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General Secretariat

Brussels, 02 March 2020

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

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### WORKING PAPER

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### **WORKING DOCUMENT**

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From:	General Secretariat of the Council
To:	Working Party on Aviation

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N° prev. doc.:	ST 5123/20
N° Cion doc.:	ST 7615/13

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Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air - Comments from Member States on the Presidency compromise
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Delegations will find attached comments and suggestions from Poland on the above mentioned document.

## **PL comments and suggestions to document 5123/20**

**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air**

### **Proposal:**

#### **Article 2 definitions**

PL proposes amendments pertaining terms *operating air carrier* and *actual air carrier*. All phrases containing term *operating air carrier* shall be replaced by *actual air carrier*.

Article 2 is amended as follows:

The definition in point (b) is replaced by the following:

1. Actual air carrier means an air carrier that performs a flight.
2. The contracting carrier is this carrier who makes a contract of carriage with a passenger and another contract with an actual carrier.

### **Justification:**

Rationale behind the presented proposal about the presented introduction of terms an *actual air carrier* and a *contracting air carrier*.

It would be prudent that the amended regulation was complemented with existing legal regime of the Montreal Convention. In previous documents, FR indicated that it is to precise which air carrier shall be liable for compensation, when the voyage was operated by two or more carriers. This is a case of missed connecting flight. It may be highly accurate to invoke and introduce existing rules as formulated in art. 39 and 40 of the Montreal Convention, for a couple of reasons:

Firstly, meaning of a term *operating carrier*, as formulated by existing version of so called Regulation 261/2004, was alternated in light of ruling *C-532/17, Thomson Airways Ltd, ECLI:EU:C:2018:527*. This judgment introduced a couple of meanings of the term *operating*

*carrier* blurring them. Since the term *operating carrier* means an *actual carrier* and a *contracting carrier* simultaneously, this situation causes a measure latitude.

Secondly, the already mentioned regulation supposed to act in synergy with an international legal system. Because of reference to existing rules, this aim would be attain.

Thirdly, biding text of the regulation 261/2004 and CJEU judgments accompanied to this regulation was a matter of a severe criticism form air carriers. This criticism was caused by a lack of coherence with the Montreal Convention. The proposed amendment will be a positive turn for carriers. In the same time, the proposed amendment will be in favor of consumers, because of the higher level of clarity.

### **Suggestion to art. 2 (m)**

(m) The text has to contain a definition of extraordinary circumstances and an non-exhaustive list of extraordinary circumstances including **strikes of air traffic controllers**, airport and ground handling personnel, delays caused by geopolitical situation, weather conditions, **technical difficulties which could not have been avoided even if all reasonable measures had been taken**, damages to aircraft, bird strikes, extraordinary high level of traffic congestion in the air.

Technical difficulties and strikes of air traffic controllers and flight personnel should be included in the catalogue of the extraordinary circumstances in Annex 1

### **Justification:**

In the current wording of Regulation 261/2004, strikes are treated as an extraordinary circumstance that exempts the carrier from damages (recital 14 of the Preamble to the Regulation). The amended regulation should contain strikes on the list of extraordinary circumstances, transferring this issue form the preamble to the content of this Regulation. An aim to do so is to remove interpretative doubts as it is in the current legal status.

A strike organized by employees of an air carrier is an external event that an air carrier could not prevent. Under no circumstances an air carrier may be required to comply with any request by a striking group of workers to prevent a strike organization.

A strike organized by trade unions of employees rather than by the air carrier itself or its employees is an external event with respect to the air carrier concerned, which the air carrier has no influence on and which it cannot effectively prevent.

When analyzing previous statements of the jurisprudence on this issue, it should be assumed that extraordinary circumstances should be considered to be related to an event that does not fall within the scope of normal operation of a given air carrier and does not allow it to be effectively controlled, owing to its nature or source.

Given the above, it should be noted that the strike that caused the irregularity of the voyage is external and to the end (due to the very nature of this phenomenon, which is the strike), it is unpredictable. In addition, it cannot be assumed to be an event of this kind that falls under the normal conduct of the carrier's business. It is also impossible to prevent its effects (the strike usually applies to all pilots or cabin crew at a given carrier). Also, the mere announcement of a strike's readiness does not mean that the strike will take place, and also - when such a strike can take place and - what extent it can have. It should also be taken into account that in the event of an air carrier's pilot strike involving; for example, many flights at the same time, it is not possible to "download" other pilots from the market who had not previously carried out flight operations in his company (in order to prevent the effects of the strike or even in to minimize them). The work of aircraft pilots cannot in any way be replaced by the work of other people who do not have the same qualifications.

#### **Proposal to art. 2 (o)**

(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; **actual carrier is liable for a flight that is solely operated by him.**

#### **Proposal to art. 2 (v)**

(v) time of arrival - means the time when the aircraft reaches the arrival stand and the parking brakes are engaged (on-block time).

The time at which at least the one of the door is opened is not registered. On block stand is registered by MVT.

#### **Suggestion**

#### **Art. 4 denied boarding**

PL is of the opinion that a "No-show" policy is justified as a legally acceptable market practice, which should not be prohibited by Regulation (EC) No 261/2004, which is confirmed in the Commission Notice point 3.1.1., in which we read that this does not constitute "denied boarding within the meaning of Article 2(j). The same is true when a passenger who holds a reservation including consecutive flights is not allowed to board a flight because he did not take the previous flight(s). These two situations are usually based on the terms and conditions linked to the ticket purchased." (Commission notice Interpretative guidelines for Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding or of cancellation or long delay of flights, and Council Regulation (EC) No 2027/97 on air carrier liability in the event of air accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council (2016 / C 214/04)).

**Suggestion:**

**Article 5. 1a cancellation**

The level of protection shall depend on time limit of delay – 5 hours, 9 hours and 12 hours. In the case of **art. 5 1a (v)** canceled flight and **art. 6 (iv)** delayed flight the proposal of no compensation for irregular flights in PL is flexible. From PL's point of view, this is not a matter of first importance because of the marginal segment it represents on the European aviation market. In the case of airports with passenger traffic below 1 million per year, PL does not raise any objections and gives support the postulate. Doubts about the equal treatment of carriers may arise, however, the abovementioned these flights constitute a small part of the aviation market and thus should not contribute to the distortion of fair competition rules, but may cause the development or maintenance of existing air transport in remote and smaller regions.

**Suggestion:**

**Article 6a Missed connecting flight is amended as follows:**

In art. 6a it should be clearly indicated that the actual air carrier operating on a given flight is responsible for the irregularity of the flight for the obligations arising from Articles 7, 8, 9, 14.

**Justification:**

This regulation does not indicate any liability of a contracting carrier. Where a passenger misses a connecting flight as a result of a delay at arrival of a previous flight operating by an actual carrier, the actual carrier is responsible solely for the carriage which it performs. The carrier

liable shall offer the passenger assistance with Article 7, 8, and care in accordance with Article 9. All phrases containing term operating air carrier shall be replaced by actual air carrier.

**Proposal:**

**Art. 7 right to compensation**

Polish position is that the amount of compensation **must depend on the ticket price only**.

Paragraph 1 is replaced by the following:

1. Where reference is made to this paragraph, as regards cancellation and denied boarding, the following compensation amounts shall apply:

- (a) 25% of ticket price for journeys of 1500 kilometres or less;
- (b) 35% of ticket price for journeys between 1500 and 3500 kilometres, as well as for intra-EU journeys over 3500 km;
- (c) 50% of ticket price for extra-EU journeys of 3500 kilometres or more.

