



Council of the European Union
General Secretariat

Brussels, 23 March 2020

Interinstitutional files:
2013/0072(COD)

WK 3082/2020 ADD 2

REDACTED DOCUMENT ACCESSIBLE TO THE
PUBLIC (30.06.2025).
ONLY MARGINAL PERSONAL DATA HAVE BEEN
REDACTED.

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WORKING PAPER

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WORKING DOCUMENT

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

N° prev. doc.:	ST 5123/1/20 REV 1
N° Cion doc.:	7615/13

Subject:	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 revised Presidency compromise
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Delegations will find attached comments from Spain on the above mentioned document.



Council of the
European Union

Brussels, 6 March 2020
(OR. en)

Interinstitutional File:
2013/0072(COD)

5123/1/20
REV 1

LIMITE

AVIATION 2
CONSOM 4
CODEC 15

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	5123/20
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 – Revised Presidency compromise

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, and the Working Parties of 13 and 25 February, the delegations may find the below text of the above-mentioned proposal in preparation of the Aviation Working Party of 12 March 2020.

The text below is a revised Presidency compromise based on the last version discussed, ie document 5123/20. Changes when compared to the aforementioned text are marked in **Bold** for additions and ~~strikethrough~~ for deletions.

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.'

Point (e) is added:

'their flight is rescheduled.'

Commented [REDACTED] OK

Paragraph 2 and 3 are replaced by the following:

'2. This Regulation shall not apply to Gibraltar airport.'¹

¹ 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."

2. Article 2 is amended as follows:

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

"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. 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.'

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

"~~Community~~ Union 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 Community².'

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

"Organiser" means a person within the meaning of Article 3(8) of Directive (EU) 2015/2302 of 25 November 2015 on package travel and linked travel arrangements, ~~package holidays and package tours~~³;

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

"Package" means those services as defined in Article 3, point 2, of Directive (EU) 2015/2302';

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

"Reservation" means the fact that the passenger has a ticket, ~~or other~~ with proof of payment, which indicates that the reservation has been accepted and registered by the air carrier, organiser or ticket seller;

² OJ L293, 31.10.2008, p. 3.

³ OJ L 326, 11.12.2015, p. 1–33

Commented [REDACTED] OK but C-532-17 Wirth – Thomson
Airways text is clearer.

add to the present text of (b) the following:

This definition must be interpreted as not covering the case of an air carrier which leases to another air carrier an aircraft, including crew, under a wet lease, but does not bear the operational responsibility for the flights, even where the booking confirmation of a seat on a flight issued to passengers states that that flight is operated by the former air carrier.

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 ; ⁴

The definition of "volunteer" in point (k) does not change;

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

The following definitions are added:

(m) "extraordinary circumstances" means circumstances which **by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and** are beyond its actual control. For the purposes of this Regulation, extraordinary circumstances **are listed in the Annex 1;**

~~(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~~

Commented [REDACTED] Clarification needed for flights returning to place of departure:

Add to the definition of "cancellation" in point (l):
"A flight where the aircraft took off but was subsequently forced to return to the airport of departure and where the passengers of the aircraft concerned were transferred to departure on other flights, shall be considered a cancelled flight."

Commented [REDACTED] OK & IMPORTANT

Commented [REDACTED] OK to an exhaustive & revisable list and for more emphasis:

replace "are listed" with the following:
"are limited to the circumstances set out in Annex 1"

⁴ OJ L204, 26.7.2006, p.1

~~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;~~

Commented [REDACTED] OK & IMPORTANT

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

Commented [REDACTED] OK

(o) "connecting flight" means a flight which, under a single ~~bookingcontract 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. ~~This excludes stop overs;~~

Commented [REDACTED] OK

Commented [REDACTED] DELETE
Not needed in a full ban scenario for no show

~~This excludes stop overs;~~

(oo) "Stop over" means 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 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;

Commented [REDACTED] DELETE
Not needed in a full ban scenario for no show

Fully deletion of (oo)

(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 ~~bookingcontract of carriage~~. 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;**

(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;

- PUBLIC
- (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 (in-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;
- (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;
- (ae) ~~"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;

