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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a regulation 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 Compromise proposed by the Polish Presidency for recitals

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In view of the Working Party on Aviation of 19 May 2025, delegations will find, in Annex, a compromise proposed by the Presidency for Recitals. Changes compared to the previous version are highlighted in **bold underlined** and ~~striketrough~~.

Delegations are requested to send their comments, if any, in writing at [avia-mar@consilium.europa.eu](mailto:avia-mar@consilium.europa.eu) by 20 May 2025 cob.

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**

Whereas:

- (1) 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<sup>1</sup>, and Regulation (EC) No 2027/97 of the Council of 9 October 1997 on air carrier liability of the carriage of passengers and their baggage by air<sup>2</sup> have significantly contributed to protecting the rights of air passengers when their travel plans are disrupted by denied boarding, long delays, cancellations or mishandled baggage.
- (2) A number of shortcomings, revealed during the implementation of the rights under the Regulations, have however prevented their full potential in terms of passenger protection from being realised. In order to ensure a more effective, efficient and consistent application of air passenger rights across the Union, a series of adjustments to the current legal framework is required. This was underlined in the Commission 2010 EU Citizenship Report on dismantling obstacles to EU citizens' rights<sup>3</sup> which announced measures to ensure a set of common rights notably for air passengers and the adequate enforcement of these rights.
- (2a) The Study mandated and published by the Commission in 2020 (hereafter “the Study”) showed that passengers’ main priority is to be provided with assistance in the event of travel disruption and to be offered rerouting so that they arrive at their destination as soon as possible. The Study showed that the payment of compensation comes third by order of priority. On the other hand, the Study also showed that the absolute and relative costs incurred by air carriers through the implementation of Regulation 261/2004 have grown significantly since 2011 with a risk to result in a restriction in the number of routes operated or a reduction in connectivity offered to passengers in the long term. The revision of Regulation 261/2004 should therefore focus particularly on passengers’ rights to assistance and rerouting, while taking into account economic incentives of air carriers and impacts on connectivity.
- (2b) Passengers travelling on a flight covered by Public Service Obligations, either at a full or at a reduced fare, should be subject to the same rights under this Regulation.

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<sup>1</sup> OJ L46, 17.2.2004, p.1

