



Council of the European Union  
General Secretariat

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

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**Brussels, 10 April 2025**

**WK 4470/2025 ADD 4**

**LIMITE**

**AVIATION  
CONSOM  
CODEC**

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## **CONTRIBUTION**

From:	General Secretariat of the Council
To:	Working Party on Aviation
N° prev. doc.:	ST 6102/2/2025 REV2
N° Cion doc.:	ST 7615 2013 INIT
Subject:	Proposal for a regulation amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air - Comments from Spain on the compromise proposed by the Polish Presidency

Delegations will find, in annex, comments from **Spain** on the compromise proposed by the Polish Presidency.

Brussels, 20 March 2025  
(OR. en)

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Interinstitutional File:  
2013/0072(COD)

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6102/2/25  
REV 2

LIMITE

AVIATION 12  
CONSOM 21  
CODEC 114

**NOTE**

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	ST 5123/20 REV1
No. Cion doc.:	ST 7615/13
Subject:	<p>Proposal for a regulation amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air</p> <ul style="list-style-type: none"><li>– Revised compromise proposed by the Polish Presidency, including less contentious issues</li></ul>

In view of the Working Party on aviation of 27 March 2025, delegations will find, in Annex, a revised compromise proposed by the Presidency. Changes compared to the previous version are highlighted in **bold underlined** and ~~striketrough~~. This revised compromise does not cover the amendments to Regulation 2027/97.

Delegations are requested to send their comments, if any, in writing to [avia-mar@consilium.europa.eu](mailto:avia-mar@consilium.europa.eu) by 10 April 2024.

Articles 3(1), 3(1a) and 3(1b), on the scope of the Regulation, are still under consideration following the discussion during the Working Party on aviation of 13 March 2025.

From the outset, the Presidency would like to refer to the opinion of the Council Legal Service (ST 6594/14), notably the paragraphs 26 to 46 which provide for an analysis regarding the legal basis of the scope of Regulation 261/2004. Taking into account this opinion and the discussion in the Working

Party, the Presidency is seeking the views of delegations on two possible options. A separate working document (WK 3722/25) provides for an overview of passenger rights under different options.

**Option 1** is to apply Regulation 261/2004 to all **journeys** departing from or arriving to the Union, independently of whether flights on the journey are operated by a Union air carrier or a Third Country carrier.<sup>1</sup> Such an option, which builds on the case law, would improve the clarity of the Regulation and enhance, *de jure*, the level playing field between Union and Third Country operators. However, such a level playing field would be *de facto* undermined by the difficulties of enforcement already observed today on flights operated by Third Country operators. Moreover, in certain cases not all passengers on a flight would be entitled to the same rights (e.g. on a journey between two third Countries with a connecting flight in the Union, only passengers stopping in the Union would benefit from the Regulation). Importantly, such an option, which is highly political, could also affect the Union's external relations<sup>2</sup> and create conflicts of jurisdictions with other air passenger rights legislation in Third Countries.

**Option 2** is to apply Regulation 261/2004 to all **flights** departing from or arriving to the Union, independently of whether the flights are operated by a Union air carrier or a Third Country carrier. Such an option would fill in a gap in the Regulation insofar as the Court's interpretation of the Regulation stems, *inter alia*, from the absence of a definition of the concept of "flight". Moreover, such an option would reduce distortions of competition between Union and Third Country carriers for flights departing from or arriving to the Union. The territorial link with the Union would be direct for flights departing from or arriving to the Union, which would reduce the room for non-compliance and difficulties in enforcement of the Regulation with respect to Third Country carriers. The risk of conflict of jurisdictions would also be reduced. Moreover, there would be no discrimination between passengers on a flight in terms of their rights. However, passengers on a connecting flight operated outside the Union would not be covered by the Regulation. In fact, the rights of all passengers would

**Commented [ES-MITMS1]:** Our position is that neither option solves the problem of how to oblige third country airlines arriving from a third country. In addition, there is the issue of Member States' competence (arising from the conflict with the COM over the request to the CJEU in the EU-Oman agreement). In short, we would not be in favour of extending the scope of the regulation without first resolving the legal (interaction with third countries) and competence issues. That said, option 2 would leave out connections with third countries, whoever makes them. This problem would be avoided with option 1.

<sup>1</sup> The impact of such an option on Council's stance in the Request from the Commission to the Court on the EU-Oman agreement is under consideration.

<sup>2</sup> The inclusion of international aviation in the EU ETS led to widespread protests at the International Civil Aviation Organization (ICAO), as well as sharp tension between the EU and its partners and threats of trade retaliation against European industry. The dispute was resolved after the Union was isolated at the ICAO Assembly in 2013 and the directive was partially and temporarily suspended ("stop the clock" Regulations).

reflect the effective rights of passengers on flights operated by Third Country carriers under the current legal framework.

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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:

Paragraph 1 is replaced by the following:

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

**(a) they are denied boarding;**

**(b) their flight is cancelled;**

**(c) their flight is delayed or rescheduled;**

**(d) they miss a connecting flight;**

**(e) they are upgraded or downgraded.’**

[Paragraphs 2 and 3 remain unchanged.]<sup>3</sup>

**Commented [ES-MITMS2]: GENERAL COMMENTS**

•Spain's position is in favour of quality of service standards and supervision of NEBs using a risk-based approach.

•Spain continues to consider that it is essential that there are requirements on airlines to report periodically on issues related to this Regulation (cancellations, delays, complaints received, etc.).

•Another notable omission in the proposal is the absence of a guarantee fund to address an air carrier insolvency. Such a fund is crucial to ensure that passengers are compensated in cases of insolvency. We therefore propose to add to the proposal a couple of articles with text analogous to that in articles 17 and 18 of the Directive (EU) 2015/2302 on package travel.

**Commented [ES-MITMS3]:** ES considers that if the scope of application is finally left as “*flight*” instead of “*journey*”, this point does not seem to be applicable except for intra-European connections.

<sup>3</sup> Under consideration.

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 an air transport contract with a passenger **holding a ticket** ~~or on behalf of contracting air carrier~~. The fact that an operating air carrier uses the aircraft of another air carrier, with or without crew of that other carrier, shall not change the designation of the former air carrier as operating air carrier for the purposes of this Regulation.'

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

"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 Community<sup>4</sup>.'

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<sup>5</sup>.'

