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LIMITE

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| From: | General Secretariat of the Council |
| To: | Working Party on Aviation |
| N° Cion doc.: | ST 7615 2013 INIT ST 16284 2013 INIT |
| Subject: | Consolidated text of regulatory proposals adopted by the Commission to amend Regulation 261/2004 |

Delegations will find **for information**, in Annex, the consolidated text of regulatory proposals (2013/0072 (COD) and 2023/0437 (COD)) adopted by the Commission to amend Regulation 261/2004.

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NB: Text in *bold and italics* shows the amendments made to Regulation 261/2004 in the **Commission's 2013 Proposal** (2013/0072).

Amendments to Regulation 261/2004 contained in the **2023 proposal** (2023/0437) are visualised in *bold and italics*.

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.

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.

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 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*¹;

(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 tours²;

(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 its authorised agent;

(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 or tour operator;

(h) "final destination" means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight; alternative connecting flights available shall not be taken into account if the original planned arrival time is respected;

(i) "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*³.

(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" means a person who has presented himself for boarding under the conditions laid down in Article 3(2) and responds positively to the air carrier's call for passengers prepared to surrender their reservation in exchange for benefits.

(l) "cancellation" means the non-operation of a flight which was previously planned and on which at least one place was reserved. *A flight where the aircraft took off but, for whatever reason, was subsequently forced to land at an airport other than the airport of destination or to return to the airport of departure, shall be considered a cancelled flight.*

(m) «extraordinary circumstances» means circumstances which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. For the purposes of this Regulation, extraordinary circumstances shall include the circumstances set out in the Annex;

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

(o) «connecting flight» means a flight which, under a single contract of carriage, is intended to enable the passenger to arrive at a transfer point in order to depart on another flight, or, where appropriate in the context, means that other flight departing from the transfer point.

¹ OJ L293, 31.10.2008, p. 3.

² OJ L158, 23.6.1990, p. 59

³ OJ L204, 26.7.2006, p.1

(p) "journey" means a flight or a continued series of connecting flights transporting the passenger from an airport of departure to his final destination in accordance with the contract of carriage;

(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 paid for all optional and non-optional services included in the ticket;

(t) "flight price" means the value obtained by multiplying the ticket price by the ratio between the distance of the flight and the total distance of the journey(s) covered by the ticket;

(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 start of boarding of the passengers 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" means the period between midnight and 6 a.m.,

(y) "unaccompanied child" means a child who travels without an accompanying parent or guardian and where the air carrier has accepted responsibility for care in accordance with its published rules.

(z) 'intermediary' means any ticket vendor, organiser or retailer as defined in points (8) and (9) respectively of Article 3 of Directive (EU) 2015/2302 other than a carrier.

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 carrier.

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

(a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5 *and in the case of change of schedule referred to in Article 6*, present themselves for *boarding*,

- as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the *organiser* or an authorised travel agent,

or, if no time is indicated,

- not later than 45 minutes before the *scheduled* departure time; 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 tour operator.

4. *Without prejudice to Article 8(6), this Regulation shall only apply to passengers transported by motorised fixed wing aircraft. However, where a part of the journey is carried out, in accordance with a contract of carriage, by another mode of transport or by helicopter, this Regulation shall apply for the whole journey and the part of the journey carried out by another mode of transport shall be considered as a connecting flight for the purposes of this Regulation.*

5. This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.

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. The passenger shall be entitled to present claims under this Regulation and under Council Directive 90/314/EEC, but may not in relation to the same facts cumulate rights under both legal acts if the rights safeguard the same interest or have the same objective. 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. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.

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 compensate them in accordance with Article 7 and assist them in accordance with Articles 8. *Where the passenger opts for rerouting at the earliest opportunity pursuant to Article 8(1)(b) and where the departure time is at least two hours after the initial departure time, the operating carrier shall assist the passenger in accordance with Article 9.*

4. Paragraphs 1, 2 and 3 shall also apply to return tickets where the passenger is denied boarding at the return journey on the grounds that he/she did not take the outward journey or did not pay an additional charge for this purpose.

5. Where the passenger, or an intermediary acting on behalf of the passenger, reports a spelling mistake in the name of one or several passengers included in the same contract of carriage that may lead to a denial of boarding, the air carrier shall correct this at least once up until 48 hours before departure without any additional charge to the passenger or the intermediary, except where it is prevented from doing so by national or international law.

