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#### NOTE

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To:	Delegations
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No. Cion doc.:	7615/13 AVIATION 47 CODEC 616 + ADD 1 + ADD 2
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 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 Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air

Following the Aviation Working Party on 30 March 2015, delegations will find attached a consolidated further revised version of the above proposal. Changes with regard to the previous version are marked in **bold** and ~~striktthrough~~. To make the reading and the cross-references easier, the text which is part of the Commission proposal (doc. 7615/13) has been highlighted in grey.

All delegations have a scrutiny reservation on the text. UK has a parliamentary reservation.

Recitals will be examined in their entirety at a later stage, in light of the substantive provisions agreed.

A review table on compensations for cancellation and delay has been inserted in Annex III.

**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**

**(Text with EEA relevance)**

**Article 1**

**Subject**

1. This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:
  - (a) they are denied boarding against their will;
  - (b) their flight is cancelled;
  - (c) their flight is delayed at departure or at arrival;
  - (d) *[deleted]*
  - (e) they are upgraded or downgraded.
2. [Application of this Regulation to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.
3. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.]<sup>1</sup>

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<sup>1</sup> UK cannot accept the continued suspension of this regulation to Gibraltar Airport. The TFEU is clear that EU aviation legislation applies to Gibraltar and consequently paragraph 3 must be deleted.

## **Article 2**

### **Definitions**

For the purposes of this Regulation:

- (a) "air carrier" means an air transport undertaking with a valid operating licence;
- (b) "operating air carrier" means an air carrier that has performed, performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;
- (c) "Community air carrier" means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Regulation (EC) No 1008/2008 of 24 September 2008 on common rules for the operation of air services in the Community<sup>2</sup>;
- (d) "Organiser" means a person within the meaning of Article 2(2) of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours<sup>3</sup>;
- (e) "package" means those services defined in Article 2, point 1, of Directive 90/314/EEC;
- (f) "ticket" means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or ticket seller;
- (g) "reservation" means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier, organiser or ticket seller;
- (h) "final destination" means the destination of the flight or of the last flight of a journey as indicated in the reservation;

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<sup>2</sup> OJ L 293, 31.10.2008, p. 3.

<sup>3</sup> OJ L 158, 23.6.1990, p. 59.

- (i) "disabled person or person with reduced mobility" means any person as defined in Article 2(a) of Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air<sup>4</sup>;
- (j) "denied boarding" means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;
- (k) *[volunteer deleted]*
- (l) "cancellation" means the non-operation of flight, which was previously planned and on which at least one place was reserved. A flight that departs before the time of departure indicated on the passenger's reservation shall also be considered as cancelled, unless the passenger ~~was able to~~ **accepts to** take the rescheduled flight. **The case where after take-off the aircraft was subsequently forced to return to the airport of departure and passengers of the concerned aircraft were transferred to other flights a flight operation was terminated between the time of departure and the time of arrival and the aircraft returns to the airport of departure** shall also be considered as a cancelled flight;
- (m) "extraordinary circumstances" means circumstances which, are beyond the actual control of the air carrier. For the purposes of this Regulation, extraordinary circumstances shall include, but shall not be limited to the circumstances set out in the Annex<sup>5</sup>;

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<sup>4</sup> OJ L 204, 26.7.2006, p.1.

<sup>5</sup> The Presidency proposes to complement recital 3 with the following text: *"The circumstances that resulted in a delay or cancellation need to be assessed on a case-by-case basis in the light of such list, especially where multiple factors contributed to the travel disruption. Moreover, where extraordinary circumstances apply, an individual assessment is also needed to determine whether the travel disruption could not have been avoided even if the air carrier had taken all reasonable measures and hence whether the air carrier could be exempted from certain obligations under this Regulation."* **DE** proposes to complement the recital with the following text: *"It is possible to deviate from that list if an exceptional case so requires."*

(mm) "unexpected flight safety shortcoming" means one or several technical defect(s) and/or problems which:

- pose a risk to the safe operation of the aircraft,
- are first discovered during or after the pre-flight check and before the engine shutdown at the destination of the flight, and
- occur despite the fact that maintenance was executed correctly in accordance with the applicable safety rules; and
- are not the result of damage caused by the air carrier itself or its contracted agents working under the carrier's responsibility.

The detailed criteria for technical defect(s) and/or problems to qualify as unexpected safety shortcomings are specified in Annex 2; <sup>6</sup>

(n) "flight" means an air transport operation between two specified airports; intermediate stops for technical and operational purposes only shall not be taken into consideration;

(nn) "feeder flight" means a flight that carries passengers to a transfer point in order to take a connecting flight, if the flights are under the same contract of carriage;

(o) "connecting flight" means a flight that carries the passenger from a transfer point to which the passenger was transported by a feeder flight, if the flights are, under the same contract of carriage. This excludes stopovers, i.e. the voluntary interruption of the performance of the contract of carriage by the passenger and agreed in advance by the air carrier as it appears on the ticket. Such a stopover point shall be regarded as a final destination;

(p) "journey" means a flight or a continued series of flights transporting the passenger from the initial airport of departure to his final destination in accordance with a single contract of carriage. The outward and the return journey are not the one and the same journey;

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<sup>6</sup> AT and DE do not support the separation of technical defects in a new definition. The Presidency proposes the following clarification recital on unexpected safety shortcomings: *"Unexpected flight safety shortcomings should be considered as a separate category of exemption next to extraordinary circumstances in order to properly take into account their technical nature. For maximum legal certainty, they should be precisely defined in an exhaustive and binding way with reference to existing safety regulations and maintenance requirements."*

- (q) "airport" means any area specifically adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services, including the installations needed to assist commercial air services;
- (r) "airport managing body" means a body which, in conjunction with other activities or not as the case may be, has as its objective under national laws, regulations or contracts the administration and management of the airport or airport network infrastructures and the coordination and control of the activities of the different operators present in the airports or airport network concerned;
- (s) "ticket price" means the full price paid for a ticket and including the air fare, and all applicable taxes, charges, surcharges and fees, including the management fees charged by the air carrier, paid for all optional and non-optional services included in the ticket;
- (t) [*"flight price" deleted*]
- (u) "time of departure" means the time when the aircraft leaves the departure stand, pushed back or on its own power (off-block time);
- (v) "time of arrival" means the time when the aircraft reaches the arrival stand and the parking brakes are engaged (in-block time);
- (w) "tarmac delay" means, at departure, the time the aircraft remains on the ground between the closing of the doors, or in any case the time when passengers can no longer leave the aircraft, and the take-off time of the aircraft or, at arrival, the time between the touch-down of the aircraft and the start of disembarkation of the passengers;
- (x) [*"night" deleted*]
- (y) [*"unaccompanied child" deleted*]

- (ab) *["reasonable measures" deleted]*
- (ac) "third country" means any state to which the Treaty is not applicable or any part of Member States' territory that is not subject to Treaty provision;
- (ad) "delay at departure" means the difference of time between the time of departure indicated on the passenger's reservation and the actual time of departure of the flight;<sup>7</sup>
- (ae) "delay at arrival" means the difference of time between the time of arrival indicated on the passenger's reservation, and the actual time of arrival;
- (af) "class of transport" means a part of the passenger cabin of the aircraft characterised by different seats, a different seat configuration or any other difference in the standard service provided to passengers compared to other parts of the cabin;
- (ag) "rerouting" means an alternative offer of transport at no extra cost to the passenger and allowing him to reach his final destination or an alternative destination agreed with the passenger;
- (ah) *["flight concerned": deleted];*
- (aj) "ticket seller" means the seller of an air ticket, other than an air carrier or an organiser, who arranges a contract of carriage on behalf of the air carrier with a passenger, **whether** for a flight on its own **or as part of of a package**<sup>8</sup>;
- (ak) *["stopover" deleted]*
- (al) "minor" - means a person below the age of 18 years.**

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<sup>7</sup> The Presidency proposes the following changes in recital 12: *"To ensure legal certainty, Regulation (EC) No 261/2004 should confirm that the changing of flight schedules has a similar impact on passengers to long delays or cancellations and should therefore give rise to similar rights. In this regard, advancement of the schedule should be associated to cancellation. As postponement of the schedule inevitably results in a delay at arrival, it should be associated to delay. "*

<sup>8</sup> "ticket seller" definition needs to cover the seller of flight-only tickets but also the "retailer"(i.e. travel agents) who sells packages put together by the organiser as an intermediary - see definition of "retailer" in Directive 90/314/EEC - Package Travel Directive

## Article 3

### Scope

1. This Regulation shall apply:

- (a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;
- (b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community air carrier.