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

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

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

"Ticket" means valid evidence, regardless of its form, of the conclusion of a transport contract;'

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

"Reservation" means an authorisation, on paper or in electronic form, giving entitlement to transportation subject to previously confirmed personalised transport arrangements.'

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

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<sup>4</sup> OJ L293, 31.10.2008, p. 3.

<sup>5</sup> OJ L 326, 11.12.2015, p. 1–33

"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:

"person with disabilities" and "person with reduced mobility" mean any person who has a permanent or temporary physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder his or her full and effective use of transport on an equal basis with other passengers or whose mobility when using transport is reduced due to age; '

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

"denied boarding" means a refusal to carry passengers on a flight, ~~although they have presented themselves for boarding under the conditions laid down in Article 4(0),~~ except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;'<sup>6</sup>

The definition of ~~"volunteer"~~ in point (k) is replaced by the following:

"volunteer" means a ~~person~~**passenger** who has presented himself or herself for boarding under the conditions laid down in Article 4(0) and responds positively to the air carrier's call for passengers prepared to surrender their reservation in exchange for benefits;'

The definition of ~~"cancellation"~~ in point (l) ~~does not change;~~ **is replaced by the following:**

**(l) 'cancellation' means the non-operation of a flight which was previously planned and on which at least one seat was reserved. A flight where the aircraft took off but, for whatever reason, diverted to an airport other than the airport of final destination, or to return to the airport of departure, is to be treated as a cancellation, unless the airport of arrival and the airport stated in the air transport contract serve the same town, city or region and the air carrier provided transport to the passenger to the final destination. The case when a passenger has been issued a ticket for a flight and the take-off time has been brought forward by more than one hour, unless there is no**

<sup>6</sup> **The Presidency suggests adding a recital specifying that air carriers have reasonable grounds to deny boarding to passengers with unruly behaviour threatening the safety or security of a flight.**

**change in the check-in and boarding times, or unless the passenger has taken the rescheduled flight, is also to be treated as a cancellation.**

**Points (g), (r), (s), (t) and (y) are deleted.**

The following definitions are added:

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

**(ac) "third country" means any country to which the Treaties does not apply;**

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

(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, **including in particular the list of extraordinary circumstances** ~~For the purposes of this Regulation, a non-exhaustive list of extraordinary circumstances is presented in the Annex;~~

(n) "flight" means an air transport operation **operated by a single aircraft** between two airports **identified on the reservation through a predetermined itinerary, a schedule and a single identification number**; intermediate stops for technical and operational purposes only shall not be taken into consideration;

(o) "connecting flight" means a flight which, under a single air transport contract, is intended to enable the passenger to arrive at a transfer point in order to depart on another flight, or, where appropriate in the context, means that other flight departing from the transfer point. ~~This excludes stop overs;~~

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

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

**Commented [ES-MITMS4]:** ES considers that the list should be consistent so that there is no misinterpretation later on and therefore believes that it should also include issues that will not be considered extraordinary circumstances.  
We propose to add the following (in bold): "including in particular the list of extraordinary **and non-extraordinary** circumstances".



single air transport contract. ~~The outward and the return journey are not the one and the same journey.~~ **The outward and the return journey are to be considered as separate journeys.**

- (u) "time of departure" means the time when the aircraft leaves the departure stand, pushed back or on its own power (off-block time);
- (v) "time of arrival" means the time when the aircraft reaches the arrival stand and the parking brakes are engaged (~~on~~-block time);
- (w) "tarmac delay" means, at departure, the time the aircraft remains on the ground between the **off-block time** ~~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 **on-block time** ~~start of disembarkation of the passengers;~~
- (ad) "delay at departure" means the difference of time between the time of departure indicated on the passenger's reservation and the actual time of departure of the flight;
- (ae) "delay at arrival" means the difference of time between the time of arrival indicated on the passenger's reservation, and the actual time of arrival;
- ~~(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;~~
- ~~(ak) "linked travel arrangement" means those services as defined in Article 3, point 2, of Directive (EU) 2015/2302.~~
- (al) "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;**
- (yc) "minor" - means a person below the age of 18 years;

**Commented [ES-MITMS5]:** We wonder what happens to the time between door closure and off-block. If what is intended to be controlled is the time a passenger remains inside a "forced" aircraft, the start should be from the time boarding is completed. We consider that the above definition is better because between the blocking time and the closing of doors there may be a period of time that is not being monitored.  
Paragraph 3.3.3. of the Interpretative Guidelines of the Regulation refers to a judgment in which the Court concludes that the "concept of "arrival time" used to determine the extent of the delay suffered by passengers on a flight if arrival is delayed corresponds to the time at which at least one of the aircraft doors opens, since it is considered that, at that time, passengers can leave the aircraft".

~~(yd) "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;~~

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

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

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

**(zd) "disruption" means denied boarding as defined in point (j), cancellation as defined in point (l), tarmac delay as defined in point (w), delay at departure as defined in point (ad) or delay at arrival as defined in point (ae).**

3. [Article 3 is amended as follows:

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

**(a)** 'to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;'

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

**(b)** 'to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Union air carrier.'

(aaaa) Paragraphs 1a and 1b are added:

**Commented [ES-MITMS6]:** Flight or journey? This should be clarified. ES proposed a text for Art. 3.1 that simplified the text of this point:

*"1. This Regulation shall apply:*

*(a) to passengers in any of the flights when the journey is departing from an airport located in the territory of a Member State to which the Treaty applies;*

*(b) to passengers in any of the flights when the journey is departing from an airport located in a third country ~~to~~ and the journey finishes in an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of any of the flights in the journey concerned is a Community carrier."*

Thus the definition of "journey" already covers the single air transport contract and any connections outside the EU, and excludes connections within the EU for journeys to and from outside the EU.

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

1b. This Regulation shall not apply to passengers on connecting flights operated by a Union air carrier that were the subject of a single air transport contract if both the airport of departure of the first leg of the journey, and the airport of arrival of the second leg of the journey, are located in a non-EU country, and only the airport where the stopover takes place is located in the territory of a Member State.’<sup>7</sup>

(a) Paragraph 2 is replaced by the following:

‘Paragraphs 1, 1a and 1b shall apply on the condition that passengers:

(a) have a confirmed reservation on the flight concerned

or

(b) have been transferred by an air carrier or an intermediary ~~organiser~~ from the flight for which they held a reservation to another flight, irrespective of the reason.’

