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From:	General Secretariat of the Council
To:	Working Party on Aviation
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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 compromises proposed by the Polish Presidency

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

Brussels, 16 May 2025
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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	7503/1/25 REV 1
No. Cion doc.:	COM(2023) 130 final
Subject:	Proposal for a regulation amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air Compromise proposed by the Polish Presidency for recitals

In view of the Working Party on Aviation of 19 May 2025, delegations will find, in Annex, a compromise proposed by the Presidency for Recitals. Changes compared to the previous version are highlighted in **bold underlined** and ~~striketrough~~.

Delegations are requested to send their comments, if any, in writing at avia-mar@consilium.europa.eu by 20 May 2025 cob.

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

Whereas:

- (1) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91¹, and Regulation (EC) No 2027/97 of the Council of 9 October 1997 on air carrier liability of the carriage of passengers and their baggage by air² have significantly contributed to protecting the rights of air passengers when their travel plans are disrupted by denied boarding, long delays, cancellations or mishandled baggage.
- (2) A number of shortcomings, revealed during the implementation of the rights under the Regulations, have however prevented their full potential in terms of passenger protection from being realised. In order to ensure a more effective, efficient and consistent application of air passenger rights across the Union, a series of adjustments to the current legal framework is required. This was underlined in the Commission 2010 EU Citizenship Report on dismantling obstacles to EU citizens' rights³ which announced measures to ensure a set of common rights notably for air passengers and the adequate enforcement of these rights.
- (2a) The Study mandated and published by the Commission in 2020 (hereafter "the Study") showed that passengers' main priority is to be provided with assistance in the event of travel disruption and to be offered rerouting so that they arrive at their destination as soon as possible. The Study showed that the payment of compensation comes third by order of priority. On the other hand, the Study also showed that the absolute and relative costs incurred by air carriers through the implementation of Regulation 261/2004 have grown significantly since 2011 with a risk to result in a restriction in the number of routes operated or a reduction in connectivity offered to passengers in the long term. The revision of Regulation 261/2004 should therefore focus particularly on passengers' rights to assistance and rerouting, while taking into account economic incentives of air carriers and impacts on connectivity.
- (2b) Passengers travelling on a flight covered by Public Service Obligations, either at a full or at a reduced fare, should be subject to the same rights under this Regulation.

Commented [ES-MITMS1]: There is no proven effect of the current regulation on connectivity, so changes cannot be justified on the basis of the above.