<sup>2</sup> OJ L285, 17.10.1997, p.1; modified in OJ L140, 30.5.2002, p.2

<sup>3</sup> COM(2010) 603 final

- (3) In order to increase legal certainty for air carriers and passengers, a more precise definition of the concept of "extraordinary circumstances" is needed, which takes into account the judgement of the European Court of Justice in the case C-549/07 (Wallentin-Hermann) interpreting the original version of Regulation 261/2004. Such a definition should be further clarified via a non-exhaustive list of circumstances that are clearly identified as extraordinary or not. The Commission should review the list of extraordinary circumstances every three years and propose, as appropriate, to the European Parliament and the Council to update that list.
- (3a) In the original version of Regulation 261/2004, as interpreted by the Court in the Case C-549/07 (Wallentin-Hermann), an unexpected technical problem was not considered as an extraordinary circumstance, except when limited to a hidden manufacturing defect revealed by the manufacturer of the aircraft or by a competent authority, or damage to the aircraft caused by acts of sabotage or terrorism. However, in the light of experience gained and given the overriding importance of ensuring that the rights granted to passengers under this Regulation are not detrimental to safety, technical issues with an aircraft that could not be **remedied** ~~identified~~ as part of preventive maintenance in line with EU rules and procedures for the continuing airworthiness management of aircraft should be considered as extraordinary circumstances.
- (3b) In the original version of Regulation 261/2004, as interpreted by the Court in Joined eCases C-156/22, C-157/22 and C-158/22 (TAP Portugal), the unexpected absence due to illness or even unexpected death, shortly before the departure of a flight, of member whose presence is essential to its operation were not considered as an extraordinary circumstances. Nonetheless, even though air carriers have the duty to take all reasonable measures to ensure replacement of the **pilot, co-pilot or minimum required cabin** crew, ensuring compliance with that obligation in practice ~~if~~ outside the carrier **home** bases requires considerable time and highly financial cost. Therefore, it is appropriate to provide that the **unexpected** sickness or death of an essential crew member, **for instance when it occurs the day before the departure of the flight**, outside the bases of air carriers should be considered as an extraordinary circumstance.
- (3c) In the original version of Regulation 261/2004, as interpreted by the Court in Cases C-28/20 (Airhelp Ltd), C-195/17 (Krüsemann and Others), C-613/20 (Eurowings) and C-287/20 (Ryanair), strikes by airline staff were not considered as extraordinary circumstances. Nonetheless, when a strike occurs, certain demands do not fall within the remit of the air carrier and are outside its control, **such as changes in the retirement age or in financial contributions that can only be addressed by public authorities**. Therefore, it is appropriate to provide that certain strikes by airline staff should be considered as extraordinary circumstances.
- (4) In the original version of Regulation 261/2004, as interpreted by the Court in Case C-173/07 (Emirates), the concept of 'flight' within the meaning of Regulation No 261/2004 was not defined but considered as consisting essentially of an air transport operation, as a 'unit' of such transport, performed by an air carrier which fixes its itinerary. In order to avoid uncertainty and in the light of experience gained, a clear definition of a "flight" should now be provided, as well as for the associated notions of "connecting flight" **and "journey"**.
- (4a) In the original version of Regulation 261/2004, as interpreted by the Court in Case C-537/17 (Wegener), the Regulation applied to any flight part which was part of one journey regardless of where the flights took place, including flights fully operated outside the Union; **when either the initial point of departure is located in the territory of a Member States to which the**

**Treaties apply, or, when the operating air carrier is a Union operating air carrier, when the final destination of the journey is located in the territory of a Member States to which the Treaties apply.** Nonetheless, the Draghi report emphasised the critical role of transport for the Union's competitiveness and the risk of business diversion from transport hubs in the Union to those in the Union's neighborhood, stemming from asymmetric regulations. Regulation 261/2004 applies 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, only if the operating air carrier of the flight concerned is a Union air carrier. This asymmetry creates distortions of competition between Union air carriers and third country air carriers and discriminates between passengers flying on the same routes. Those differences are exacerbated by the fact that, according to the Study, multiple National Enforcement Bodies face difficulties with enforcement on and compliance by non-EU carriers. The difficulties of enforcement are compounded for flights fully operated outside the Union. With a view to reducing competition distortions between Union air carriers and third country air carriers and ensuring effective enforceability of passengers' rights, this Regulation should not apply to a passenger during the part of a journey which is fully operated outside the Union.

- (4aa) The Study has shown a higher level of compliance with Regulation 261/2004 by Union air carriers. Therefore, restoring the level-playing field between Union and non-Union air carriers and improving the economic sustainability of Union air carriers will support the Union flagship and ultimately improve the protection of passengers overall.
- (4b) Greenland is subject to particularly harsh meteorological conditions, and is characterised by very low population density and the remoteness of its populated places. To ensure connectivity and to maintain the availability of flights within Greenland, flights within Greenland should not be covered by the obligations regarding compensation, including where those flights are connecting flights which arrive at or depart from the territory of a Member State to which the Treaties apply.
- (4d) Tickets are issued or authorised by the operating air carrier following the conclusion of an air transport contract with a passenger. **They should be identifiable through a unique ticket number and contain a unique reference related to the air transport contract issued at booking.** They should be deemed to cover one flight or connecting flight **of a journey covered by the air transport contract**, without taking into account intermediate stops for technical and operational purposes. They should contain several pieces of information regarding that flight or connecting flight such as the flight date, departure and arrival, the scheduled times of departure and arrival, the passenger's name, surname, the flight number and the name of the operating air carrier. ~~Tickets should be identifiable through a unique ticket number.~~
- (5) In the case C-22/11 (Finnair), the European Court of Justice decided that the concept of 'denied boarding' must be interpreted as relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons. Passengers who have presented themselves for boarding and are denied boarding or who have been informed in advance that they would be denied boarding against their will should be reimbursed **without undue delay** ~~immediately~~.
- (5a) At the same time, there are reasonable grounds to deny passengers boarding, such as reasons of health, safety, ~~or~~ security, or inadequate travel documentation. Air carriers have also reasonable grounds to deny boarding to passengers displaying unruly behaviour threatening the safety or security of a flight, as referred into the amended Convention on Offences and