Commented [REDACTED] **DELETE.**
This is a regulation for air carriers, involving different actors might create confusion. We ask to remove any reference to "airport managing body"

Fully removal of point (r)

Commented [REDACTED] **COME BACK TO PREVIOUS PROPOSAL.**
We support this former PRY texting as is coherent with case law C-452/13 Germanwings and also clearer for passengers checking time of arrival purposes:

(v) "time of arrival" 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;

(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 **depart from the initial point of departure, or in case of missed 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;**

(aj) "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 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 or linked travel arrangement⁵;

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

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

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

Commented [REDACTED] COME BACK TO PREVIOUS PROPOSAL
Updated concept of class transport

(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;

Commented [REDACTED] MISSTAKE
Directive (EU) 2015/2302

⁵ ~~"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 (Package Travel Directive.)~~

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2. Article 3 is amended as follows:

(aa) Paragraph 1(a) is amended by the following:

'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;'

(aaa) Paragraph 1(b) is amended by the following:

'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 air carrier'

(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 reservation 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 from the flight for which they held a reservation to another flight, irrespective of the reason.'

Commented [REDACTED] ADD

At the end of the definition:
The burden of proof of received benefits or compensation at least equivalent extraordinary circumstances shall rest on the operating air carrier.

Commented [REDACTED] CLARIFICATION NEEDED
(departing from the EU but receiving assistance in a third country?)

Commented [REDACTED] ADD

At the end of the definition:
The burden of proof of received benefits or compensation at least equivalent extraordinary circumstances shall rest on the operating air carrier.

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.'

Commented [REDACTED] ADD

Add after "free of charge":
"(..) including children aged under the age of two for whom no separate seat has been booked(..)"

Paragraph 4 is replaced by the following:

'4. Without prejudice to Articles 2(p), 6a(4a), 8(46) and 8(5), 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 providing transport to passengers covered by paragraphs 1 and 2. **The operating air carrier is responsible for performing the obligations under this Regulation** ~~Where no contract exists between the operating 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.~~

Commented [REDACTED] OK

Paragraph 6 is replaced by the following:

'6. This Regulation shall also apply to passengers transported according to package travel **and linked travel 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~~ tour is cancelled or delayed for reasons other than cancellation or delay of the flight.'

Article 3a is added:

'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 [REDACTED] OK IMPORTANT

3. Article 4 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. 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 ~~volunteer passenger~~ has received information in accordance with Article 14(2). 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.'**

(b) Paragraph 3 is replaced by the following:

'3. 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 ~~within 10 days of the date of the denied boarding~~ in accordance with Article 7(1). **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.'**

Commented [REDACTED] OK IMPORTANT

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 booking 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 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 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 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, as well as for intra-EU journeys over 1500 kilometres;

Commented [REDACTED] IMPORTANT ADD
Regarding No-Show the text of the EP (full-ban no-show):

Add:

"Passengers shall not be denied boarding at the return journey, including one which consists of multiple flights, on the grounds that he/she did not take the outward journey of a return ticket or did not pay an additional charge for this purpose. If boarding is denied to passengers against their will on such grounds, paragraphs 1 and 2 shall apply. In addition, the operating air carrier shall immediately compensate the passengers concerned in accordance with Article 7 and shall assist them in accordance with Articles 8 and 9."

Commented [REDACTED] REPLACE

Replace:
"name or given name(s)" by "data"

Commented [REDACTED] OK

Commented [REDACTED] OK

Commented [REDACTED] REPLACE

It contains an important setback of air pass rights. To avoid this:

Replace the whole (ii) texting of PRY with:

"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 3 hours."

(b) nine hours for extra-EU 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) 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 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 preceeding it operated by the same aircraft.**

Commented [REDACTED] OK
Important to avoid this new concept

Commented [REDACTED] OK

or

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

Commented [REDACTED] REPLACE.
Based on C502/18 CS vs CESKE & C-537/17 Wegener vs Royal Air Maroc case laws for scoping:

~~or~~

~~(v) the cancelled flight arrives at/departs from an airport:~~

Replace the (iv) with:
"the regulation applies to a passenger transport effected under a single booking under the scope of Art. 3.1 also when the scheduled stopovers are outside the European Union; whether they are with a change of aircraft or not"

~~(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~~

Commented [REDACTED] OK, IMPORTANT

Paragraph 2a is added:

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

Commented [REDACTED] CLARIFICATION NEEDED
¿why this removal?