¹ OJ L46, 17.2.2004, p.1

² OJ L285, 17.10.1997, p.1; modified in OJ L140, 30.5.2002, p.2

³ COM(2010) 603 final

- (3) In order to increase legal certainty for air carriers and passengers, a more precise definition of the concept of "extraordinary circumstances" is needed, which takes into account the judgement of the European Court of Justice in the case C-549/07 (Wallentin-Hermann) interpreting the original version of Regulation 261/2004. Such a definition should be further clarified via a non-exhaustive list of circumstances that are clearly identified as extraordinary or not. The Commission should review the list of extraordinary circumstances every three years and propose, as appropriate, to the European Parliament and the Council to update that list.
- (3a) In the original version of Regulation 261/2004, as interpreted by the Court in the Case C-549/07 (Wallentin-Hermann), an unexpected technical problem was not considered as an extraordinary circumstance, except when limited to a hidden manufacturing defect revealed by the manufacturer of the aircraft or by a competent authority, or damage to the aircraft caused by acts of sabotage or terrorism. However, in the light of experience gained and given the overriding importance of ensuring that the rights granted to passengers under this Regulation are not detrimental to safety, technical issues with an aircraft that could not be **remedied** identified as part of preventive maintenance in line with EU rules and procedures for the continuing airworthiness management of aircraft should be considered as extraordinary circumstances.
- (3b) In the original version of Regulation 261/2004, as interpreted by the Court in Joined eCases C-156/22, C-157/22 and C-158/22 (TAP Portugal), the unexpected absence due to illness or even unexpected death, shortly before the departure of a flight, of member whose presence is essential to its operation were not considered as an extraordinary circumstances. Nonetheless, even though air carriers have the duty to take all reasonable measures to ensure replacement of the **pilot, co-pilot or minimum required cabin** crew, ensuring compliance with that obligation in practice ~~it~~ outside the carrier **home** bases requires considerable time and ~~highly~~ financial cost. Therefore, it is appropriate to provide that the **unexpected** sickness or death of an essential crew member, **for instance when it occurs the day before the departure of the flight**, outside the bases of air carriers should be considered as an extraordinary circumstance.
- (3c) In the original version of Regulation 261/2004, as interpreted by the Court in Cases C-28/20 (Airhelp Ltd), C-195/17 (Krüsemann and Others), C-613/20 (Eurowings) and C-287/20 (Ryanair), strikes by airline staff were not considered as extraordinary circumstances. Nonetheless, when a strike occurs, certain demands do not fall within the remit of the air carrier and are outside its control, **such as changes in the retirement age or in financial contributions that can only be addressed by public authorities**. Therefore, it is appropriate to provide that certain strikes by airline staff should be considered as extraordinary circumstances.
- (4) In the original version of Regulation 261/2004, as interpreted by the Court in Case C-173/07 (Emirates), the concept of 'flight' within the meaning of Regulation No 261/2004 was not defined but considered as consisting essentially of an air transport operation, as a 'unit' of such transport, performed by an air carrier which fixes its itinerary. In order to avoid uncertainty and in the light of experience gained, a clear definition of a "flight" should now be provided, as well as for the associated notions of "connecting flight" **and "journey"**.
- (4a) In the original version of Regulation 261/2004, as interpreted by the Court in Case C-537/17 (Wegener), the Regulation applied to any flight part which was part of one journey regardless of where the flights took place, including flights fully operated outside the Union; **when either the initial point of departure is located in the territory of a Member States to which the**

Commented [ES-MITMS2]: Has any of the different stakeholders identified that passenger rights can be detrimental to safety? In what cases? This cannot be part of a recital unless we are thinking that there will be air operators that under some conditions will leave safety apart to avoid the costs of compensations. Are airlines associations thinking that way?

Commented [ES-MITMS3]: What practical examples of "technical issues" would not be considered extraordinary circumstances? This would de facto derogate the right to compensation.

Treaties apply, or, when the operating air carrier is a Union operating air carrier, when the final destination of the journey is located in the territory of a Member States to which the Treaties apply. Nonetheless, the Draghi report emphasised the critical role of transport for the Union's competitiveness and the risk of business diversion from transport hubs in the Union to those in the Union's neighborhood, stemming from asymmetric regulations. Regulation 261/2004 applies 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, only if the operating air carrier of the flight concerned is a Union air carrier. This asymmetry creates distortions of competition between Union air carriers and third country air carriers and discriminates between passengers flying on the same routes. Those differences are exacerbated by the fact that, according to the Study, multiple National Enforcement Bodies face difficulties with enforcement on and compliance by non-EU carriers. The difficulties of enforcement are compounded for flights fully operated outside the Union. With a view to reducing competition distortions between Union air carriers and third country air carriers and ensuring effective enforceability of passengers' rights, this Regulation should not apply to a passenger during the part of a journey which is fully operated outside the Union.