2. Paragraph 1 shall apply on the condition that passengers:

- (a) have a confirmed reservation on the flight concerned and, in the case of denied boarding referred to in Article 4 present themselves for boarding after on-line check-in or check-in at the airport,
  - as stipulated and at the time indicated on the ticket in advance and in writing (including by electronic means) by the air carrier, the organiser or a ticket seller, or, if no boarding time is indicated,
  - not later than 45 minutes before the time of departure indicated in the passenger's reservation; or
- (b) have been transferred by an air carrier or organiser from the flight for which they held a reservation to another flight, irrespective of the reason.

3. This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an air carrier or organiser.



4. Without prejudice to Article 6a(4a), this Regulation shall only apply to passengers transported by motorised fixed wing aircraft.
5. This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where no contract exists between the operating air carrier and the passenger, the performer of rights and obligations under this Regulation shall be regarded as doing so on behalf of the contracting parties.
6. This Regulation shall also apply to passengers transported according to package travel contracts but shall not affect the rights of passengers under Council Directive 90/314/EEC. This Regulation shall not apply in cases where a package tour is cancelled or delayed for reasons other than cancellation or delay of the flight.

## Article 4

### Denied boarding

1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. This agreement with the volunteer on the benefits shall replace the passenger's right to compensation as laid down in Article 7(1), only if it is approved in a signed document by the volunteer and the passenger has received information in accordance with Article 14(2). Volunteers shall be offered by the operating air carrier assistance in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph, and care in accordance with Article 9.
2. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.
3. If boarding is denied to passengers against their will, the operating air carrier shall immediately assist them in accordance with Article 8 and offer care in accordance with Article 9. The operating air carrier shall, without a request compensate the passenger within 10 days of the date of the denied boarding in accordance with Article 7.
4. [deleted]<sup>9</sup>
- 4a. [deleted]
5. Where the passenger, or an organiser, reports a spelling mistake in the name or given name(s) of one or several passengers included in the same contract of carriage, the air carrier shall correct this at least once up until 72 hours before departure without any additional charge to the passenger or the organiser, except where it is prevented from doing so by applicable national or international law regarding security.
6. [change of schedule is covered by the new definition of cancellation and delay]

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<sup>9</sup> HU, PL and the Commission do not agree with the deletion of the paragraph on no-show policy.

## Article 5

### Cancellation<sup>10</sup>

1. In case of cancellation of a flight, the passengers concerned shall be offered by the operating air carrier in a clear and reliable manner:
  - (a) the choice between the options specified in Article 8; and
  - (b) the care in accordance with Article 9.
- 1a. Passengers shall have the right to receive, on request, compensation by the operating air carrier in accordance with Article 7, unless:
  - (i) they are informed of the cancellation at least 14 days before the time of departure indicated in their reservation;or
  - (ii) the offered re-routing allows them to reach their final destination:
    - no more than five<sup>11</sup> hours after the time of arrival indicated in their reservation **for journeys of 1500 kilometres or less;**
    - **no more than nine hours after the time of arrival indicated in their reservation for journeys between 1500 and 3500 kilometres;**
    - **no more than twelve hours after the time of arrival indicated in their reservation for journeys of 3500 kilometres or more.**

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<sup>10</sup> HU proposes to insert the following paragraph in Articles 5 and 6: "*Passengers who have exercised the right to reimbursement under Article 8(1) retain their right to compensation referred to in this Article.*" The Presidency proposes to clarify this aspect in a recital: "*The right to compensation should be additional to the right to reimbursement.*"

<sup>11</sup> AT, ES and MT prefer 3 hours.

(iii) the passengers are informed of the cancellation more than 24 hours before the time of departure indicated in the reservation and are offered re-routing departing no more than 1 hour before the time of departure indicated in the reservation, allowing them to reach their final destination within the threshold indicated in subparagraph (ii)."<sup>12</sup> ;

2a. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

2b. *[moved to new Article 16aa]*

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if both of the following conditions are met:

– the cancellation is caused by extraordinary circumstances or unexpected flight safety shortcomings; and

– the cancellation could not have been avoided even if the air carrier had taken all reasonable measures.

3a. When applying paragraph 3, the air carrier can only invoke extraordinary circumstances or unexpected flight safety shortcomings fulfilling the conditions of Annex 2 for a later flight than the first affected flight, provided that:

– the cancellation of this later flight was caused by these extraordinary circumstances or flight safety shortcomings and it has taken all reasonable measures to avoid cancellation, and

– when the air carrier invokes items iii, iv, viii, ix, x or xi of Annex 1, or unexpected flight safety shortcomings fulfilling the conditions of Annex 2, the scheduled time of departure of the flight concerned falls within 24 hours after the scheduled time of arrival of the first affected flight **operated or scheduled to be operated by the same aircraft.**

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<sup>12</sup> The Presidency proposes the following recital: *"The compensation regime of this Regulation should be devised to incite air carriers to offer effective rerouting options, close or even before the originally scheduled flight, if the passenger is informed sufficiently long in advance."*

Member States may exempt from this provision flights operated to, from and within outermost regions, as referred to in Article 349 of the TFEU. In such a case, they shall inform the Commission thereof. The Commission shall make this information public through the internet.<sup>13</sup>

4. [deleted]

4a. [deleted]

5. [deleted].

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<sup>13</sup> ES proposes to limit the right to invoke extraordinary circumstances to two preceding flights in the case of short-haul flights, and one flight in the case of long haul flights. HU and RO do not support a concept based on hours and support the Commission proposal. BE could support a distinction between flights, while DE and EE prefers a limitation lower than 24 hours, given that the time of arrival is the starting point of the limitation period, increasing the flexibility for airlines. NL is opposed to the overseas exemption in the last subparagraph. CION and AT do not support this paragraph which is excessively complex and long, and the 24h limit renders the intended restriction meaningless.

The Presidency proposes the following recital to clarify the objective of paragraph (3a): *"It should be clarified that technical defects and certain categories of extraordinary circumstances that affect a single aircraft cannot be invoked by the air carrier beyond a certain time period limit after their occurrence. This time limit should not apply to extraordinary circumstances that affected several aircraft, such as a natural disaster or the closure of an airport."*

<sup>14</sup> HU proposes to insert the following paragraph in Articles 5 and 6: *"Passengers who have exercised the right to reimbursement under Article 8(1) retain their right to compensation referred to in this Article."*

## Article 6

### Delay<sup>15</sup>

1. When an operating air carrier expects a flight to be delayed at departure passengers shall be offered by the operating air carrier in a clear and reliable manner:
  - (i) the care in accordance with Article 9 while waiting for the departure of the delayed flight;
  - (ii) when the delay is at least five hours<sup>16</sup>, the assistance specified in Article 8(1)(a).
2. Passengers shall have the right to receive on request compensation from the operating air carrier in accordance with Article 7 where they arrive at their final<sup>17</sup> destination with a delay at arrival<sup>18</sup> of:
  - at least five hours for journeys of 1500 kilometres or less<sup>19</sup>;
  - at least nine hours for journeys between 1500 and 3500 kilometres;
  - at least twelve hours for journeys of 3500 kilometres or more.
3. [deleted]
4. The exemptions from compensation provided for in Article 5(3) and 5(3a) shall also apply to flights delayed at arrival.
5. Paragraph 2 shall not apply if the passenger has been informed of the change in the time of departure indicated on the passenger's reservation at least 14 days before that date.
6. <sup>20</sup>Where the aircraft took off but was subsequently forced to land at an airport other than the airport for which the reservation was made, the passengers concerned shall be offered by the operating air carrier the options specified in Article 8(1) and the care in accordance with Article 9. Paragraphs 2 to 4 of this Article shall apply accordingly.

