



Council of the  
European Union

Brussels, 4 June 2025  
(OR. en)

9430/25  
ADD 3

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**Interinstitutional File:**  
**2013/0072 (COD)**

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**AVIATION 63**  
**CONSOM 92**  
**CODEC 690**

**NOTE**

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From:	General Secretariat of the Council
To:	Council
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 - Political agreement

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Delegations will find in Annex the compromise text proposed by the Presidency for Annex II.

**Annex 2****ANNEX****AIR CARRIER LIABILITY FOR PASSENGERS AND THEIR BAGGAGE**

This information notice summarises the liability rules applied by Union 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 the limit under Article 21 of the Montreal Convention as updated by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention (the air carrier shall indicate between brackets the approximate amount in local currency), the 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, 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 16% of the limit under Article 21 of the Montreal Convention as updated by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention (the air carrier shall indicate between brackets the approximate amount in local currency).

## **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 the limit under Article 22(1) of the Montreal Convention as updated by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention (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 the limit under Article 22(2) of the Montreal Convention as updated by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention (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 up to the limit under Article 22(2) of the Montreal Convention as updated by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention (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 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 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 the limit under Article 22(2) of the Montreal Convention as updated by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention (the air carrier shall indicate between brackets the approximate amount in local currency). The tariff shall be made available to passengers upon request.

Disabled passengers and passengers with reduced mobility shall systematically be offered at booking, at the same time as the notification pursuant to Article 6 of Regulation (EC) No 1107/2006, and at the latest when the equipment is handed over to the air carrier and, in the case of recognised assistance dog, at boarding, the option of making a special declaration of interest in accessible format for the transportation, at no additionnal cost, of their mobility equipment or of their recognised assistance dog.

## **EXONERATION**

If the carrier proves that any damage covered by the liability rules applied by Union 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 complain to the air carrier as soon as possible. The passenger must complain within a time limit of 7 days in 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. To that extent, passengers may find a dedicated form on the websites and on the online applications of air carriers which can either be submitted on paper or online. 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**

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.

## **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.

## **MOBILITY EQUIPMENT DESTRUCTION, LOSS, DAMAGE OR DELAY**

The air carrier is liable for destruction, loss, damage or delay of mobility equipment up to the limit under Article 22(2) of the Montreal Convention pursuant to Article 24(2) of the Montreal Convention (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.

A passenger can benefit, at no additional cost, from a higher liability limit by making a special declaration specifying the cost of replacement of its mobility equipment, at the latest at check-in.

In case of destruction, loss, damage or delay of mobility equipment, the the air carrier shall pay a compensation not exceeding to the sum declared in the special declaration.

Before the payment of this compensation, the air carrier shall make all reasonable efforts to provide immediately needed temporary replacements for mobility equipment beyond the termination of the journey of the passengers concerned.'

#### **BASIS FOR THE INFORMATION**

The basis for the rules described above is the Montreal Convention of 28 May 1999, which is implemented in the 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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