- (4aa) The Study has shown a higher level of compliance with Regulation 261/2004 by Union air carriers. Therefore, restoring the level-playing field between Union and non-Union air carriers and improving the economic sustainability of Union air carriers will support the Union flagship and ultimately improve the protection of passengers overall.
- (4b) Greenland is subject to particularly harsh meteorological conditions, and is characterised by very low population density and the remoteness of its populated places. To ensure connectivity and to maintain the availability of flights within Greenland, flights within Greenland should not be covered by the obligations regarding compensation, including where those flights are connecting flights which arrive at or depart from the territory of a Member State to which the Treaties apply.
- (4d) Tickets are issued or authorised by the operating air carrier following the conclusion of an air transport contract with a passenger. **They should be identifiable through a unique ticket number and contain a unique reference related to the air transport contract issued at booking.** They should be deemed to cover one flight or connecting flight **of a journey covered by the air transport contract**, without taking into account intermediate stops for technical and operational purposes. They should contain several pieces of information regarding that flight or connecting flight such as the flight date, departure and arrival, the scheduled times of departure and arrival, the passenger's name, surname, the flight number and the name of the operating air carrier. ~~Tickets should be identifiable through a unique ticket number.~~
- (5) In the case C-22/11 (Finnair), the European Court of Justice decided that the concept of 'denied boarding' must be interpreted as relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons. Passengers who have presented themselves for boarding and are denied boarding or who have been informed in advance that they would be denied boarding against their will should be reimbursed **without undue delay** immediately.
- (5a) At the same time, there are reasonable grounds to deny passengers boarding, such as reasons of health, safety, ~~or~~ security, or inadequate travel documentation. Air carriers have also reasonable grounds to deny boarding to passengers displaying unruly behaviour threatening the safety or security of a flight, as referred to in the amended Convention on Offences and

Certain Other Acts Committed on Board Aircraft. The operating air carrier should bear the burden of proof.

- (7) In order to improve levels of protection, passengers should not be denied boarding on a return flight on the ground that they did not take the outbound flight of the same air transport contract.
- (8) At present, passengers are sometimes penalised for spelling errors in their names by the application of punitive administrative fees. Reasonable corrections of booking errors, or in case of an administrative change, should be provided free of charge provided they do not imply a change of times, date, itinerary or passenger.
- (9) In cases of cancellation, the choice between receiving reimbursement, continuation of travel by rerouting or travel at a later date should be the decision of the passenger and not that of the air carrier.
- (10) Airport managing bodies, at airports whose annual traffic is not less than five million passenger movements, and airport essential service providers, in particular air carriers and the suppliers of ground-handling services should cooperate to minimise the impact of multiple flight disruptions on passengers. To this end, airport managing bodies should prepare contingency plans for such occurrences and work together in the development of such plans. At all other airports with more than 700 000 passenger movements per year, the airport managing body should make all reasonable efforts to coordinate and make arrangements with airport users to inform stranded passengers in situations leading to a considerable number of passengers stranded.
- (11) Regulation (EC) No 261/2004 should explicitly include the right to compensation for passengers suffering long delays, in line with the judgement of the European Court of Justice in the Joined cases C-402/07 and C-432/07 (Sturgeon). The Sturgeon judgement has fixed a one-trigger time threshold of three hours for compensation in cases of delay. However, many delays cannot be resolved within the three hours fixed in that judgement and a short threshold may increase the number of flight cancellations where air carriers reduce the knock-on effects of delayed flights on the subsequent flights by cancelling one or several flights to reposition the aircraft for a next flight. In most circumstances, the passenger would still prefer a delay over a cancellation because the passenger has more certainty to arrive at destination at the earliest opportunity. On many routes, the frequency of flights is limited and, in cases of cancellation, the passenger cannot be immediately rerouted. Increasing the time threshold therefore presents an advantage for the passenger. Finally,
- (11a)** ~~W~~With a view to maintaining connectivity, the thresholds above which delays give rise to a right to compensation should be increased to take account of the financial and competitiveness impact on the sector. In this way, it will be possible to avoid incentivising any increase in the frequency of cancellations or restrictions in the number of routes operated or reductions in connectivity offered to passengers in the long term. To ensure that passengers travelling within the EU face homogenous conditions for compensation, the threshold should be the same for all travel within the Union.
- (11ab)** The standardised compensation in the original version of Regulation 261/2004 serves to compensate a loss of time which is common to all passengers while the amounts fixed in the original version of Regulation 261/2004 could in many cases go beyond the value of the damage incurred by passengers as established by economic studies. It is therefore appropriate

Commented [ES-MITMS4]: ES refers to its position on "no shows".

to define different thresholds for compensation according to the distance of the flight disrupted and the delay at arrival.

