



Council of the European Union
General Secretariat

Brussels, 13 February 2025

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

WK 1936/2025 INIT

LIMITE

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Delegations
N° prev. doc.:	ST 5123/20 REV1
N° Cion doc.:	ST 7615 2013 INIT
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 – consolidated version

In view of the Working Party on Aviation on 20 February 2025, delegations will find, in Annex, the first compromise proposed by the Presidency consolidated with Regulation 261/2004 and the General approach agreed in Council on 5 December 2025 on the proposal on enforcement amending Regulation 261/2025. This consolidated version is published to help the delegations to get an overview.

This first compromise is based on the last compromise published by the HR Presidency (WK 2688/20) and the comments made by delegations on the non-paper prepared by the Presidency (WK 9/25). The Presidency has also updated the text in light of recent case law and is seeking the views from delegations on the need to codify or to deviate from the case law in some instances. This first compromise does not cover the less contentious issues. Moreover, a number of aspects needs further examination.

In drafting this compromise, the Presidency has been guided by some principles which delegations have insisted on:

WK 1936/2025 INIT

LIMITE

EN

1. The need to ensure a balanced system between a high level of passengers rights and reasonable financial burden for air carriers

Given the findings of the study mandated by the Commission in 2020, the Presidency has given a particular focus to the rights of passengers regarding rerouting and assistance. The Presidency has also introduced a deadline for the payment of the compensation. On the other hand, the Presidency suggests maintaining the thresholds for compensation as proposed by the Commission in 2013 and introducing a regular review by the Commission of the compensation amounts.

2. The need for a simple and unambiguous text

In that account, the Presidency has tried to structure each Article relating to travel disruptions according to the sequence of events and related needs of passengers and to streamline the text where possible. Moreover, the Presidency has used the active form and specified the operating air carrier responsible. The Presidency has also used similar terminology and concepts as in other regulations on passengers rights. Finally, the Presidency has replaced references to articles by the appropriate terms to improve readability.

The Presidency has provided a short explanation for each change. All changes compared to the last compromise published by the HR Presidency are highlighted in **bold underlined** and strikethrough. The text of the General Approach on the Enforcement proposal is highlighted in **bold and blue**.

Article 1

Subject

1. This Regulation establishes, under the conditions specified herein, minimum rights for **air** passengers ~~when:~~

1. ~~they are denied boarding against their will;~~
2. ~~their flight is cancelled;~~
3. ~~their flight is delayed at departure or at arrival;~~
4. ~~they are upgraded or downgraded;~~
5. ~~their flight is rescheduled.~~

Commented [A1]: The list is not complete and not really necessary. PCY proposes to simplify.

2. [This Regulation shall not apply to Gibraltar airport.¹]

Article 2

Definitions

For the purposes of this Regulation:

(a) "air carrier" means an air transport undertaking with a valid operating licence;

(aa) "contracting air carrier" means an air carrier which concludes an air transport contract with a passenger;

(b) "operating air carrier" means an air carrier that performs or intends to perform a flight under **an air transport** contract with a passenger or on behalf of ~~another person, legal or natural, having a contract with that passenger~~ **a contracting air carrier**. The fact that an operating air carrier uses the aircraft of another air carrier, with or without crew of that other carrier, shall not change the designation of the former air carrier as operating air carrier for the purposes of this Regulation;

(c) "Union carrier" means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Regulation (EEC) No 1008/2008 of 24 September 2008 on common rules for the operation of air services in the Community³;

(ca) "airport managing body" means a body as defined in Article 2, point (f), of Regulation (EC) No 1107/2006;

Commented [A2]: PCY suggest introducing this definition in relation to the introduction of «air transport contracts» and to differentiate from the operating air carrier and establish clearly the responsibilities. Inspired from Multimodal GA wording.

Commented [A3]: Introduced by enforcement GA.

(d) ["Organiser" means a person within the meaning of Article 3(8) of Directive (EU)

¹ Recital: "In view of the legal position of the Kingdom of Spain with regard to sovereignty and jurisdiction on the territory where the airport is located, this Regulation should not apply to Gibraltar airport."

² Text under consideration.

³ OJ L293, 31.10.2008, p. 3.

2015/2302 of 25 November 2015 on package travel and linked travel arrangements⁴;

(e) "package" means those services defined in Article 3, point 2, of Directive (EU) 2015/2302;⁵

(f) "ticket" means **valid evidence, regardless of its form, of the conclusion of a transport contract** 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;

Commented [A4]: Same definition as Multimodal GA

(fa) "full cost of the ticket" means final price to be paid at the end of the reservation process that includes the air fare and all applicable taxes, charges, surcharges and fees paid for all optional and non-optional services included in the ticket, excluding intermediation fees, regardless whether those extras and fees have been paid together with the fares for the transport service or separately at a later stage;

(fb) "intermediation fee" means any difference between the amount paid by the passenger and the amount received by the air carrier for the same service, and which is collected by the intermediary;

Commented [A5]: Introduced by enforcement GA

(g) "reservation" means **an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements** the fact that the passenger has a ticket, with proof of payment, which indicates that the reservation has been accepted and registered by the air carrier, organiser or ticket seller or tour operator;

Commented [A6]: Same definition as Multimodal GA

(ga) "air transport contract" means a contract of carriage between a contracting air carrier and a passenger for the provision of one or more flights;

Commented [A7]: Definition introduced following the approach and terminology used in Multimodal GA

(h) "final destination" means the destination of the flight or of the last flight of a journey as indicated in the reservation;

(i) "Disabled person or person with reduced mobility" means any person as defined in Article 2(a) of Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air⁶; **"person with disabilities" and "person with reduced mobility" mean any person who has a permanent or temporary physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder his or her full and effective use of transport on an equal basis with other passengers or whose mobility when using transport is reduced due to age;**

Commented [A8]: Same definition as Multimodal GA

(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)4(0), 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 **or herself** for boarding under the conditions laid down in Article 3(2)4(0) 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

⁴ OJ L326, 11.12.2015, p. 1-33.

⁵ Text under consideration

⁶ OJ L204, 26.7.2006, p.1

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, **a non-exhaustive list of** extraordinary circumstances ~~are listed~~ **is presented** in the Annex;

Commented [A9]: A majority of delegations in favour of a non exhaustive list

(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 ~~booking~~ **air transport contract**, 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. This excludes stop overs;

(ma) "Stop over" means the voluntary interruption of the performance of the **air transport contract** ~~contract of carriage~~ by the passenger and agreed in advance by the air carrier as it appears on the ticket and the reservation. A stop over shall be regarded as interrupting a journey and the stop over point as the final destination of such journey;

(p) "journey" means a flight or a continued series of flights transporting the passenger from the initial airport of departure to his final destination in accordance with a single **air transport contract** ~~booking~~. The outward and the return journey are not the one and the same journey. ~~For the implementation of this Regulation, this definition shall also apply to parts of the journey made with other modes of transport if this specific travel is included in the single contract of carriage.~~

Commented [A10]: Same terminology used throughout the text

Commented [A11]: Deleted as this would create an overlap with Multimodal GA

(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;~~

Commented [A12]: This definition may not be necessary

(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 co-ordination and control of the activities of the different operators present in the airports or airport network concerned;~~

(s) ~~"ticket price" means the full price paid for a ticket and including the air fare, and all applicable taxes, charges, surcharges and fees, including the management fees charged by the air carrier, paid for all optional and non optional services included in the ticket;~~

Commented [A13]: These definitions are included in the Enforcement GA.