**Justification:**

600 Euro compensation for a 19 Euro ticket is very unfair for air carriers. There is an international Regulation for air passengers– Convention for the unification of certain rules for international carriage by air - *Art. 19 The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.*

**Suggestion:**

**Art. 9 right to care**

PL supports that a carrier shall be responsible and liable only for providing a care which means hotel accommodation, phone call, and meal that is not beyond a time limit of three (3) nights.

**Proposal:**

**Art. 16a Passenger claims and complaints**

- Limitation period for the enforcement of claims:

It should be unified in the whole EU and limited to 6 months period of time. Poland supports the provision in the Art. 16a paragraph 2.

- **Claiming agencies:**

Activity of third parties to the particular flight that is taken at the airport, whereby the third party strives to make agreements with passengers of assignment or representation before the appropriate body or the court to achieve compensation, are forbidden. Member States should actively counteract such activities.

**Suggestion:**

**Annex 1**

PL supports non-exhaustive list of circumstances considered as extraordinary, because creating a closed list is very difficult, if at all possible. In addition, it leaves room for maneuver in the event of new circumstances such as virus spread.

**Suggestion:**

**Annex 3**

We are in favour of the deletion of Annex 3 - the issue of baggage should be excluded from Regulation 261/2004 as it is regulated in the Montreal Convention.

Compensation in the case of Death or Injury - in PL's opinion, they are pursued under general principles in force in a given Member State (e.g. the Civil Code) before common courts and there is no point in duplicating it. Each Member State has its rules in this area.

In the case of the already widening scope of Regulation 261/2004 to include matters not yet regulated, the introduction of baggage issues would reduce the readability of the provisions of the legal act which applies to air operations. In the existing regulation, the lack of baggage records has never been a problem.



Council of the  
European Union

Brussels, 12 February 2020  
(OR. en)

5123/20

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#### NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	7615/13
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air

Following the discussion of the non-paper (ST 5581/20) at the Aviation Working Party of 4 February 2020, the Working Party on the Steer Study on 21 January 2020, the delegations may find the below text of the above-mentioned proposal in preparation of the Aviation Working Party of 13 February 2020.

The text below is based on the last version discussed under the LV Presidency as can be seen in document ST 8695/15. However, the format of the below text is not in the form of a consolidated version but in the format that had been originally proposed by the Commission.

Changes when compared to the LV proposal are marked in **Bold** for additions and ~~striethrough~~ for deletions.

**Commented [1]:** All changes made by Polish side is highlighted in yellow.



Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air**

***Article 1***

**Regulation 261/2004 is amended as follows:**

1. Article 1 is amended as follows:

Point (c) is replaced by the following:

'their flight is delayed at departure or at arrival;'

Point (d) is added:

'they are upgraded or downgraded.'

**Paragraph 2 and 3 are replaced by the following:**

- '2. This Regulation shall not apply to Gibraltar airport.'**<sup>1</sup>

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<sup>1</sup> **The following recitals would be added:**

"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."

Article 2 is amended as follows:

The definition in point (b) is replaced by the following:

1. Actual air carrier means an air carrier that performs a flight.
2. The contracting carrier means an air carrier that makes a contract of carriage with a passenger and another contract with an actual carrier.

The definition in point (c) is replaced by the following:

'«Community air carrier» means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Regulation (EC) No 1008/2008 of 24 September 2008 on common rules for the operation of air services in the Community<sup>2</sup>.'

The definition in point (d) is replaced by the following:

'«Organiser» means a person within the meaning of Article 2(2)3(8) of ~~Council Directive 90/314/EEC of 13 June 1990~~ Directive (EU) 2015/2302 of 25 November 2015 on package travel, package holidays and package tours<sup>3</sup>;

The definition in point (g) is replaced by the following:

''reservation'' means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier, organiser or ticket seller;'

The definition in point (h) is replaced by the following:

''final destination'' means the destination of the flight or of the last flight of a journey as indicated in the reservation;'

The definition in point (i) is replaced by the following:

''disabled person or person with reduced mobility'' means any person as defined in Article 2(a) of Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air ; <sup>4</sup>

<sup>2</sup> OJ L293, 31.10.2008, p. 3.

<sup>3</sup> ~~OJ L158, 23.6.1990, p. 59~~ OJ L 326, 11.12.2015, p. 1–33

<sup>4</sup> OJ L204, 26.7.2006, p.1

#### Commented [REDACTED]

PL proposes amendments pertaining terms *operating air carrier* and *actual air carrier*.

Polish proposal introduces a definition taken from the Montreal Convention (the Convention for the Unification of Certain Rules for International Carriage by Air); namely, Polish proposal is an adjusted text taken from art. 39 and 40 of this Convention.

PL proposes to replace a text art. 2 point 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;

by following definitions:

The definition in point (b) is replaced by the following:

1. Actual air carrier means an air carrier that performs a contract.
2. The contracting carrier is this carrier who makes a contract of carriage with a passenger and another contract with an actual carrier.

PL proposes also that art. 6a(1) (on page 16 of the document) instead of hereunder text:

Where a passenger misses a connecting flight as a result of a delay at arrival of a previous feeder flight, the air carrier operating that feeder the delayed flight shall offer the passenger assistance in accordance with Article 8, (...)

contains the this text:

This regulation does not indicate any liability of a contracting carrier. Where a passenger misses a connecting flight as a result of a delay at arrival of a previous flight operating by an actual carrier, the actual carrier is responsible solely for the carriage which it performs. The carrier liable shall offer the passenger assistance with Article 7, 8, and care in accordance with Article 9.

All phrases containing term *operating air carrier* shall be replaced by *actual air carrier*.

Rationale behind the presented proposal about the presented introduction of terms an actual air carrier and a contracting air carrier.

It would be prudent that the amended regulation was complemented with existing legal regime of the Montreal Convention. In previous documents, FR indicated that it is to precise which air carrier shall be liable for compensation, when the voyage was operated by two or more carriers. This is a case of missed connecting flight. It may be highly accurate to invoke and introduce existing rules as formulated in art. 39 and 40 of the Montreal Convention, for a couple of reasons:

Firstly, meaning of a term *operating carrier*, as formulated by existing version of so called Regulation 261/2004, was alternated in light of ruling *C-532/17, Thomson Airways Ltd, ECLI:EU:C:2018:527*. This judgment introduced a couple of meanings of the term *operating carrier* blurring them. Since the term *operating carrier* means an *actual carrier* and a *contracting carrier* simultaneously, this situation causes a measure latitude.

Secondly, the already mentioned regulation supposed to act in synergy with an international legal system. Because of reference to existing rules, this aim would be attain.

Thirdly, biding text of the regulation 261/2004 and CJEU judgments accompanied to this regulation was a matter of a severe criticism from air carriers. This criticism was caused by a lack of coherence with the Montreal Convention. The proposed amendment will be

The definition of "cancellation" in point (l) does not change;

The following definitions are added:

(m) «extraordinary circumstances» means circumstances which are beyond its actual control. For the purposes of this Regulation, extraordinary circumstances ~~are listed~~ shall include, but shall not be limited to, the circumstances set out in the Annex 1;

Commented [1]: list of circumstances considered as extraordinary should be non-exhaustive, due to plentiful of situations for example: volcanoes activity, virus spread etc.