- (11**bc**) In line with the Union's efforts to promote a climate-neutral and environmentally friendly mobility, it is also appropriate to ensure that regulatory frameworks for passenger rights of transport modes converge to the extent possible and that compensations are levelled between transport modes.
- (12) To ensure legal certainty, Regulation (EC) No 261/2004 should explicitly confirm that the changing of flight schedules has a similar impact on passengers to cancellations or delays and should therefore give rise to the same rights.
- (13) Passengers missing a connecting flight part of a journey~~an air transport contract~~ as a result of a disruption on a previous flight within the scope of this Regulation should be properly assisted while waiting for rerouting. In such cases, in line with the principle of equal treatment, passengers should be entitled to compensation upon reaching the final destination of their alternative flight or transportation, on a similar basis to passengers suffering disruptions on direct flights.
- (13a) At the time of booking and prior the purchase of the tickets, air carriers, or, where appropriate, the intermediaries should clearly inform passengers whether their travel plans would be covered by a single air transport contract and of their rights under the Regulation, particularly regarding missed connecting flights.
- (14) In order to enhance passenger protection, it should be clarified that delayed passengers ~~enjoy~~ benefit from rights to assistance and compensation irrespective of whether they are waiting in the airport terminal or are already seated on board the aircraft. However, as the latter have no access to the services available in the terminal, their rights should be reinforced with regard to basic needs and with regard to the right to disembark. The right to disembark may only be limited if there are safety, immigration, air traffic control or security-related reasons. If an air carrier is about to disembark passengers but is informed by Air traffic control authorities that the flight is about to take-off, it should be allowed to decline to disembark passengers.
- (15) Where a passenger has taken up the choice of rerouting at the earliest opportunity, the air carrier often makes the rerouting conditional upon the availability of seats on its own services, thereby denying their passengers the option of being rerouted more quickly by alternative services. Therefore, the carrier should also consider other options for rerouting, including to an alternative airport, via a different route, on another carrier's services or on other transport modes where this can speed up rerouting. Alternative rerouting should be dependent upon the availability of seats. If the air carrier has not offered a re-routing and the cumulated waiting time is prolonged by at least three hours, the passenger should have the right to arrange its own rerouting in order to reach its final destination without unnecessary delay. Such rerouting should be, under conditions, at the air carrier's expenses and at comparable transport conditions.
- (15a) When rerouting passengers, air carriers should seek to ensure that passengers can travel with their baggage, including checked and unchecked baggage. An air carrier should be allowed by the passenger to proceed otherwise if restrictions on baggage transportation caused further delays to passengers awaiting rerouting, without prejudice to its liability in respect of passengers' baggage governed by Regulation N° 2027/97 and the Montreal Convention.