Certain Other Acts Committed on Board Aircraft. The operating air carrier should bear the burden of proof.

- (7) In order to improve levels of protection, passengers should not be denied boarding on a return flight on the ground that they did not take the outbound flight of the same air transport contract.
- (8) At present, passengers are sometimes penalised for spelling errors in their names by the application of punitive administrative fees. Reasonable corrections of booking errors, or in case of an administrative change, should be provided free of charge provided they do not imply a change of times, date, itinerary or passenger.
- (9) In cases of cancellation, the choice between receiving reimbursement, continuation of travel by rerouting or travel at a later date should be the decision of the passenger and not that of the air carrier.
- (10) Airport managing bodies, at airports whose annual traffic is not less than five million passenger movements, and airport essential service providers, in particular air carriers and the suppliers of ground-handling services should cooperate to minimise the impact of multiple flight disruptions on passengers. To this end, airport managing bodies should prepare contingency plans for such occurrences and work together in the development of such plans. At all other airports with more than 700 000 passenger movements per year, the airport managing body should make all reasonable efforts to coordinate and make arrangements with airport users to inform stranded passengers in situations leading to a considerable number of passengers stranded.
- (11) Regulation (EC) No 261/2004 should explicitly include the right to compensation for passengers suffering long delays, in line with the judgement of the European Court of Justice in the Joined cases C-402/07 and C-432/07 (Sturgeon). The Sturgeon judgement has fixed a one-trigger time threshold of three hours for compensation in cases of delay. However, many delays cannot be resolved within the three hours fixed in that judgement and a short threshold may increase the number of flight cancellations where air carriers reduce the knock-on effects of delayed flights on the subsequent flights by cancelling one or several flights to reposition the aircraft for a next flight. In most circumstances, the passenger would still prefer a delay over a cancellation because the passenger has more certainty to arrive at destination at the earliest opportunity. On many routes, the frequency of flights is limited and, in cases of cancellation, the passenger cannot be immediately rerouted. Increasing the time threshold therefore presents an advantage for the passenger. Finally,
  - (11a)** ~~W~~with a view to maintaining connectivity, the thresholds above which delays give rise to a right to compensation should be increased to take account of the financial and competitiveness impact on the sector. In this way, it will be possible to avoid incentivising any increase in the frequency of cancellations or restrictions in the number of routes operated or reductions in connectivity offered to passengers in the long term. To ensure that passengers travelling within the EU face homogenous conditions for compensation, the threshold should be the same for all travel within the Union.
  - (11ab)** The standardised compensation in the original version of Regulation 261/2004 serves to compensate a loss of time which is common to all passengers while the amounts fixed in the original version of Regulation 261/2004 could in many cases go beyond the value of the damage incurred by passengers as established by economic studies. It is therefore appropriate

to define different thresholds for compensation according to the distance of the flight disrupted and the delay at arrival.