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 intermediary ~~organiser~~.’<sup>8</sup>

Paragraph 4 is replaced by the following:

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<sup>7</sup> **Under consideration**

<sup>8</sup> PCY suggests adding a recital to clarify that passengers travelling under a flight covered by Public Service Obligations (that is available to the public under certain conditions) are subject to the same rights as other passengers.

'4. Without prejudice to Articles 8(3b) and 8(4), this Regulation shall only apply to passengers transported by motorised fixed wing aircraft.

Paragraph 5 is replaced by the following:

'5. Unless otherwise specified, the operating air carrier shall be responsible for performing the obligations under this Regulation.'

Paragraph 6 is replaced by the following:

'6. **Without prejudice to Article 12 of this Regulation,** ~~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~~ **unless** a package travel is cancelled or **its performance is** delayed for reasons other than cancellation or delay of the flight.'

4. Article 4 is amended as follows:

(aa) Paragraph 0 is added:

~~'0. Without prejudice to Article 3(2),~~ **This Article shall apply to passengers that present themselves for boarding at the gate, after on-line check-in or check-in at the airport, as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the organiser or the intermediary, or, if no boarding time is indicated, not later than 45 minutes before the time of departure indicated in the passenger's reservation. This Article shall also apply to passengers who do not present themselves for boarding when they were informed in advance that they will be denied boarding against their will.**

(a) Paragraph 1 is replaced by the following:

'1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first ~~provide~~ **specify to** the passengers **concerned their rights in such situation under this Regulation** ~~with the information notice referred to in Article 14(1) and call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the volunteer and the operating air carrier. This agreement with the volunteer on the benefits shall replace the passenger's right to compensation as laid down in Article 7(1), only if~~ **the volunteer explicitly approves of it by means of** ~~it is approved in a signed~~

document or **any digital means on a durable medium** in an email by the volunteer. In absence of such signed document or email, the volunteer shall be entitled, on request, to compensation by the operating air carrier denying boarding in accordance with Articles 7(1) **and 7(3).**'

(ab) Paragraph 2 is replaced by the following:

'If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will. ~~The operating air carrier shall provide the passengers concerned with the information on the process for requesting compensation defined in Articles 16a and 16aa.~~ The passengers who are denied boarding against their will shall be entitled, ~~without a request to that end,~~ to compensation by the air carrier denying boarding in accordance with Article 7(1). ~~By way of derogation from Article 16a(1a), s~~Such compensation shall, **without request**, be granted immediately. **The operating air carrier shall also provide the passengers concerned with the information on the process for the handling of complaints under Articles 15a and 16a.**'

(b) Paragraph 3 is replaced by the following:

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

**Commented [ES-MITMS7]:** For "reimbursement", what is meant by "immediately"? In order to avoid subjectivity in interpretation and to provide certainty, we believe that a maximum timeframe should be established (e.g. 48-72 hours?).

The following paragraphs are added:

'4. Paragraphs ~~1, 2~~ and 3 shall also apply to ~~return tickets~~ **flights** where the passenger is denied boarding ~~at the return journey~~ on the grounds that ~~he/she~~ **the passenger** did not take **a previous flight of the same air transport contract and provided that the passenger has paid or offered to pay any agreed additional fee** ~~the outward journey.~~ **By way of derogation from Article 8(1)(a), the reimbursement shall only cover the flight or flights affected by the denied boarding;**

**Commented [ES-MITMS8]:** We believe that the practice of charging this fee should be removed. In our opinion, a fee that may not be included in the initial price creates disprotection for the passenger. It should be made clear from the very beginning.

5. ~~Where the passenger,~~ or an **intermediary organiser,** ~~reports~~ **demands the correction of** a spelling mistake in the name or given name(s) of one or several passengers included in the same reservation, the operating air carrier shall correct this at least once up until 48 hours before departure without any additional charge to the passenger or the **intermediary organiser.**<sup>9</sup>

**Commented [ES-MITMS9]:** We agree with the content of the paragraph and simply point out that it is not clear where it is located: why is this paragraph in the article on denied boarding? We think it would be better to move it to another article, although we understand that the problem would arise in the case of denied boarding because the documentation is not in order.

5. Article 5 is amended as follows:

(aa) Paragraph 0 is added:

‘0. In case of cancellation of a flight, the operating air carrier of the cancelled flight shall inform **each passenger who has a reservation for this flight** ~~the passengers concerned~~ as soon as possible ~~and, in any event, no later than on the time of departure indicated in the reservation.~~ The operating air carrier shall ~~provide~~ **specify to** the passengers concerned **the reasons for the cancellation, the applicable flight distance as set out in Article 7 and their rights under this Regulation, in particular as regards rerouting under Article 8,** ~~with the information notice referred to in Article 14(1) as well as the information on the process for requesting compensation or reimbursement defined in Articles 7 and 8 and on the handling of complaints under Articles 15a and- 16a and 16aa.~~<sup>2</sup> ~~Passengers shall also be informed of the reasons for the cancellation and of the applicable flight distance as set out in Article 8.~~

**Commented [ES-MITMS10]:** We propose the following alternative text to specify the information obligation in the specific rights for each case: “*The specific rights under this regulation applicable to the case*”.

The passengers are entitled, upon **written** request, to receive in writing the reasons for the cancellation. The air carrier operating the cancelled flight shall provide such information **in a precise manner** within ~~10 working~~ **seven calendar** days **of the submission of the request.**<sup>9</sup>

(a) Paragraph 1 is replaced by the following:

‘The operating air carrier of the cancelled flight shall offer the the passengers concerned:

(a) in a clear ~~and reliable~~ manner, the choice between rerouting and reimbursement in accordance with Article 8; and

<sup>9</sup> **PCY suggest adding a recital to indicate that such information may be provided through push notifications via mobile applications.**

(b) the assistance in accordance with Article 9.

~~The operating air carrier shall also explain possible alternative transport.'~~

(b) Paragraphs 1a and 1b are added:

'1a. ~~By way of derogation from Article 9(6),~~ When the operating air carrier informs the passengers of the cancellation of a flight less than 24 hours before the time of departure of the cancelled flight indicated in the passengers' reservation and the passengers concerned choose a return flight in accordance with Article 8(1)(a) or rerouting in accordance with Article 8(1)(b), the operating air carrier of the cancelled flight shall provide assistance for the passengers concerned ~~during the waiting time for~~ in accordance with Article 9, while waiting for the departure of the new flight or alternative transportation rerouting in accordance with Article 9.