- (15b) Whether transport conditions are comparable could depend on a number of factors and on the circumstances. Where possible and it does not entail further delay, passengers should not be downgraded to transport services of a lower class compared with the one on the reservation. Re-routing should be offered at no additional cost to the passenger, even if passengers are re-routed with another air carrier or on a different transport mode or in a higher class or at a higher fare than the one paid for the original service. Reasonable efforts should be made to avoid additional connections. When using another air carrier or an alternative mode of transport for re-routing, the total travel time should be as close as reasonably possible to the scheduled travel time of the original flight, in the same class of carriage or a higher one if necessary. If several flights are available with comparable timings, passengers having the right to re-routing should accept the offer of re-routing made by the air carrier, including on those air carriers cooperating with the operating air carrier. If assistance for people with disabilities or reduced mobility was booked for the original flight, such assistance should also be available on the alternative route in accordance with Regulation 1107/2006.
- (16) Passengers should be offered assistance from the scheduled time of departure until the departure of their flight or alternative transportation. Air carriers currently face unlimited liability for the accommodation of their passengers in the case of extraordinary circumstances of long duration. This uncertainty linked with the absence of any foreseeable limit in time may risk endangering a carrier's financial stability, with consequential negative effects for passengers in terms of connectivity. An air carrier should therefore be able to limit the provision of accommodation to three nights. Moreover, contingency planning and speedy rerouting should lessen the risk of passengers being stranded for long periods.
- (17) [...]
- (18) The needs of passengers with specific needs such as persons with disabilities, persons with reduced mobility, minors, pregnant women and persons in need of specific medical assistance such as people with severe diabetes or epilepsy, may require specific attention by the operating air carrier. In particular, it may be more difficult to arrange accommodation when flight disruptions occur. Therefore, any limitations on the right for accommodation in cases of extraordinary circumstances should not apply to these categories of passenger.
- (18a) Regulation (EC) No 261/2004 also applies to passengers that have booked their air transport as part of a package travel. The revision aims at further improving coherence between Directive (EU) 2015/302⁴ and the Regulation. To that extent, passengers may not cumulate corresponding rights, in particular under both legislations.
- (19) The reasons behind the current level of delays and cancelled flights in the EU are not attributable solely to air carriers. In order to incentivise all actors in the aviation chain to seek efficient and timely solutions to minimise the inconvenience that long delays and cancellations cause to passengers, air carriers should have the right to seek redress from any third party which contributed to the event triggering compensation or other obligations.
- (19a) In the case C-502/18 (České aerolinie), the European Court of Justice held that, in the case of connecting flights, within the scope of the Regulation, any operating air carrier which participated in the performance of at least one of those connecting flights is liable to compensate the passenger under this Regulation whether or not the flight which that air carrier

⁴ OJ L 326, 11.12.2015.

operated was disrupted. Even if the Regulation recalls that operating carriers fulfilling duties under it may seek compensation to any third party, the Study has shown poor effectiveness of the right of redress recalled in the Regulation. As a result, Union air carriers bear a disproportionate financial burden compared to non-Union air carriers. With a view to restoring Union air carriers competitiveness in line with the recommendations of the Draghi report, and to maintaining, in the long run, connectivity, the revision of 261/2004 should therefore limit the liability of an air carrier to the flights it operates as operating air carrier.

- (20) Regulation (EC) No 2111/2005 imposes an obligation to inform the passenger of the identity of the operating air carrier and Directive 93/13/EC imposes obligations to provide information on terms and conditions. Passengers should not only be correctly informed about their rights in cases of flight disruption, but they should also be adequately informed about the cause of the disruption itself, as soon as the information becomes available. This information should also be provided where the passenger has acquired the ticket through an intermediary established in the Union. Such information should be at least provided by the air carrier or the intermediary in accessible format and, where appropriate, through so-called “push” notifications from mobile applications or other digital means.
- (20a) In order to ensure a better enforcement of passenger rights, the National Enforcement Bodies should monitor the enforcement of the Regulation and, decide on appropriate sanctions to incentivise air carrier to comply with this Regulation.
- (21) In order to ensure a better enforcement of passenger rights, Member States should enable consumers to access to a mechanism for an out-of-court-resolution of disputes after those consumers have unsuccessfully complained or submitted a request to the air carrier or the intermediary. Those mechanisms should be without prejudice to the right of the Member States to determine whether the participation of the air carriers or intermediaries should be mandatory.

(21a) When passengers choose to be reimbursed after a disruption, they should be automatically reimbursed, in a timely manner, without filling a dedicated request.

- (22) Passengers should be adequately informed about the relevant procedures for submitting requests for ~~reimbursement and~~ compensation and complaints to air carriers and should receive a reply within a reasonable time period. Passengers should also have the option **to submit individual disputes following complaints or requests** ~~about air carriers~~ via out-of-court measures. However, since the right to an effective remedy before a tribunal is a fundamental right recognised in Article 47 of the Charter of Fundamental Rights of the European Union, those measures should neither prevent nor hinder passengers' access to courts.