Article 5

Cancellation

1. In case of cancellation of a flight, the passengers concerned shall:

(a) *be offered by the operating air carrier the choice between reimbursement, continuation of their travel by rerouting or travel at a later date, in accordance with Article 8; and*

(b) *be offered by the operating air carrier in the event of re-routing when the reasonably expected time of departure of the flight is at least 2 hours after the planned departure of the cancelled flight, the care specified in Article 9 and*

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:

(i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

(ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

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

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

4. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.

5. At airports whose annual traffic has been not less than three 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, including in cases of airline insolvency or revocation of the operating licence. The contingency plan shall be set up to ensure adequate information and assistance to the stranded passengers. The managing body of the airport shall communicate the contingency plan and any amendments to it to the National Enforcement Body designated pursuant to Article 16. At airports below the above-mentioned threshold, the airport management body shall make all reasonable efforts to coordinate airport users and to assist and inform stranded passengers in such situations.

Article 6

Long delay

1. *When an operating air carrier reasonably expects a flight to be delayed, or an operating carrier postpones the scheduled time of departure, beyond its originally scheduled time of departure, passengers shall be offered by the operating air carrier:*

(i) when the delay is of at least two hours, the assistance specified in Article 9(1)(a) and 9(2); and

(ii) when the delay is of at least five hours and includes one or several nights, the assistance specified in Article 9(1)(b) and 9(1)(c); and

(iii) when the delay is of at least five hours, the assistance specified in Article 8(1)(a).

2. *Passengers shall have a right to compensation from the operating air carrier in accordance with Article 7 where the passenger arrives at its final destination:*

(a) five hours or more after the scheduled time of arrival for all intra-Community journeys and for journeys to/from third countries of 3500 kilometres or less;

(b) nine hours or more after the scheduled time of arrival for journeys to/from third countries between 3500 and 6000 kilometres;

(c) twelve hours or more after the scheduled time of arrival for journeys to/from third countries of 6000 kilometres or more.

3. *Paragraph 2 shall also apply where the operating air carrier has modified the scheduled times of departure and arrival causing a delay compared to the time of arrival of the original schedule, unless the passenger was informed of the schedule change more than fifteen days in advance of the originally scheduled time of departure.*

4. *An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the delay or change of schedule is caused by extraordinary circumstances and that the delay or change of schedule could not have been avoided even if all reasonable measures had been taken. Such extraordinary circumstances can only be invoked insofar they affect the flight concerned or the previous flight operated by the same aircraft.*

5. *Subject to safety constraints, where a tarmac delay exceeds one hour, the operating air carrier shall provide free of charge access to toilet facilities and drinking water, shall ensure adequate heating or cooling of the passenger cabin, and shall ensure that adequate medical attention is available if needed. Where a tarmac delay reaches a maximum of five hours, the aircraft shall return to the gate or another suitable disembarkation point where passengers shall be allowed to disembark and to benefit from the same assistance as specified in paragraph 1, unless there are safety-related or security-related reasons why the aircraft cannot leave its position on the tarmac.*

Article 6a

Missed connecting flight

1. *Where a passenger misses a connecting flight as a result of a delay or change of schedule to a preceding flight, the Community air carrier operating the onward connecting flight shall offer the passenger:*

(i) the assistance specified in Article 9(1)(a) and 9(2) if the passenger's waiting time for the connection is prolonged by at least two hours; and

(ii) re-routing as specified in Article 8(1)(b); and

(iii) when the scheduled time of departure of the alternative flight or other transport offered under Article 8 is at least 5 hours after the scheduled time of departure of the flight missed and the delay includes one or several nights, the assistance specified in Article 9(1)(b) and 9(1)(c).

2. *Where a passenger misses a connecting flight as a result of a delay to a preceding connecting flight, the passenger shall have a right to compensation by the Community air carrier operating that preceding flight in accordance with Article 6(2). For these purposes, the delay shall be calculated by reference to the scheduled time of arrival at the final destination.*

3. *Paragraph 2 shall be without prejudice to any indemnity arrangements made between affected air carriers.*

4. *Paragraphs 1 and 2 apply also to third country air carriers operating a connecting flight to or from an EU airport.'*

Article 7

Right to compensation

1. Where reference is made to this Article, passengers shall receive compensation amounting to:

(a) EUR 250 for all ***journeys*** of 1500 kilometres or less;

(b) EUR 400 for all intra-Community ***journeys*** of more than 1500 kilometres, and for all other ***journeys*** between 1500 and 3500 kilometres;

(c) EUR 600 for all *journeys* not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

2. Where the passenger has opted for the continuation of his travel pursuant to Article 8(1)(b), the right to compensation can arise only once during his travel to the final destination, even if a new cancellation or missed connection should arise during rerouting.