1b. Passengers shall have the right to receive, on request, compensation by the operating air carrier of the cancelled flight in accordance with Articles 7(1) and 7(3). This right is also applicable when passengers ~~they~~ are rerouted and reach their final destination with a delay at arrival ~~after the time of arrival indicated in their reservation~~ exceeding the thresholds defined in Article 7(1a).

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

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

3. The right to receive compensation under paragraph 1b shall not apply if the passengers have been informed of the cancellation at least 14 calendar days before the time of departure indicated on their reservation. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.

**Commented [ES-MITMS11]:** We believe that it is necessary to set a limit to the number of preceding flights, either in number or in time (on the same day?).

4. 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;~~

~~- where the aircraft landed at an airport that does not serve the same city as the airport of the final destination and did not subsequently reach the said airport of final destination.~~

6. Article 6 is replaced by the following:

*Article 6*

**Long-Delay**

0. When an operating air carrier expects a flight to be delayed at departure, it shall inform the passengers concerned as soon as possible and, at the latest, in any event, no later than on the time of departure indicated in the reservation. To the extent possible, passengers shall receive regular updates in real-time. The operating air carrier shall ~~provide~~ specify to the passengers concerned the reasons for the delay, the applicable flight distance as set out in Article 7 and their rights under this Regulation ~~with the information notice referred to in Article 14(1) as well as the information on the process for requesting compensation defined in Articles 7(3) as well as the handling of complaints under Articles 15a and 16a and 16aa.~~<sup>10</sup> Passengers shall also be informed of the reasons for the delay and of the applicable flight distance as set out in Article 8.

The passengers are entitled, upon request, to receive in writing the reasons for the delay. The air carrier operating the delayed flight shall provide such information in a precise manner within ~~10 working~~ 7 calendar days of the submission of the request.

1. The operating air carrier shall offer to the passengers concerned the assistance in accordance with Article 9 while waiting for the departure of their delayed flight. In addition, when the delay is of at least ~~five~~ three hours, the operating air carrier shall offer to the passengers concerned the reimbursement specified in Article 8(1)(a).<sup>11</sup>

<sup>10</sup> PCY suggest adding a recital to indicate that such information may be provided through push notifications via mobile applications.

<sup>11</sup> A Recital will be added to justify this lower threshold.

**Commented [ES-MITMS12]:** Same comment as previous article. Proposed alternative text: "The specific rights under this regulation applicable to the case".



2. Passengers shall have the right to receive, on request, compensation from the operating air carrier of the delayed flight in accordance with Articles 7(1) and 7(3) when they reach their final destination with a delay at arrival ~~after the time of arrival indicated in their reservation~~ exceeding the thresholds defined in Article 7(1a).

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

**Commented [ES-MITMS13]:** Same comment as in the previous article. There needs to be a limit to the number of preceding flights, either in number or in time (on the same day?).

~~54.~~ This article shall also apply if the time of departure as indicated in the reservation was postponed by the air carrier. However, the right to receive assistance under paragraph 1 and 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 reservation and~~ if the passenger has been informed of such a change at least 14 calendar days before ~~that~~ the date of departure. 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.

~~65.~~ This article shall also apply where the aircraft takes off and lands at an airport other than the airport for which the reservation was made, but subsequently takes off to reach the airport of destination. For the purposes of determining the extent of the delay at arrival incurred by a passenger on a diverted flight ~~which landed at an airport which is not that for which the reservation was made but which serves the same town, city or region,~~ it is necessary to take as a reference the time at which the passenger actually reaches, ~~at the end of the transfer,~~ either the airport for which the reservation was made or, ~~as the case may be,~~ another close-by destination agreed ~~with~~ upon between the passenger and the operating air carrier in a signed document or any other digital means on a durable medium.'

7. The following Article is inserted:

**Article 6-2a**

**Tarmac delay**

**Commented [ES-MITMS14]:** See comment on Article 2 definition (W) on 'tarmac delay'.

**Commented [ES-MITMS15]:** Time reference should be set with the opening and closing of doors.

1. In the event of tarmac delay, the operating air carrier shall inform passengers of the delay as soon as possible. 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. If the tarmac delay is longer than 30 minutes, **unless the cabin crew is ready for take-off or those services cannot be reconciled with air safety or air security requirements,** 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 ~~an~~ 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, **air traffic control** or security-related reasons why the aircraft cannot leave its position on the tarmac. **In such cases, the operating air carrier shall provide assistance in any possible and reasonable manner to passengers mentioned in Article 11(1).**

**Commented [ES-MITMS16]:** We would prefer 2 hours instead of the proposed 3 hours.

**3. Passengers disembarked in accordance with paragraph 2 shall be entitled to assistance in accordance with Article 9(1), taking into account the tarmac delay.'**

8. The following Article is inserted:

*Article 6a*

**Missed connecting flight during journeys performed under a single air transport contract**

~~0. The operating air carrier of the delayed or cancelled flight shall inform the passenger of the delay or of the cancellation as soon as possible and, in any event, no later than on the time of departure of the connecting flight indicated in the reservation. To the extent possible, passengers shall receive regular updates in real time. The operating air carrier shall provide the passengers concerned with the information notice referred to in Article 14(1) as well as the information on the process for requesting compensation defined in Articles 7(3) 16a and 16aa. Passengers shall also be informed of the reasons for the delay or the cancellation and of the applicable flight distance as set out in Article 8. The~~

passengers are entitled, upon request, to receive in writing the reasons for the delay or cancellation. The air carrier operating the delayed or cancelled flight shall provide such information within 10 working days.—

1. Where a passenger misses a connecting flight as a result of **a disruption on a previous flight** a delay at arrival or the cancellation of a previous flight, the air carrier operating the delayed or cancelled **preceding disrupted** flight shall **be responsible for providing to** offer the passenger reimbursement or re-routing in accordance with Article 8, and assistance in accordance with Article 9.