(22a) In order to enable passengers and consumers to exercise their rights regarding requests, complaints and individual disputes, they should be able to directly and personally make an application to the air carriers, intermediaries, or the relevant bodies under this Regulation, in a clear and accessible manner.

- (23) [...]
- (24) [...]
- (25) [...]

(26) [...]

(27) Having regard to the United Nations Convention on the Rights of Persons with Disabilities, in order to ensure that the damage to, destruction or loss of mobility equipment or the injury or death of recognised assistance dogs are compensated to their full replacement cost, air carriers should offer free of charge to persons with disabilities and persons with reduced mobility, as defined in Regulation 1107/2006, the opportunity to make a special declaration of interest, which pursuant to the Montreal Convention, allows them to seek full compensation.

(27a) Disabled person or the person with reduced mobility should be entitled to immediately receive from air carriers needed temporary replacement for checked mobility equipment in case of their loss, destruction or damage. Given recognised assistance dogs cannot be easily replaced, other temporary solutions in replacement of their loss, death or injury should be provided.

(28) Passengers are sometimes confused about the baggage they are allowed to take on board, in terms of dimensions, weight or number of items. In order to ensure that passengers are fully aware of the baggage allowances included in their ticket, both for unchecked and checked baggage, air carriers should clearly indicate these allowances at booking and at the airport. In order to ensure sufficient personal comfort during passengers' travel, passengers should be allowed to take at no cost personal items constituting a necessary aspect of their carriage into the cabin, provided that the items comply with applicable safety and security requirements and meet reasonable requirements in terms of weight and dimensions. **Personal items considered as necessary aspects of the carriage of passengers are understood to be those items that are essential for the duration of the journey and may include passports and other travel documents, essential medicines, personal devices and reading materials as well as food and beverage appropriate to the duration of the flight.** Such items may include, for example, a handbag or purse, infant's food, medication or an overcoat. Personal items constituting a necessary aspect of the carriage of passengers are independent of the air carrier or even the type of aircraft and should always be allowed to be brought into the cabin and should not be transported in the hold.

(28a) Passengers should be informed at booking, in clear and accessible format, of the maximum dimensions and weight of the baggage they can bring with them in the cabin. Given the diversity of the air carriers' policies, it is appropriate to set uniform minimal rules for all Union carriers and all flights departing from the Union, without prejudice to the principle of freedom of pricing under Regulation 1008/2008. Air carriers operating on regional routes with small aircraft should be exempted, given the capacity constraints on those aircraft.

(29) Musical instruments can be of immense monetary, artistic and historic value. Moreover, musical instruments are the tools of musicians' trade on which they regularly rehearse and perform and cannot be easily replaced. Therefore, passengers should be entitled to carry in the cabin musical instruments under their own responsibility, provided those instruments respect capacity, safety and security rules and the air carrier maximum baggage allowance policy. When capacity, safety and security requirements are fulfilled, the air carrier should endeavour to allow passengers to carry musical instruments on additional seats, provided that the corresponding fares have been paid. Where this is not possible, musical instruments should, where possible, be carried under the appropriate conditions in the cargo compartment of the aircraft. Regulation (EC) No 2027/97 should be amended accordingly.

Commented [ES-MITMS5]: ES considers that it is technically better to address these issues in the revision of Regulation (EC) N° 1008/2008 rather than in this Regulation.

Commented [ES-MITMS6]: We do not oppose this measure for musical instruments but we are in favour of it being more general and applicable to other cases (e.g. sports equipment).