Paragraph 3 is deleted.

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 that does not serve the same city as other than the airport of final destination and did not subsequently reach the said airport of final destination.

5. Article 6 is replaced by the following:

'Article 6

Delay

1. When an operating air carrier expects a flight to be delayed at departure, passengers shall be offered by the 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 operating air carrier in accordance with Article 7(1a) unless:

(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) 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, as well as for intra-EU journeys over 3500 kilometres;

Commented [REDACTED] IMPORTANT ADD
In line with COM, EP and Package travel Directive 2015/2302 providing protection for insolvencies, we would like to add the amendment 69 of the EP reading:

Add 5.c paragraph:
"5c. In the event of cancellation of a flight owing to insolvency, bankruptcy, or the suspension or cessation of the activities of an air carrier, passengers who are stranded shall be entitled to a reimbursement, the return flight to the point of departure or re routing, and to care, as provided for in Articles 8 and 9 of this Regulation. Equally, air passengers who have not yet started their journey shall be entitled to reimbursement. Air carriers shall prove that they have taken all necessary measures, such as taking out an insurance policy or creating guarantee funds, to provide for the care, reimbursement or re routing of stranded passengers where applicable. These rights shall apply to all passengers concerned irrespective of their place of residence, point of departure or where they bought their ticket."

Commented [REDACTED] CLARIFICATION NEEDED
¿does this provision includes rescheduling of flights?

Commented [REDACTED] CLARIFICATION NEEDED
¿is this provision also intended to deal with flights returning to same point of departure?

(c) 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. **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 preceeding it operated by the same aircraft.**

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~~

5. This article shall also apply if the time of departure as indicated in the reservation was postponed by the air carrier. 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 Passenger's booking and if the passenger has been informed of such a 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 change in time, resulting in a delay, shall rest with the operating air carrier.

Commented [REDACTED] REPLACE
It contains an important setback of air pass rights. To avoid this:

Replace the whole (ii) texting of PRY with:

"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 3 hours."

Commented [REDACTED] OK

Commented [REDACTED] OK

Commented [REDACTED] OK IMPORTANT

Commented [REDACTED] REPLACE.
Based on C502/18 CS vs CESKE & C-537/17 Wegener vs Royal Air Maroc case laws for scoping:

Replace the (iv) with:
"the regulation applies to a passenger transport effected under a single booking under the scope of Art. 3.1 also when the scheduled stopovers are outside the European Union; whether they are with a change of aircraft or not"

Commented [REDACTED] OK IMPORTANT

Commented [REDACTED] CLARIFICATION NEEDED
is this also intended for rescheduling of flights?

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.

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 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 ~~and~~. 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 three hours in an airport situated in a territory of a member State to which the Treaty applies, the aircraft shall 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.’

Commented [REDACTED] REPLACE
Needed to establish when. In line with EP:

Replace “where a tarmac delay occurs” by “where a tarmac delay of more than an hour occurs”

Commented [REDACTED] ADD

After “shall provide” add “upon request”

Commented [REDACTED] OK

Commented [REDACTED] ADD
In line with amendment 76 of the EP.

Add at the end of this sentence:
“After a total delay of more than three hours from the initial departing time, passengers benefit from the same assistance as specified in paragraph 1, including the option of reimbursement, return flight and rerouting, as specified in Article 8(1) and they shall be informed accordingly.”

6. The following Article is inserted:

'Article 6a

Missed connecting flight

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

Commented [REDACTED] OK

2. Where a passenger misses a connecting flight as a result of a delay to a previous flight, the passenger shall have a right to receive, on request, compensation in accordance with Article 6(2) and Article 7(1).

Commented [REDACTED] OK but for clarification purposes:

3. The air carrier operating the delayed flight shall be responsible for the handling and settlement of claims, including payment of compensation where applicable.

Add 5:
"A delay must be assessed for the purposes of the compensation provided for in Article 7 of the Regulation, in relation to the scheduled time of arrival at the passenger's final destination as defined in Article 2(h) of the Regulation, which in the case of directly connecting flights must be understood as the destination of the last flight taken by the passenger"

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.