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

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

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

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

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

- (o) «connecting flight» means a flight that carries the passenger from a transfer point to which the passenger was transported by a feeder flight, if the flights are, under the same contract of carriage. This excludes stopovers, i.e. the voluntary interruption of the performance of the contract of carriage by the passenger and agreed in advance by the air carrier as it appears on the ticket. Such a stopover point shall be regarded as a final destination 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; Actual carrier is liable for a flight that is solely operated by him.
- (p) "journey" means a flight or a continued series of flights transporting the passenger from the initial airport of departure to his final destination in accordance with a single contract of carriage. The outward and the return journey are not the one and the same journey;
- (q) «airport» means any area specifically adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services, including the installations needed to assist commercial air services;
- (r) «airport managing body» means a body which, in conjunction with other activities or not as the case may be, has as its objective under national laws, regulations or contracts the administration and management of the airport or airport network infrastructures and the coordination and control of the activities of the different operators present in the airports or airport network concerned;

- (s) « ticket price" means the full price paid for a ticket and including the air fare, and all applicable taxes, charges, surcharges and fees, including the management fees charged by the air carrier, paid for all optional and non-optional services included in the ticket;
- (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 (on-block time) ~~means the time at which at least one of the doors of the aircraft is opened and the passengers are permitted to leave the aircraft;~~

Commented [REDACTED]: Rationale:  
The time at which at least the one of the door is opened is not registered. On block stand is registered by MVT.

- (w) «tarmac delay» means, at departure, the time the aircraft remains on the ground between the closing of the doors, or in any case the time when passengers can no longer leave the aircraft, and the take-off time of the aircraft or, at arrival, the time between the touch-down of the aircraft and the start of disembarkation of the passengers;
- (ac) "third country" means any state to which the Treaty is not applicable or any part of Member States' territory that is not subject to Treaty provision;
- (ad) "delay at departure" means the difference of time between the time of departure indicated on the passenger's reservation and the actual time of departure of the flight;
- (ae) "delay at arrival" means the difference of time between the time of arrival indicated on the passenger's reservation, and the actual time of arrival;

- (af) "class of transport" means a part of the passenger cabin of the aircraft characterised by different seats, a different seat configuration or any other difference in the standard service provided to passengers compared to other parts of the cabin;
- (ag) "rerouting" means an alternative offer of transport at no extra cost to the passenger and allowing him to reach his final destination or an alternative destination agreed with the passenger;
- (aj) "ticket seller" means the seller of an air ticket (including contracting air carrier), other than an actual air carrier or an organiser, who arranges a contract of carriage on behalf of the air carrier with a passenger, whether for a flight on its own or as part of a package<sup>5</sup>;
- (al) "minor" - means a person below the age of 18 years.'

2. Article 3 is amended as follows:

- (a) Paragraph 2 is replaced by the following:

'Paragraph 1 shall apply on the condition that passengers:

(a) have a confirmed reservation on the flight concerned and, in the case of denied boarding referred to in Article 4, present themselves for boarding, after on-line check-in or check-in at the airport,

- as stipulated and at the time indicated on the ~~ticket~~ reservation in advance and in writing (including by electronic means) by the contracting 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

<sup>5</sup> "ticket seller" definition needs to cover the seller of flight-only tickets but also the "retailer" (i.e. travel agents) who sells packages put together by the organiser as an intermediary - see definition of "retailer" in Directive (90/314/EEC - Package Travel Directive.

(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.'

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Paragraph 3 is replaced by the following:

'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.'

Paragraph 4 is replaced by the following:

'4. Without prejudice to Article 8(6), this Regulation shall only apply to passengers transported by motorised fixed wing aircraft.'

Paragraph 5 is replaced by the following:

'5. This Regulation shall apply to any ~~operating air carrier~~ actual air carrier providing transport to passengers covered by paragraphs 1 and 2. Where no contract exists between the ~~operating air carrier~~ actual air carrier and the passenger, the performer of rights and obligations under this Regulation shall be regarded as doing so on behalf of the contracting parties.'

Paragraph 6 is replaced by the following:

'6. This Regulation shall also apply to passengers transported according to package travel contracts but shall not affect the rights of passengers under Directive (EU) 2015/2302. 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.'



3. Article 4 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'When ~~an operating air carrier~~ **an actual 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~~ **actual air carrier**. This agreement with the volunteer on the benefits shall replace the passenger's right to compensation as laid down in Article 7(1), only if it is approved in a signed document by the volunteer and the passenger has received information in accordance with Article 14(2). Volunteers shall be offered by the **actual air carrier** ~~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.'

(b) Paragraph 3 is replaced by the following:

'3. If boarding is denied to passengers against their will, the **actual air carrier** ~~operating air carrier~~ shall immediately assist them in accordance with Article 8 and offer care in accordance with Article 9. The **actual air carrier** ~~operating air carrier~~ shall, without a request **to that end**, compensate the passenger within 10 days of the date of the denied boarding in accordance with Article 7(1)'

Commented [1]: No consistency with 2 months term for a response from an air carrier – see page. 31 art. 16a point 2.

The following paragraph is added:

'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 contract of carriage, the air carrier shall correct this at least once up until 72 hours before departure without any additional charge to the passenger or the organiser, except where it is prevented from doing so by applicable national or international law regarding security.'

4. Article 5 is amended as follows:

- (a) Paragraph 1 is replaced by the following:

'In case of cancellation of a flight, the passengers concerned shall be offered by the **actual operating** air carrier in a clear and reliable manner:

- (a) the choice between the options specified in Article 8; and
- (b) the care in accordance with Article 9.'

Paragraph 1a is added:

- 1a. Passengers shall have the right to receive, on request, compensation by the **actual operating** air carrier in accordance with Article 7(1), 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 informed of the cancellation more than 24 hours before the time of departure indicated in the reservation and are offered re-routing departing no more than 1 hour before the time of departure indicated in the reservation, allowing them to reach their final destination within the threshold indicated in subparagraph (iii).~~
  - (ii) they are offered re-routing allowing them to reach their final destination with a delay at arrival after the time of arrival indicated in their reservation of no more than:**
    - (a) five hours for journeys of 1500 kilometres or less;**

- (b) nine hours for journeys between 1500 and 3500 kilometres, as well as for intra-EU journeys over 3500 kilometres;**
- (c) twelve hours for extra-EU journeys of 3500 kilometres or more.**

or

~~(iii) they are offered re-routing allowing them to reach their final destination no more than three hours after the time of arrival indicated in their reservation.~~

- (iii) the cancellation is caused by extraordinary circumstances or unexpected flight safety shortcomings and the cancellation could not have been avoided even if the air carrier had taken all reasonable measures**

or

- (iv) the cancellation occurs on the connecting flight operated entirely outside the EU**

or

- (v) the cancelled flight arrives at/departs from an airport:**
- (a) with an average passenger traffic less than 1 million per year', or**
  - (b) situated in an outermost region of the EU, or**
  - (c) served on the basis of public service obligation as prescribed by Article 16 of Regulation (EC) 1008/2008**

Paragraph 2a is added:

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

Paragraph 3 is replaced by the following:

~~'3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7 if it can prove that both of the following conditions are met:~~