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques.

4. The distances given in paragraph 1 shall be measured by the great circle route method.

5. The air carrier may reach a voluntary agreement with the passenger that replaces the compensation provisions set out in paragraph 1, provided that this agreement is confirmed by a document signed by the passenger which reminds the passenger of his rights to compensation under this Regulation.'

Article 8

Right to reimbursement or re-routing

1. Where reference is made to this Article, passengers shall be offered, free of charge, the choice between three options:

(a) - reimbursement within seven days of the passenger's request, by the means provided for in Article 7(3), of the flight 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;

(b) continuation of the passengers' travel plans by re-routing them, under comparable transport conditions, to their final destination at the earliest opportunity; or

(c) re-routing, under comparable transport conditions, 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.

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 use services operated by another air carrier, involve a different routing, or 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 transport the passenger on its own services and in time to arrive at the final destination within 12 hours of the scheduled arrival time. Notwithstanding Article 22(1) of Regulation (EC) No 1008/2008, the other air carrier or other transport operator shall not charge the contracting carrier a price that goes beyond the average price paid by its own passengers for equivalent services in the last three months.

6. Whenever passengers are offered, pursuant to paragraph 1, a total or partial rerouting by another mode of transport, this Regulation shall apply to the transport carried out by that other mode of transport as if it were carried out by fixed wing aircraft.'

Article 8a

Reimbursement when the ticket was booked through an intermediary

1. Where the passenger has bought a ticket through an intermediary, the operating air carrier may make the reimbursement referred to in Article 8(1) point (a) through that intermediary in accordance with this Article.

2. The intermediary and the air carrier shall inform the passenger of the reimbursement process as provided for in this Article in a clear, comprehensible and easily accessible manner at the time of booking and on the booking confirmation.

3. Reimbursement through the intermediary shall be free of charge for passengers and all other parties concerned.

4. The air carrier shall state publicly, in a clear, comprehensible and easily accessible manner, whether it agrees to process reimbursements through intermediaries, and with which intermediaries it accepts to do so.

5. The following rules shall apply in the case of reimbursement through intermediaries which have paid the air carrier for tickets from their own accounts:

(a) the air carrier shall reimburse the intermediary within seven days, in one transaction through the same payment method which was used at the time of booking, and linking the payment to the original booking reference. The seven-day period shall start on the date of the passenger's choice of a reimbursement in accordance with Article 8 (1) (a), first indent. The intermediary shall reimburse the passenger via the original payment method, at the latest within a further seven days, and inform the passenger and the air carrier thereof.

(b) if the passenger does not receive the reimbursement within 14 days as of the date of choosing a reimbursement in accordance with Article 8 (1) (a), first indent, the operating air carrier shall contact the passenger at the latest on the day following the expiry of the 14-day period in order to receive the payment details for the reimbursement. Upon receipt of these payment details, the operating air carrier shall reimburse the passenger within seven days and inform the passenger and the intermediary thereof.

6. This Article shall not affect any obligations of operating air carriers under Directive (EU) 2015/2302.

Article 9

Right to care

1. Where reference is made to this Article, passengers shall be offered free of charge:

(a) meals and refreshments in a reasonable relation to the waiting time;

(b) hotel accommodation in cases

- where a stay of one or more nights becomes necessary, or

- where a stay additional to that intended by the passenger becomes necessary;

(c) transport between the airport and place of accommodation (hotel, *place of residence of the passenger* or other).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.

3. In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.

4. If the operating air carrier can prove that the cancellation, delay or change of schedule is caused by extraordinary circumstances and that the cancellation, delay or change of schedule could not have been avoided even if all reasonable measures had been taken, it may limit the total cost of accommodation provided according to paragraph 1(b) to EUR 100 per night and per passenger and to a maximum of 3 nights. 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.

5. The obligation to offer accommodation under paragraph 1(b) shall not apply where the flight concerned 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 connecting flight. If the operating air carrier chooses to apply this exemption, it shall nevertheless provide the passengers with information about available accommodation.

6. Where a passenger opts for reimbursement pursuant to Article 8(1)(a) while being at the departure airport of his journey, 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) in relation to the relevant flight.