&

"This distance shall be based in the 'great circle' distance between the place of departure and the final destination i.e. 'the journey' and not by adding the 'great circle' distances between the different relevant connecting flights composing the 'journey'."

Commented [REDACTED] OK

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. ~~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, the following compensation amounts shall apply:
 - (a) 250 EUR for journeys of 1500 kilometres or less, as well as for intra-EU journeys over 1500 kilometres;
 - (b) 400 EUR for extra-EU 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.~~

Paragraphs 2, and 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 ~~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.~~

Commented  COME BACK TO THE PREVIOUS PROPOSAL
Important set back of passenger rights compensations, all intra EU journeys regardless the distance would fall in this category.

Use of the previous PRY proposal keeping the compensation amounts currently in force

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, **promptly**, free of charge, the choice between three options:

Commented [REDACTED] CLARIFICATION NEEDED
For the exact meaning of this word "promptly".

(a) - reimbursement within 10 days of the passenger's ~~request~~ **claim**, 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 **final** destination at the earliest opportunity after the time of departure indicated in the reservation; or

Commented [REDACTED] CLARIFICATION NEEDED
¿why "continuation"? ¿what if the travel plan hasn't started yet?

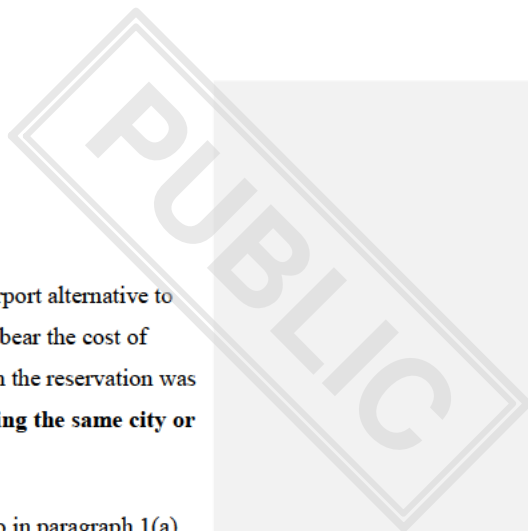
Commented [REDACTED] OK

(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; except for the right to reimbursement where such right arises under Directive (EU) 2015/2302.**

Commented [REDACTED] OK

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 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** ~~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~~ **transport** 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 ~~12~~ **6** hours of the time of arrival indicated in the reservation.'

Commented [REDACTED] OK

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 2(a) ~~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.

Commented [REDACTED] OK Según está escrito el límite solo aplicaría al alojamiento pero no a la manutención ni las llamadas

Commented [REDACTED] REPLACE
Now is unlimited. In line with EP:

Replace "3" with "5"

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] DELETE
For environmental reasons & avoid non equal treatment:

Remove fully paragraph 5

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 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:

- (a) 30% of the ~~ticket~~ **flight** price for all flights of 1500 kilometres or less, or
- (b) 50% of the ~~ticket~~ **flight** price for all intra-~~Community~~ EU 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~~ **flight** 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 paragraphs ~~are~~ 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.

4. **The flight price is the ticket price to the exclusion of taxes and charges indicated on the ticket, as long as neither the requirement to pay those taxes and charges nor their amount depends on the class for which that ticket has been purchased.**

Commented [REDACTED] OK

11. Article 10a is added:

Article 10a

Airport contingency plans

Commented [REDACTED] DELETE
Remove the full Article 10a

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~~ **referred to in** Council Directive 96/67/EC on access to the groundhandling market at ~~Community~~ **Union** 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 needs⁶

1. Operating air carriers shall give priority to carrying disabled persons or persons with reduced mobility and any persons or ~~certified service~~ **recognised assistance** 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.~~

Commented [REDACTED] COME BACK TO THE PREVIOUS PROPOSAL
To allow including minors in this article (they are not PMRs).

Commented [REDACTED] OK

⁶ in line 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. 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. 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.

Commented [REDACTED] REPLACE
According to C-354/18 Radu-Lucian Rusu vs Blue Air:
Replace "shall" with "may"

13. Article 13 is replaced by the following:

'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 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.'

