

# TRAVEL LAW FORUM - PALLADIAN

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# Some basic singularities when selling air transport products

- Low return on investment
- Airlines have huge operating costs
- Airline capacity has an exceptionally short shelf life
- Tickets are sold in different markets
- Travel Agents (online or brick-and-mortar) have special relations with airlines

# TRENDS

Unbundling of services

No longer all inclusive

Passenger only pays for what he needs

- **SEAT INVENTORY MUST CONSTANTLY BE MATCHED WITH DEMAND**



- **You need marketing information**

Overbooking  
= normal business practice



**EU Regulation 295/91 of February 4<sup>th</sup>,  
1991 establishing common rules for  
denied boarding compensation**

=> Financial compensation in case of denied  
boarding of 150 or 300 euro, but cannot  
exceed what the passenger paid for the ticket

# Evolution into 261/2004



- 2000: campaigning by the Commission to make passengers aware of their rights (posters in community airports)
- 2001: denied boarding still too high so the Commission posted a new proposal
- **Regulation 261/2004 came into force on February 16th, 2005!**

# **“Clarification” of 261/2004 by the European Court of Justice**

# SEPARATION OF POWERS

## 2 PRONGS

1. Protect individuals against the abuse of power by the institutions (also National) Separation of powers between the legislative and the judicial
2. Specific EU principle: **THE PRINCIPLE OF INSTITUTIONAL BALANCE**

Governs the distribution of powers among the EU's institutions to ensure that the balance as laid down in the Treaties is maintained

Positive obligation: requires that the EU institutions act within the scope of the powers conferred upon them by the Treaties

Negative obligation: not encroach on the powers assigned to the other institutions



# Art. 19 TEU formulates the Court' jurisdiction.

- Text suggests that the Court is a relatively autonomous institution
- Enjoys a degree of discretion when it interprets legislation

QUESTION : how far does this discretion go and where does it end?

No clear cut answer

Quid: Court as the ultimate lawmaker.

Is there hope?

Case C-501/17 Germanwings v. Wolfgang Pauels;  
ICJ 4 April 2019  
ECLI:EU:C:2019:288

Thank you!