(t) "time of departure" means the time when the aircraft leaves the departure stand, pushed back or on its own power (off-block time);

(u) "time of arrival" means the time when the aircraft reaches the arrival stand and the parking brakes are engaged (in-block time);

(v) "tarmac delay" means, at departure, the time the aircraft remains on the ground between the closing of the doors, or in any case the time when passengers can no longer leave the aircraft, and the take-off time of the aircraft or, at arrival, the time between the touch-down of the aircraft and the start of disembarkation of the passengers;

(w) "delay at departure" means the difference of time between the time of departure indicated on the passenger's reservation and the actual time of departure of the flight;

(x) "delay at arrival" means the difference of time between the time of arrival indicated on the passenger's reservation, and the actual time of arrival;

(y) "rerouting" means an alternative offer of transport at no extra cost to the passenger and allowing him to depart from the initial point of departure, or in case of missed ~~connections~~ **connecting flights**, from the transfer point, or an alternative departure point agreed with the passenger and reach his final destination or an alternative destination agreed with the passenger;

(ya) ~~"ticket seller" means the seller of an air ticket, or retailer and trader facilitating a linked travel arrangement as defined in Directive (EC) 2015/2302 other than an air carrier or an organiser, who arranges a booking on behalf of the air carrier with a passenger, whether for a flight on its own or as part of a package or linked travel arrangement;~~

[(yb) "linked travel arrangement" means those services as defined in Article 3, point 2, of Directive (EU) 2015/2302.]⁷

(yc) "minor" - means a person below the age of 18 years;

(yd) "unaccompanied minor" means a minor who travels without an accompanying parent or guardian and where the air carrier has accepted responsibility for ~~care~~ **assistance** in accordance with its published rules;

(x) "night" means the period between midnight and 6 a.m.;

(z) "intermediary" means any natural or legal person, other than a carrier, who is acting, for purposes relating to their trade, business or profession, on behalf of a carrier or a passenger for the conclusion of a transport contract;

(za) "recognised assistance dog" means a dog specifically trained to increase independence and self-determination of persons with disabilities, officially recognised in accordance with applicable national rules, where such rules exist.

(zb) 'durable medium' means any instrument which enables the passenger to store information in a way accessible for future reference, for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

(zc) "accessible format" means a format that gives the person with disabilities or with reduced mobility an access to any relevant information, including allowing such person to have access as feasibly and comfortably as a person without any of the impairments or disabilities, and which meets accessibility requirements defined in accordance with the applicable legislation such as Annex I to Directive (EU) 2019/882;

Commented [A14]: This definition is redundant with the definition of intermediary introduced in the Enforcement GA.

Commented [A15]: Presidency suggests, following the comments from some delegations, to rename Article 9 so that terminology is similar for all transport modes.

Commented [A16]: Definitions introduced in the Enforcement GA

Commented [A17]: Same definition as in Multimodal GA, introduced in relation to information obligations.

Commented [A18]: Same definition as in Multimodal GA, introduced in relation to Disabled and PRM specific rights

⁷ Under consideration.

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 unless they received benefits or compensation at least equivalent to the ones provided under this Regulation and were given assistance in a third country;~~ **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 at least equivalent to the ones provided under this Regulation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Union carrier~~ **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 Union air carrier.**

1a. This Regulation shall apply to the passengers of a flight operated by a third-country operator, departing from an airport located in the territory of a Member State and arriving at an airport situated in the territory of a third-country with a connection in another airport of that third-country, where the two connecting flights are the subject of a single air transport contract, even when the delay arises during the second connecting flight and the flight is fully operated outside the Union.

1b. This Regulation shall not apply to passengers on connecting flights operated by a Union air carrier that were the subject of a single air transport contract if both the airport of departure of the first leg of the journey, and the airport of arrival of the second leg of the journey, are located in a non-EU country, and only the airport where the stopover takes place is located in the territory of a Member State.

2. Paragraphs 1, **1a and 1b** shall apply on the condition that passengers:

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

(b) ~~have been transferred by an air carrier [or **organiser** ~~tour operator~~]⁸ from the flight for which they held a reservation to another flight, irrespective of the reason.~~

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

Commented [A19]: Presidency suggests reverting the scope defined in Regulation 261/2004.

Commented [A20]: The Presidency would welcome the views of the delegations on the need to codify these Court rulings, decided after the Commission proposal, or, as an alternative to explain any reasons justifying a deviation from those rulings by the co-legislator.

Commented [A21]: In order to improve clarity, the Presidency suggests moving this additional condition under Article 4 - Denied boarding- since it only applies in that case.

⁸ Under consideration

4. Without prejudice to Articles ~~2(p), 6a(4a), 8(4)8(3)(b) and 8(5)8(4)~~, this Regulation shall only apply to passengers transported by motorised fixed wing aircraft.

Commented [A22]: Provisions deleted in previous compromises

Commented [A23]: Cross references updated

5. ~~This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Unless otherwise specified, the operating air carrier shall be~~ responsible for performing the obligations under this Regulation.

Commented [A24]: This adjustment is necessary given that the text introduces obligations for other stakeholders than the operating air carrier (e.g. intermediaries, airport managing bodies).

6. [This Regulation shall also apply to passengers transported according to package travel and linked arrangements contracts but shall not affect the rights of passengers under Directive (EU) 2015/2302. This Regulation shall not apply in cases where a package travel is cancelled or delayed for reasons other than cancellation or delay of the flight.]⁹

Article 3a

~~In determining the distances for the purpose of this Regulation, the basis shall be the distance between the initial point of departure and the final destination of the journey. Those distances shall be measured by the great circle route method.~~

Commented [A25]: Presidency suggest moving this provision to Article 7 where applicable distances are defined.

Article 4

Denied boarding

0. Without prejudice to Article 3(2), this Article shall apply to passengers that present themselves for boarding, after on-line check-in or check-in at the airport, as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the organiser or the intermediary, or, if no boarding time is indicated, not later than 45 minutes before the time of departure indicated in the passenger's reservation.

Commented [A26]: Order of the article has been modified to follow the sequence of events and spell out the rights of passengers at each step of the process.