- (11**bc**) In line with the Union's efforts to promote a climate-neutral and environmentally friendly mobility, it is also appropriate to ensure that regulatory frameworks for passenger rights of transport modes converge to the extent possible and that compensations are levelled between transport modes.
- (12) To ensure legal certainty, Regulation (EC) No 261/2004 should explicitly confirm that the changing of flight schedules has a similar impact on passengers to cancellations or delays and should therefore give rise to the same rights.
- (13) Passengers missing a connecting flight part of ~~a journey~~a journey~~an air transport contract~~ as a result of a disruption on a previous flight within the scope of this Regulation should be properly assisted while waiting for rerouting. In such cases, in line with the principle of equal treatment, passengers should be entitled to compensation upon reaching the final destination of their alternative flight or transportation, on a similar basis to passengers suffering disruptions on direct flights.
- (13a) At the time of booking and prior the purchase of the tickets, air carriers, or, where appropriate, the intermediaries should clearly inform passengers whether their travel plans would be covered by a single air transport contract and of their rights under the Regulation, particularly regarding missed connecting flights.
- (14) In order to enhance passenger protection, it should be clarified that delayed passengers ~~enjoy~~ benefit from rights to assistance and compensation irrespective of whether they are waiting in the airport terminal or are already seated on board the aircraft. However, as the latter have no access to the services available in the terminal, their rights should be reinforced with regard to basic needs and with regard to the right to disembark. The right to disembark may only be limited if there are safety, immigration, air traffic control or security-related reasons. If an air carrier is about to disembark passengers but is informed by Air traffic control authorities that the flight is about to take-off, it should be allowed to decline to disembark passengers.
- (15) Where a passenger has taken up the choice of rerouting at the earliest opportunity, the air carrier often makes the rerouting conditional upon the availability of seats on its own services, thereby denying their passengers the option of being rerouted more quickly by alternative services. Therefore, the carrier should also consider other options for rerouting, including to an alternative airport, via a different route, on another carrier's services or on other transport modes where this can speed up rerouting. Alternative rerouting should be dependent upon the availability of seats. If the air carrier has not offered a re-routing and the **cumulated** waiting time is prolonged by at least three hours, the passenger should have the right to arrange its own rerouting in order to reach its final destination without unnecessary delay. Such rerouting should be, under conditions, at the air carrier's expenses and at comparable transport conditions.
- (15a) When rerouting passengers, air carriers should seek to ensure that passengers can travel with their baggage, including checked and unchecked baggage. An air carrier should be allowed by the passenger to proceed otherwise if restrictions on baggage transportation caused further delays to passengers awaiting rerouting, without prejudice to its liability in respect of passengers' baggage governed by Regulation N° 2027/97 and the Montreal Convention.

- (15b) Whether transport conditions are comparable could depend on a number of factors and on the circumstances. Where possible and it does not entail further delay, passengers should not be downgraded to transport services of a lower class compared with the one on the reservation. Re-routing should be offered at no additional cost to the passenger, even if passengers are re-routed with another air carrier or on a different transport mode or in a higher class or at a higher fare than the one paid for the original service. Reasonable efforts should be made to avoid additional connections. When using another air carrier or an alternative mode of transport for re-routing, the total travel time should be as close as reasonably possible to the scheduled travel time of the original flight, in the same class of carriage or a higher one if necessary. If several flights are available with comparable timings, passengers having the right to re-routing should accept the offer of re-routing made by the air carrier, including on those air carriers cooperating with the operating air carrier. If assistance for people with disabilities or reduced mobility was booked for the original flight, such assistance should also be available on the alternative route in accordance with Regulation 1107/2006.
- (16) Passengers should be offered assistance from the scheduled time of departure until the departure of their flight or alternative transportation. Air carriers currently face unlimited liability for the accommodation of their passengers in the case of extraordinary circumstances of long duration. This uncertainty linked with the absence of any foreseeable limit in time may risk endangering a carrier's financial stability, with consequential negative effects for passengers in terms of connectivity. An air carrier should therefore be able to limit the provision of accommodation to three nights. Moreover, contingency planning and speedy rerouting should lessen the risk of passengers being stranded for long periods.
- (17) [...]
- (18) The needs of passengers with specific needs such as persons with disabilities, persons with reduced mobility, minors, pregnant women and persons in need of specific medical assistance such as people with severe diabetes or epilepsy, may require specific attention by the operating air carrier. In particular, it may be more difficult to arrange accommodation when flight disruptions occur. Therefore, any limitations on the right for accommodation in cases of extraordinary circumstances should not apply to these categories of passenger.
- (18a) Regulation (EC) No 261/2004 also applies to passengers that have booked their air transport as part of a package travel. The revision aims at further improving coherence between Directive (EU) 2015/302<sup>4</sup> and the Regulation. To that extent, passengers may not cumulate corresponding rights, in particular under both legislations.
- (19) The reasons behind the current level of delays and cancelled flights in the EU are not attributable solely to air carriers. In order to incentivise all actors in the aviation chain to seek efficient and timely solutions to minimise the inconvenience that long delays and cancellations cause to passengers, air carriers should have the right to seek redress from any third party which contributed to the event triggering compensation or other obligations.
- (19a) In the case C-502/18 (České aerolinie), the European Court of Justice held that, in the case of connecting flights, within the scope of the Regulation, any operating air carrier which participated in the performance of at least one of those connecting flights is liable to compensate the passenger under this Regulation whether or not the flight which that air carrier