2. Upon request, a passenger shall **also** have a right to compensation by the air carrier operating the **disrupted** ~~previous delayed or cancelled~~ flight in accordance with Articles 7(1) **and 7(3)**, if the passenger misses a connecting flight as a result of a delay at arrival or cancellation of the previous flight, and reaches its final destination with a delay at arrival after the time of arrival indicated on his or her reservation exceeding the thresholds defined in Article 7(1a). For these purposes **of determining the delay**, the delay shall be calculated by reference **shall be made to** the scheduled time of arrival at the final destination as indicated **on the passenger's** ~~his or her~~ reservation.<sup>12</sup>

3. **Where, as indicated in the reservation, a passenger plans and interrupts its journey with a gap of at least 24 hours between two flights, that stop over shall be regarded as interrupting the passenger's journey, and as the final destination of the passenger's journey.**

3. By way of derogation from Article 3(5), in the case of connecting flights booked as a single air transport contract departing from a non-EU country to the territory of a Member State with a stopover in the territory of a Member State, where the cause of a long delay arises in the first flight operated, under a code share agreement, by a carrier established in a non-EU country, a passenger may bring his or her action for compensation against the Union air carrier that performed the second flight.<sup>13</sup>

9. Article 7 is amended as follows:

Paragraph 1 is replaced by the following:

<sup>12</sup> **A recital will explain the rights of passengers with separate tickets.**

<sup>13</sup> **A recital will be needed.**

‘1. In case of **disruption**, ~~denied boarding under Articles 4(1) and 4(2), a delay after rerouting following a cancellation under Article 5, a delay under Article 6 or a delay after a missed connecting flight under Article 6a,~~ the following compensation amounts shall apply **under the conditions defined in Articles 4, 5, 6 or 6a and in this Article:**

- (a) ~~250~~**300** EUR for journeys of ~~1500~~**3500** kilometres or less;
- (b) ~~400~~**500** EUR for journeys ~~between 1500 and 3500 kilometres;~~
- ~~(c) 600 EUR for all journeys of 3500 kilometres or more.~~

Paragraph 1a is added:

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

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

Paragraph 1ab is added:

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

Paragraphs 2 and 3 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~~**connecting flight** occurs during re-routing, the passenger's right to compensation can arise only once during his travel to the final destination.

3. ~~Claims~~**Requests for compensation** under this Article shall be submitted, **in accordance with Article 16aa**, by the passenger within 6 months from the date on which the flight was

**Commented [ES-MITMS17]:** The simplification into two segments, a priori, does not seem bad to us. For journeys of 3.500 kms, which compensation would apply: 300 EUR or 500 EUR? In the proposed text it appears in both segments.

**Commented [ES-MITMS18]:** ES asks to maintain the current situation where the minimum delay threshold for compensation is 3 hours. If two segments are finally introduced, we would be in favour of establishing 3 and 5 hours.

**Commented [ES-MITMS19]:** It is proposed to add the reference to Article 15a to take into account claims on other rights such as reimbursement.

performed or was to be performed according to the reservation. Within 30 calendar days of the submission of the ~~claim request~~, the operating air carrier shall either pay the compensation or provide the passenger with a justification for not paying the compensation, including, if applicable where relevant, an explanation on extraordinary circumstances. In case the operating air carrier does not pay that compensation or does not provide any justification within 30 calendar days, the passenger may submit a complaint in accordance with Article 16a. The compensation shall be paid in cash or by other means agreed upon between the passenger and the operating air carrier in a signed document or any other digital means on a durable medium and following appropriate information of the rights under this Regulation, 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.'

**Paragraph 4 is deleted.**

10. Article 8 is replaced by the following:

*'Article 8*

**Right to reimbursement or re-routing**

1. In case of disruption ~~denied boarding under Articles 4(1) and 4(2), a cancellation under Article 5, a delay under Article 6 or a missed connecting flight under Article 6a~~, passengers shall immediately and free of charge be offered, promptly, free of charge, the choice between ~~three~~ the following options under the conditions defined in Articles 4, 5 or 6 and in this Article:

- (a) - reimbursement within ~~10 working~~ seven calendar days from the date of the passenger's ~~claim request~~, in cash, or by other means as agreed upon between the passenger and the operating air carrier in a signed document or any other digital means on a durable medium by electronic bank transfer, bank orders, credit/debit card refund or bank cheques, of the full cost of the ticket, 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 on the reservation;

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

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

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

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

3. In order for the passenger to reach his or her destination as determined under paragraphs 1(a), 1(b) or 1(c) at the earliest opportunity, the operating air carrier shall, ~~in agreement with the passenger and~~ **and provided that they are under comparable transport conditions, consider propose** the following alternative options **to the passenger for agreement in a signed document or any other digital means on a durable medium**.<sup>14</sup>

(a) a flight, ~~at comparable transport conditions as set out in the air transport contract, to or from an~~ **alternative** airport ~~alternative to that for which~~ **compared to the airport stated in** the reservation ~~was made~~. In such a case, the operating air carrier shall bear the cost of transferring the passenger from ~~that the~~ alternative airport to ~~that for which~~ **the airport stated in** the reservation ~~was made, or, with regard to the destination airport, to another airport serving the same city or conurbation agreed with the passenger;~~

(b) the use of services operated by another air carrier,

**(c)** a different routing, or,

<sup>14</sup> A Recital will explain what comparable conditions are in line with point 4.2 of the Commission interpretative guidelines.

(d) where appropriate for the distance to be travelled, the use of another mode of transport, ~~at comparable transport conditions~~ as set out in the air transport contract.

~~34.~~ Where a passenger chooses the continuation of ~~his or her travel plans by re-routing to his or her final destination under the option referred to in~~ **the journey in accordance with** paragraph 1(b) and the operating air carrier cannot foreseeably arrange rerouting of the passenger in time to arrive at the final destination within 8 hours of the time of arrival indicated on the reservation, the passenger may arrange ~~himself or herself~~ **the its own** rerouting, at comparable transport conditions as set out in the ~~transport contract~~ **reservation and in accordance with paragraph 3(b),** ~~via another air carrier, a different route or another mode of transport.~~ When doing so the passengers shall ~~seek to~~ limit the expenses **to the extent those are necessary,** ~~it is~~ reasonable and appropriate. The air carrier operating the flight subject to the ~~disruption denied boarding, delay or cancellation~~ shall reimburse the expenses incurred by the passengers within ~~30~~ **seven calendar days of** **the submission of the request.'**

**Commented [ES-MITMS20]:** Does this mean that if the delay is less than 8 hours, the airline does not have to pay the costs incurred if the passenger is more resourceful in finding an alternative? The 8 hour limit would have to be changed. Should the limitation to travel in the same class be introduced? This question is linked to the compensation time thresholds. That margin should be, for example, two hours in addition to minimum time threshold.