<sup>15</sup> AT, DE and ES propose to introduce a right to rerouting in case of long delays.

<sup>16</sup> AT, DE, ES, FI and MT consider the 5-hour waiting time for assistance too long.

<sup>17</sup> HR, IE, NL, LU, SI, SE and UK propose to delete the word "*final*".

<sup>18</sup> LT, supported by FI, propose to include tarmac delay in the overall delay at arrival.

<sup>19</sup> DE and FI cannot support a 5-9-12 hour threshold. AT, BE, ES and MT prefer a 3-5-9 hour threshold. DK, FI, HR and SK prefer a flat 5 hour threshold.

<sup>20</sup> FR considers that diverted flights should not be covered by this Regulation.

## Article 6-2a

### Tarmac delay

1. **Subject to safety constraints, where a tarmac delay occurs, the operating air carrier shall ensure adequate heating or cooling of the passenger cabin, access to toilet facilities and that adequate medical attention is available if needed.** ~~Subject to safety constraints, where a tarmac delay~~ **If the tarmac delay is longer than 30 minutes, the operating air carrier shall provide free of charge access to toilet facilities and drinking water on board, shall ensure adequate heating or cooling of the passenger cabin, and shall ensure that adequate medical attention is available if needed.**
2. Where a tarmac delay reaches a maximum of three hours in an airport situated in a territory of a Member State to which the Treaty applies<sup>21</sup>, the aircraft shall proceed to the gate or another suitable disembarkation point where passengers shall be allowed to disembark.<sup>22</sup> Beyond this deadline, a tarmac delay can only be prolonged if there are safety, immigration or security-related reasons why the aircraft cannot leave its position on the tarmac.
- 2a. **Subject to safety and security constraints, passengers shall be allowed to disembark as soon as possible after the aircraft reaches the arrival stand and the parking brakes are engaged.**

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<sup>21</sup> The Presidency suggests the following clarification in a recital: *"The Regulation should establish rules in order to minimise the discomfort to passengers in cases of tarmac delay. These rules do not affect passengers' rights regarding assistance, care and compensation and are additional to those rights."*

<sup>22</sup> DE would like to keep the previous text in this paragraph, as follows: *"Where a tarmac delay at the airport of departure reaches a maximum of two hours in an airport situated in a territory of a Member State to which the Treaty applies, and unless the pilot has confirmed information that the aircraft will depart within the next 45 minutes."*

**Article 6a**  
**Missed connecting flights**

1a. This article shall apply to:

- all air carriers ~~operating in~~ **whose feeder flight arrived at** an airport situated in a territory of a Member State to which the Treaty applies;
- Community air carriers ~~where the~~ **whose** feeder flight departed from an airport situated in a territory of a Member State to which the Treaty applies.

1. Where a passenger misses a connecting flight as a result of a delay at arrival to a feeder flight, the air carrier operating that feeder flight shall offer the passenger assistance in accordance with Article 8, and care in accordance with Article 9.

2. Where a passenger misses a connecting flight as a result of a delay to a feeder flight, the passenger shall have a right to receive, on request<sup>23</sup>, compensation in accordance with Article 6(2) and 6(4), unless the transfer time<sup>24</sup> at the transfer point as indicated in the reservation was:<sup>25</sup>

- less than 90 minutes for journeys of less than 3500 kilometres;
- less than 180<sup>26</sup> minutes for journeys of more than 3500 kilometres;

<sup>27</sup>The amount of compensation shall be determined in accordance with Article 7, based on the journey distance and the length of delay suffered at final destination.

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<sup>23</sup> DE suggests to delete "*on request*".

<sup>24</sup> CION would prefer "*delay at the transfer point*"

<sup>25</sup> The Presidency proposes to add a recital justifying the difference in the treatment of passengers of direct and connecting flights. HR, FR, IE, LU, NL, SI, SE and UK propose to add the following sentence at the end of paragraph 1: "*Compensation in accordance with Article 7 shall not be payable in respect of missed connecting flights.*" Paragraphs 2 and 3 would then be deleted.

<sup>26</sup> AT, DE, FI, MT and CION consider 180 minutes too long. MT also suggests that there should be no link to the number of kilometres.

<sup>27</sup> DE requests to add the following sentence: "*For these purposes, the delay shall be calculated by reference to the scheduled time of arrival at the final destination*".



3. The compensation shall be paid according to the indemnity arrangements made between affected air carriers. The air carrier operating the feeder flight shall be responsible for the handling and settlement of claims.<sup>28</sup>

4. [deleted]

4a. Where, in accordance with a single contract of carriage, a passenger is carried on a part of the journey by another mode of transport stipulated in the contract of carriage, the passenger shall be informed at the time of reservation, of any arrangements or the absence thereof, between the air carrier and the other transport operators in the case of a missed connection, in particular as regards arrangements for providing care and assistance.

## Article 6b

### Change of schedule

[deleted]<sup>29</sup>

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<sup>28</sup> DE, FI and PL prefer to delete this paragraph, on the argument that this legislative act should not regulate the relationship between air carriers, but only between the passenger and the air carrier.

<sup>29</sup> DE and FI are against the deletion of this article and to the deletion of all references in the text which are linked to the 'change of schedule'.

## Article 7

### Right to compensation

1. Where reference is made to this Article, the following compensation amounts shall apply:
  - (a) 250 EUR for journeys of 1500 kilometres or less<sup>30</sup>;
  - (b) 400 EUR for journeys between 1500 and 3500 kilometres; and
  - (c) 600 EUR for journeys of 3500 kilometres or more, **except for journeys to and from the Union's outermost regions**;
  - (d) **400 EUR for journeys of 3500 kilometres or more to and from the Union's outermost regions.**

In determining the distance, the basis shall be the final destination.<sup>31</sup>

2. Where the passenger has opted for the continuation of his travel pursuant to Article 8(1)(b), and another cancellation or missed connection occurs during rerouting, the passenger's right to compensation can arise only once for the same reason during his travel to the final destination.<sup>32</sup>
3. The compensation referred to in paragraph 1 shall be paid within 10 days of the passenger's request in cash, by electronic bank transfer, bank orders, credit/debit card refund or bank cheques. Following appropriate information to the passenger regarding his rights under this Regulation, with the confirmed agreement of the passenger compensation may also be paid in travel vouchers and/or other services.
4. The distances given in paragraph 1 shall be measured by the great circle route method.
5. [deleted]

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<sup>30</sup> A recital justifying the difference in treatment according to journey distance should be inserted.

<sup>31</sup> CY, HR, IE, LU, NL, SI and SE propose the deletion of the last sentence.

<sup>32</sup> SE proposes the deletion of "*final*". IE, FR, NL, PL, UK and the Commission propose the deletion of "*for the same reason*".