Commented [REDACTED] OK but ADD
ADD at the end of the sentence
"The burden of proof of received benefits or compensation at least equivalent extraordinary circumstances shall rest on the operating air carrier."

14. Article 14 is replaced by the following:

Article 14

Obligations to inform passengers

1. The operating air carrier shall include on its website an information notice ~~specifying setting out the rules for compensation and assistance in line with rights under this Regulation, including complaint handling process information on possible limitations pursuant to Articles 9(45) and 9(56).~~ The 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 **and a language that is internationally used.**

Commented [REDACTED] OK

Commented [REDACTED] CLARIFICATION NEEDED
¿What are those languages?

2. **In case of denied boarding, cancellation and delays, the air carrier shall provide each passenger concerned with the information notice referred to in paragraph 1.** ~~An 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 a language that is internationally usedEnglish.**

Commented [REDACTED] OK

Commented [REDACTED] REPLACE

Replace last sentence of the paragraph with:
"This information notice shall be provided at least in the language(s) of the places of the departure and arrival"

2aaa. **The Commission may adopt implementing acts⁷ that define a standardised information notice to be used by the air carriers for the purposes of paragraphs 1 and 2, including the notification referred to in Article 11(3). Those implementing acts shall be adopted in accordance with the procedure referred to in Article 16c(2).**

Commented [REDACTED] OK but implementing acts should extended as far as possible to allow interpretation of this regulation by the MSs&COM

⁷ ~~In these implementing acts, the notification referred to in Article 11(3) can be included in the standardised information notice.~~

2aa. **The airport managing body and the operating air carrier shall ensure** that at the check-in desks (including at self-service check-in machines) and at the boarding gate, 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 a **language that is internationally used** ~~English~~.

Commented [REDACTED] INCONSISTENT
The fact of considering that two different entities must accomplish the same responsibility will be challenging for the authorities, especially when establishing penalties.

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 **and in an accessible format**.

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 a **language that is internationally used** ~~English~~.

5. In the event of cancellation or delay in departure, passengers shall be informed by the operating air carrier of the situation as soon as possible and in any event no later than ~~40 minutes before~~ **on** the time of departure indicated in the reservation. **To the extent possible, passengers shall receive regular updates in real-time.** 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 ~~are entitled to~~ **may**, upon request and within 10 days, receive, **from the air carrier**, in writing, the reasons for the cancellation or delay.

5a. In the event of tarmac delay, passengers shall be informed by the operating air carrier of the delay as soon as possible.

6. Where the passenger does not acquire a ticket directly from the 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~~ **EU law or national law** and not for marketing purposes. The processing, access and storage of these data shall be undertaken in accordance with **EU law, in particular** 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/EC⁸.

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 OJ L 119, 4.5.2016, p. 1-88

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.'~~

Commented [REDACTED] DELETE
In coherence with a full no-show ban:
Remove this paragraph 8

14. Article 16 is replaced by the following:

~~'Article 16'~~

Commented [REDACTED] OK to the recital

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.~~ **shall report annually the actions taken to implement the obligations under this Regulation. The standardised format and the elements to be included in that report shall be defined by the Commission by means of an implementing act, adopted in accordance with Article 16c(2).**

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

⁹ **to be added to the corresponding recital: "In addition, whenever an air carrier gives partial, misleading or wrong information to passengers on their rights, either individually or on a general basis through media advertisements or publications on its website, this should be considered as an infringement of the Regulation."**

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. ~~Every two years~~~~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.

Commented [REDACTED] COME BACK TO PREVIOUS PRY PROPOSAL
This disposition is important for harmonization purposes, should be:
"For each year, at (...)"

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 complaints¹⁰

1a. Air carriers shall set up or have in place a mechanism for the handling of complaints, ~~including requests for~~and 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.

¹⁰ **Recital on claim agencies to be added.**

2. **Complaints** ~~Passengers may submit complaints, including claims for payment in writing, shall be submitted by the passengers~~ to the 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.

Commented [REDACTED] CLARIFICATION NEEDED
¿What about legal legal representatives? They are not exactly "the passengers"...