Article 10

Upgrading and downgrading

1. If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplementary payment.

2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse

(a) 30 % of the *flight price* for all flights of 1500 kilometres or less, or

(b) 50 % of the *flight price* for all intra-Community flights of more than 1500 kilometres, except flights between the European territory of the Member States and the French overseas departments, and for all other flights between 1500 and 3500 kilometres, or

(c) 75 % of the *flight price* for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French overseas departments.

Article 11

Persons with reduced mobility or special needs

1. Operating air carriers shall give priority to carrying persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied children.

2. In cases of denied boarding, cancellation and delays of any length, persons with reduced mobility and any persons accompanying them, as well as unaccompanied children, shall have the right to care in accordance with Article 9 as soon as possible.

3. The operating air carrier shall not apply the limitations set out in Articles 9(4) and 9(5) if the passenger is a person with reduced mobility or any person accompanying him/her, an unaccompanied child, a pregnant woman or a person in need of specific medical assistance, on condition the air carrier or its agent or the organiser has been notified of their particular needs for assistance at least 48 hours before the scheduled time of departure of the flight. Such notification shall be deemed to cover the entire journey and the return journey if both journeys have been contracted with the same air carrier.

Article 12

Further compensation

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.

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 or of national law may be interpreted as restricting its right to seek compensation for the costs incurred under this Regulation from any third parties which contributed to the event triggering compensation or other obligations.

Article 14

Obligation to inform passengers

- 1. The airport managing body and the operating air carrier shall ensure that at the check-in desks (including at self-service check-in machines) and at the boarding gate, a clearly legible notice containing the following text is displayed 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, ask at the check-in counter or boarding gate for the notice stating your rights, particularly with regard to assistance and possible compensation».*
- 2. An operating air carrier denying boarding or cancelling a flight shall provide each passenger affected with a written 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). It shall also provide each passenger affected by a delay or a change of schedule of at least two hours with an equivalent notice. The contact details of the competent complaint handling bodies designated under Article 16a shall also be given to the passenger in written form.*
- 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. It shall also ensure that passengers present at the airport are informed about the cancellation of their flight and about their rights in case the airline unexpectedly ceases operations as in the case of insolvency or revocation of its operating licence.*
- 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 30 minutes after the scheduled departure time, and of the estimated departure time as soon as this information is available, provided the air carrier has received the passenger's contact details in accordance with paragraphs 6 and 7 in case the ticket was acquired via an intermediary.*
- 6. Where the passenger does not acquire a ticket directly from the operating air carrier, but via an intermediary established within the Union, this intermediary 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. The air carrier may use these contact details exclusively for the purpose of fulfilling the information obligation under this Article and not for marketing purposes and shall delete the contact details within 72 hours after the completion of the contract of carriage. 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.*
- 7. An intermediary 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.*

Article 14a

Transfer of information

1. The information for passengers under this Regulation shall be provided also by electronic means, where technically possible. Where information is provided by such means, air carriers and intermediaries shall ensure that the passenger can keep any written correspondence, including the date and time of such correspondence, on a durable medium. All means of communication shall enable the passenger to contact them quickly and to communicate effectively.

2. Where the passenger does not acquire a ticket directly from the air carrier, but through an intermediary, this intermediary shall provide the contact details of the passenger and the booking details to the air carrier. The air carrier may only use these contact details to the extent necessary to comply with its information, provision of care, reimbursement, re-routing and compensation obligations under this Regulation and to fulfil the air carrier's obligations under applicable Union law on aviation safety and security and to provide information to passengers on the operating carrier in accordance with its obligations under Chapter III of Regulation (EC) No 2111/2005.

3. The carrier shall delete the contact details within 72 hours after the completion of the contract of carriage unless further retention of the contact details is justified to fulfil obligations in respect of the passenger's right to re-routing, reimbursement or compensation.

4. Where an intermediary acquires a ticket on behalf of a passenger, the intermediary shall inform the air carrier at the time of booking about the fact that it has booked the ticket as an intermediary. It shall provide the air carrier with its own postal and electronic contact details. If the intermediary requests to receive the information which the passenger receives from the air carrier to fulfil its obligations in accordance with paragraph 2, it shall inform the air carrier thereof and the air carrier shall provide the information under paragraph 2 simultaneously to the intermediary and to the passenger. 5. The air carrier shall provide the possibility for the intermediary to transmit and to request the information under paragraphs 2 and 4 as part of the booking process.