11. Article 9 is amended as follows:

**(-a) The title of the Article is replaced by the following:**

*‘Article 9*

#### **Right to assistance**

(a) Paragraph 1 is replaced by the following:

'In case of **disruption and subject to the conditions defined in Articles 4, 5, 6, 6a and 6-2a and in this Article** ~~denied boarding under Articles 4(1) and 4(2), a cancellation under Article 5, a delay under Article 6 or a delay after a missed connecting flight under Article 6a,~~ and when the waiting time for their **flight or alternative transportation** ~~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) refreshments every two hours **of waiting time**;
- (b) a meal every 5 hours **of waiting time** with a maximum of three meals per day;

- (c) ~~the choice between~~ two telephone calls, **text messages and** ~~or~~ internet access, **including access to recharging stations.**

**If an operating air carrier is about to provide assistance under this paragraph but this would extend the waiting time for the departure, it shall be allowed to decline to provide this assistance.'**

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

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

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

- (c) Paragraphs 2a, ~~and~~ 2b **and 2c** are added:

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

2b. Where the operating air carrier does not fulfil its obligations under paragraphs 1, **2** and **2a**, the passengers concerned may make their own arrangements ~~insofar as the related~~ **to the extent those** expenses are **necessary**, reasonable and proportionate to the duration of the waiting and the costs of refreshments and meals at the **place of the** airport where the passengers are stranded. The air carrier operating the flight subject to **the disruption** ~~denied boarding, delay or cancellation~~ shall reimburse the expenses incurred by the passengers within ~~30~~ **seven calendar** days of the submission **of the request for reimbursement.**



2c. **At all Union airports, with more than 700 000 passengers per year, the Airport managing body shall put in place arrangements to ensure that adequate refreshments can be made available regardless of the time of day, flight, terminal.'**

(d) Paragraph 3 is deleted.

(e) The following paragraphs are added:

'3. If the ~~disruption~~**disruption**~~cancellation, missed connection or delay at departure~~ is caused by extraordinary circumstances and the ~~disruption~~**disruption**~~cancellation, or delay~~ could not have been avoided even if all reasonable measures had been taken, the air carrier may limit the accommodation provided according to paragraph 2(a) to a maximum of 3 nights. If the operating air carrier chooses to apply this limitation, it shall nevertheless provide the passengers with information about available accommodation after the three nights, in addition to the continued obligations for information.

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

~~5~~4. Where a passenger opts for reimbursement pursuant to Article 8(1)(a) while being at the first point of departure, or opts for rerouting at a later date pursuant to Article 8(1)(c), the passenger shall have no further rights with regard to assistance under Article 9(1) and 9(2) in relation to the relevant flight.

~~6. 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.~~

~~7. Paragraphs 4 and 5 shall not apply to a passenger mentioned in Article 11(1), as well as pregnant women and persons in need of specific medical assistance provided that the passenger has notified the operating air carrier of their particular needs for assistance at least 48 hours before the scheduled time of departure of the flight. Such notification shall~~

be deemed to cover the entire journey and the return journey if both journeys are part of the same air transport contract. As regards pregnant women and persons in need of specific medical assistance, they shall be required to notify the air carrier of their particular needs for assistance at the time when the cancellation or delay at departure is announced.'

12. Article 10 is replaced by the following:

**'Article 10**

**Upgrading and downgrading**

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

2. 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 ~~seven~~**30 calendar days of the downgrading**, by the means provided for in Article 7(3), **provide the passenger with a compensation equivalent to** ~~reimburse~~:

- (a) ~~34~~**40**% of the flight price for all flights of ~~4~~**3**500 kilometres or less, or
- ~~(b) 50% of the flight price for all flights between 1500 and 3500 kilometres, or~~
- (b) 75% of the flight price for all flights of 3500 kilometres or more.

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

4. The flight price excludes 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.'

13. ~~Article 10a is added~~ **The following Article is inserted:**

*'Article 10a*

**Airport contingency plans**

1. At Union airports whose annual traffic has been over five million passengers for at least three consecutive years, the airport managing body shall ensure that the operations of the airport and of airport users, in particular the air carriers, and the suppliers of groundhandling 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.

1a. Airport contingency plans shall take into account the particular and individual needs of **special categories of passengers as defined under Article 11** ~~passengers with disabilities and reduced mobility.~~

2. The contingency plan shall be set up with the participation of the Airport Users Committee referred to in Council Directive 96/67/EC on access to the groundhandling market at Union airports **as well as third parties providing groundhandling services.** 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 Airport Users Committee referred to in Council Directive 96/67/EC** ~~the National Enforcement Body designated pursuant to Article 16 or any other authority designated for this purpose.~~

Commented [ES-MITMS21]: Ok.

~~34.~~ A Member State may decide that an airport not covered by paragraph 1, located on its territory, is to fulfil the obligations laid down in paragraphs 1 to 3.

~~45.~~ At airports below the threshold set in paragraph 1 or not covered by paragraph 4, **with more than 700 000 passengers per year,** 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 **of multiple cancellations and/or delays of flights leading to a considerable number of passengers stranded at the airport.**

~~6. At all Union airports, the Airport managing body together with the air carriers operating at the airport shall put in place arrangements to ensure that adequate refreshments can be made available regardless of the time of day, flight, terminal.~~

14. Article 11 is replaced by the following:

*'Article 11*

**Persons with disabilities and reduced mobility-Special categories of passengers**

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

1. Operating air carriers shall give priority to carrying persons with disabilities, persons with ~~with~~ reduced mobility and any persons or recognised assistance dogs accompanying them, as well as ~~unaccompanied~~ minors, **pregnant women and persons in need of specific medical assistance.**

2. In applying the rerouting 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 rerouting and assistance as soon as possible to those persons, **including to any persons or recognised assistance dogs accompanying them.**

**3. Article 9(3) shall not apply to a passenger mentioned in paragraph 1, provided that the passenger has notified the operating air carrier of their particular needs for assistance at the latest at the time when the disruption is announced. Such notification shall be deemed to cover the entire journey.'**

15. **In Article 12, the title is amended as follows:** ~~paragraph 1 is replaced by the following:~~

*'Article 12*

**'Further rights'**

**In Article 12, the paragraph 1 is amended as follows:**

'1. This Regulation shall not affect rights and claims of the passenger granted under other legal acts, including under Directive (EU) 2015/2302.