1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first **provide the passengers concerned with the information notice referred to in Article 14(1) and** call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the ~~passenger concerned~~ **volunteer** and the operating air carrier. This agreement with the volunteer on the benefits shall replace the passenger's right to compensation as laid down in Article 7(1), only if it is approved in a signed document **or in an email** by the volunteer ~~and the volunteer has received information in accordance with Article 14(2).~~ **In absence of such signed document or email, the volunteer shall be entitled, on request, to compensation by the operating air carrier denying boarding in accordance with Article 7(1).**

Commented [A27]: Additional condition for the application of this Article, previously defined in the Article 3 - scope.

Commented [A28]: Presidency suggests putting the obligation of information on rights first.

Commented [A29]: To provide flexibility

Commented [A30]: Presidency suggest adding this sentence for clarity.

~~Volunteers shall be offered by the operating air carrier assistance in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph, and care in accordance with Article 9. By way of derogation of Article 8(1)(a) and 9(1) first indent, such assistance and care shall be granted immediately.~~

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. **The operating air carrier shall provide the passengers concerned with the information on the process for requesting compensation defined in Articles 16a and 16aa. The passengers who are denied boarding against their will**

Commented [A31]: Presidency suggests putting forward the obligation of information on rights in case passengers would still need to make a complaint (e.g. in case the passenger consider the amount of compensation is not correct).

⁹ Under consideration

shall be entitled, without a request to that end, to compensation by the air carrier denying boarding in accordance with Article 7(1). By way of derogation from Article 16a(1a), such compensation shall be granted immediately.

3. Passengers who are denied boarding under paragraphs 1 and 2 of this Article shall be entitled to reimbursement or re-routing, and assistance by the air carrier denying boarding, in accordance with Articles 8 and 9. By way of derogation from Article 8(1)(a) and 9(1) first indent, such reimbursement or re-routing, and assistance shall be granted immediately. Such reimbursement or re-routing, and assistance shall be without prejudice to the benefits referred to in paragraph 1.

If boarding is denied to passengers against their will, the operating air carrier shall immediately assist them in accordance with Article 8 and offer care in accordance with Article 9. The operating air carrier shall, without a request to that end, compensate the passenger them in accordance with Article 7(1) and assist them in accordance with Articles 8 and 9. By way of derogation of Article 16a(2a), Article 8(1)(a) and 9(1) first indent, such compensation, assistance and care shall be granted immediately.

4. Where the passenger[, or an organiser] reports a spelling mistake in the name or given name(s) of one or several passengers included in the same booking reservation, the operating air carrier shall correct this at least once up until 48 hours before departure without any additional charge to the passenger [or the organiser].

Article 5

Cancellation

0. In case of cancellation of a flight, the operating air carrier of the cancelled flight shall inform the passengers concerned as soon as possible and, in any event, no later than on the time of departure indicated in the reservation. The operating air carrier shall provide the passengers concerned with the information notice referred to in Article 14(1) as well as the information on the process for requesting compensation or reimbursement defined in Articles 16a and 16aa. Passengers shall also be informed of the reasons for the cancellation and of the applicable flight distance as set out in Article 8. The passengers are entitled, upon request, to receive in writing the reasons for the cancellation. The air carrier operating the cancelled flight shall provide such information within 10 working days.

1. In case of cancellation of a flight, the operating air carrier of the cancelled flight shall offer the passengers concerned:

- (a) shall be offered by the operating air carrier in a clear and reliable manner the choice between the options specified in rerouting and reimbursement in accordance with Article 8, and
- (b) the assistance in accordance with Article 9.

The operating air carrier shall also explain possible alternative transport. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

1a. By way of derogation from Article 9(6), when the operating air carrier informs the passengers of the cancellation of a flight less than 24 hours before the time

Commented [A32]: The Presidency suggests putting upfront the obligation of information on rights (text previously under Article 14)

Commented [A33]: Presidency considers there is no need for repetition

Commented [A34]: Active form and clear specification of the operating air carrier responsible.

Commented [A35]: Presidency considers the information on the options (rerouting or reimbursement) must be provided in a clear and reliable manner.

Commented [A36]: The Presidency considers the passenger may need information on alternative transport for choosing between rerouting and reimbursement.

of departure of the cancelled flight indicated in the passengers' reservation and the passengers concerned choose a return flight in accordance with Article 8(1)a or rerouting in accordance with Article 8(1)(b), the operating air carrier of the cancelled flight shall provide assistance for the passengers concerned during the waiting time for rerouting in accordance with Article 9.

1b. Passengers shall have the right to receive, on request, compensation by the operating air carrier **of the cancelled flight** in accordance with Article 7(1) ~~when, unless:~~

(i) ~~they are informed of the cancellation at least 14 days before the time of departure indicated in their reservation;~~

~~or~~

(ii) ~~they are offered re-routing re-routed and allowing them to reach their final destination with a delay at arrival after the time of arrival indicated in their reservation exceeding the thresholds defined in Article 7(1a), of no more than:~~

(a) ~~five hours for journeys of 1500 kilometres or less, as well as for intra-EU journeys over 1500 kilometres;~~

(b) ~~nine hours for extra-EU journeys between 1500 and 3500 kilometres;~~

(c) ~~twelve hours for extra-EU journeys of 3500 kilometres or more.~~

~~or~~

(iii) ~~the cancellation is caused by extraordinary circumstances and the cancellation could not have been avoided even if the air carrier had taken all reasonable measures. The burden of proof of extraordinary circumstances shall rest on the operating air carrier. Such extraordinary circumstances can only be invoked in so far as they affect the flight concerned or the flight preceding it operated by the same aircraft.~~

~~or~~

(iv) ~~the cancellation occurs on the connecting flight operated entirely outside the EU.~~

2. **An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation was caused by extraordinary circumstances and the cancellation could not have been avoided even if the air carrier had taken all reasonable measures. The burden of proof of extraordinary circumstances shall rest on the operating air carrier. Such extraordinary circumstances may only be invoked in so far as they affect the flight concerned or the preceding flight or flights in the rotation sequence operated by the same aircraft, and provided that there is a direct causal link between the occurrence of that circumstance and the cancellation of the flight.**

3. **The right to receive compensation under paragraph 1b shall not apply if the passengers have been informed of the cancellation at least 14 days before the time of departure indicated on their reservation.** 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.

Commented [A37]: As supported by a majority of delegations, conditions for compensation are aligned with conditions for compensation in case of delay. Those conditions are set out in Article 7(1a).

Commented [A38]: Redrafting of the exemption from compensation for extraordinary circumstances in line with exemption under Article 6 - delay.

Commented [A39]: The exemption from compensation if the 14 day deadline was observed is, in the view of the Presidency, better placed here, along with the explanation on the burden of proof. A similar structure was proposed by COM for delay and the Presidency considers applying the same structure for articles to the extent possible improve readability for passengers.