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 15a

Service quality standards

- 1. Air carriers shall establish service quality standards and implement a quality management system to maintain service quality. The service quality standards shall at least cover the items listed in Annex II.**
- 2. Air carriers shall monitor their performance as reflected in the service quality standards. They shall publish a report on their service quality performance on their website by [2 years after the Regulation becomes applicable], and every two years thereafter. This report shall not contain personal data.**
- 3. Airport managing bodies located in a Member State shall establish service quality standards based on the relevant items listed in Annex II. They shall monitor their performance pursuant to those standards and provide access to the information on their performance to the national public authorities on request.**

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.**
- 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. In order to carry out its functions, the National Enforcement Body shall also take account of the information submitted to it by the body designated under Article 16a. It may also decide on enforcement actions based on individual complaints transmitted by the body designated under Article 16a.**
- 3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.**
- 4. Where the bodies designated under Articles 16 and 16a differ, reporting mechanisms shall be set up to ensure the exchange of information between the various bodies in order to help the National Enforcement Body to carry out its tasks of supervision and enforcement and for the body designated under Article 16a to collect the information necessary to examine individual complaints.**
- 5. For each year, at the latest at the end of April of the following calendar year, the National Enforcement Bodies shall publish statistics on their activity, including on sanctions applied.**
- 6. Air carriers shall communicate their contact details, for matters covered by this Regulation, to the National Enforcement Bodies of the Member States in which they operate.**

Article 16a

Passenger claims and complaints

- 1. At the time of reservation, air carriers shall provide information to passengers on their claim and complaint handling processes in relation to the rights set out in this Regulation and on the relevant contact addresses, to which passengers can submit claims and complaints, including via electronic means of transmission. The air carrier shall also inform passengers of the body or bodies competent for handling passenger complaints.*
- 2. If a passenger wants to make a complaint to the air carrier with regard to his rights under this Regulation, he shall submit it within 3 months from the date on which the flight was performed or was scheduled to be performed. Within 7 days of receiving the complaint, the carrier shall confirm the receipt of the complaint to the passenger. Within two months of receiving the complaint, the carrier shall provide a full answer to the passenger.*
- 3. In accordance with relevant EU and national law, each Member State shall designate a national body or bodies responsible for the out-of-court resolution of disputes between air carriers and passengers with regard to the rights covered by this Regulation.*
- 4. Each passenger may complain to any national body designated under paragraph 3, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory. Such complaints may be submitted at the earliest two months after a complaint was submitted to the concerned carrier unless the carrier has already provided a final reply to such complaint.*
- 5. Within 7 days of receiving the complaint, the designated body shall confirm receipt of the complaint and shall send a copy to the appropriate National Enforcement Body. The time taken to provide the final reply to the complainant shall not be longer than three months from the receipt of the complaint. A copy of the final reply shall also be provided to the National Enforcement Body.*

Article 16aa

Common form for reimbursement and compensation requests

- 1. The Commission shall adopt an implementing act establishing a common form for compensation and reimbursement requests under Articles 7 and 8. That common form shall be established in a format which is accessible to persons with disabilities and persons with reduced mobility. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 38 (2) of Regulation (EU) 2021/782 of the European Parliament and the Council⁴.*
- 2. Passengers shall have the right to submit their requests using the common form referred to in paragraph 1. Operating air carriers and intermediaries shall not reject a request solely on the grounds that the passenger has not used that form. If a request is not sufficiently precise, the carrier shall ask the passenger to clarify the request and shall assist the passenger in doing so.*
- 3. Air carriers and intermediaries shall provide details on their website such as an e-mail address, to which requests under paragraph 1 may be sent by electronic means. This requirement shall not*

⁴ Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations (recast) (OJ L 172, 17.5.2021, p. 1, ELI: <http://data.europa.eu/eli/reg/2021/782/oj>).

apply where other electronic means of communication allowing passengers to request reimbursement or compensation exist, such as a form on a website or mobile applications, provided that such means offer the choice and information set out in the common form and are also available in an official language of the Union and in the language internationally accepted in this field. When using such means, passengers shall not be prevented from providing information in any of the languages of the Union.

4. The Commission shall make the common form available in all Union languages on its website. The body or bodies designated by Member States in accordance with Articles 16(1) and 16a(3) shall ensure that passengers have access to the common form.

Article 16b

Cooperation between Member States and the Commission

1. The Commission shall support dialogue between Member States concerning national interpretation and application of this Regulation through the Committee referred to in Article 16c.