2a. **Claims for payment of compensation under Article 7 shall be submitted in writing by the passenger 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 claim, the operating air carrier shall pay the compensation as provided by Article 7(3). In case the operating air carrier does not pay that compensation, the passenger can submit a complaint in accordance with paragraph 2 of this Article.**

Commented [REDACTED] OK

3. ~~Without prejudice to Directive 2013/11/EU~~ Member States shall ensure that air passengers can submit disputes regarding claims for payment **and complaints** 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, **recurrent deficiencies by air carrier, sanctions, and best practices of enforcement, the annual compliance monitoring process and the reporting to the Commission.**

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).

Commented [REDACTED] REPLACE
Recognising that the existence of a well-functioning ADR entity would be a key for reaching a high number of mutually satisfactory solutions:

Replace PRY paragraph 4 with the following:
“4. Member States shall ensure that the out-of-court dispute resolution is available as set in Directive 2013/11/EU, and shall be free of charge or at a nominal fee to passengers, and for air carriers their decisions binding and mandatory participation.”

Commented [REDACTED] CHANGE
This disposition is going the principle of improving harmonization.

“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.”

Commented [REDACTED] ADD
In order to monitor the application by Member States of this Regulation a COM inspection programme -as in other fields- should be deployed. Following text has been adapted from Reg 300/2008.

Add new paragraph Article 16d:
“Article 16d. Commission inspections.

1. The Commission, acting in cooperation with the National Enforcement Body of the Member State concerned, shall conduct inspections, including inspections of air carriers, in order to monitor the application by Member States of this Regulation and, as appropriate, to make recommendations to improve its application. For this purpose, the appropriate authority shall inform the Commission in writing of all air carriers in its territory serving civil aviation. The procedures for conducting Commission inspections shall be adopted in accordance with the regulatory procedure referred to in Article 16c.
2. Commission inspections of air carriers shall be unannounced. The Commission shall in good time before an inspection inform the Member State concerned thereof.
3. Each Commission inspection report shall be communicated to the National Enforcement Body of the Member State concerned, which shall, in its answer, set out the measures taken to remedy any identified deficiencies. The report, together with the answer of the appropriate authority, shall subsequently be communicated to the National Enforcement Bodies of the other Member States.”

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 16bb

Review of the list of Extraordinary Circumstances

1. 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.
2. 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 16bc

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.

Commented [REDACTED] ADD
‘Shame list’ as proposed in the amm. 140 of the EP

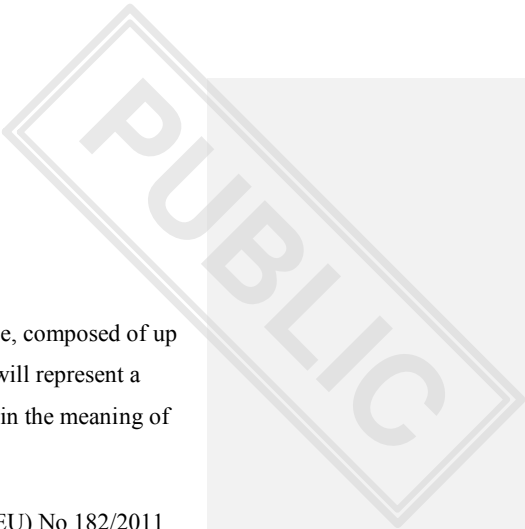
Add par. 5:
“The Commission shall publish on its website and regularly update, a list of all air carriers operating in the Union that systematically fail to comply with the provisions of this Regulation. Irrespective of size or nationality, any carrier for whom the Commission has received evidence of infringements pursuant to Article 16b (5b) that occurred to passengers on more than 10 different flights in one calendar year, and that relate to more than one article of this Regulation, shall be considered to have systematically fail to comply with this Regulation.”

Commented [REDACTED] REPLACE
Update with the in force CPC Regulation:

Replace pars. 4 & 5 with
“4. Without prejudice to the right of the National Enforcement Bodies to conduct investigation and enforcement actions, for intra-Union infringements, widespread infringements and widespread infringements with a Union dimension Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities shall apply.”

- PUBLIC
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.

Commented [REDACTED] OK but the list should be revisable in the Committee of Art 16c.



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 5 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 ~~4 January 2017~~ **[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-Community EU carriers, in the context of international air transport agreements.