## Article 8

### Right to reimbursement or re-routing

1. Where reference is made to this Article, the passengers shall be offered, free of charge, the choice between three options:
  - (a) - reimbursement within 10 days of the passenger's request, by the means provided for in Article 7(3), of the ticket price, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,  
- a return flight to the first point of departure, at the earliest opportunity after the time of departure indicated in the reservation;
  - (b) continuation of the passengers' travel plans by re-routing them to their final destination at the earliest opportunity after the time of departure indicated in the reservation; or
  - (c) re-routing to their final destination at a later date at the passenger's convenience, subject to availability of seats.
2. Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC.
- 2a. When the passenger exercises his right to re-routing in accordance with paragraph 1 (b), the air carrier may offer an alternative flight departing earlier than the time of departure indicated in the reservation. Where the passenger refuses such earlier rerouting, he shall still be entitled to the option of rerouting at the earliest opportunity after the time of departure indicated in the reservation.

3. If an operating air carrier offers a passenger a flight to or from an airport alternative to that for which the reservation was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport to that for which the reservation was made, or, with regard to the destination airport, to another neighbouring destination agreed with the passenger.
4. Where agreed by the passenger, the return flight or flights referred to in paragraph 1(a) or the re-routing referred to in paragraph 1(b) or 1(c) may, at comparable comfort conditions as set out in the transport contract, use services operated by another air carrier, involve a different routing, or, where appropriate for the distance to be travelled, use another mode of transport.
5. Where passengers choose the option referred to in paragraph 1(b), they shall, subject to availability, have the right to re-routing via another air carrier or another mode of transport where the operating air carrier cannot foreseeably transport the passenger on its own services and in time to arrive at the final destination within 12 hours of the time of arrival indicated in the reservation.
6. [deleted] <sup>33</sup>

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<sup>33</sup> FR and ES would prefer to reinstate this paragraph on the continued application of this Regulation even if rerouting is done by another mode of transport. PCY is proposing an addition to recital 15 as follows: *"In case of rerouting on another transport mode, this Regulation continues to apply until the passenger reaches the final destination."*

**Article 9**  
**Right to care**

1. Where reference is made to this Article, and when the waiting time for the delayed flight, rerouting or the connecting flight is prolonged by at least two hours, passengers, while waiting for their flight, shall be offered promptly and free of charge:
  - (a) meals and refreshments in a reasonable relation to the waiting time;
  - (b) the choice between two telephone calls, fax messages, e-mails or other web-based message services.
  - (c) [deleted]
2. In addition, where a stay of one or more nights becomes necessary, passengers shall be offered free of charge:
  - (a) hotel accommodation;
  - (b) transport between the airport and place of accommodation (hotel, place of residence of the passenger or other) and return.
3. [deleted] *[moved to Article 11(2)]*
- 3a. [deleted]

4. If the cancellation, **missed connection** or delay at departure is caused by extraordinary circumstances and the cancellation or delay could not have been avoided even if all reasonable measures had been taken, the air carrier may limit the accommodation provided according to paragraph 2(a) to a maximum of 3 nights.<sup>34</sup> If the operating air carrier chooses to apply this limitation, it shall nevertheless provide the passengers with information about available accommodation after the three nights, in addition to the continued obligations for information specified in Article 14.<sup>35</sup>
5. Member States may decide to exempt air carriers from the obligation to offer accommodation under paragraph 2(a) where the flight concerned departs from an airport in its territory, is of 250 km or less and scheduled to be operated by an aircraft with a maximum capacity of 80 seats or less, except where the flight is a feeder or a connecting flight. If the operating air carrier chooses to apply this exemption, it shall nevertheless provide the passengers with information about available accommodation. Member States that choose to apply this exemption shall inform the Commission about their decision before the exemption enters into force.
6. Where a passenger opts for reimbursement pursuant to Article 8(1)(a) while being at the first point of departure, or opts for rerouting at a later date pursuant to Article 8(1)(c), the passenger shall have no further rights with regard to care under Article 9(1) and 9(2) in relation to the relevant flight.
7. When exercising their rights under this Article, passengers shall cooperate in limiting the expenses for the air carrier as far as it is reasonable and appropriate.

<sup>34</sup> HU and MT are against the deletion of the monetary limit to accommodation. DK and SE propose to have a 5-night limitation in this paragraph.

<sup>35</sup> AT, BE, DE, HU, and SK propose to add a new provision, giving the possibility of arranging accommodation personally when the air carrier failed to provide accommodation. HU proposes the new provision as follows: "*In case the air carrier has failed to provide accommodation, the passenger shall have the right to arrange his own accommodation at the expense of the air carrier. The air carrier may limit the total cost of accommodation to EUR 125 per night and per passenger and to a maximum of 3 nights.*" BE adds that this should not lead to situations where air carriers systematically discharge themselves from their initial obligations in this regard. ES considers that the passenger should have the right to look for accommodation and if chooses to do so, a price cap on accommodation should be introduced in order to ensure consistency also with paragraph 7.

**Article 10**  
**Upgrading and downgrading**

1. If an operating air carrier places a passenger in a class of transport higher than that for which the ticket was purchased, it shall not be entitled to any supplementary payment.
2. If an operating air carrier places a passenger in a class of transport lower than that for which the ticket was purchased, it shall within 10 days, by the means provided for in Article 7(3), reimburse
  - (a) 30% of the ticket price for all flights of 1500 kilometres or less, or
  - (b) 50% of the ticket price for all intra-Community flights of more than 1500 kilometres, except flights between the European territory of the Member States and the French outermost regions, and for all other flights between 1500 and 3500 kilometres, or
  - (c) 75% of the ticket price for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French outermost regions.
3. Where the price of the concerned flight is not indicated on a multi-flight ticket, the reimbursement mentioned in paragraph 2 shall be calculated in proportion of the flight to the total distance covered by the ticket.

## Article 10a

### Airport contingency plans

1. At Union airports whose annual traffic has been over five million passengers for at least three consecutive years, the airport managing body shall ensure that the operations of the airport and of airport users, in particular the air carriers and the suppliers of ground handling services, are coordinated through a proper contingency plan in view of possible situations of multiple cancellations and/or delays of flights leading to a considerable number of passengers stranded at the airport. The contingency plan shall be set up to ensure that adequate information is given to stranded passengers and shall contain arrangements in order to minimise their waiting time and discomfort.
2. The contingency plan shall be set up with the participation of the Airport Users Committee pursuant to Council Directive 96/67/EC on access to the groundhandling market at Community airports. The contingency plan shall also contain the contact data of the person(s) designated by each air carrier in order to represent it on the spot in relation with the authorities, airport managing body and passengers in the case of multiple cancellations and/or delays of flights. The air carrier shall ensure that the designated person(s) has the necessary means to assist passengers in accordance with the obligations arising from this Regulation in case of cancellation, delay, or denied boarding.
3. The airport **authority or the airport** managing body shall communicate the contingency plan and any amendments to it to the National Enforcement Body designated pursuant to Article 16 or any other authority designated for this purpose.
4. Member States may lower the threshold referred to in paragraph 1, but not to less than 3 million passengers, for airports situated in their territory. At airports below the threshold set, the airport managing body shall make all reasonable efforts to coordinate airport users and to make arrangements with airport users to inform stranded passengers in such situations.<sup>36</sup>

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<sup>36</sup> LU and NL would prefer to delete paragraph 4 due to the possible effect on airlines in different Member States if the derogation is applied.