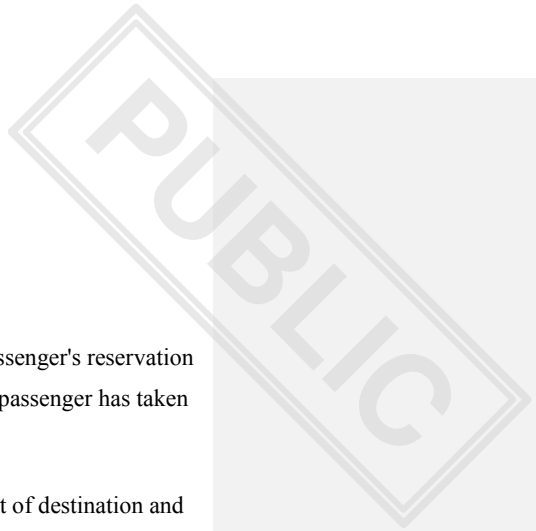
- ~~—— the cancellation is caused by extraordinary circumstances or unexpected flight safety shortcomings; and~~
- ~~—— the cancellation could not have been avoided even if the air carrier had taken all reasonable measures.'~~

The following paragraph 3a is added:

~~When applying paragraph 3, the air carrier can only invoke extraordinary circumstances or unexpected flight safety shortcomings for a later flight than the first affected flight, provided that:~~

- ~~—— cancellation of this later flight was caused by these extraordinary circumstances or flight safety shortcomings and it has taken all reasonable measures to avoid cancellation, and~~
- ~~—— when the air carrier invokes the extraordinary circumstances affecting a single aircraft set out in items iii, iv, viii, ix, x or xi of Annex 1, or unexpected flight safety shortcomings fulfilling the conditions of Annex 2, the scheduled time of departure of the flight concerned falls within 24 hours after the scheduled time of arrival of the first affected flight operated or scheduled to be operated by the same aircraft.~~

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



The following paragraph 5 is added:

'5. This 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 on an airport other than the airport of destination and did not subsequently reach the said airport of destination.'

5. Article 6 is replaced by the following:

*‘Article 6*

**Delay**

1. When an **actual operating** air carrier expects a flight to be delayed at departure, passengers shall be offered by the **actual operating** air carrier in a clear and reliable manner:

- (i) the care in accordance with Article 9 while waiting for the departure of the delayed flight;
- (ii) when the delay is of at least five hours, the assistance specified in Article 8(1)(a).

2. Passengers shall have the right to receive, on request, compensation from the **actual operating** air carrier in accordance with Article 7(1a) **unless:**

~~where they arrives at its final destination with a delay at arrival of:~~

**(i) they reach their final destination with a delay at arrival after the time of arrival indicated in their reservation of no more than:**

- (a) ~~at least three~~**five** hours for journeys of 1500 kilometres or less;
- (b) ~~at least~~ nine hours for journeys between 1500 and 3500 kilometres, as well as for intra-EU journeys over 3500 kilometres;
- (c) ~~at least~~ twelve hours for extra-EU journeys of 3500 kilometres or more

**or**

**(ii) the delay is caused by extraordinary circumstances or unexpected flight safety shortcomings and the delay could not have been avoided even if the air carrier had taken all reasonable measures**

**or**

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

or

(iv) the delayed flight arrives at/departs from an airport:

- (a) with an average passenger traffic less than 1 million per year', or
- (b) situated in an outermost region of the EU, or
- (c) served on the basis of public service obligation as prescribed by Article 16 of Regulation (EC) 1008/2008

~~4. The exemptions from compensation provided for in Article 5(3) and 5(3a) shall also apply to flights delayed at arrival.'~~

5. Paragraph 2 shall not apply if the passenger has been informed of the change in the time of departure indicated on the passenger's reservation at least 14 days before that date. The burden of proof concerning the questions as to whether and when the passenger has been informed of the delay of the flight shall rest with the actual operating air carrier.

6. This article shall also apply where the aircraft takes off and lands at an airport other than the airport for which the reservation was made, but subsequently takes off to reach the airport of destination.

7. This article shall also apply if the time of departure as indicated in the reservation was postponed by the air carrier.'

6. The following Article is inserted:

*'Article 6-2a*

**Tarmac delay**

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

6. The following Article is inserted:

*'Article 6a*

**Missed connecting flight**

~~1a. — This article shall apply to:~~

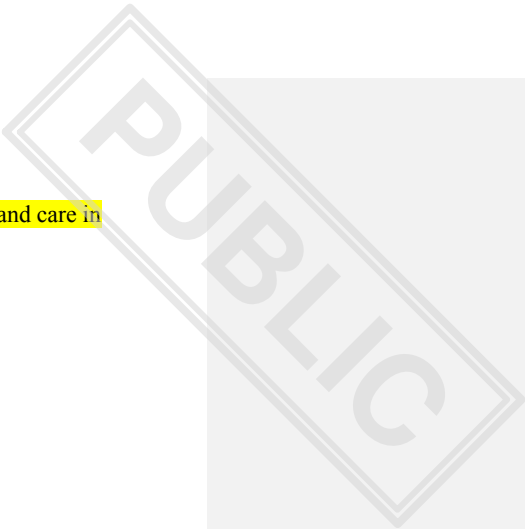
- ~~— all air carriers whose feeder flight arrived at an airport situated in a territory of a Member State to which the Treaty applies;~~
- ~~— Community air carriers whose feeder flight departed from an airport situated in a territory of a Member State to which the Treaty applies.~~

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

**This regulation does not indicate any liability of a contracting carrier. Where a passenger misses a connecting flight as a result of a delay at arrival of a previous flight operating by an actual carrier, the actual carrier is responsible solely for the carriage which it performs.**



The carrier liable shall offer the passenger assistance with Article 7, 8, and care in accordance with Article 9.



2. Where a passenger misses a connecting flight as a result of a delay to a ~~feeder~~ **previous** flight, the passenger shall have a right to receive, on request, compensation in accordance with Article **6(2) and Article 7(1)** ~~7. 6(2) and 6(4)~~, unless ~~the transfer time at the transfer point as indicated in the reservation was~~ **from an actual air carrier that operated delayed flight.**

~~— less than 90 minutes for journeys of less than 3500 kilometres;~~

~~— less than 180 minutes for journeys of more than 3500 kilometres;~~

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

3. ~~The compensation shall be paid according to the indemnity arrangements made between affected air carriers. The~~ **actual** air carrier **that operates** ~~operating~~ the **feeder delayed** flight shall be responsible for the handling and settlement of claims.

3a. **Passengers shall be informed by the actual operating air carrier of the delayed flight as soon as possible. The actual 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.**

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

7. Article 7 is amended as follows:

Paragraph 1 is replaced by the following:

1. Where reference is made to this paragraph, as regards cancellation and denied boarding, the following compensation amounts shall apply:

- (a) 25% of ticket price for journeys of 1500 kilometres or less;
- (b) 35% of ticket price for journeys between 1500 and 3500 kilometres, as well as for intra-EU journeys over 3500 km;
- (c) 50% of ticket price for extra-EU journeys of 3500 kilometres or more.

~~1. Where reference is made to this paragraph, as regards cancellation and denied boarding, the following compensation amounts shall apply:~~

- ~~(a) 250 EUR for journeys of 1500 kilometres or less;~~
- ~~(b) 400 EUR for journeys between 1500 and 3500 kilometres, as well as for intra-EU journeys over 3500 km;~~
- ~~(c) 600 EUR for extra-EU journeys of 3500 kilometres or more.~~

In determining the distance, the basis shall be the final destination.