4. This ~~A~~article shall also apply to the following situations:

- a flight that departs before the time of departure indicated on the passenger's reservation unless there is no change in the check-in and boarding times, or the passenger has taken the rescheduled flight;
- ~~the case~~ where the aircraft landed ~~at~~ an airport that does not serve the same city as the airport of ~~the~~ final destination and did not subsequently reach the said airport of final destination.

Article 6

Long Delay

0. ~~When an operating air carrier expects a flight to be delayed at departure, it shall inform the passengers concerned as soon as possible and, in any event, no later than on the time of departure indicated in the reservation. To the extent possible, passengers shall receive regular updates in real-time. The operating air carrier shall provide the passengers concerned with the information notice referred to in Article 14(1) as well as the information on the process for requesting compensation defined in Articles 16a and 16aa. Passengers shall also be informed of the reasons for the delay and of the applicable flight distance as set out in Article 8. The passengers are entitled, upon request, to receive in writing the reasons for the delay. The air carrier operating the delayed flight shall provide such information within 10 working days.~~

Commented [A40]: Presidency suggests putting forward the obligation of information of passengers on their rights (previously in Article 14).

1. ~~When an operating air carrier expects a flight to be delayed at departure, the operating air carrier shall offer to the passengers concerned~~ shall be offered by the operating air carrier in a clear and reliable manner: ~~the care assistance~~ in accordance with Article 9 while waiting for the departure of the delayed flight; ~~In addition, when the delay is of at least five hours, the operating air carrier shall offer to the passengers concerned the assistance reimbursement specified in Article 8(1)(a).~~

2. Passengers shall have the right to receive, on request, compensation from the operating air carrier ~~of the delayed flight~~ in accordance with Article 7(1) ~~when unless:~~

(i) they reach their final destination with a delay at arrival after the time of arrival indicated in their reservation ~~exceeding the thresholds defined in Article 7(1a), of no more than:~~

(a) ~~five hours for journeys of 1500 kilometres or less, as well as for intra-EU journeys over 1500 kilometres;~~

(b) ~~nine hours for extra-EU journeys between 1500 and 3500 kilometres;~~

(c) ~~twelve hours for extra-EU journeys of 3500 kilometres or more.~~

Commented [A41]: Conditions for compensation set out in Article 7(1a).

or

(ii) ~~the delay is caused by extraordinary circumstances and the delay could not have been avoided even if the air carrier had taken all reasonable measures. The burden of~~

proof of extraordinary circumstances shall rest on the operating air carrier. Such extraordinary circumstances can only be invoked in so far as they affect the flight concerned or the flight preceding it operated by the same aircraft.

or

(iii) the delay is caused by a connecting flight operated entirely outside the EU.

3. **An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that** the delay ~~was~~ caused by extraordinary circumstances and the delay could not have been avoided even if the air carrier had taken all reasonable measures. The burden of proof of extraordinary circumstances shall rest on the operating air carrier. Such extraordinary circumstances can only be invoked in so far as they affect the flight concerned or ~~the flight preceding~~ **the preceding flight or flights in the rotation sequence** ~~it~~ operated by the same aircraft **and provided that there is a direct causal link between the occurrence of that circumstance and the long delay of the subsequent flight.**

Commented [A42]: Redrafting in line with case law.

5. This article shall also apply if the time of departure as indicated in the reservation was postponed by the air carrier. ~~The~~ **However, the right** to receive compensation under paragraph 2 shall not apply if the delay at departure or at arrival results from a change in the time of departure indicated on the ~~p~~Passenger's **reservation** ~~booking~~ and if the passenger has been informed of such a change at least 14 days before that date. The burden of proof concerning the questions as to whether and when the passenger has been informed of the change in time, resulting in a delay, shall rest with the operating air carrier.

6. This article shall also apply where the aircraft takes off and lands at an airport ~~not serving the same city as~~ other than the airport for which the reservation was made, but subsequently takes off to reach the airport of destination. **For the purposes of determining the extent of the delay at arrival incurred by a passenger on a diverted flight which landed at an airport which is not that for which the reservation was made but which serves the same town, city or region, it is necessary to take as a reference the time at which the passenger actually reaches, at the end of the transfer, either the airport for which the reservation was made or, as the case may be, another close-by destination agreed with the operating air carrier.**

Commented [A43]: Presidency suggests codifying this case law.

[Article 6-2a

Tarmac delay]¹⁰

Article 6a

Missed connecting flight

0. **The operating air carrier of the delayed or cancelled flight shall inform the passenger of the delay or of the cancellation as soon as possible and, in any event, no later than on the time of departure of the connecting flight indicated in the reservation. To the extent possible, passengers shall receive regular updates in real-time. The operating**

¹⁰ Under consideration

air carrier shall provide the passengers concerned with the information notice referred to in Article 14(1) as well as the information on the process for requesting compensation defined in Articles 16a and 16aa. Passengers shall also be informed of the reasons for the delay or the cancellation and of the applicable flight distance as set out in Article 8. The passengers are entitled, upon request, to receive in writing the reasons for the delay or cancellation. The air carrier operating the delayed or cancelled flight shall provide such information within 10 working days.

Commented [A44]: Presidency suggests putting upfront the obligation of information.

1. Where a passenger misses a connecting flight as a result of a delay at arrival or the cancellation of a previous flight, the air carrier operating the delayed or cancelled flight shall offer the passenger ~~assistance~~ reimbursement or re-routing in accordance with Article 8, and ~~care~~ assistance in accordance with Article 9.
2. Where a passenger misses a connecting flight as a result of a delay to a previous flight, Upon request, the a passenger shall have a right to ~~receive, on request,~~ compensation by the air carrier operating the previous delayed or cancelled flight in accordance with Article 6(2) and Article 7(1), if the passenger misses a connecting flight as a result of a delay at arrival or cancellation of the previous flight, and reaches its final destination with a delay at arrival after the time of arrival indicated on his or her reservation exceeding the thresholds defined in Article 7(1a). For these purposes, the delay shall be calculated by reference to the scheduled time of arrival at the final destination as indicated on his or her reservation.
3. By way of derogation from Article 3(5), in the case of connecting flights booked as a single air transport contract departing from a non-EU country to the territory of a Member State with a stopover in the territory of a Member State, where the cause of a long delay arises in the first flight operated, under a code-share agreement, by a carrier established in a non-EU country, a passenger may bring his or her action for compensation against the Union air carrier that performed the second flight.
4. The air carrier operating the delayed flight shall be responsible for the handling and settlement of claims, including payment of compensation where applicable.

Commented [A45]: The Presidency would welcome the views of the delegations on the need to codify this Court ruling, decided after the Commission proposal, or, as an alternative to explain any reasons justifying a deviation from that ruling by the co-legislator.