## Article 11

### Disabled persons and persons with reduced mobility or special needs

1. Operating air carriers shall give priority to carrying disabled persons or persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied minors.
2. In applying the care and assistance in accordance with Articles 8 and 9, the operating air carrier shall pay particular attention to the needs of the persons mentioned in paragraph 1. Air carriers shall provide this care and assistance as soon as possible.
- 2a. When setting up the contingency plan under Article 10a, air carriers and airport managing bodies shall pay particular attention to the specific needs of the passengers mentioned in paragraph 1.
3. Articles 9(4) and 9(5) shall not apply to passengers mentioned in paragraph 1, and pregnant women or a person in need of specific medical assistance. As regards pregnant women and persons in need of specific **medical** assistance, they shall be required to notify the air carrier of their particular needs for assistance at the time when the cancellation or delay at departure is announced.
4. For the purpose of this Regulation, air carriers and airport managing bodies shall ensure proper training of their staff in accordance with Regulation (EC) 1107/2006.

## Article 12

### Further rights

1. This Regulation shall not affect rights and claims of the passenger granted under other legal acts, including under Directive 30/314/EC. However, if these rights safeguard the same interest or have the same objective, the compensation or price reduction granted under Articles 7 or 10(2) of this Regulation and the compensation granted under the other legal acts, shall be deducted from each other.<sup>37</sup>
2. Without prejudice to relevant principles and rules of national law, including case-law, paragraph 1 shall not apply to passengers who have voluntarily surrendered a reservation under Article 4(1).

## Article 13

### Right of redress

In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation<sup>38</sup> may be interpreted as restricting its right to seek compensation for the costs incurred under this Regulation from any third parties which caused or contributed to the event triggering compensation or other obligations.

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<sup>37</sup> DE and NL proposes to delete the phrase "*if these rights safeguard the same interest or have the same objective*" due to its potential restriction of liability in the context of the Montreal Convention.

<sup>38</sup> ES, SI and the Commission do not support the deletion of the reference "*or of national law*".

## Article 14

### Obligations to inform passengers of their rights

1. The operating air carrier shall include on its website an information notice setting out the rules for compensation and assistance in line with this Regulation, including information on possible limitations pursuant to Articles 9(4) and 9(5). The operating air carrier shall also provide this information in paper or in the electronic form during the reservation process. The information shall be provided in the language of the reservation process.
  2. An operating air carrier calling for volunteers under Article 4(1), denying boarding or cancelling a flight shall provide each passenger affected with the information notice referred to in paragraph 1. It shall also provide each passenger affected by a delay of at least two hours with the information notice. The contact details of the competent complaint handling bodies designated under Articles 16 and 16a shall also be given to the passenger in written form. This information notice shall be provided at least in the language(s) of the place of the airport and in English.
- 2aaa. The Commission may adopt implementing acts<sup>39</sup> that define a standardised information notice to be used by the air carriers for the purposes of paragraphs 1a and 2. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 16c(2).
- 2aa. The operating air carrier shall ensure that at the check-in desks (including at self-service check-in machines) and at the boarding gate, the following text is displayed in a clearly legible form and in a manner clearly visible to passengers: "If you are denied boarding or if your flight is cancelled or delayed for at least two hours or is rescheduled, ask at the check-in counter or boarding gate for the information notice stating your rights, particularly with regard to assistance, care and possible compensation." This text shall be displayed at least in the language(s) of the place of the airport and in English.

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<sup>39</sup> In these implementing acts, the notification referred to in Article 11(3) can be included in the standardised information notice.

- 2a. At the time of the reservation, air carriers, organisers and ticket sellers shall provide information to the passenger on the deadline and on the procedure by which he/she can request the correction of a spelling mistake as specified in Article 4(5), without any additional charge. *[moved from Article 4(5)]*
- 2b. Air carriers, organisers and ticket sellers shall make available, including on their website, information on the air carrier's complaint handling processes in relation to the rights set out in this Regulation and on the relevant contact addresses, to which passengers can file claims, including via electronic means of transmission, as well as information on the body or bodies designated under Article 16(1) and 16a(3). *[moved from Article 16a(1) and 16(1a) merged]*
3. In respect of blind and visually impaired persons, the provisions of this Article shall be applied using appropriate alternative means.
4. The airport managing body shall ensure that general information on passenger rights is clearly and visibly displayed within the passenger areas of the airport. This general information shall be displayed at least in the language(s) of the place of the airport and in English.
5. In the event of cancellation or delay in departure, passengers shall be informed by the operating air carrier of the situation as soon as possible and in any event no later than the time of departure indicated in the reservation. Passengers shall also be informed of the reasons for the cancellation or delay, of the applicable flight distance as set out in Articles 5 and ~~76~~, and of the estimated time of departure as soon as this information is available.

6. Where the passenger does not acquire a ticket directly from the operating air carrier, but via an organiser or ticket seller established within the Union, the organiser or ticket seller shall provide the passenger's contact details to the air carrier, on condition that the passenger has given his explicit and written authorisation. This authorisation may only be given on an "opt-in" basis, after the passenger has been informed of the purpose of this transfer of data. The air carrier may use these contact details obtained pursuant to this paragraph exclusively for the purpose of fulfilling its information obligations under this Regulation and not for marketing purposes. The processing, access and storage of these data shall be undertaken in accordance with Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>40</sup>
7. An organiser or ticket seller shall be exempted from paragraph 6 if it can prove the existence of an alternative system that ensures that the passenger is informed without the transmission of the relevant contact details. In such case, the airline shall fulfil its information obligations under this Article towards the organiser or ticket seller who shall ensure the correct and timely transmission of the information to the passenger.
8. At booking air carriers shall explicitly and clearly inform passengers if under their terms and conditions passengers may be denied boarding on a particular flight on the grounds that he/she did not take a previous flight of the same ticket or did not pay an additional charge for this purpose. These terms and conditions shall remain fully in compliance with Directive 93/13/EEC on unfair terms in consumer contracts.

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<sup>40</sup> OJ L 281, 23.11.1995, p.31.

## **Article 15**

### **Exclusion of waiver**

1. Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.
2. If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.

## Article 16

### Enforcement

1. Each Member State shall designate a National Enforcement Body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.
  - 1a. *[moved to Article 14]*
  2. The National Enforcement Body shall closely monitor compliance with the requirements of this Regulation and take the measures necessary to ensure that the rights of passengers are respected. For this purpose, air carriers and airport managing bodies shall provide the relevant documents to the National Enforcement Body at its request.
  - 2a. The National Enforcement Body may also investigate and decide on enforcement actions based on information contained in individual complaints submitted by passengers.
3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive. In particular, such sanctions shall be sufficient to provide carriers with a financial incentive to comply consistently with the Regulation.<sup>41</sup>
4. *[deleted]*
5. For each year, at the latest at the end of June of the following calendar year, the National Enforcement Bodies shall publish a report on their activity, on the enforcement action and its outcome, including sanctions applied. These reports shall be submitted to the Commission and also be made available on the websites of the National Enforcement Bodies.
6. Air carriers shall communicate the contact data of the person(s) or of a body designated to act on their behalf on a permanent basis, in the Member State where they operate for matters covered by this Regulation, to the relevant National Enforcement Bodies.

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<sup>41</sup> IE and UK propose to delete the second sentence of this paragraph. DK, NL and PL propose the harmonisation of sanctions and enforcement measures by NEBs.

## Article 16a

### Complaints and disputes

1. *[moved to Article 14]*
- 1a. Air carriers shall set up or have in place a mechanism for the handling of complaints, including requests for claims for payment arising from rights and obligations set out in this Regulation. This mechanism shall also be available online and in all languages which may be used for reservation with the given air carrier. These mechanisms shall be easily accessible and operated in a transparent way.
2. Passengers may submit complaints, including claims for payment in writing to the operating air carrier within 6 months from the date on which the flight was performed or was to be performed according to the reservation. Within 10 days of the submission of the complaint, the carrier shall confirm the receipt of the complaint. Within two months of the submission of the complaint, the carrier shall provide a full justified answer to the passenger, including, where relevant, an explanation on extraordinary circumstances or unexpected flight safety shortcomings. **For the latter, this shall include information on how each criterion referred to in Annex II has been fulfilled.** The answer shall also contain the relevant contact details of bodies designated under paragraph 3 for out-of court dispute resolution, including postal address, phone number, website and e-mail address.
3. Without prejudice to Directive 2013/11/EU Member States shall ensure that air passengers can submit disputes regarding claims for payment under this Regulation to a national body or bodies responsible for the out-of-court resolution of disputes.<sup>42</sup> Member States shall inform the Commission of the body or bodies that has been designated in accordance with this paragraph. Member States may decide to apply this paragraph to disputes between air carriers and consumers only.