- (30) [...]
- (31) Given the short deadlines for the submission of complaints for the rights and obligations covered by Regulation 2027/97, air carriers should give passengers the possibility to submit a complaint by providing a complaint form at least on their mobile applications and on their websites. That form should allow the passenger to immediately file a complaint about damaged, delayed or lost baggage.
- (32) Article 3(2) of Regulation (EC) No 2027/97⁵ has become obsolete as insurance matters are now regulated by Regulation (EC) No 785/2004. It should accordingly be deleted.
- (33) It is necessary that the monetary limits referred to in the annex to Regulation (EC) No 2027/97 should be regularly amended by air carriers in order to take into account economic developments, as reviewed by the International Civil Aviation Organization (ICAO) pursuant to Article 24(2) of the Montreal Convention.
- (33a) In future reviews of this Regulation, the Commission should 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 and assess the possible need to extend the scope of this Regulation.
- (33b) The Commission should assess the feasibility of setting up ~~uniform rules for unchecked baggage and of setting up~~ a fund to protect passengers in case of insolvency of air carriers.
- (34) [...]
- (35) [...]
- (36) Since the objective of this Regulation, namely protecting air passenger rights in a fair and balanced manner having regard to the competitiveness of the Union's aviation sector and the need to maintain connectivity for passengers in the long term cannot be sufficiently achieved by the Member States but can rather, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

⁵ Regulation (EC) No 2027/97 of the Council of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air, OJ L 285, 17.10.1997, p.1 as modified by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002, OJ L 140, 30.5.2002, p.2

Brussels, 16 May 2025
(OR. en)

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ADD 1 REV 2

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NOTE

From:	General Secretariat of the Council
On:	7 May 2025
To:	Delegations
No. prev. doc.:	7503/1/25 ADD 1 REV 1
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 - Revised compromise proposed by the Polish Presidency on Regulation 261/2004

In view of the Working Party on Aviation of 19 May 2025, delegations will find, in Annex, a revised compromise proposed by the Presidency on Regulation 261/2004.

Changes compared to the previous version are highlighted in **bold underlined** and ~~striketrough~~. Delegations are requested to send their comments, if any, in writing to avia-mar@consilium.europa.eu by 20 May 2025 cob.

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:

0. Article 1 is amended as follows:

(a) Paragraph 1 is replaced by the following:

‘1. This Regulation establishes, under the conditions specified herein, minimum rights for air passengers in the event that :

(a) they are denied boarding;

(b) their flight is cancelled, **delayed or rescheduled**;

~~(c) their flight is delayed;~~

~~(c)~~ they miss a connecting flight;

~~(d)~~ they are upgraded or downgraded.’

[Paragraphs 2 and 3 remain unchanged.]¹

1. Article 2 is amended as follows:

(a) 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 or on behalf of another person, legal or

¹ Under consideration.

Commented [ES-MITMS1]: 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.).

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.'

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

"Union air carrier"² 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 Community³.'

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

"Organiser"² means a person within the meaning of Article 3, point 8, of Directive (EU) 2015/2302⁴;

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

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

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

"Ticket" means valid evidence, regardless of its form, of an air transport contract.'

- (bc) The definition in point (g) is deleted.

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

"Final destination" means the destination of the flight or of the last connecting flight on a journey covered by an air transport contract. Both the outward and the return flights, or last connecting flights, have a different final destination.

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

² Alignment throughout the text will be part of the legal-linguistic revision.

³ OJ L293, 31.10.2008, p. 3.

⁴ OJ L 326, 11.12.2015, p. 1–33

“person with disabilities” and “person with reduced mobility”² 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; ’

(ca) 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) or when they were informed in advance that they will be denied boarding against their will, except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;⁵

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

“volunteer” means a 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 not to board on their flight in exchange for benefits;’

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

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

⁵ The related recital will be adapted.

