



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

**Issued by the Department of Transportation  
on the 8<sup>th</sup> day of March, 2023**

**Eurowings GmbH**

**Violations of 14 CFR Part 259 and  
49 U.S.C. § 41712**

**Docket OST-2023-0001**

**Served March 8, 2023**

**CONSENT ORDER**

This consent order concerns violations by Eurowings GmbH (Eurowings) of 14 CFR Part 259 and 49 U.S.C. § 41712. Eurowings failed to adhere to the assurance in its contingency plan for lengthy tarmac delays regarding the timely deplaning of passengers. Specifically, the carrier permitted an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane. This order directs Eurowings to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assesses the carrier \$225,000 in civil penalties.

**Applicable Law**

Pursuant to 14 CFR 259.4,<sup>1</sup> foreign air carriers that operate scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more seats, are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large hub, medium hub, small hub, and non-hub airport. According to the version of section 259.4(b)(2)<sup>2</sup> that was in effect at the time the violations in this order occurred, covered carriers could not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours for international flights that depart from or arrive at a U.S. airport without providing

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<sup>1</sup> 14 CFR 259.4 was amended by Final Rule on May 3, 2021 and became effective on June 2, 2021. 86 Fed. Reg. 23260 (May 3, 2021). The changes to the rule do not impact the violations at issue in this case. The citations contained in this order are to the rule that was in effect at the time of the violations.

<sup>2</sup> 14 CFR 259.4(b)(2) has since been replaced by 14 CFR 259.4(c)(2).

passengers the opportunity to deplane, with the following exceptions: (1) the pilot-in-command determines there is a safety-related or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers (e.g., weather, a directive from an appropriate government agency, etc.); or (2) Air Traffic Control (ATC) advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.<sup>3</sup>

A covered carrier's failure to comply with the assurances required by section 259.4, and as contained in the carrier's contingency plan for lengthy tarmac delays, constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712. Because the purpose of section 259.4 is to protect individual passengers from experiencing a tarmac delay of more than four hours without the opportunity to deplane when on an international flight, the Office of Aviation Consumer Protection (OACP)<sup>4</sup> takes the position that a separate violation occurs for each passenger who is forced to remain on the tarmac on board an aircraft for longer than the set amount of time without the opportunity to deplane.

### **Facts and Conclusions**

Eurowings is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)<sup>5</sup> that operates scheduled service from Miami International Airport (MIA), among other U.S. airports, using at least one aircraft having a design capacity of more than 30 passenger seats.<sup>6</sup> Eurowings has a tarmac delay contingency plan that states, "Eurowings will not permit an aircraft to remain on the tarmac for more than four hours. It will return to the gate or to another suitable disembarkation point, where passengers will be allowed to deplane," with specific exceptions permitted by law.

An investigation by OACP revealed that on July 23, 2019, Eurowings flight EW1182 traveling from Dusseldorf Airport (DUS) to MIA, was diverted to Fort Lauderdale-Hollywood International Airport (FLL) as a result of a weather-related closure at MIA. EW1182 arrived at FLL at 5:14 p.m. and parked at a remote stand. The flight crew requested to deplane passengers and transport them to the terminal via buses, but U.S. Customs and Border Patrol (CBP) would only permit passengers onboard flight EW1182 to deplane if their checked luggage could also be offloaded. Ground handlers were not available at that time to offload checked luggage; thus, passengers were not permitted to deplane the aircraft.

At 7:15 p.m., approximately two hours into the delay, EW1182 was advised that ground handlers were available to offload checked luggage and the crew could start deplaning passengers.

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<sup>3</sup> When the Department amended its tarmac delay rule in 2021, it added an exception that applies to departure flights, 14 CFR 259.4(c)(3)(i).

<sup>4</sup> The Office of Aviation Consumer Protection was formerly known as the Office of Aviation Enforcement and Proceedings.

<sup>5</sup> 49 U.S.C. § 40102(a)(2) defines a foreign air carrier as "a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation."

<sup>6</sup> Eurowings ceased operating flights to and from the U.S. at the commencement of the pandemic in 2020 and does not have plans to resume its U.S. operations.

However, EW1182 declined the opportunity to deplane passengers and offload check luggage and decided instead to continue to MIA. For the next three and half hours, the aircraft remained on the tarmac at FLL. At 10:00 p.m., Eurowings was advised that MIA closed because of weather conditions. At the same time, multiple passengers onboard the aircraft became restless and called the police, who ultimately facilitated deplaning of the aircraft. The 268 passengers onboard flight EW1182 were deplaned at 10:50 p.m. after being held on the tarmac for a total of five hours and 36 minutes.

