in this case Flight delay was caused by extraordinary circumstances. Current Regulation (EC) 261/2004 “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” Article 5 (3) states that “(..) air carrier shall not be obliged to pay compensation (..) if (..) cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken”. As European Court of Justice has acknowledged in its practice (please see, for example, decision made by European Court of Justice on 23rd of October, 2012 in joined cases No. C-581/10 and C-629/10), then, also deciding on compensations for passengers if the flight is delayed, air carrier should evaluate, if delay is caused by extraordinary circumstances, and in case of affirmation, carrier is entitled to refer to Regulation (EC) 261/2004 Article 5 (3) not only in case of flight cancellation, but also – delay.

Furthermore, in accordance with the judgement of the Court of Justice of the European Union on June 11th, 2020 in Case No. C 74/19, in order to be exempted from its obligation to compensate passengers in the event of a long delay or cancellation of a flight, an operating air carrier may rely on an ‘extraordinary circumstance’ which affected a previous flight which it operated using the same aircraft, provided that there is a direct causal link between the occurrence of that circumstance and the delay or cancellation of the subsequent flight. Therefore, Airline cannot meet Passengers' request to pay delayed flight compensation.

Airline also would like to explain you that it took all reasonable measures to minimize delay and negative impact on passengers; however due to delay reason the possibilities to avoid the delay were very limited and especially taking into consideration the delay reason.

In addition, Airline also explains that when a flight is delayed Airline always looks at opportunities to bring passengers to their destinations as fast as possible through their own or partner's airlines' flights. Airline is not interested in delaying passengers to reach their destinations without offering the fastest possible flight, as any delay will result in additional financial costs for the Airline in providing care and possible compensation if the flight has not been canceled due to extraordinary circumstances. Flights delays are a significant cost for the

Airline, so the Airline always makes every effort to bring passengers to their destinations as fast as possible and minimize the inconvenience to them.

On June 2nd, 2025, there was an earlier flight, BT315 from Riga to Tallinn. However, the Airbus A220-300 aircraft, which operated flight BT315, has a capacity of 148 seats, while 152 passengers had already been booked on this particular flight (please see attachment No. 8 – extract from the Network Planning System). Therefore, the Airline offered the next earliest possible alternative, flight BT361 from Riga to Tallinn, also on June 2nd, 2025. However, the Passenger chose not to accept the alternative flight and instead requested a refund for the unused portion of the ticket.

In addition Airline would like to inform that according to practice of European Court of Justice (please see, for example, European Court of Justice decision in case No. C-11/11 Air France SA against Heinz-Gerke Folkerts, Luz-Tereza Folkerts (2013)) passengers are entitled to receive compensation in case flight is delayed if they reach their destination three hours or later than scheduled time of arrival. Therefore, according to the provisions of the EU Regulation 261/2004, if a passenger declines an alternative flight offered by the airline in the event of a cancellation or long delay, they are not entitled to receive compensation for the disruption. This is because the regulation requires airlines to offer passengers assistance and alternative transportation, but it does not require passengers to accept these alternatives. Therefore, compensation applies only in case passengers who missed their connecting flight use the alternative flight or transportation provided by the airline.

In addition, Airline informs that Current Regulation (EC) 261/2004 “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” states that Airline must provide passengers with care while waiting for an alternative flight. As Passenger did not use alternative flight and decided to receive unused ticket part refund no care expenses should be reimbursed.

SGS sendi kvartanda svar AB til umsagnar þann 5. ágúst 2025. Í svari kvartanda kom fram:

Thank you for the opportunity to provide comments on the response from AirBaltic.

I would like to contest the airlines position on the following grounds:

1. Extraordinary Circumstances Not Justified

Air Baltic claims that the delay was caused by Air Traffic Control (ATC) restrictions impacting a previous flight (BT653 to London Gatwick) and that this constitutes "extraordinary circumstances." However:

- According to CJEU case law (C-549/07 Wallentin-Hermann), for an event to be considered an "extraordinary circumstance," it must:
  - Not be inherent in the normal exercise of the activity of the air carrier.
  - Be beyond its actual control.

ATC delays are common and part of normal airline operations. While they may be outside the airline's control in the moment, they are foreseeable and part of the operational risks airlines are expected to manage through planning, including scheduling buffers and standby aircraft.