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<sup>42</sup> The Presidency proposes the following recital: *"When availing themselves of out-of-court dispute resolution procedures, passengers should not be obliged to retain a lawyer or legal advisor."*



3a. [deleted]

4. Without prejudice to Directive 2013/11/EU, Member States shall ensure that the out-of-court dispute resolution is available free of charge or at a nominal fee to passengers, and the designated body or bodies under paragraph 3 shall as a minimum: <sup>43</sup>
- meet the requirements of article 7(1) subparagraphs (a), (h) and (j) and Article 7(2) of that Directive;
  - provide a substantiated reply to the passenger with the outcome of their dispute resolution procedure within the time limits set out in Article 8(e) of Directive 2013/11/EU and in the case of highly complex disputes at the latest ~~9~~ 6 months from the date on which the designated body has received the complete complaint file. <sup>44</sup>
5. Where the body or bodies designated under paragraph 3 are different from those entrusted with the enforcement of this Regulation under Article 16(1), they shall cooperate and exchange information. <sup>45</sup>
6. The procedures under paragraphs 2 and 3 and the passenger's participation to such procedures shall be without prejudice to his right to seek redress through court proceedings or submit complaints within the meaning of Article 16(2a), subject to periods of limitation in accordance with national law. <sup>46</sup>

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<sup>43</sup> The PCY proposes to modify recital 22 as follows: "*Passengers should be adequately informed about the relevant procedures for submitting claims and complaints to air carriers and should receive a reply within a reasonable time period. Passengers should also have the option to complain about air carriers via out-of-court **dispute resolution** measures and, in doing so, they should retain the right to be represented by mandated third parties, such as lawyers, but should not be obliged to be represented. **Out-of-court dispute resolution bodies should respond to minimum quality standards but Member States should retain the freedom to apply higher standards in view of a higher level of consumer protection.** However, since the right to an effective remedy before a tribunal is a fundamental right recognised in Article 47 of the Charter of Fundamental Rights of the European Union, those measures should neither prevent nor hinder passengers' access to courts.*"

<sup>44</sup> DE and FI do not support the addition in the last sentence on highly complex issues.

<sup>45</sup> DE prefers to delete paragraph 5.

<sup>46</sup> NL, PL and UK propose to insert a two-year period of limitation for introducing claims.

**Article 16aa**  
**Burden of proof**

**As regards civil proceedings**, the burden of proving compliance with its obligations as set out in Articles 3 to 11 and 14, shall rest with the operating air carrier.

**Article 16b**  
**Cooperation between Member States and the Commission**

1. The Commission shall support dialogue and exchange of information between the National Enforcement Bodies concerning the application of this Regulation through the Committee referred to in Article 16c. This exchange of information will particularly concern infringements, sanctions and best practices of enforcement.
- 1a. At the request of the Commission, the National Enforcement Bodies shall send relevant information concerning the national interpretation and application of this Regulation.
2. [deleted]
3. [deleted]
4. At the request of a Member State, or on its own initiative, the Commission shall examine cases where differences in the application and enforcement of any of the provisions of this Regulation by the National Enforcement Bodies arise and particularly concerning the interpretation of extraordinary circumstances and unexpected flight safety shortcomings. To this end, the Commission may issue a recommendation after consultation of the Committee referred to in Article 16c(1).
5. In case of a specific suspected practice by one or several air carriers simultaneously in several Member States, the Commission may request the Member States concerned to investigate this specific practice and to report the findings to the Commission. The Commission shall support the exchange of information and the coordination of the respective National Enforcement Bodies with regard to the issue concerned.<sup>47</sup>

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<sup>47</sup> AT would prefer to delete this paragraph.

**Article 16c**  
**Committee procedure**<sup>48</sup>

1. The Commission shall be assisted by the Passenger Rights Committee, composed of up to two representatives of each Member State and of which at least one will represent a National Enforcement Body. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. [deleted]

**Article 17**

**Report**

The Commission shall report to the European Parliament and the Council XX.XX.20XX [3 years following the entry into force of the Regulation] on the operation and the results of this Regulation. The Commission shall also include information on the enhanced protection of air passengers on flights from third countries operated by non-Community carriers, in the context of international air transport agreements.

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<sup>48</sup> AT and HU do not see the need for this Article. DK, FR, ES and UK would prefer to use the examination procedure.

<sup>49</sup> Annexes 1 and 2 set out in Annex 1 to this Regulation are added to Regulation (EC)No 261/2004.

**Article 18a**  
**Entry into force**

This Regulation shall enter into force on the **twentieth day following that of its publication in the *Official Journal of the European Union*. It shall apply from XX.XX.20XX [ 24 months following its entry into force]**<sup>50</sup>.

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<sup>50</sup> This article is not part of the amending act proposed by the CION and has only been included in the consolidated version for easier reading (see footnote 62 on the same issue).

**Non-exhaustive list of circumstances considered as extraordinary<sup>51</sup>**

The following circumstances shall be considered as extraordinary.

- i. natural and/or environmental disasters which are deemed to affect the safe operation of the flight;
- ii. a hidden manufacturing defect revealed by the manufacturer or a competent authority and which impinges on flight safety;
- iii. security risks, acts of sabotage or unlawful acts, incompatible with the safe operation of the flight;
- iii.(a) war or political instability where the competent national public authorities of the country of departure of the journey advise against travel;
- iv. health risks or medical emergencies (such as serious illness) discovered at short notice before flight departure, or necessitating the interruption or deviation of the flight;
- v. air traffic management restrictions or closure of airspace;
- v.(c) unscheduled closure of an airport;
- vi. meteorological conditions incompatible with the safe operation of the flight or resulting in capacity restrictions at the airport of departure or of arrival; and
- vii. labour disputes<sup>52</sup> at essential service providers such as airports, Air Navigation Service Providers or groundhandling service providers;

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<sup>51</sup> DE and FI prefer a non-binding Annex allowing NEBs to divert from the Annex in justified cases and propose to add "*as a general rule*" in the text. DK prefers a binding and exhaustive Annex, or, alternatively complement the Annex with circumstances which are not extraordinary.

<sup>52</sup> FI and SE consider that labour disputes should not be included in the list of extraordinary circumstances.

- viii. disruptive passenger behaviour endangering the safe operation of the flight;
  - ix. collision of birds with the aircraft during a flight which may cause damage that requires immediate compulsory checks and possible repair;
  - x. damage to the aircraft caused by third parties for whom the air carrier, in the absence of contractual relations, is not responsible on the ground prior to departure of the flight and requiring immediate assessment or repair.
  - xi. damage to the aircraft which could affect the safety of the flight or the integrity of the aircraft and requires immediate assessment and/or repair and is caused by meteorological events (for example: lightning strikes, hailstones, thunderstorms, severe turbulence etc.).
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**List of criteria to be fulfilled by technical defect(s) and/or problems in order to qualify as unexpected flight safety shortcomings (Article 2(mm))<sup>53</sup>**

**1. Proper maintenance**

Maintenance has been executed in accordance with the up-to-date approved maintenance programme, by an appropriate qualified maintenance organisation and using the prescribed maintenance data as specified in accordance with Annex IV of Regulation (EC) No 216/2008, or for third country carriers with ICAO Annex 6.