Based on our investigation, none of the exceptions in the Department's Tarmac Delay Rule apply to the delay experienced by flight EW1182. As such, by failing to provide passengers on board EW1182 with the opportunity to deplane before the tarmac delay exceeded four hours, Eurowings failed to adhere to its contingency plan and violated 14 CFR 259.4 and 49 U.S.C. § 41712.

### **Response**

In response, Eurowings states that the safety of its passengers and crews is of the utmost priority to Eurowings. It states that it regrets the inconvenience that the delay caused to its passengers because Eurowings strives to provide convenient and efficient air transportation to its passengers at all times.

First, Eurowings notes that the Department is issuing this order more than three years after the violation at issue occurred. Eurowings states that after flying for approximately 10 hours and holding for at least 30 minutes waiting for its destination of MIA to reopen, EW1182 had no choice but to divert to FLL.<sup>7</sup> Eurowings states that because it did not operate scheduled service at FLL, the carrier lacked pre-existing arrangements for ground handling services at the airport.<sup>8</sup> Eurowings states that nevertheless, upon arriving at FLL, Eurowings worked to secure the resources needed to either continue to MIA or deplane passengers safely, mindful of the Department's tarmac delay requirements.

Eurowings states that while it sought to deplane passengers upon arrival at FLL, its efforts to promptly deplane passengers safely and transport them to the terminal by bus were frustrated by CBP restrictions that required all checked baggage to be offloaded.<sup>9</sup> Eurowings explains that after successfully arranging for air stairs, it could not deplane passengers because it was unable to secure ground handling services to offload all checked baggage. Eurowings states that rather than simply waiting for the necessary ground handling services to become available, Eurowings proactively contacted other airlines and vendors at FLL to request assistance.

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<sup>7</sup> During this time, Eurowings provided food, water, and other onboard provisions in accordance with DOT requirements.

<sup>8</sup> DOT requires carriers to coordinate their contingency plan for lengthy tarmac delays with airport authorities at U.S. large hub, medium hub, small hub and non-hub airports, including its regular U.S. diversion airports. See 14 CFR 259.4(c) (9). FLL was a regular diversion airport for Eurowings.

<sup>9</sup> DOT requires carriers to coordinate their contingency plan for lengthy tarmac delays with CBP at U.S. large hub, medium hub, small hub and non-hub airports. See 14 CFR 259.4(c) (9).

Eurowings states that while attempting to deplane passengers at FLL, it also prepared to continue onto MIA as an alternative, but a relief crew could not reach FLL for more than 90 minutes due to heavy traffic and severe weather in the area. Eurowings states that upon arriving at FLL, the crew was required to go to the international terminal to be screened, resulting in an additional 90-minute delay. Eurowings states that it attempted again to continue the flight to its original destination, MIA, but efforts to depart FLL were delayed by a series of factors.

Eurowings states that it firmly believes that the tarmac delay was caused by forces beyond its control and although it believes that no civil penalties should apply, it is entering into this Consent Order to avoid the suggested possibility of escalated civil penalties.

### **Decision**

OACP views seriously Eurowings violations of 14 CFR Part 259 and 49 U.S.C. § 41712. Accordingly, after carefully considering all the facts in this case, including those set forth above, OACP believes that enforcement action is warranted. In order to avoid litigation, Eurowings consents to the issuance of this order to cease and desist from future violations of 14 CFR Part 259 and 49 U.S.C. § 41712 and to the assessment of \$225,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by Eurowings and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

### **ACCORDINGLY,**

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Eurowings GmbH violated 14 CFR 259.4(b)(2)<sup>10</sup> by failing to adhere to the assurances in its contingency plan for lengthy tarmac delays that the carrier would not permit an international flight to remain on the tarmac for more than four hours without providing passengers an opportunity to deplane;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, Eurowings GmbH engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;
4. We order Eurowings GmbH and its successors and assigns to cease and desist from further violations of 14 CFR Part 259 and 49 U.S.C. § 41712;
5. We assess Eurowings GmbH \$225,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of that amount, \$112,500 shall

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<sup>10</sup> 14 CFR 259.4(b)(2) has since been replaced by 14 CFR 259.4(c)(2).

be due and payable within 30 days of the issuance of this order. The remaining \$112,500 will become due and payable if, within one year of the date of the issuance of this order, Eurowings GmbH violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Eurowings GmbH may be subject to additional enforcement action for violation of this order;

6. We order Eurowings GmbH to pay within 30 days of the issuance of this order the penalty assessed in ordering paragraph 5, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Eurowings to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

**BY:**

**BLANE A. WORKIE**  
**Assistant General Counsel**  
**for the Office of Aviation Consumer Protection**

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