- Moreover, in C-74/19 (the case cited by the airline), the Court allowed carriers to invoke prior ATC restrictions only if all reasonable measures were taken, such as using standby aircraft or re-routing.

The airline claims no spare aircraft were available in KEF. However, they do not explain why other reasonable measures weren't taken in Riga—where they have a hub—or why they didn't use other available options to avoid cascading delays. Simply stating that no spare aircraft were available is not sufficient to demonstrate all reasonable measures were taken.

## 2. Refusal of Alternative Flight Does Not Negate Right to Compensation

Air Baltic argues that because I refused the alternative flight (which was 12 hours later), I am not eligible for compensation. This is not consistent with Regulation (EC) 261/2004 or ECJ jurisprudence:

- In C-11/11 (Folkerts case), the ECJ held that what matters is whether the passenger reaches their final destination with a delay of more than 3 hours, regardless of whether a flight was cancelled or a connection missed.
- The compensation right arises automatically if the arrival delay exceeds 3 hours and is not caused by extraordinary circumstances.
- Whether I accepted the alternative or not is irrelevant for the purpose of compensation.
- My final arrival in Tallinn was more than 3 hours later than scheduled, due to the missed connection. The offered alternative flight was approximately 15 hours later, and I reasonably chose to reach my destination sooner via ground transport.

Also, I request that ICETRA assess whether Air Baltic took all reasonable measures to avoid the delay cascade, including the use of reserve aircraft from other hubs or rescheduling.

In light of the above, I respectfully maintain that I am entitled to compensation under EU Regulation 261/2004. I request ICETRA to consider these facts in evaluating my case.

## III. Forsendur og niðurstaða Samgöngustofu

SGS fer með eftirlit með réttindum neytenda samkvæmt ákvæðum XVI. kafla laga um loftferðir nr. 80/2022 og skal grípa til viðeigandi aðgerða til að tryggja að réttindi farþega séu virt, sbr. 2. mgr. 207. gr. laganna.

Farþegar og aðrir sem eiga hagsmuna að gæta geta skotið ágreiningi er varðar fjárhagslegar kröfur og einkaréttarlega hagsmuni samkvæmt ákvæðum XVI. kafla laga um loftferðir til SGS, sbr. 1. mgr. 208. gr. laganna. Náist ekki samkomulag eða sátt skal SGS skera úr ágreiningi með úrskurði.

Samkvæmt 1. mgr. 204. gr. sömu laga er flugrekanda skylt að veita farþegum aðstoð og eftir atvikum greiða þeim bætur, í samræmi við þau skilyrði sem sett eru í reglugerð sem ráðherra setur, ef: tjón hefur orðið vegna tafa á flutningi, farþega er neitað um far, flugi er aflýst eða þegar flutningi er flýtt.

Um réttindi flugfarþega er fjallað í reglugerð EB nr. 261/2004 um sameiginlegar reglur um skaðabætur og aðstoð til handa farþegum sem neitað er um far og þegar flugi er aflýst eða mikil seinkun verður, sem

var innleidd hér á landi með reglugerð nr. 466/2024. Samkvæmt 2. gr. reglugerðar nr. 466/2024 er Samgöngustofa sá aðili sem ber ábyrgð á framkvæmd reglugerðarinnar samanber 16. gr. reglugerðar EB nr. 261/2004.

Um seinkun á flugi og þá aðstoð sem flugrekandi skal veita í slíkum tilvikum er fjallað um í 6. gr. reglugerðar EB nr. 261/2004. Þar kemur hins vegar ekki fram með skýrum hætti að flugrekandi skuli greiða bætur skv. 7. gr. reglugerðarinnar vegna tafa eða seinkunar eins og átt getur við þegar flugi er aflýst sbr. 5. gr. reglugerðarinnar. Með dómi Evrópudómstólsins frá 19. nóvember 2009, í sameinuðum málum C-402/07 og C-432/07, komst dómstóllinn að þeirri niðurstöðu að túlka bæri reglugerð EB nr. 261/2004 með þeim hætti að farþegar sem verða fyrir seinkun á flugi sínu sbr. 6. gr. reglugerðarinnar, eigi að fá sömu meðferð og farþegar flugs sem er aflýst sbr. 5. gr.