**2. Time of discovery**

First discovery of the relevant defect is made during or after the pre-flight check and before the engine shutdown at the destination of the flight.

**3. Flight safety risk**

In accordance with Regulation (EC) No 216/2008, or for third country carriers with ICAO Annex 6, either:

- a) The defect is related to the airworthiness of the aircraft, is not listed in the Minimum Equipment List (MEL) and results in the defect having to be fixed before the flight can operate in accordance with Point M.A.403 of (EC) No 2042/2003; or,
- b) The defect is outside the limits set by the MEL, and it necessitates an immediate termination action of the flight operation; or
- c) Several defects occur which are listed in the MEL, and in accordance with Commission Regulation (EU) No 965/2012 the commander decides that it is not safe to operate the aircraft with the combination of these defects.

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<sup>53</sup> AT and DE do not support the separation of technical defects in a new definition.

**COUNCIL REGULATION (EC) No 2027/97 of 9 October 1997 on air carrier liability in  
the event of accidents**

**Article 1**

This Regulation implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions. It also extends the application of these provisions to carriage by air within a single Member State.

**Article 2**

1. For the purpose of this Regulation:

- (a) ‘air carrier’ shall mean an air transport undertaking with a valid operating licence;
- (b) ‘Community air carrier’ shall mean an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Regulation (EC) No 1008/2008;
- (c) ‘person entitled to compensation’ shall mean a passenger or any person entitled to claim in respect of that passenger, in accordance with applicable law;
- (d) ‘baggage’, unless otherwise specified, shall mean both checked and unchecked baggage with the meaning of Article 17(4) of the Montreal Convention;
- (e) ‘SDR’ shall mean a special drawing right as defined by the International Monetary Fund;
- (f) ‘Warsaw Convention’ shall mean the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, or the Warsaw Convention as amended at The Hague on 28 September 1955 and the Convention supplementary to the Warsaw Convention done at Guadalajara on 18 September 1961;



- (g) 'Montreal Convention' shall mean the 'Convention for the Unification of Certain Rules Relating to International Carriage by Air', signed at Montreal on 28 May 1999;
- (h) 'mobility equipment' shall mean any equipment whose purpose is to provide mobility to the disabled persons or persons with reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006<sup>54</sup>, or assist them in their mobility.

2. Concepts contained in this Regulation which are not defined in paragraph 1 shall be equivalent to those used in the Montreal Convention.

### Article 3

The liability of a Community air carrier in respect of passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability. This includes the liability of a Community air carrier concerning a passenger or baggage delay.

2. *[moved to Article 6]*

### Article 3a

The supplementary sum which, in accordance with Article 22(2) of the Montreal Convention, and without prejudice to Article 6a, may be demanded by a Community air carrier when a passenger makes a special declaration of interest in delivery of their baggage at destination, shall be based on a tariff which is related to the additional costs involved in transporting and insuring the baggage concerned over and above those for baggage valued at or below the liability limit. The tariff shall be made available to passengers on request.

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<sup>54</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p.1.

**(Article 4)**

*[deleted by amending Regulation (EC) 889/2002]*

**Article 5**

1. In case of death or injury of passengers<sup>55</sup>, the Community air carrier shall without delay, and in any event not later than fifteen days after the identity of the natural person entitled to compensation has been established, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the hardship suffered.
2. Without prejudice to paragraph 1, an advance payment in case of death of passengers shall not be less than 16% per passenger, of the limit of liability under Article 21(1) of the Montreal Convention and in line with the decisions by the International Civil Aviation Organization to review the limit of liability pursuant to Article 24(2) of the Montreal Convention.
3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of Community air carrier liability, but is not returnable, except in the cases prescribed in Article 20 of the Montreal Convention or where the person who received the advance payment was not the person entitled to compensation.

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<sup>55</sup> DE and RO propose to add a reference to 'serious injury'. AT supports the Commission proposal.

## Article 6

1. All air carriers shall, when selling carriage by air in the Union, ensure that a summary of the main provisions governing liability for passengers and their baggage, including deadlines for filing an action for compensation and the possibility of making a special declaration for baggage, is made available to passengers at all points of sale, including sale by telephone and via the Internet. In order to comply with this information requirement, Community air carriers shall use the notice contained in the Annex. Such summary or notice cannot be used as a basis for a claim for compensation, nor to interpret the provisions of this Regulation or the Montreal Convention. The Commission shall be empowered, by means of a delegated act in accordance with Article 6c, to adjust the amounts mentioned in the Annex, with the exception of the amount mentioned in Article 5(2), in line with the decisions by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention.<sup>56</sup>
2. In addition to the information requirements set out in paragraph 1, all air carriers shall in respect of carriage by air purchased in the Union, provide each passenger with a written indication of:
  - the applicable limit for that flight on the carrier's liability in respect of death or injury, if such a limit exists,
  - the applicable limit for that flight on the carrier's liability in respect of destruction, loss of or damage to baggage and a warning that baggage greater in value than this figure should be brought to the airline's attention at check-in or fully insured by the passenger prior to travel;
  - the applicable limit for that flight on the carrier's liability for damage occasioned by delay.

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<sup>56</sup> FR opposes the delegated acts foreseen in this paragraph.

3. In the case of all carriage performed by Community air carriers, the limits indicated in accordance with the information requirements of paragraphs 1 and 2 shall be those established by this Regulation unless the Community air carrier applies higher limits by way of voluntary undertaking. In the case of all carriage performed by non-Community air carriers, paragraphs 1 and 2 shall apply only in relation to carriage to, from or within the Union.
4. All air carriers shall provide at the airports and points of sale situated on the territory of a Member State to which the Treaty applies and on their websites a form which allows the passenger to immediately file a complaint about damaged, delayed or lost baggage. The date of submission of such a complaint shall be considered by the air carrier as the filing date of the complaint pursuant to Article 31(2) and 31(3) of the Montreal Convention, even if the air carrier requests further information at a later date. This possibility shall not affect the right of the passenger to submit a complaint via other means within the deadlines given by the Montreal Convention. *[moved from Article 3(2)]*

#### Article 6a

1. Whenever carrying checked in mobility equipment, the Community air carrier shall ensure that each disabled person or person with reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006<sup>57</sup> is offered the option to make a special declaration of interest pursuant to Article 22(2) of the Montreal Convention, at booking and at the latest when the equipment is handed over. The special declaration may be offered free of charge.<sup>58</sup>
2. [deleted]
3. In case of destruction, loss, damage or delay in the carriage of checked mobility equipment, the Community air carrier shall be liable to pay a sum not exceeding the sum declared by the passenger; unless it proves that the sum claimed is greater than the person's actual interest in delivery at destination.

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<sup>57</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p.1.

<sup>58</sup> DK, FI, HU and the Commission consider that the special declaration should always be made available free of charge.

## Article 6b<sup>59</sup>

[deleted]

## Article 6c

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 6(1) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.
3. The delegation of power referred to in Article 6(1) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 6(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

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<sup>59</sup> The Presidency proposes the following recital on enforcement: *"Member States should take measures to ensure the correct application of the rights conferred to passengers by Regulation (EC) No 2027/97, for example via the implication of enforcement authorities responsible for general consumer law."* CION is opposed to the deletion of the obligation for the Member States to enforce the rules as regards to baggage.