17. Annex 1 to this regulation is added as the Annex ~~4~~ 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~~ **Union** 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 1107/2006¹¹, or assist them in their mobility.'

2. The following sentence is added to Article 3(1):

'This includes the liability of a ~~Community~~ **Union** air carrier concerning passenger or baggage delay.'

¹¹ 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~~ **Union** 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~~ **Union** 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.'

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~~ **Union** air carrier shall ensure that each disabled person or person with reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006¹² 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 ~~shall~~**may** be offered free of charge.

Commented [REDACTED] OKa

~~2.~~

3. In case of destruction, loss, damage or delay in the carriage of checked mobility equipment, the ~~Community~~ **Union** 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.

¹² 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

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.
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~~ **Union** 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 **included in the ticket price and free of charge** 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 shopping¹³.

Commented [REDACTED] OK

Commented [REDACTED] CLARIFICATION NEEDED

In line with Am. 151 of the EP

Add at the end of the sentence:
“(..) in addition to the prescribed maximum cabin baggage allowance to be carried for free defined in Art.6d.1”

Proposed text in (13) is deemed unnecessary.

¹³ The following recital is added:

"In order to ensure a sufficient personal comfort during their travel, passengers should be allowed to take at no cost personal items and belongings into the cabin, provided that their weight and dimension is reasonable and the items comply with applicable safety and security requirements. Such items may include, for example, a lady's handbag or purse, infant's food, medication, small musical instruments, an overcoat, an umbrella, a small camera, a small music player, reasonable amount of reading material and airport purchases."

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 (EU) 2015/1998.

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~~ **[date to be indicated at a later stage]** on the operation and the results of this Regulation.’

6. The Annex to Regulation 2027/97 is replaced by Annex ~~23~~ 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

Annexes to the ANNEX

Annex 1

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

Commented [REDACTED] OK

1. The following circumstances shall be considered as extraordinary:

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;**

~~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;**

Commented [REDACTED] CHANGE
Consider instability not only in the place of departure, also in stopovers, arrivals and overflights on conflict zones

Replace iii.(a) with:
"iii. (a). war or political instability where any of the competent national public authorities of the countries of departure, stopover, arrival of the flight, advise against travel; or short term warnings issued by any competent authority regarding overflight of conflict zones in the flight plan;"

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

Commented [REDACTED] MISSTAKE
"flight"

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

Commented [REDACTED] ADD
In line with EP

vi. **partial or full** unscheduled closure of an airport;

Add at the beginning of the sentence: "Unpredictable"

~~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~~

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

viii. disruptive passenger behaviour endangering the safe operation of the flight;

ix. collision of birds or other ~~objects/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. **unexpected flight safety shortcomings: technical defect(s) and/or problems, provided that all of the following criteria is fulfilled:**

a) **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;**

b) **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;**

Commented [REDACTED] REMOVE

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

c) 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.

Commented [REDACTED] REMOVE
Remove fully xii.

Annex 2

~~'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 V of Regulation (EU) 2018/1139, 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, 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; 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 23

AIR CARRIER LIABILITY FOR PASSENGERS AND THEIR BAGGAGE

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

COMPENSATION IN THE CASE OF DEATH OR INJURY

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

Without prejudice to Article 20 of the Montreal Convention on the exoneration of the air carrier, for damages up to ~~113,100~~ **128 821** 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~~ **20 611** 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).

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 ~~4-694-5~~ **346** 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 ~~4-134-1~~ **288** 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.

DESTRUCTION, LOSS OR DAMAGE TO BAGGAGE

The air carrier is liable for damage up to ~~4-143-1~~ **288** 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.

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 ~~4-134-1~~ **288** SDRs (the air carrier shall indicate between brackets the approximate amount in local currency). The tariff shall be made available to passengers upon request.

EXONERATION

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

TIME LIMIT FOR COMPLAINTS ON BAGGAGE

If the baggage is damaged, delayed, lost or destroyed, the passenger must in all cases 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~~ **Union** by Regulation (EC) No 2027/97 (as amended by Regulation (EC) No 889/2002 and by Regulation (EU) No xxx) and national legislation of the Member States.'