**In accordance with Articles 13 and 16 of Directive (EU) 2015/2302 and without prejudice to Article 22 of that Directive, the organiser shall be responsible for the performance of the travel services included in the package travel contract, irrespective of whether those services are to be performed by the organiser or by other travel service providers, and for providing assistance to the passengers transported according to package travel contracts. The organiser may entrust the operating carrier with the provision of assistance, provided that the passenger is informed about this transfer of tasks.**

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.

**Passengers shall be entitled to present claims for a price reduction or compensation under Directive (EU) 2015/2302 and requests for compensation under this Regulation. Compensation or price reduction granted under Directive (EU) 2015/2302 and compensation granted under Articles 7 or 10(2) of this Regulation shall be deducted from each other in order to avoid overcompensation.**

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

16. 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 **from any person, including third parties, in accordance with the law applicable.** ~~for the costs incurred under this Regulation from any third parties which caused or contributed to the event triggering compensation or other obligations.'~~

17. Paragraphs 1, 2 and 3 of Article 14 ~~are~~**is** replaced by the following:

*Article 14*

**Obligations to inform passengers**

1. The operating air carrier shall include on its website **and mobile application** an information notice specifying rights under this Regulation, including complaint handling process.
2. When offering tickets for ~~a journey on an air transport contract~~ and prior to the purchase, air carriers and intermediaries shall inform the passenger on the following:
  - (a) the type of ticket or tickets being offered, in particular whether the ticket or the tickets are covered by a single air transport contract or **a combination of** separate air transport contracts;
  - (b) the general conditions applicable to the ticket; and
  - (c) the rights and obligations of the passenger, the operating air carrier and the intermediary under this Regulation, **attached to the air transport contract**, including information on the reimbursement process;
  - (d) the deadline and the procedure by which passenger can request the correction of a spelling mistake as specified in Article 4(4), without any additional charge;
  - (e) the terms and conditions, including the amount of any additional fee, that may apply on a particular flight on the grounds that the passenger does take a previous flight of the same ticket. ~~Those terms and conditions shall remain fully in compliance with Directive 93/13/EEC on unfair terms in consumer contracts.~~
- In order to comply with the information requirement set out in point (c) of the first subparagraph, the air carrier and the intermediary may use a summary of the provisions of this Regulation prepared by the Commission in all official languages of the Union and made available to the public.
- ~~3.~~ An intermediary or an air carrier which sells tickets that are **a combination of covered** ~~by separate~~ air transport contracts shall inform the passenger prior to the purchase, that the tickets are covered by separate **air** transport contracts with no rights under Articles 7, 8 and 9 to reimbursement, re-routing or assistance in the case of a missed connecting ~~on flight~~.

**Commented [ES-MITMS22]:** Spain is generally against allowing a no-show policy. It should not be a "fee". It should be taken into account that there would be a problem with flight search engines webs (visibility of flights).

Such information shall be provided in a clear and accessible manner ~~on a durable medium~~ when selling the ticket.

~~The intermediary or the air carrier which sells the tickets shall inform the passenger of the identification of the operating air carriers and their contact details. Such information shall be communicated prior to the purchase or as soon as it becomes available.~~

~~The intermediary or the air carrier which sells the tickets shall also inform passengers in a clear and accessible manner of the contact details of the body or bodies designated by Member States pursuant to Article 16 and Article 16a and, where relevant, their respective responsibilities.~~

Air carriers and intermediaries shall provide the information pursuant to this paragraph in the language of the booking reservation and a language that is internationally used on a durable medium.’

18. In Article 14 a new paragraph 7 is added:

‘7. 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 reimbursement or re-routing, assistance and possible compensation». That text shall be displayed at least in the language(s) of the place of the airport and in a language that is internationally used.’

19. ~~Article 15a is added~~ The following Article is inserted:

*‘Article 15a*

**Complaint to the air carrier or the intermediary**

1. Each air carrier and each intermediary shall set up a complaint-handling mechanism for the rights and obligations covered by this Regulation in their respective fields of responsibility. They shall make their contact details and working language, or languages, widely known to passengers, including in accessible format. Details of the complaint-handling procedure shall be accessible to the public, including to persons with reduced

mobility. They shall also inform passengers in a clear and accessible manner of the contact details of the body or bodies designated by Member States pursuant to Article 16 and Article 16a and, where relevant, their respective responsibilities. That information shall be available in the official language or languages of the Member States in which the air carrier and the intermediary are operating.

2. When passengers submit a complaint using the mechanism referred to in paragraph 1, such a complaint shall be submitted within ~~three~~**six** months of the occurrence that it concerns. Within ~~one month~~ **30 calendar days** of receiving the complaint, the air carrier, **or the intermediary, to which the complaint is addressed** shall either provide a reasoned reply or, in duly justified **exceptional** cases, inform **the passenger that** the passenger ~~that he or she~~ will receive a final reply within a period of less than ~~three months~~**30 calendar days** from the date of ~~receipt~~ **submission** of the complaint. The answer shall also contain the relevant contact details of bodies designated under Articles 16 or 16a, including postal address, phone number, website and e-mail address.

3. The submission of complaints by passengers using the mechanism referred to in paragraph 1 shall be without prejudice to their right to submit disputes for out-of-court resolution in accordance with Article 16a, or to seek redress through court proceedings, subject to periods of limitation in accordance with national law.’

20. Article 16 is replaced by the following:

*‘Article 16*

**Enforcement**

1. Each Member State shall designate a National Enforcement Body responsible for the enforcement of this Regulation as regards ~~flights~~**journeys** from airports situated on its territory and ~~flights~~**journeys** 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.

**Commented [ES-MITMS23]:** We do not understand this provision. Does it mean that there are 30 days to reply that you will get a reply in less than 30 days? The wording would need to be clarified with an alternative because we do not understand this additional period, as it does not clarify anything and does not seem to make sense (it seems more logical that it should be a little more than 30 days). Clarification is needed.

**Commented [ES-MITMS24]:** We reiterate our support for this change from “flights” to “journeys”. It is important for us to maintain this change in subsequent proposals, if the applicability is to journeys.



2a. ~~Where a National Enforcement Body has been entrusted with the handling of individual complaints pursuant to Article 16a(1),~~ The National Enforcement Body may also investigate and decide on enforcement actions based on information contained in individual complaints submitted by passengers.

**Commented [ES-MITMS25]:** We miss the obligations on airlines to provide the information required by the NEBs.

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.