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<sup>4</sup> OJ L 326, 11.12.2015.

operated was disrupted. Even if the Regulation recalls that operating carriers fulfilling duties under it may seek compensation to any third party, the Study has shown poor effectiveness of the right of redress recalled in the Regulation. As a result, Union air carriers bear a disproportionate financial burden compared to non-Union air carriers. With a view to restoring Union air carriers competitiveness in line with the recommendations of the Draghi report, and to maintaining, in the long run, connectivity, the revision of 261/2004 should therefore limit the liability of an air carrier to the flights it operates as operating air carrier.

- (20) Regulation (EC) No 2111/2005 imposes an obligation to inform the passenger of the identity of the operating air carrier and Directive 93/13/EC imposes obligations to provide information on terms and conditions. Passengers should not only be correctly informed about their rights in cases of flight disruption, but they should also be adequately informed about the cause of the disruption itself, as soon as the information becomes available. This information should also be provided where the passenger has acquired the ticket through an intermediary established in the Union. Such information should be at least provided by the air carrier or the intermediary in accessible format and, where appropriate, through so-called “push” notifications from mobile applications or other digital means.
- (20a) In order to ensure a better enforcement of passenger rights, the National Enforcement Bodies should monitor the enforcement of the Regulation and, decide on appropriate sanctions to incentivise air carrier to comply with this Regulation.
- (21) In order to ensure a better enforcement of passenger rights, Member States should enable consumers to access to a mechanism for an out-of-court-resolution of disputes after those consumers have unsuccessfully complained or submitted a request to the air carrier or the intermediary. Those mechanisms should be without prejudice to the right of the Member States to determine whether the participation of the air carriers or intermediaries should be mandatory.
- (21a) When passengers choose to be reimbursed after a disruption, they should be automatically reimbursed, in a timely manner, without filling a dedicated request.**
- (22) Passengers should be adequately informed about the relevant procedures for submitting requests for reimbursement and compensation and complaints to air carriers and should receive a reply within a reasonable time period. Passengers should also have the option **to submit individual disputes following complaints or requests** about air carriers via out-of-court measures. 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.
- (22a) In order to enable passengers and consumers to exercise their rights regarding requests, complaints and individual disputes, they should be able to directly and personally make an application to the air carriers, intermediaries, or the relevant bodies under this Regulation, in a clear and accessible manner.**
- (23) [...]
- (24) [...]
- (25) [...]