~~Paragraph 1a is added:~~

~~1a. Where reference is made to this paragraph, as regards delays, the following compensation amounts shall apply:~~

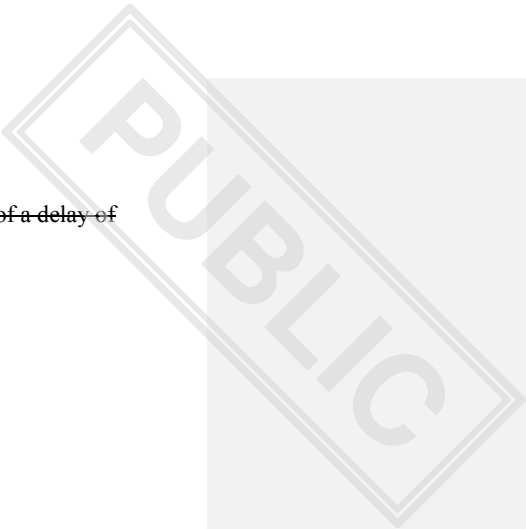
- ~~(a) 125 EUR for journeys of 1500 kilometres or less if the delay is between 3 and 5 hours;~~
- ~~(b) 250 EUR for journeys of 1500 kilometres or less in case of a delay of over 5 hours;~~
- ~~(c) 400 EUR for journeys between 1500 and 3500 kilometres, as well as for intra-EU flights over 3500 km in case of a delay of over 9 hours;~~

**Commented** : Amount of compensation shall apply to a ticket price as follows:

- (a) 25%
- (b) 35 %
- (c) 50%

600 Euro compensation for a 19 Euro ticket is unfair for air carriers. There is an international Regulation for air passengers-Convention for the unification of certain rules for international carriage by air - Art. 19 The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

~~(d) 600 EUR for extra EU journeys of 3500 kilometres or more in case of a delay of more than 12 hours.~~



Paragraphs 2, 3 and 4 are replaced by the following:

2. Where the passenger has opted for the continuation of his travel pursuant to Article 8(1)(b), and another cancellation or missed connection occurs during 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 **after the process of reclamation between a passenger and an actual air carrier is finished (with a positive decision) within 10 days of the passenger's request** in cash, by electronic bank transfer, bank orders, credit/debit card refund or bank cheques. Following appropriate information to the passenger regarding his rights under this Regulation, with the confirmed agreement of the passenger compensation may also be paid in travel vouchers and/or other services.

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

8. Article 8 is replaced by the following:

*'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 10 days of the passenger's request, by the means provided for in Article 7(3), of the ticket price, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,

- a return flight to the first point of departure, at the earliest opportunity after the time of departure indicated in the reservation;

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

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

2. Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive (EU) 2015/2302~~90/314/EEC~~.

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

3. If an **actual operating** air carrier offers a passenger a flight to or from an airport alternative to that for which the reservation was made, the **actual operating** air carrier shall bear the cost of transferring the passenger from that alternative airport to that for which the reservation was made, or, with regard to the destination airport, to another neighbouring destination agreed with the passenger.

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

5. Where passengers choose the option referred to in paragraph 1(b), they shall, subject to availability, have the right to re-routing via another air carrier or another mode of transport where the operating air carrier cannot foreseeably transport the passenger on its own services and in time to arrive at the final destination within ~~426~~ hours of the time of arrival indicated in the reservation.'

9. Article 9 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'Where reference is made to this Article, and when the waiting time for the delayed flight, rerouting or the connecting flight is prolonged by at least two hours, passengers, while waiting for their flight, shall be offered promptly and free of charge:

- (a) meals and refreshments in a reasonable relation to the waiting time;
- (b) the choice between two telephone calls, fax messages, e-mails or other web-based message services'

Paragraph 2 is replaced by the following:

In addition, where a stay of one or more nights becomes necessary, passengers shall be offered free of charge:

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

Paragraph 3 is deleted.

The following paragraphs are added:

'3. If the cancellation, missed connection or delay at departure is caused by extraordinary circumstances and the cancellation or delay could not have been avoided even if all reasonable measures had been taken, the air carrier may limit the accommodation provided according to paragraph 1(b) 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. Member States may decide to exempt air carriers from the obligation to offer accommodation under paragraph 2(a) where the flight concerned departs from an airport in its territory, is of 250 km or less and scheduled to be operated by an aircraft with a maximum capacity of 80 seats or less, except where the flight is a feeder or a connecting flight. If the operating air carrier chooses to apply this exemption, it shall nevertheless provide the passengers with information about available accommodation. Member States that choose to apply this exemption shall inform the Commission about their decision before the exemption enters into force.

Commented [REDACTED]: Feeder - This definition is removed from the text.

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

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

10. Paragraph 2 of Article 10 is replaced by the following:

If an actual operating air carrier places a passenger in a class of transport lower than that for which the ticket was purchased, it shall within 10 days, by the means provided for in Article 7(3), reimburse:

Commented [REDACTED]: No consistency with 2 months term for a response from an air carrier – see page. 31 art. 16a point 2.

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



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

(c) 75% of the ticket price for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French outermost regions.

The following paragraph is added to Article 10:

'3. Where the price of the concerned flight is not indicated on a multi-flight ticket, the reimbursement mentioned in paragraph 2 shall be calculated in proportion of the flight to the total distance covered by the ticket.'

11. Article 10a is added:

***‘Article 10a***

**Airport contingency plans**

1. At Union airports whose annual traffic has been over five million passengers for at least three consecutive years, the airport managing body shall ensure that the operations of the airport and of airport users, in particular the air carriers and the suppliers of ground handling services, are coordinated through a proper contingency plan in view of possible situations of multiple cancellations and/or delays of flights leading to a considerable number of passengers stranded at the airport. The contingency plan shall be set up to ensure that adequate information is given to stranded passengers and shall contain arrangements in order to minimise their waiting time and discomfort.

2. The contingency plan shall be set up with the participation of the Airport Users Committee pursuant to Council Directive 96/67/EC on access to the groundhandling market at Community airports. The contingency plan shall also contain the contact data of the person(s) designated by each air carrier in order to represent it on the spot in relation with the authorities, airport managing body and passengers in the case of multiple cancellations and/or delays of flights. The air carrier shall ensure that the designated person(s) has the necessary means to assist passengers in accordance with the obligations arising from this Regulation in case of cancellation, delay, or denied boarding.

3. The airport authority or the airport managing body shall communicate the contingency plan and any amendments to it to the National Enforcement Body designated pursuant to Article 16 or any other authority designated for this purpose.

4. Member States may lower the threshold referred to in paragraph 1, but not to less than 3 million passengers, for airports situated in their territory. At airports below the threshold set, the airport managing body shall make all reasonable efforts to coordinate airport users and to make arrangements with airport users to inform stranded passengers in such situations.

12. Article 11 is replaced by the following:

***'Article 11***

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

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

2. In applying the care and assistance in accordance with Articles 8 and 9, the operating air carrier shall pay particular attention to the needs of the persons mentioned in paragraph 1. Air carriers shall provide this care and assistance as soon as possible.