Af þessu leiðir að allir farþegar sem verða fyrir þriggja tíma seinkun á flugi sínu eða meira, og koma á ákvörðunarstað þremur tímum seinna eða meira en upprunalega áætlun flugrekandans kvað á um, eiga rétt á bótum skv. 7. gr., nema flugrekandi geti sýnt fram á að töfin hafi verið vegna óviðráðanlegra aðstæðna sem ekki hefði verið hægt að afstýra jafnvel þótt gerðar hefðu verið allar nauðsynlegar ráðstafanir sbr. 3. mgr. 5. gr. reglugerðarinnar.

### **Staðlaðar skaðabætur**

Fyrir liggur í málinu að kvartandi átti bókað far með flugi nr. BT170 frá Keflavík til Tallin þann 2. júní 2025 og að fluginu frá Keflavík seinkaði um 40 mínútur sem varð til þess að kvartandi missti af tengiflugi sínu og kom til áfangastaðar með fimm klst. og 40 mínútna seinkun. Álitaefti þessa máls er hvort að seinkun á flugi kvartanda sé bótaskyld á grundvelli reglugerðar EB nr. 261/2004, sbr. reglugerð nr. 466/2024.

Skv. gögnum málsins þá var kvartanda boðið nýtt flug frá Riga til Tallin 12 klst. seinna sem kvartandi afþakkaði og valdi endurgreiðslu í staðinn.

Bótaskylda við seinkun kemur einungis til álita þegar komu farþega á lokaáfangastað seinkar um þrjár klukkustundir eða meira og hann verður fyrir tilheyrandi tímamissi (e. loss of time), sbr. niðurstaða Evrópudómstólsins í sameinuðum málum C-402/07 og C-432/07 (Sturgeon). Er það þannig forsenda bótaskyldu að farþegi ferðist með viðkomandi flugi. Þar sem að kvartandi ferðaðist ekki með fluginu sem boðið var og valdi endurgreiðslu þá myndaðist ekki bótaréttur. Er kröfu kvartanda um staðlaðar skaðabætur á grundvelli reglugerðar EB nr. 261/2004, sbr. reglugerð nr. 466/2024, því hafnað.

### **Réttur til aðstoðar**

Í a-lið 5. gr. reglugerðar EB nr. 261/2004 segir að hafi flugi verið aflýst eða seinkað skuli veita farþegum aðstoð skv. 8. gr. en þar er fjallað um rétt til endurgreiðslu eða að breyta flugleið. Í túlkunarreglum framkvæmdastjórnar ESB um reglugerð EB nr. 261/2004 kemur fram að hafi flugrekandi sýnt fram á að hann hafi haft samband við farþega, sem hefur látið flugrekandanum í té tengiliðaupplýsingar sínar, og boðið aðstoð skv. 8. gr., en farþeginn hefur engu að síður gert ráðstafanir til þess að breyta flugleið sjálfur, þá megi flugrekandi gera ráð fyrir að hann sé ekki ábyrgur fyrir aukakostnaði sem farþegi hefur orðið fyrir vegna þess. Fyrir liggur að AB bauð kvartanda nýtt flug 12 klst. seinna en tengiflugið sem kvartandi missti af en kvartandi hafnaði boðinu og kom sér sjálfur á lokaáfangastað. Með hliðsjón af framangreindu er kröfu kvartanda um endurgreiðslu kostnaðar vegna nýs farmiða þ.a.l. hafnað.

### *Úrskurðarorð*

Kröfu kvartanda um staðlaðar skaðabætur úr hendi Air Baltic vegna seinkunar á flugi nr. BT170 þann 2. júní 2025 samkvæmt reglugerð EB nr. 261/2004 sbr. reglugerð 466/2024, er hafnað.

Kröfum kvartanda um endurgreiðslu á kostnaði er hafnað.

Samkvæmt 4. mgr. 208. gr. laga um loftferðir nr. 80/2022 verður úrskurði Samgöngustofu ekki skotið til annarra stjórnvalda. Þegar úrskurður hefur verið kveðinn upp geta aðilar lagt ágreining sinn fyrir dómstól á venjulegan máta. Málshöfðun frestar ekki heimild til aðfarar skv. 6. mgr. 208. gr.

Reykjavík, 15. október 2025

Ómar Sveinsson

Ludvig Árni Guðmundsson