## Article 6d

1. Without prejudice to Regulation (EC) No 1008/2008, Community air carriers shall clearly indicate, at booking and on their website, and also make available on request at the airport (including at self-service check-in machines):
  - the maximum baggage allowance in terms of dimension and weight that passengers are permitted to carry within the cabin, and in the hold of the aircraft on each of the flights included within a passenger's reservation,
  - any restrictions on the number of items that would be applied within a given maximum baggage allowance.
  - the conditions under which fragile or valuable items, such as musical instruments, sports equipment, children's pushchairs and infant seats shall be transported in the passenger cabin or in the cargo hold of the aircraft,
  - potential additional charges applied for the carriage of baggage.
- 1a. Without prejudice to Regulation (EC) No 1107/2006 and to Article 23 of Regulation (EC) No 1008/2008, irrespective of the prescribed maximum cabin baggage allowance, passengers shall be permitted to carry in the cabin, at no extra cost, essential personal items or belongings, and at least one bag of airport shopping.<sup>60</sup>

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<sup>60</sup> BE, CZ, IE, NL, SE, SK and UK consider that as long as sufficient information is provided to the passenger, further rules on baggage should not be introduced and these aspects should be left to the commercial decision of the carrier. The Presidency proposes the following recital to clarify the concept of personal items: *"In order to ensure a sufficient personal comfort during their travel, passengers should be allowed to take at no cost personal items and belongings into the cabin, provided that their weight and dimension is reasonable and the items comply with applicable safety and security requirements. Such items may include, for example, a lady's handbag or purse, infant's food, medication, small musical instruments, an overcoat, an umbrella, a small camera, a small music player, reasonable amount of reading material and airport purchases."*

2. Where specific reasons, such as safety reasons, capacity reasons or a change of the aircraft type since the booking was made, preclude the carriage in the cabin of items included in the carry-on baggage allowance, the air carrier may carry them in the hold of the aircraft, but at no extra cost to the passenger.
3. This Article does not affect the restrictions on carry-on baggage established by EU and international security and safety rules such as Regulations (EC) No 300/2008, (EC) No 820/2008 and (EC) No 216/2008.

**Article 6e**<sup>61</sup>  
[deleted]

**Article 7**

The Commission shall report to the European Parliament and the Council by XX.XX.20XX [3 years following the entry into force of the Regulation ] on the operation and the results of this Regulation.

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<sup>61</sup> A recital will be inserted encouraging the transportation of musical instruments under appropriate conditions.

<sup>62</sup> This is Article 3 of the amending act and refers to the entry into force of the two revised regulations: *"This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. Regulation (EC) No 261/2004, as amended by this Regulation, shall apply from XX.XX.20XX [24 months following its entry into force]. Regulation (EC) No 2027/97, as amended by this Regulation, shall apply to rights and obligations arising from contracts concluded after its entry into force."*

## **AIR CARRIER LIABILITY FOR PASSENGERS AND THEIR BAGGAGE**

This information notice summarises the liability rules applied by Community air carriers as required by EU legislation and the Montreal Convention.

## **COMPENSATION IN THE CASE OF DEATH OR INJURY**

There are no financial limits to the liability for passenger injury or death caused by an accident on board the aircraft or during any of the operations of embarkation and disembarkation.

Without prejudice to Article 20 of the Montreal Convention on the exoneration of the air carrier, for damages up to 113,100 SDRs (*the air carrier shall indicate between brackets the approximate amount in local currency*), the air carrier cannot exclude or limit its liability. Above that amount, the air carrier is not liable if it proves that:

- the damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents, or
- that the damage was solely due to the negligence or other wrongful act or omission of a third party.

## **ADVANCE PAYMENTS**

If a passenger is killed or injured<sup>63</sup> the air carrier must make an advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation. In the event of death, this advance payment shall not be less than 18 096 SDR (*the amount is 16% per passenger of the limit of liability referred in the preceding paragraph and shall remain 16% whenever the amount is adapted in accordance with Article 6; the air carrier shall also indicate between brackets the approximate amount in local currency*)

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<sup>63</sup> DE and RO propose to add a reference to '*serious injury*'.



## PASSENGER DELAYS

In case of passenger delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for passenger delay is limited to 4 694 SDRs (*the air carrier shall indicate between brackets approximate amount in local currency*).

## BAGGAGE DELAYS

In case of baggage delay, the air carrier is liable for damage up to 1131 SDRs (*the air carrier shall indicate between brackets the approximate amount in local currency*), the compensation limit being applicable per passenger and not per piece of checked baggage. The air carrier shall not be liable when it has taken all reasonable measures to avoid the damage resulting from such delay or when it was impossible to take such measures.

## DESTRUCTION, LOSS OR DAMAGE TO BAGGAGE

The air carrier is liable for damage sustained in case of destruction, loss or damage to baggage up to 1 131 SDRs (*the air carrier shall indicate between brackets the approximate amount in local currency*), the compensation limit being applicable per passenger and not per piece of baggage.

In the case of damaged or lost checked baggage, the air carrier is liable, unless the damage is caused by an inherent defect, quality or vice of the baggage.

In the case of unchecked baggage (hand luggage), including personal items, the air carrier is only liable if the damage has resulted from its fault or that of its servants or agents.

## HIGHER LIMITS FOR CHECKED BAGGAGE

A passenger can benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee if so required. Such supplementary fee shall be based on a tariff which is related to the additional costs involved in transporting and insuring the baggage concerned over and above the liability limit of 1131 SDRs (*the air carrier shall indicate between brackets the approximate amount in local currency*), The tariff shall be made available to passengers upon request.

## EXONERATION

If the carrier proves that any damage covered by the liability rules applied by Community air carriers as required by Regulation (EC) 2027/97 and the Montreal Convention, including death or injury, was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

## TIME LIMIT FOR COMPLAINTS ON BAGGAGE

If the baggage is damaged, delayed, lost or destroyed, the passenger must in all cases write and complain to the air carrier as soon as possible. The passenger must complain in writing within a time limit of 7 days in the case of damage to checked baggage, and within a time limit of 21 days in case of delayed baggage, in both cases from the date on which the baggage was placed at the passenger's disposal. In order to facilitate compliance with these deadlines, the air carrier must offer passengers the possibility to file a complaint at the airport through a form. Such complaint form must be accepted by the air carrier at the airport as a complaint. The date of submission of such a complaint shall be considered by the air carrier as the filing date of the complaint pursuant to Articles 31(2) and 31(3) of the Montreal Convention, even if the air carrier requests further information at a later date.

## LIABILITY OF CONTRACTING AND ACTUAL CARRIERS<sup>64</sup>

If the air carrier actually performing the flight is not the same as the contracting air carrier, the passenger has the right to address a complaint or to make a claim for damages against either. This includes cases where a special declaration of interest at delivery has been agreed with one or the other of the two carriers.

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<sup>64</sup> DE proposes to change the title as follows “*Liability of community air carriers and contracting air carriers*” and to substitute “*air carrier*” by “*Community air carrier*” in the first sentence.

## TIME LIMIT FOR ACTION

Any action in court to claim damages must be brought within two years from the date of arrival of the aircraft, or from the date on which the aircraft ought to have arrived.

## BASIS FOR THE INFORMATION

The basis for the rules described above is the Montreal Convention of 28 May 1999, which is implemented in the European Union by Regulation (EC) No 2027/97 (as amended by Regulation (EC) No 889/2002 and by Regulation (EU) No xxx and national legislation of the Member States.

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**Review table on compensations for cancellation and delay in accordance with  
Articles 5, 6 and 7**

<b>Delay (hr)</b>	<b>Distance (km)</b>	<b>Amount (EUR)</b>
<b>5</b>	<b>all 0-1500</b>	<b>250</b>
<b>9</b>	<b>all 1500-3500 km</b>	<b>400</b>
<b>12</b>	<b>all 3500 - more <u>except</u> to and from the Union's outermost regions</b>	<b>600</b>
<b>12</b>	<b>all 3500 - more to and from the <u>Union's outermost</u> <u>regions</u></b>	<b>400</b>