- (26) [...]
- (27) Having regard to the United Nations Convention on the Rights of Persons with Disabilities, in order to ensure that the damage to, destruction or loss of mobility equipment or the injury or death of recognised assistance dogs are compensated to their full replacement cost, air carriers should offer free of charge to persons with disabilities and persons with reduced mobility, as defined in Regulation 1107/2006, the opportunity to make a special declaration of interest, which pursuant to the Montreal Convention, allows them to seek full compensation.
- (27a) Disabled person or the person with reduced mobility should be entitled to immediately receive from air carriers needed temporary replacement for checked mobility equipment in case of their loss, destruction or damage. Given recognised assistance dogs cannot be easily replaced, other temporary solutions in replacement of their loss, death or injury should be provided.**
- (28) Passengers are sometimes confused about the baggage they are allowed to take on board, in terms of dimensions, weight or number of items. In order to ensure that passengers are fully aware of the baggage allowances included in their ticket, both for unchecked and checked baggage, air carriers should clearly indicate these allowances at booking and at the airport. In order to ensure sufficient personal comfort during passengers' travel, passengers should be allowed to take at no cost personal items constituting a necessary aspect of their carriage into the cabin, provided that the items comply with applicable safety and security requirements and meet reasonable requirements in terms of weight and dimensions. **Personal items considered as necessary aspects of the carriage of passengers are understood to be those items that are essential for the duration of the journey and may include passports and other travel documents, essential medicines, personal devices and reading materials as well as food and beverage appropriate to the duration of the flight.** ~~Such items may include, for example, a handbag or purse, infant's food, medication or an overcoat.~~ Personal items constituting a necessary aspect of the carriage of passengers are independent of the air carrier or even the type of aircraft and should always be allowed to be brought into the cabin and should not be transported in the hold.
- (28a) Passengers should be informed at booking, in clear and accessible format, of the maximum dimensions and weight of the baggage they can bring with them in the cabin. Given the diversity of the air carriers' policies, it is appropriate to set uniform minimal rules for all Union carriers and all flights departing from the Union, without prejudice to the principle of freedom of pricing under Regulation 1008/2008. Air carriers operating on regional routes with small aircraft should be exempted, given the capacity constraints on those aircraft.**
- (29) Musical instruments can be of immense monetary, artistic and historic value. Moreover, musical instruments are the tools of musicians' trade on which they regularly rehearse and perform and cannot be easily replaced. Therefore, passengers should be entitled to carry in the cabin musical instruments under their own responsibility, provided those instruments respect capacity, safety and security rules and the air carrier maximum baggage allowance policy. When capacity, safety and security requirements are fulfilled, the air carrier should endeavour to allow passengers to carry musical instruments on additional seats, provided that the corresponding fares have been paid. Where this is not possible, musical instruments should, where possible, be carried under the appropriate conditions in the cargo compartment of the aircraft. Regulation (EC) No 2027/97 should be amended accordingly.

- (30) [...]
- (31) Given the short deadlines for the submission of complaints for the rights and obligations covered by Regulation 2027/97, air carriers should give passengers the possibility to submit a complaint by providing a complaint form at least on their mobile applications and on their websites. That form should allow the passenger to immediately file a complaint about damaged, delayed or lost baggage.
- (32) Article 3(2) of Regulation (EC) No 2027/97<sup>5</sup> has become obsolete as insurance matters are now regulated by Regulation (EC) No 785/2004. It should accordingly be deleted.
- (33) It is necessary that the monetary limits referred to in the annex to Regulation (EC) No 2027/97 should be regularly amended by air carriers in order to take into account economic developments, as reviewed by the International Civil Aviation Organization (ICAO) pursuant to Article 24(2) of the Montreal Convention.
- (33a) In future reviews of this Regulation, the Commission should include information on the enhanced protection of air passengers on flights from third countries operated by non-EU carriers, in the context of international air transport agreements and assess the possible need to extend the scope of this Regulation.
- (33b) The Commission should assess the feasibility of setting up ~~uniform rules for unchecked baggage and of setting up~~ a fund to protect passengers in case of insolvency of air carriers.
- (34) [...]
- (35) [...]
- (36) Since the objective of this Regulation, namely protecting air passenger rights in a fair and balanced manner having regard to the competitiveness of the Union's aviation sector and the need to maintain connectivity for passengers in the long term cannot be sufficiently achieved by the Member States but can rather, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

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<sup>5</sup> Regulation (EC) No 2027/97 of the Council of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air, OJ L 285, 17.10.1997, p.1 as modified by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002, OJ L 140, 30.5.2002, p.2