Commented [A46]: The Presidency considers that this provision is no longer necessary since the paragraphs above specify that the operating carrier of the previous flight is responsible

Commented [A47]: Moved upfront

3a. Passengers shall be informed of the delay by the operating air carrier of the delayed flight as soon as possible. The operating air carrier of the delayed flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with this Regulation. The contact details of the national designated body referred to in Article 16 shall also be given to the passenger in written form.

Commented [A48]: The Presidency considers that this provision would be an overlap with the Multimodal GA.

4a. Where a passenger, on a journey falling within the scope of this Regulation, misses a connecting flight as a result of a cancellation, or delay at arrival, of another mode of transport stipulated in its single booking sold by an air carrier, that air carrier shall offer the passenger assistance in accordance with Article 8 and care in accordance with Article 9.

Article 7

Right to compensation

1. Where reference is made to this Article, passengers shall receive compensation amounting to: ~~In case of denied boarding under Articles 4(1) and 4(2), a delay after rerouting following a cancellation under Article 5, a delay under Article 6 or a delay after a missed connecting flight under Article 6a, the following compensation amounts shall~~

Commented [A49]: Several delegations requested that references to articles are replaced with the appropriate terms to improve readability.

apply:

- (a) ~~250 EUR for journeys of 1500 kilometres or less, as well as for intra-EU journeys over 1500 kilometres;~~ EUR 250 for all journeys of 1500 kilometres or less;
- (b) ~~400 EUR for extra-EU journeys between 1500 and 3500 kilometres;~~ EUR 400 for all intra-Community journeys of more than 1500 kilometres, and for all other journeys between 1500 and 3500 kilometres;
- (c) ~~600 EUR for extra-EU journeys of 3500 kilometres or more.~~ EUR 600 for all journeys ~~not falling under (a) or (b)~~ **of 3500 kilometres or more.**

1a. In case of a delay after rerouting following a cancellation under Article 5, a delay under Article 6 or a delay after a missed connecting flight under Article 6a, the right to compensation shall arise for delays of more than:

- (a) **five hours for journeys of 1500 kilometres or less;**
- (b) **nine hours for all journeys between 1500 and 3500 kilometres;**
- (c) **twelve hours for all journeys of 3500 kilometres or more.**

1aa. In determining the distances for the purpose of this Regulation, the basis shall be the distance between the initial point of departure and the final destination of the journey. In case of a connecting flight, only the first airport of departure and the airport of the final destination shall be taken into consideration. Those distances shall be measured by the great circle route method.

- 2. Where the passenger has opted for the continuation of his travel pursuant to Article 8(1)(b), and another cancellation or missed connecting flight occurs during re-routing, the passenger's right to compensation can arise only once during his travel to the final destination.
- 3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders, credit/debit card refund or bank cheques **within 30 days after the submission of the request for compensation.** Following appropriate information to the passenger regarding his rights under this Regulation, with the confirmed agreement of the passenger, compensation may also be paid in travel vouchers and/or other services.

Article 8

Right to assistance-reimbursement or re-routing

1. Where reference is made to this Article **In case of denied boarding under Articles 4(1) and 4(2), a cancellation under Article 5, a delay under Article 6 or a missed connecting flight under Article 6a,** passengers shall be offered, promptly, free of charge, the choice between three options:

- (a) reimbursement within **10 working days** ~~of from the date of passenger's claim, by~~ **in cash, by electronic bank transfer, bank orders, credit/debit card refund or bank cheques** ~~the means provided for in Article 7(3), of the ticket price~~ **full cost of the ticket,** for

Commented [A50]: Given that a majority of delegations support COM proposed amounts without distinction intra-extra EU.

Commented [A51]: A majority of delegations support that the same thresholds apply for delay and delay after cancellation. The Presidency suggests indicating those thresholds in a new paragraph 1a to streamline the text. Distances in this paragraph have been aligned with distances under Paragraph 1 to simplify. As regards specific values for delay, in absence of clear majority, the Presidency suggests maintaining the thresholds proposed by the Commission in 2013.

Commented [A52]: In the last compromise published under the HR Presidency, this provision was an Article 3a new. The Presidency suggests moving it in this Article where the distances thresholds are defined. The provision has been updated in light of recent case law.

Commented [A53]: At the request of delegations, a timelimit is introduced, in line with other modes of transports

Commented [A54]: At the request of some delegations, alignment with terminology used in other transport modes

Commented [A55]: To improve clarity and balance between passengers and operators

Commented [A56]: At the request of some delegations, references to article is replaced by appropriate terms.

Commented [A57]: Concept introduced by the Enforcement GA

the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity after the time of departure indicated ~~in~~**on** the reservation;

(b) continuation of the passengers' travel plans by re-routing them to their final destination at the earliest opportunity after the time of departure indicated ~~in~~**on** the reservation; or

(c) re-routing to their final destination at a later date at the passenger's convenience, subject to availability of seats.

2. [Paragraph 1(a) shall also apply to passengers whose flights form part of a package or linked travel arrangements. However, in case of package travel the right to reimbursement arises under Directive (EU) 2015/2302.]

2a. When the passenger exercises his **or her** right to re-routing in accordance with paragraph 1(b), the air carrier may offer an alternative flight departing earlier than the time of departure indicated in the reservation. Where the passenger refuses such earlier rerouting, he **or she** shall still be entitled to the option of rerouting at the earliest opportunity after the time of departure indicated in the reservation.

3. In order for the passenger to reach his or her destination as determined under paragraphs 1(a), 1(b) or 1(c) at the earliest opportunity, the operating air carrier shall, in agreement with the passenger and subject to availability, consider the following alternative options:

(a) **a flight, at comparable transport conditions as set out in the air transport contract, to or from an airport alternative to that for which the reservation was made. In such a case,** 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 airport serving the same city or conurbation agreed with the passenger.

(b) ~~Where agreed by the passenger, the return flight or flights referred to in paragraph 1(a) or the re-routing referred to in paragraph 1(b) or 1(c) may, at comparable transport conditions as set out in the transport contract,~~ **the use of services operated by another air carrier, involve a different routing, or, where appropriate for the distance to be travelled, the use of another mode of transport, at comparable transport conditions as set out in the air transport contract.**

~~3. Where passengers choose the option referred to in paragraph 1(b), they shall, subject to availability, have the right to re-routing via another air carrier or another mode of transport where the operating air carrier cannot foreseeably transport the passenger on its own services and in time to arrive at the final destination within 6 hours of the time of arrival indicated in the reservation.~~

3. Where a passenger chooses the continuation of his or her travel plans by re-routing to his or her final destination under the option referred to in paragraph 1(b) and the operating air carrier cannot foreseeably arrange rerouting of the passenger in time to arrive at the final destination within 8 hours of the time of arrival indicated on the reservation, the passenger may arrange himself or herself the rerouting, at comparable transport conditions as set out in the transport contract, via another air carrier, a different route or another mode of transport. When doing so the passengers

Commented [A58]: Attempt to clarify the concept of earliest opportunity and streamline the text

shall seek to limit the expenses as far as it is reasonable and appropriate. The air carrier operating the flight subject to denied boarding, delay or cancellation shall reimburse the expenses incurred by the passengers within 30 days.