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

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

4. For the purpose of this Regulation, air carriers and airport managing bodies shall ensure proper training of their staff in accordance with Regulation (EC) 1107/2006.'

12. Article 12, paragraph 1 is replaced by the following:

***'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 30/34/EC. However, if these rights safeguard the same interest or have the same objective, the compensation or price reduction granted under Articles 7 or 10(2) of this Regulation and the compensation granted under the other legal acts, shall be deducted from each other.

13. Article 13 is replaced by the following:

*‘Article 13*

**Right of redress**

In cases where an **actual 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 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.'

14. Article 14 is replaced by the following:

*‘Article 14*

**Obligations to inform passengers**

1. The **actual and contracting operating** air carrier shall include on its website an information notice setting out the rules for compensation and assistance in line with this Regulation, including information on possible limitations pursuant to Articles 9(4) and 9(5). The **actual operating** air carrier shall also provide this information in paper or in the electronic form during the reservation process. The information shall be provided in the language of the reservation process.
2. An **actual operating** air carrier calling for volunteers under Article 4(1), denying boarding or cancelling a flight shall provide each passenger affected with the information notice referred to in paragraph 1. It shall also provide each passenger affected by a delay of at least two hours with the information notice. The contact details of the competent complaint handling bodies designated under Article 16 and 16a shall also be given to the passenger in written form. This information notice shall be provided at least in the language(s) of the place of the airport and in English.

2aaa. The Commission may adopt implementing acts<sup>6</sup> that define a standardised information notice to be used by the air carriers for the purposes of paragraphs 1 and 2. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 16c(2).

2aa. The actual operating air carrier shall ensure that at the check-in desks (including at self-service check-in machines) and at the boarding gate, the following text is displayed in a clearly legible form and in a manner clearly visible to passengers: «If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the information notice stating your rights, particularly with regard to assistance, care and possible compensation». This text shall be displayed at least in the language(s) of the place of the airport and in English.

2a. At the time of the reservation, air carriers, organisers and ticket sellers shall provide information to the passenger on the deadline and on the procedure by which he/she can request the correction of a spelling mistake as specified in Article 4(5), without any additional charge.

2b. Air carriers, organisers and ticket sellers shall make available, including on their website, information on the air carrier's complaint handling processes in relation to the rights set out in this Regulation and on the relevant contact addresses, to which passengers can file claims, including via electronic means of transmission, as well as information on the body or bodies designated under Article 16(1) and 16a(3).

3. In respect of blind and visually impaired persons, the provisions of this Article shall be applied using appropriate alternative means.

4. The airport managing body shall ensure that general information on passenger rights is clearly and visibly displayed within the passenger areas of the airport. This general information shall be displayed at least in the language(s) of the place of the airport and in English.

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<sup>6</sup> In these implementing acts, the notification referred to in Article 11(3) can be included in the standardised information notice.

5. In the event of cancellation or delay in departure, passengers shall be informed by the **actual operating** air carrier of the situation as soon as possible and in any event no later than **40 minutes before** the time of departure indicated in the reservation. Passengers shall also be informed of the reasons for the cancellation or delay, of the applicable flight distance as set out in Articles 5, 6 and 7, and, in case of delay, of the estimated time of departure as soon as this information is available. **The passengers may, upon request and within 10 days, receive in writing the reasons for the cancellation or delay.**

6. Where the passenger does not acquire a ticket directly from the **actual operating** air carrier, but via an organiser or ticket seller established within the Union, the organiser or ticket seller shall provide the passenger's contact details to the air carrier, on condition that the passenger has given his explicit and written authorisation. This authorisation may only be given on an "opt-in" basis, after the passenger has been informed of the purpose of this transfer of data. The air carrier may use these contact details obtained pursuant to this paragraph exclusively for the purpose of fulfilling its information obligations under this Regulation and not for marketing purposes. The processing, access and storage of these data shall be undertaken in accordance with **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC** ~~Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data~~<sup>7</sup>.

<sup>7</sup> ~~OJ L 281, 23.11.1995, p. 31~~ **OJ L 119, 4.5.2016, p. 1-88**

7. An organiser or ticket seller shall be exempted from paragraph 6 if it can prove the existence of an alternative system that ensures that the passenger is informed without the transmission of the relevant contact details. In such case, the airline shall fulfil its information obligations under this Article towards the organiser or ticket seller who shall ensure the correct and timely transmission of the information to the passenger.

8. At booking air carriers, organisers and ticket sellers shall explicitly and clearly inform passengers if under the terms and conditions passengers may be denied boarding on a particular flight on the grounds that he/she did not take a previous flight of the same ticket or did not pay an additional charge for this purpose. These terms and conditions shall remain fully in compliance with Directive 93/13/EEC on unfair terms in consumer contracts.'

14. Article 16 is replaced by the following:

*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

2a. The National Enforcement Body may also investigate and decide on enforcement actions based on information contained in individual complaints submitted by passengers.

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive. In particular, such sanctions shall be sufficient to provide carriers with a financial incentive to comply consistently with the Regulation.

5. For each year, at the latest at the end of June of the following calendar year, the National Enforcement Bodies shall publish a report on their activity, on the enforcement action and its outcome, including on sanctions applied. These reports shall be submitted to the Commission and also be made available on the websites of the National Enforcement Bodies.

6. Air carriers shall communicate the contact data of the person(s) or of a body designated to act on their behalf on a permanent basis, in the Member State where they operate, for matters covered by this Regulation, to the National Enforcement Bodies.'

15. The following Articles are inserted:

*‘Article 16a*

**Passenger claims and complaints**

1a. Air carriers shall set up or have in place a mechanism for the handling of complaints, including requests for claims for payment arising from rights and obligations set out in this Regulation. This mechanism shall also be available online and in all languages which may be used for reservation with the given air carrier. These mechanisms shall be easily accessible and operated in a transparent way.

1 b. Activity of third parties to the particular flight that is taken at the airport, whereby the third party strives to make agreements with passengers of assignment or representation before the appropriate body or the court to achieve compensation, are forbidden. Member States should actively counteract such activities.



2. Passengers may submit complaints, including claims for payment in writing to the **actual operating** air carrier within 6 months from the date on which the flight was performed or was to be performed according to the reservation. Within 10 days of the submission of the complaint, the carrier shall confirm the receipt of the complaint. Within two months of the submission of the complaint, the carrier shall provide a full justified answer to the passenger, including, where relevant, an explanation on extraordinary circumstances or unexpected flight safety shortcomings. For the latter, this shall include information on how each criterion referred to in Annex II has been fulfilled. The answer shall also contain the relevant contact details of bodies designated under paragraph 3 for out-of-court dispute resolution, including postal address, phone number, website and e-mail address.

3. Without prejudice to Directive 2013/11/EU Member States shall ensure that air passengers can submit disputes regarding claims for payment under this Regulation to a national body or bodies responsible for the out-of-court resolution of disputes. Member States shall inform the Commission of the body or bodies that has been designated in accordance with this paragraph. Member States may decide to apply this paragraph to disputes between air carriers and consumers only.

4. Without prejudice to Directive 2013/11/EU, Member States shall ensure that the out-of-court dispute resolution is available free of charge or at a nominal fee to passengers, and the designated body or bodies under paragraph 3 shall as a minimum:

- meet the requirements of article 7(1) subparagraphs (a), (h) and (j) and Article 7(2) of that Directive;
- provide a substantiated reply to the passenger with the outcome of their dispute resolution procedure within the 90 day time limits set out in Article 8(e) of Directive 2013/11/EU and in the case of highly complex disputes at the latest 6 months from the date on which the designated body has received the complete complaint file.