4. Four years after the date of application of this Regulation and then every two years, ~~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 on their websites. These reports shall also be submitted to the Commission ~~and also be made available on the websites of the National Enforcement Bodies.~~

**Commented [ES-MITMS26]:** We consider that every 5 years is too long. We suggest that the Commission could determine the minimum content of this report.

5. 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.

**Commented [ES-MITMS27]:** However, we believe that it should be specified that NEBs may share this information with each other, for the purpose of complying with the Regulation (in case an operator does not operate in a country but needs to be contacted).

21. The following Articles are inserted:

*‘Article 16a*

~~Complaint handling by National Enforcement Bodies or other Bodies~~ **Out-of-court resolution of disputes**

1. Member States shall ensure that air passengers can submit disputes regarding complaints under this Regulation to a national body or bodies responsible for the out-of-court resolution of disputes. To that end, Member States may designate the National enforcement body or bodies entrusted with the enforcement of this Regulation under Article 16(1). 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.

2. 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 1 shall ~~as a minimum: Meet~~ **minimum** the requirements **in terms of**

transparency regarding their contact details, the language(s) of proceedings, any preliminary requirements the parties may have to meet before an out-of-court procedure can be instituted and the costs to be borne by the parties of article 7(1) subparagraphs (a), (h) and (j) and Article 7(2) of Directive 2013/11/EU;

- 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 that Directive 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.

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

4. The passenger's participation to out-of-court dispute resolution procedures shall be without prejudice to his or her right to seek redress through court proceedings, 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, 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. To this end, the Commission

~~may issue a recommendation after consultation of the Committee referred to in Article 16c(1).~~

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

22. Article 17 is replaced by the following:

*‘Article 17*

**Review and Report**

1. Every **two** years from the **date of application** of this Regulation, the Commission shall report to the European Parliament and the Council on the list of extraordinary circumstances set out in the Annex, in the light of the events affecting the timely and effective operation of flights having occurred during the five preceding years.

**The report shall be accompanied where necessary by a legislative proposal.**

2. Every five years from the **date of application**~~entry into force~~ of this Regulation, the Commission shall report to the European Parliament and the Council on the operation and the results of this Regulation.

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

The report shall also include a review of ~~(a)~~ the amounts set out in Article 7(1) **and the percentages set out in Article 10(2)**, taking into consideration inter alia the evolution of air fares, the inflation rate and statistics on denied boarding, cancellations, delays and missed connecting flights imputable to air carriers **as well as statistics on downgrading**, during the five preceding years.’

~~(b) the list of extraordinary circumstances set out in the Annex, in the light of the events affecting the timely and effective operation of flights having occurred during the five preceding years.~~

The report shall be accompanied where necessary by legislative proposals.’

23. Annex 1 to this regulation is added as the Annex to Regulation 261/2004.

*[Article 2*

**Regulation (EC) No 2027/97 is amended as follows:]<sup>15</sup>**

*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*.

**It shall apply from ... [2 years from the date of entry into force of this Regulation].**

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*

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<sup>15</sup> A separate revised compromise will be issued.

**Annex 1**

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

1. The following circumstances shall be considered as extraordinary:

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

- i. **Major** natural and/or environmental disasters which are deemed to affect the safe operation of the flight;
  - ii. **Extreme** meteorological conditions incompatible with the safe operation of the flight or resulting in capacity restrictions at the airport of departure or of arrival;
  - iii. war or ~~insurrection~~ political instability where the competent national public authorities of the country of departure of the flight advise against travel;
  - iv. ~~major public health crises~~ **serious cross-border threats to health falling within the scope of Articles 2(1) or 2(4) of Regulation (EU) 2022/2371 which are deemed to affect the safe operation of the flight;**
  - v. bird strikes or obstacle collision with the aircraft during a flight which may cause damage that requires immediate compulsory checks and possible repair;
- (b) fault on the part of a passenger, including:
- i. disruptive passenger behaviour endangering the safe operation of the flight;
  - ii. health risks or medical emergencies (such as serious illness) discovered at short notice before flight departure, or necessitating the interruption or deviation of the flight;

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

- i. security risks, **damages caused by** acts of sabotage **or terrorism**, or unlawful acts, incompatible with the safe operation of the flight;
- ii. a hidden manufacturing defect revealed, by the manufacturer or a competent authority and which impinges on flight safety;
- iii. air traffic management restrictions or closure of airspace;
- iv. partial or full unscheduled closure of an airport, **including a general airport system failure, or the activation of the contingency plan by the Airport managing authority**;
- v. labour disputes at essential service providers such as airport managing body, Air Navigation Service Providers, ~~or~~ groundhandling service providers, or, **in relation to demands which only the public authorities can satisfy, at the operating air carrier**;
- vi. **the unexpected absence of a pilot due to illness or death, when it occurs outside the air carrier's base**;<sup>16</sup>
- vii. 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.
- viii. 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.).
- ix. a collision between the **elevator** of an aircraft in a parking position and the winglet of an aircraft of another airline;

**Commented [ES-MITMS28]:** We believe that without defining what a "base" is, another problem of interpretation will arise.

**Commented [ES-MITMS29]:** We think this is too specific. What if the collision was with a wing?

<sup>16</sup> **A recital will be added to explain the reasons for departing from the case law.**

x. damage to an aircraft tyre caused by a foreign object, provided that the air carrier deployed all its resources in terms of staff or equipment and the financial means at its disposal to avoid the damage;

xi. petrol on a runway of an airport.

xii. unexpected flight safety shortcomings that do not fall under 2(i) that could not have been identified in the context of preventive maintenance in line with EU rules and procedures for the continuing airworthiness management of aircraft.

2. The following **non exhaustive list of** circumstances shall not be considered as extraordinary:

i. technical problems that could have been identified in the context of preventive maintenance in line with EU rules and procedures for the continuing airworthiness management of aircraft;

ii. **de-icing delays, aircraft change, operational decisions, late crew / check-in / boarding procedures;** and

iii. unavailability of flight crew or cabin crew (unless caused by labour disputes **covered under 1(c)v).** '

**Commented [ES-MITMS30]:** We do not understand what this is. We consider that it could be a way to include any technical failure. In such cases, will NEBs need airworthiness and maintenance experts to determine this? We think that for practical purposes, if this issue is admitted, there would be little compensation for passengers, so we think it is a very relevant issue.

[Annex 2]<sup>17</sup>

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<sup>17</sup> A separate revised compromise will be issued.