Commented [A59]: Introduction of this right following the suggestions from delegations

Article 8a

Reimbursement when the ticket was booked through an intermediary

1. Where the passenger has booked 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 such a case, the intermediary shall reimburse the passenger in accordance with paragraphs 3 and 5 of this Article.

Air carriers shall state publicly, in a clear, comprehensible and easily accessible manner, whether they agree to process reimbursements through intermediaries, and with which intermediaries they accept to do so.

In the case the intermediary is not involved in the reimbursement process, Article 8(1), point (a), shall apply to the reimbursement.

2. The intermediary 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. The reimbursement shall not be reduced by financial transaction costs linked to the reimbursement such as fees, telephone costs or stamps.

4. [...]

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 the amount it had received for the ticket from the intermediary within seven days from the date that the air carrier received the passenger's choice of a reimbursement in accordance with Article 8(1), point (a), first indent.

The intermediary shall reimburse the passenger the full cost of the ticket and the intermediation fees reimbursable in accordance with Article 14(5), via the original payment method, which was used by, or on behalf of, the passenger at the time of the booking of the transport service, at the latest within a further seven days, and inform the passenger and the air carrier thereof. If that payment method is no longer available, the intermediary shall contact the passenger to obtain the payment details.

(b) if the passenger does not receive the reimbursement within 14 days from the date of choosing a reimbursement in accordance with Article 8(1), point (a), first indent, the 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 air carrier shall

reimburse the passenger the full cost of the ticket and the intermediation fees reimbursable in accordance with Article 14, paragraph 5, unless those fees have been charged without the knowledge of the air carrier. The air carrier shall reimburse the passenger within 14 days and inform the passenger and the intermediary thereof.

6. This Article does not apply to tickets booked as part of a package within the meaning of Directive (EU) 2015/2302 of the European Parliament and of the Council¹¹.

Commented [A60]: Introduced by Enforcement GA

Article 9

Right to care assistance

Commented [A61]: Alignment of terminology with other transport modes as suggested by some delegations

1. **In case of denied boarding under Articles 4(1) and 4(2), a cancellation under Article 5, a delay under Article 6 or a delay after a missed connecting flight under Article 6a** Where reference is made to this Article, and when the waiting time for the delayed flight, rerouting or the connecting flight is prolonged by at least two hours, passengers, while waiting for their flight, shall be offered promptly and free of charge:

(a) **meals and refreshments in a reasonable relation to the waiting time every two hours;**

(aa) a meal every 5 hours with a maximum of three meals per day;

(b) the choice between two telephone calls, fax messages, e-mails or other web-based message services **or internet access.**

Commented [A62]: Following suggestions from delegations, attempt to specify the rights to assistance

2. In addition, where a stay of one or more nights becomes necessary **while waiting for the delayed flight, rerouting or the connecting flight,** passengers shall be offered free of charge:

(a) hotel accommodation;

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

2a. The operating air carrier may use vouchers to fulfil its obligations under paragraphs 1 and 2. In such case, such vouchers shall be provided in an accessible format and usable in all shops providing food and refreshments at the airport where the passengers concerned are stranded, or in case those shops are closed, on board of their flight or at the airport of the final destination.

Commented [A63]: Following the suggestions from some delegations

2b. Where the operating air carrier does not fulfil its obligations under paragraphs 1 and 2, the passengers concerned may make their own arrangements insofar as the related expenses are reasonable and proportionate to the duration of the waiting and the costs of refreshments and meals at the airport where the passengers are stranded. The air carrier operating the flight subject to denied boarding, delay or

¹¹ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1, ELI: <http://data.europa.eu/eli/dir/2015/2302/oj>).

cancellation shall reimburse the expenses incurred by the passengers within 30 days.

3. If the cancellation, missed connecting flight ~~or~~ or delay at departure is caused by extraordinary circumstances and the cancellation, or delay could not have been avoided even if all reasonable measures had been taken, the air carrier may limit the accommodation provided according to paragraph 2(a), to a maximum of 3 nights. 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.~~

Commented [A64]: These obligations are now specified in the first paragraph of each Article.

4. Member States may decide to exempt air carriers from the obligation to offer accommodation under paragraph 2(a) where the flight concerned departs from an airport in ~~its~~ **their** territory, is of 250 km or less and scheduled to be operated by an aircraft with a maximum capacity of 80 seats or less, except where the flight is a connecting flight. If the operating air carrier chooses to apply this exemption, it shall nevertheless provide the passengers with information about available accommodation. Member States that choose to apply this exemption shall inform the Commission about their decision before the exemption enters into force.

4. Where a passenger opts for reimbursement pursuant to Article 8(1)(a) while being at the first point of departure, or opts for rerouting at a later date pursuant to Article 8(1)(c), the passenger shall have no further rights with regard to ~~care~~ **assistance** under Article 9(1) and 9(2) in relation to the relevant flight.

5. When exercising their rights under this Article, passengers shall cooperate in limiting the expenses for the air carrier as far as it is reasonable and appropriate.

6. **Paragraphs 4 and 5 shall not apply to a passenger mentioned in Article 11(1), as well as pregnant women and persons in need of specific medical assistance provided that the passenger has notified the operating air carrier 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 are part of the same air transport contract. As regards pregnant women and persons in need of specific medical assistance, they shall be required to notify the air carrier of their particular needs for assistance at the time when the cancellation or delay at departure is announced.**

Commented [A65]: Adaptation for People with special needs following the suggestion from some delegations

[Article 10

Upgrading and downgrading

Article 10a

Airport contingency plans]

Article 11¹²

¹² The issue of the declaration of special interests is currently being assessed.

~~Disabled persons and~~ **Persons with disabilities and reduced mobility**

0. All information provided to passengers under this Regulation shall be provided in accessible format.

1. Operating air carriers shall give priority to carrying persons with **disabilities, persons with reduced mobility** and any persons or **recognised assistance dogs** accompanying them, as well as unaccompanied children.
2. In applying the **re-routing care**, and assistance in accordance with Articles 8 and 9, the operating air carrier shall pay particular attention to the needs of the persons mentioned in paragraph 1. Air carriers shall provide this **re-routing** and assistance as soon as possible.