2. Member States shall provide annually a report on their activities to the Commission, at the latest at the end of April of the following calendar year. The Commission may decide on the issues to be addressed in these reports via implementing acts. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 16c.

3. The Member States shall regularly send relevant information concerning the national interpretation and application of the Regulation to the Commission, which will make this information available in electronic form to other Member States.

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 arise and particularly concerning the interpretation of extraordinary circumstances; and shall clarify the provisions of the Regulation, with a view to promoting a common approach. To this end, the Commission may adopt a recommendation after consultation of the Committee referred to in Article 16c.

5. At the request of the Commission, the National Enforcement Bodies shall investigate specific suspected practice by one or several air carriers and report its findings to the Commission within 4 months of the request.

Article 16ba

Risk-based approach to the monitoring of compliance with passenger rights

1. The national enforcement bodies shall develop a compliance monitoring programme to monitor compliance of air carriers, airport managing bodies and intermediaries with the obligations laid down in this Regulation on the basis of a risk assessment. The programme shall allow for the detection and correction of recurrent non-compliance in the implementation of passenger rights. The compliance monitoring programme shall include a representative sample of monitoring activities.

2. The risk assessment shall be based on a factual assessment that takes into account complaints made by passengers to these bodies, where available, as well as findings of the monitoring activities carried out by these bodies, information referred to in Article 16bb (1) and (3), and other sources of information pertaining to the application of this Regulation on the territory of the respective Member State.

3. The risk assessment shall be carried out for the first time by 30 June XXXX [1 year after the Regulation becomes applicable], and every two years thereafter.

4. Compliance monitoring activities shall be based on the assessment of risks and carried out by means of audits, inspections, interviews, verifications and examination of documents as appropriate. They shall include both announced and unannounced activities. The monitoring activities shall be proportionate to the risks identified.

5. National enforcement bodies shall ensure the swift rectification of noncompliance by air carriers, airport managing bodies and intermediaries as identified during their monitoring activities. They shall require carriers to submit an action plan to remedy non-compliance, as appropriate.

6. The compliance monitoring programme under paragraph 1, the risk assessment under paragraph 2 as well as their findings shall be communicated to the Commission by 30 June XXXX [2 years after the Regulation becomes applicable], and every two years thereafter.

Article 16bb

Sharing of information with national enforcement bodies

1. Carriers shall provide the national enforcement bodies with relevant documents and information at their request without undue delay and, in any event, within one month from the receipt of the request.

2. In complex cases, the national enforcement body may extend this period to a maximum of three months from the receipt of the request.

3. In carrying out their functions, the national enforcement bodies shall take account of the information submitted to them by the body designated to handle complaints, if this is a different body.

Article 16bc

Information about alternative dispute resolution by national enforcement bodies

The national enforcement body to which the passenger complains, or any other body designated by a Member State for that purpose, shall inform the complainant about his or her right to approach alternative dispute resolution bodies to seek individual redress.

Article 16c

Committee procedure

1. The Commission shall be assisted by the Passenger Rights Committee, composed of 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.

Article 17

Report

The Commission shall report to the European Parliament and the Council by 1 January **2017** on the operation and the results of this Regulation, in particular ***with regard to the impact of the compensation for long delays and the limitation of accommodation in extraordinary circumstances of long duration. The Commission shall also report 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. The report shall be accompanied where necessary by legislative proposals.***

Article 18

Repeal

Regulation (EEC) No 295/91 shall be repealed.

Article 19

Entry into force

This Regulation shall enter into force on 17 February 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 11 February 2004.

For the European Parliament

The President

P. Cox

For the Council

The President

M. McDowell

(1) OJ C 103 E, 30.4.2002, p. 225 and OJ C 71 E, 25.3.2003, p. 188.

(2) OJ C 241, 7.10.2002, p. 29.

(3) Opinion of the European Parliament of 24 October 2002 (OJ C 300 E, 11.12.2003, p. 443), Council Common Position of 18 March 2003 (OJ C 125 E, 27.5.2003, p. 63) and Position of the European Parliament of 3 July 2003. Legislative Resolution of the European Parliament of 18 December 2003 and Council Decision of 26 January 2004.

(4) OJ L 36, 8.2.1991, p. 5.

(5) OJ L 240, 24.8.1992, p. 1.

(6) OJ L 158, 23.6.1990, p. 59.