5. Where the body or bodies designated under paragraph 3 are different from those entrusted with the enforcement of this Regulation under Article 16(1), they shall cooperate and exchange information.

6. The procedures under paragraphs 2 and 3 and the passenger's participation to such procedures shall be without prejudice to his right to seek redress through court proceedings or submit complaints within the meaning of Article 16(2a), subject to periods of limitation in accordance with national law.

*Article 16b*

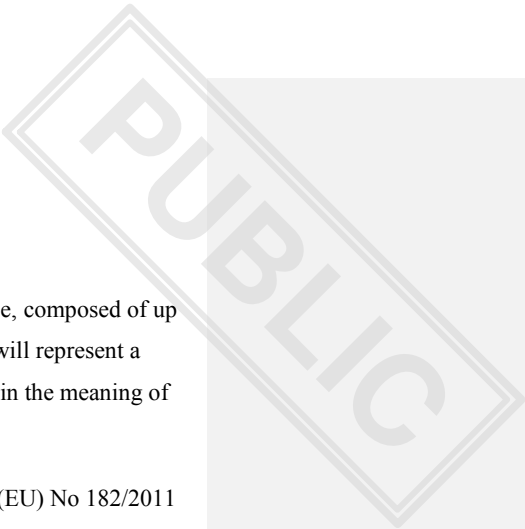
**Cooperation between Member States and the Commission**

1. The Commission shall support dialogue and exchange of information between the National Enforcement Bodies concerning the application of this Regulation through the Committee referred to in Article 16c. This exchange of information will particularly concern infringements, sanctions and best practices of enforcement.

3. At the request of the Commission, the National Enforcement Bodies shall send relevant information concerning the national interpretation and application of this Regulation.

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

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



*Article 16c*

**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 **54** of Regulation (EU) No 182/2011 shall apply.

16. Article 17 is replaced by the following:

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

17. Annex 1 to this regulation is added as Annex 1 to Regulation 261/2004.
18. Annex 2 to this regulation is added as Annex 2 to Regulation 261/2004.



*Article 2*

**Regulation (EC) No 2027/97 is amended as follows:**

- 1. Paragraph 1 of Article 2 is amended as follows:  
  
Point (b) is replaced by the following:  
  
"Community air carrier" shall mean an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Regulation (EC) No 1008/2008;  
  
Point (h) is added:  
  
'(h) "mobility equipment" shall mean any equipment whose purpose is to provide mobility to the disabled persons or persons with reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006<sup>8</sup>, or assist them in their mobility.'
  
- 2. The following sentence is added to Article 3(1):  
  
'This includes the liability of a Community air carrier concerning passenger or baggage delay.'

<sup>8</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p.1.

3. Article 3a is amended as follows:

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

4. Paragraph 1 of Article 5 is replaced by the following:

'1. In case of death or injury of passengers, the Community air carrier shall without delay, and in any event not later than fifteen days after the identity of the natural person entitled to compensation has been established, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the hardship suffered.'

5. Paragraph 2 of Article 5 is replaced by the following:

'2. Without prejudice to paragraph 1, an advance payment in case of death of passengers, shall not be less than 16% per passenger, of the limit of liability under Article 21(1) of the Montreal Convention and in line with the decisions by the International Civil Aviation Organization to review the limit of liability pursuant to Article 24(2) of the Montreal Convention.'

6. The following sentence is added to Article 6(1):

'The Commission shall be empowered, by means of a delegated act in accordance with Article 6c, to adjust the amounts mentioned in the Annex, with the exception of the amount mentioned in Article 5(2), in line with the decisions by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention.'

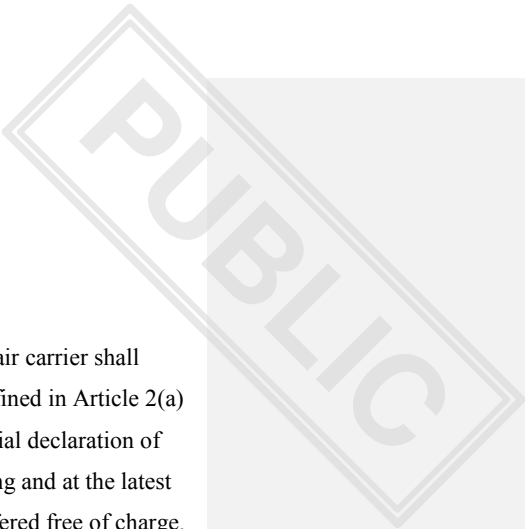
7. Paragraph 2 of Article 6 is replaced by the following:

'In addition to the information requirements set out in paragraph 1, all air carriers shall in respect of carriage by air purchased in the Union, provide each passenger with a written indication of:

- the applicable limit for that flight on the carrier's liability in respect of death or injury, if such a limit exists,
- the applicable limit for that flight on the carrier's liability in respect of destruction, loss of or damage to baggage and a warning that baggage greater in value than this figure should be brought to the airline's attention at check-in or fully insured by the passenger prior to travel;
- the applicable limit for that flight on the carrier's liability for damage occasioned by delay.'

8. Paragraph 4 is added to Article 6:

'All air carriers shall provide at the airports and points of sale situated on the territory of a Member State to which the Treaty applies and on their websites a form which allows the passenger to immediately file a complaint about damaged, delayed or lost baggage. The date of submission of such a complaint shall be considered by the air carrier as the filing date of the complaint pursuant to Article 31(2) and 31(3) of the Montreal Convention, even if the air carrier requests further information at a later date. This possibility shall not affect the right of the passenger to submit a complaint via other means within the deadlines given by the Montreal Convention.'



4. The following Articles are inserted:

*Article 6a*

1. Whenever carrying checked in mobility equipment, the Community air carrier shall ensure that each disabled person or person with reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006<sup>9</sup> is offered the option to make a special declaration of interest pursuant to Article 22(2) of the Montreal Convention, at booking and at the latest when the equipment is handed over. The special declaration may be offered free of charge.

~~2.~~

3. In case of destruction, loss, damage or delay in the carriage of checked mobility equipment, the Community air carrier shall be liable to pay a sum not exceeding the sum declared by the passenger; unless it proves that the sum claimed is greater than the person's actual interest in delivery at destination.

~~Article 6b~~

*Article 6c*

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
- 2. The delegation of power referred to in Article 6(1) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

<sup>9</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p.1

3. The delegation of power referred to in Article 6(1) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Article 6(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.'

#### *Article 6d*

1. Without prejudice to Regulation (EC) No 1008/2008, Community air carriers shall clearly indicate, at booking and on their website, and also make available on request at the airport (including at self-service check-in machines):

- the maximum baggage allowance in terms of dimension and weight that passengers are permitted to carry within the cabin, and in the hold of the aircraft on each of the flights included within a passenger's reservation,
- any restrictions on the number of items that would be applied within a given maximum baggage allowance.
- the conditions under which fragile or valuable items, such as musical instruments, sports equipment, children's pushchairs and infant seats shall be transported in the passenger cabin or in the cargo hold of the aircraft,
- potential additional charges applied for the carriage of baggage.