~~2a. When setting up the contingency plan under Article 10a, air carriers and airport managing bodies shall pay particular attention to the specific needs of the passengers mentioned in paragraph 1.~~

Commented [A66]: Presidency considers moving this Paragraph to the Article 10a - contingency plan

- ~~3. Articles 9(4) and 9(5) shall not apply to passengers mentioned in paragraph 1, and pregnant women or a person in need of specific medical assistance. As regards pregnant women and persons in need of specific medical assistance, they shall be required to notify the air carrier of their particular needs for assistance at the time when the cancellation or delay at departure is announced.~~

Commented [A67]: This exemption has been moved under Article 9

Article 12

Further rights

1. [This Regulation shall not affect rights and claims of the passenger granted under other legal acts, including under Directive (EU) 2015/2302. However, if these rights safeguard the same interest or have the same objective, the compensation or price reduction granted under Articles 7 or 10(2) of this Regulation and the compensation granted under the other legal acts, shall be deducted from each other.

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).¹³

When a compensation has already been paid to the passenger under the legislation of a third country, the amount of such compensation shall be deducted from the amount of the compensation granted under this Regulation.

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 may be interpreted as

¹³ Under consideration

restricting its right to seek compensation for the costs incurred under this Regulation from any third parties which caused or contributed to the event triggering compensation or other obligations.

[Article 14

Obligations to inform passengers¹⁴

Article 14a

Transfer of information by the intermediary

1. [...]

2. **Where the passenger does not acquire a ticket directly from an 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, and to the extent necessary to handle complaints.**

3. **For the purposes of fulfilling their obligations in respect of the passenger's right to information, the air carrier and the intermediary may keep such data for no longer than 72 hours after the completion of the contract of carriage.**

For the purposes of fulfilling their obligations in respect of provision of care, re-routing, reimbursement, compensation, and complaint handling, the air carrier and the intermediary may keep passenger's personal data for more than 72 hours after the completion of the contract of carriage to the extent strictly necessary to fulfil those obligations within the procedures laid down in the respective Member States' or Union law.

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.**

5. [...]

6. **This Article does not apply to tickets booked as part of a package within the meaning of Directive (EU) 2015/2302.**

Article 15

Exclusion of waiver

1. Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.

2. If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.

[Article 16

¹⁴ Under consideration

Enforcement]¹⁵

[*Article 16a*

Passenger claims and complaints]¹⁶

Article 16aa

Submission of reimbursement and compensation requests

0. Air carriers and intermediaries shall clearly inform passengers of the process of requesting compensation or reimbursement under, respectively, Article 7 and Articles 8, 8a, 9 and 10 of this Regulation.

0a. Passengers shall have the right to submit their requests for compensation or reimbursement using the common form referred to in paragraph 1, the form provided by the air carrier in accordance with paragraph 3 or by other means. Air carriers and intermediaries shall not reject a request on the grounds that the passenger has not used the common form referred to in paragraph 1 or the form provided by the carrier or intermediary in accordance with paragraph 3, or has sent the form by other means than electronic means referred to in paragraph 3.

Passengers shall have the right to submit their request in at least the language of the booking.

If a request is not sufficiently precise, the air carrier or the intermediary shall ask the passenger to clarify and complete the request.

1. The Commission shall adopt an implementing act establishing a common form for compensation and reimbursement requests under, respectively, Article 7 and Articles 8, 8a, 9 and 10. 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 16bd(2). The Commission shall make the common form available in all official languages of the Union on its website.

2. [...]

3. Air carriers and intermediaries shall, where possible and without undue delay, establish, and transmit to passengers, a form for compensation and reimbursement requests under, respectively, Article 7 and Articles 8, 8a, 9 and 10, or provide a link allowing a direct access to that form or to the common form referred to in paragraph 1 of this Article.

Air carriers and intermediaries shall provide details on their website such as an e-mail address, to which compensation or reimbursement requests may be sent by electronic means. That requirement shall not apply where other electronic means of communication allowing passengers to request compensation or reimbursement exist, such as the form referred to in the first subparagraph of this paragraph, available on a website or mobile applications, provided that such means offer, in an accessible format, the choice and information set out in the common form referred to in paragraph 1 and are available in at least the language of the booking.

¹⁵ Under consideration

¹⁶ Under consideration

4. [...]

Article 16ab

Legal representatives of third country intermediaries

1. Intermediaries which do not have an establishment in the Union, but which offer services in the Union shall designate, in writing, a legal or natural person to act as their legal representative in one of the Member States where they offer their services. For intermediaries covered by Regulation (EU) 2022/2065 of the European Parliament and of the Council¹⁷, the legal representative designated pursuant to that Regulation may also act a legal representative pursuant to this Regulation.

2. These intermediaries shall mandate their legal representatives for the purpose of being addressed in addition to or instead of such intermediaries, by the bodies designated under Article 16(1), on all issues necessary for the receipt of, compliance with and enforcement of decisions issued in relation to this Regulation. Intermediaries shall provide their legal representative with necessary powers and sufficient resources to guarantee their efficient and timely cooperation with those bodies, and to comply with such decisions.

3. It shall be possible for the designated legal representative to be held liable for non-compliance with obligations under this Regulation, without prejudice to the liability and legal actions that could be initiated against the intermediary.

4. Intermediaries shall notify the name, postal address, email address and telephone number of their legal representative to the bodies designated under Article 16(1) in the Member State where that legal representative resides or is established. The intermediaries shall ensure that that information is publicly available, easily accessible, accurate and kept up to date.

5. The designation of a legal representative within the Union pursuant to paragraph 1 shall not constitute an establishment in the Union.

Commented [A68]: Introduced by Enforcement GA

Article 16b

Cooperation between Member States and the Commission

1. The Commission shall support dialogue and exchange of information between the National Enforcement Bodies concerning the application of this Regulation through the Committee referred to in Article 16c. This exchange of information will particularly concern infringements, recurrent deficiencies by air carrier, sanctions, best practices of enforcement, the annual compliance monitoring process and the reporting to the Commission.
2. At the request of the Commission, the National Enforcement Bodies shall send relevant information concerning the national interpretation and application of this Regulation.

¹⁷ [Regulation \(EU\) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC \(Digital Services Act\) \(OJ L 277, 27.10.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/2065/oj\).](http://data.europa.eu/eli/reg/2022/2065/oj)

3. At the request of a Member State, or on its own initiative, the Commission shall examine cases where differences in the application and enforcement of any of the provisions of this Regulation by the National Enforcement Bodies arise and particularly concerning the interpretation of extraordinary circumstances. To this end, the Commission may issue a recommendation after consultation of the Committee referred to in Article 16c(1).

4. In case of a specific suspected practice by one or several air carriers simultaneously in several Member States, the Commission may request the Member States concerned to investigate this specific practice and to report the findings to the Commission. The Commission shall support the exchange of information and the coordination of the respective National Enforcement Bodies with regard to the issue concerned.

Article 16bb

Sharing of information with national enforcement bodies

The national enforcement bodies may request air carriers, intermediaries and airport managing bodies to provide documents and information that are relevant for the purposes of carrying out their function. Such documents and information shall be provided within one month from the receipt of the request, unless specified otherwise.