- 1a. Without prejudice to Regulation (EC) No 1107/2006 and to Article 23 of Regulation (EC) No 1008/2008, irrespective of the prescribed maximum cabin baggage allowance, passengers shall be permitted to carry in the cabin, at no extra cost, essential personal items or belongings, and at least one bag of airport shopping.
2. Where specific reasons, such as safety reasons, capacity reasons or a change of the aircraft type since the booking was made, preclude the carriage in the cabin of items included in the carry-on baggage allowance, the air carrier may carry them in the hold of the aircraft, but at no extra cost to the passenger.
3. This Article does not affect the restrictions on carry-on baggage established by EU and international security and safety rules such as Regulations (EC) No 300/2008 and ~~(EC) No 820/2008~~ **(EU) 2015/1998**.

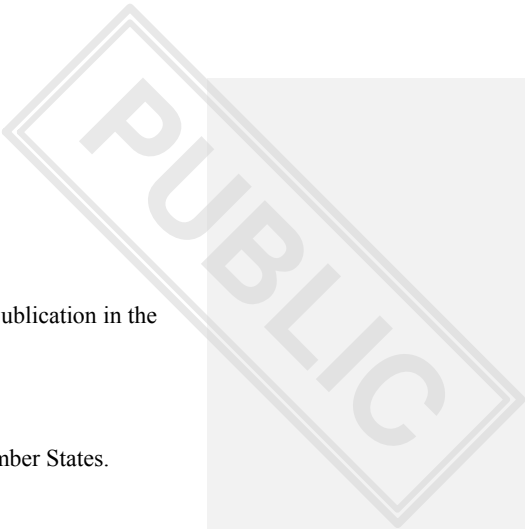
*Article 6e*

5. Article 7 is replaced by the following:

*‘Article 7*

The Commission shall report to the European Parliament and the Council by 1 January 2017 on the operation and the results of this Regulation.’

6. The Annex to Regulation 2027/97 is replaced by Annex **3** to the present Regulation.



**Article 3**

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

\_\_\_\_\_

**Annex 1 to the ANNEX**

'Annex: ~~non-exhaustive~~ ~~non-exhaustive~~ list of circumstances considered as extraordinary

Commented [1]: list of circumstances considered as extraordinary should be non-exhaustive, due to plentiful of situations for example: volcanoes activity, virus spread etc.

1. The following circumstances shall be considered as extraordinary in particular:

- i. natural and/or environmental disasters which are deemed to affect the safe operation of the flight;
- ii. a hidden manufacturing defect revealed by the manufacturer or a competent authority and which impinges on flight safety;
- iii. security risks, acts of sabotage or unlawful acts, incompatible with the safe operation of the flight;
- iii.(a) war or political instability where the competent national public authorities of the country of departure of the flight advise against travel;
- iv. health risks or medical emergencies (such as serious illness) discovered at short notice before flight departure, or necessitating the interruption or deviation of the flight;
- v. air traffic management restrictions or closure of airspace;
- v.(c) unscheduled closure of an airport;
- vi. meteorological conditions incompatible with the safe operation of the flight or resulting in capacity restrictions at the airport of departure or of arrival; and
- viii. disruptive passenger behaviour endangering the safe operation of the flight;
- ix. collision of birds or other animals with the aircraft during a flight which may cause damage that requires immediate compulsory checks and possible repair;

- x. damage to the aircraft caused by third parties for whom the air carrier, in the absence of contractual relations, is not responsible on the ground prior to departure of the flight and requiring immediate assessment or repair.
- xi. damage to the aircraft which could affect the safety of the flight or the integrity of the aircraft and requires immediate assessment and/or repair and is caused by meteorological events (for example: lightning strikes, hailstones, thunderstorms, severe turbulence etc.).
- xii. all kind of strikes including strikes of Air Traffic Controll Personel.
- xiii. technical issues.
-

**Annex 2 to the ANNEX**

**'List of criteria to be fulfilled by technical defect(s) and/or problems in order to qualify as unexpected flight safety shortcomings (Article 2(mm))**

1. **Proper maintenance**

Maintenance has been executed in accordance with the up-to-date approved maintenance programme, by an appropriate qualified maintenance organisation and using the prescribed maintenance data as specified in accordance with Annex IV of Regulation (EU) 2018/1139 (EC) No 216/2008, or for third country carriers with ICAO Annex 6.

2. **Time of discovery**

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

3. **Flight safety risk**

In accordance with Regulation (EU) 2018/1139 (EC) No 216/2008, or for third country carriers with ICAO Annex 6, either:

- a) The defect is related to the airworthiness of the aircraft, is not listed in the Minimum Equipment List (MEL) and results in the defect having to be fixed before the flight can operate in accordance with Point M.A.403 of (EU) No 1321/2014 (EC) No 2042/2003; or,

- b) The defect is outside the limits set by the MEL, and it necessitates an immediate termination action of the flight operation; or
- c) Several defects occur which are listed in the MEL, and in accordance with Commission Regulation (EU) No 965/2012 the commander decides that it is not safe to operate the aircraft with the combination of these defects.'
-

### Annex 3 to the ANNEX

Commented [REDACTED]: We are in favour of the deletion of Annex 3 - the issue of baggage should be excluded from Regulation 261/2004 as it is regulated in the Montreal Convention.

COMPENSATION IN THE CASE OF DEATH OR INJURY - in PL's opinion, they are pursued under general principles in force in a given Member State (e.g. the Civil Code) before common courts and there is no point in duplicating it. Each Member State has its rules in this area.  
In the case of the already widening scope of Regulation 261/2004 to include matters not yet regulated, the introduction of baggage issues would reduce the readability of the provisions of the legal act which applies to air operations. In the existing regulation, the lack of baggage records has never been a problem.

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

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

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

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

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

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

#### **ADVANCE PAYMENTS**

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

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**PASSENGER DELAYS**

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

**BAGGAGE DELAYS**

In case of baggage delay, the air carrier is liable for damage up to 1288 SDRs ~~1131 SDRs~~ (the air carrier shall indicate between brackets the approximate amount in local currency), the compensation limit being applicable per passenger and not per piece of checked baggage. The air carrier shall not be liable when it has taken all reasonable measures to avoid the damage resulting from such delay or when it was impossible to take such measures.

Commented [REDACTED]: There is a new amount of SDR (1288)

**DESTRUCTION, LOSS OR DAMAGE TO BAGGAGE**

The air carrier is liable for damage up to 1288 SDRs ~~1131 SDRs~~ (the air carrier shall indicate between brackets the approximate amount in local currency), the compensation limit being applicable per passenger and not per piece of baggage.

Commented [REDACTED]: There is a new amount of SDR (1288)

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

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



## HIGHER LIMITS FOR BAGGAGE

A passenger can benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee if so required. Such supplementary fee shall be based on a tariff which is related to the additional costs involved in transporting and insuring the baggage concerned over and above the liability limit of 1288 SDRs ~~1131 SDRs~~ (the air carrier shall indicate between brackets the approximate amount in local currency). The tariff shall be made available to passengers upon request.

Commented [REDACTED]: There is a new amount of SDR (1288)

## EXONERATION

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

## TIME LIMIT FOR COMPLAINTS ON BAGGAGE

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

#### **LIABILITY OF CONTRACTING AND ACTUAL CARRIERS**

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

#### **TIME LIMIT FOR ACTION**

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

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

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