Article 16bc

Information about alternative dispute resolution by national enforcement bodies

Where necessary, the national enforcement body to which the passenger complains in accordance with Article 16(2), or any other body designated by a Member State for that purpose pursuant to that provision, shall inform the complainant about his or her right to approach alternative dispute resolution bodies to seek individual redress.

This obligation may be fulfilled by referring the passenger to the interactive tool [list of notified ADR entities] maintained by the Commission pursuant to Article [20] of the Directive 2013/11/EU of the European Parliament and of the Council¹⁸, or, where appropriate, to the designated ADR contact points notified to the Commission under Article [24] of that Directive.

Article 16bd

Committee procedure

1. The Commission shall be assisted by the committee referred to in Article [26(1) of Regulation on passenger rights in the context of multimodal journeys]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁹.

1. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

2. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Commented [A69]: Introduced by Enforcement GA

¹⁸ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63, ELI: <http://data.europa.eu/eli/dir/2013/11/oj>).

¹⁹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: <http://data.europa.eu/eli/reg/2011/182/oj>).

Article 16bb

Review of the list of Extraordinary Circumstances

Every two years, the Commission shall review the Annex and draw up a report on whether it is appropriate to amend that Annex in the light of the events affecting the timely and effective operation of flights having occurred during the two preceeding years

1. Where appropriate in the light of this review and those events, the Commission shall, by means of delegated acts in accordance with Article 16bc, amend the Annex in order to include new circumstances deemed as extraordinary.

Article 16be

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 16bb shall be conferred on the Commission for a period of five years from [date to be indicated at a later stage]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 16bb may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 16bb shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 16e

Committee procedure

~~1. The Commission shall be assisted by the Passenger Rights Committee, composed of up to two representatives of each Member State and of which at least one will represent a National Enforcement Body. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.~~

~~2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.~~

Commented [A70]: This provision is now redundant since a Committee procedure was introduced by the Enforcement GA.

Article 17

Review and Report

~~Every five years from the entry into force of this Regulation, the Commission shall report to the European Parliament and the Council by [date to be indicated at a later stage] on the operation and the results of this Regulation.~~

The Commission shall also include information on the enhanced protection of air passengers on flights from third countries operated by non-EU carriers, in the context of international air transport agreements.

The report shall also include a review of:

- (a) the amounts set out in Article 7(1), taking into consideration inter alia the evolution of air fares, the inflation rate and statistics on denied boarding, cancellations, delays and missed connecting flights imputable to air carriers, during the five preceding years;
- (b) the list of extraordinary circumstances set out in the Annex, in the light of the events affecting the timely and effective operation of flights having occurred during the five preceding years.

Commented [A71]: As suggested by several delegations, regular review of compensation amounts and the list of extraordinary circumstances

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 the twentieth day following that of its publication in the Official Journal of the European Union.

~~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

For the Council

The President

The President

Annex: non-exhaustive list of circumstances considered as extraordinary circumstances for the purposes of this Regulation

Commented [A72]: Following some comments from delegations categorisation of extraordinary circumstances on the same model as rail passengers rights and has been updated in light of recent case law

1. The following circumstances shall be considered as extraordinary:

(a) extraordinary circumstances not connected with the operation of the aircraft, such as:

- i. natural and/or environmental disasters which are deemed to affect the safe operation of the flight;
- ii. meteorological conditions incompatible with the safe operation of the flight or resulting in capacity restrictions at the airport of departure or of arrival;
- iii. ~~iii.~~ (a) war or political instability where the competent national public authorities of the country of departure of the flight advise against travel;

iv. major public health crises:

v. ~~eollision of birdstrikes or other objects~~ **obstacle collision** with the aircraft during a flight which may cause damage that requires immediate compulsory checks and possible repair;

~~vi. a hidden manufacturing defect revealed by the manufacturer or a competent authority and which impinges on flight safety;~~

~~v.(a) air traffic management restrictions or closure of airspace;~~

~~vii. — partial or full unscheduled closure of an airport;~~

~~labour disputes at essential service providers such as airport managing body, Air Navigation Service Providers or groundhandling service providers~~

(b) fault on the part of a passenger, including:

- i. disruptive passenger behaviour endangering the safe operation of the flight;
- ii. health risks or medical emergencies (such as serious illness) discovered at short notice before flight departure, or necessitating the interruption or deviation of the flight;

(c) the behaviour of a third party which the operating air carrier, in spite of having taken the care required in the particular circumstances of the case, was unable to avoid and the consequences of which it was unable to prevent, such as:

i. ~~—~~ security risks, acts of sabotage or unlawful acts, incompatible with the safe operation of the flight;

~~i. a hidden manufacturing defect revealed by the manufacturer or a competent authority and which impinges on flight safety;~~

~~ii. air traffic management restrictions or closure of airspace;~~

~~iii. partial or full unscheduled closure of an airport;~~

~~iv. labour disputes at essential service providers such as airport managing body, Air~~

Navigation Service Providers or groundhandling service providers:

- v. damage to the aircraft caused by third parties for whom the air carrier, in the absence of contractual relations, is not responsible on the ground prior to departure of the flight and requiring immediate assessment or repair.
- vi. damage to the aircraft which could affect the safety of the flight or the integrity of the aircraft and requires immediate assessment and/or repair and is caused by meteorological events (for example: lightning strikes, hailstones, thunderstorms, severe turbulence etc.).
- vii. **a collision between the elevator of an aircraft in a parking position and the winglet of an aircraft of another airline;**
- viii. **damage to an aircraft tyre caused by a foreign object, provided that the air carrier deployed all its resources in terms of staff or equipment and the financial means at its disposal to avoid the damage;**
- ix. **petrol on a runway of an airport.**
- x. unexpected flight safety shortcomings **that do not fall under 2(i)**, -technical defect(s) and/or problems, provided that all of the following criteria is fulfilled:

i. ~~the maintenance has been executed in accordance with the approved maintenance programme, including/taking into account Minimum Equipment List (MEL) and Configuration Deviation List (CDL), but excluding situations in which repetitive maintenance actions of the same defect occurs;~~

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

iii. ~~the defect is related to airworthiness of the aircraft, is not listed in the MEL and results in the defect having to be fixed before the flight can operate or several defects occur which are listed in the MEL and/or CDL, and in accordance with Commission Regulation (EU) 965/2012 the commander decides that is not safe to operate the aircraft with the combination of these defects.~~

2. The following circumstances shall not be considered as extraordinary:

- i. **technical problems that could have been identified in the context of preventive maintenance in line with EU rules and procedures for the continuing airworthiness management of aircraft;**
and
- ii. **unavailability of flight crew or cabin crew (unless caused by labour disputes).**

Commented [A73]: Following comments from some delegations, the text proposed by the Commission in 2013 has been reinstated. However, point i) has been adapted to take into account the views of a majority of delegations regarding flight safety shortcomings.