(e) The following definitions are added:

- ‘(aa) “third country” means any country or part of a territory of a Member State to which the Treaties do not apply;
- (ab) "delay at departure" means the difference of time between the ~~scheduled~~ time of departure indicated on the passenger's ticket and the actual time of departure of the flight;
- (ac) "delay at arrival" means the difference of time between the ~~scheduled~~ time of arrival indicated on the passenger's ticket ~~at the passenger's final destination~~, and the actual time of arrival of the flight;
- (ad) "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;
- (ga) “air transport contract” means a contract of carriage concluded between an air carrier **or its authorised agent** 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. For the purpose of this Regulation, ~~a~~ non-exhaustive ~~lists~~ of extraordinary circumstances and ~~a list~~ of circumstances that shall not be considered as extraordinary are, presented in the Annex;
- (n) "flight" means an air transport operation operated by a single aircraft between two airports identified on the ticket 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.
- (oo) "stopover" means an intentional interruption of travel under an air transport contract for a period of time beyond that required for direct transit through or, when changing

flights, for a period normally extending to the time of departure of the next connecting flight and exceptionally including an overnight stay.

(p) "journey" means a flight or connecting flights transporting the passenger from the initial point of departure to his or her final destination in accordance with a single air transport contract. The outward and the return journeys are to be considered as separate journeys.

(q) [...]

(r) [...]

(s) [...]

(t) [...]

(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, time above 30 minutes during which the aircraft remains on the ground between the closing of the aircraft doors and the take-off time of the aircraft, at departure, or, between the touch-down of the aircraft and the opening of the aircraft doors, at arrival;

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

(y) [...]

(ya) "children" means a persons below the age of 14 years;

(yb) "infant" means a person below the age of two years;

(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);
- (ze) “initial point of departure” means the departure point of the flight or of the first connecting flight on a journey;

2. Article 3 is amended as follows:

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

~~‘1. This Regulation shall apply to passengers departing or arriving on a flight in the territory of a Member State to which the Treaty applies.’~~

(aa) Paragraph 2 is replaced by the following:

‘2. Paragraphs 1, shall apply on the condition that passengers:

(a) have a ticket for the flight concerned

or

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

(aaa) 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.⁶

(b) Paragraph 4 is replaced by the following:

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

(ba) 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.'

(c) 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 contracts unless a package travel contract is ~~cancelled~~**terminated** or its performance is affected for reasons other than a disruption of the flight.'

(d) The following paragraph is added:

'7. Article 7 of this Regulation on compensation shall not apply, if the disruption occurs on a connecting flight that both departs from and arrives at an airport in Greenland.'

3. Article 4 is amended as follows:

(-a) Paragraph 0 is added:

'0. 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 operating air carrier, or the intermediary, or, if no boarding time is indicated, not later than 45 minutes before the ~~scheduled~~ time of departure **indicated on the passenger's ticket**. This Article shall also

⁶ 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.

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.’

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

‘1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall immediately inform the passengers concerned. The operating air carrier shall, at the same time, specify to the passengers concerned their specific rights under this Regulation applicable to the case, in particular as regards rerouting and reimbursement under Article 8 and assistance under Article 9.

The operating air carrier shall call for volunteers ready not to board on their flight 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 a signed document or any digital means on a durable medium. In absence of such approval, the volunteer shall be, without undue delay and at the latest within seven calendar days of the denied boarding, compensated by the operating air carrier denying boarding in accordance with Articles 7(1).

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

‘2. If an insufficient number of volunteers comes forward to allow the remaining passengers with tickets to board the flight, the operating air carrier may then deny boarding to passengers against their will, **with the exception of passengers mentioned in Article 11.**

(a) Paragraph 3 is replaced by the following:

‘3. The operating air carrier denying boarding shall immediately specify to the passengers concerned the information on the handling of complaints under Articles 15a and 16ac.

The operating air carrier denying boarding shall, without undue delay, offer to the passengers concerned, in a clear manner, the choice between reimbursement and re-routing in accordance with Article 8. By way of derogation from Article 8(1)(a), when the passengers concerned **are** entitled to reimbursement it shall be granted without undue delay and at the latest within seven calendar days of the denied boarding.

The operating air carrier denying boarding shall offer to the passengers concerned assistance in accordance with Article 9. By way of derogation from Article 9(1) first indent, refreshments shall be granted immediately.

The operating air carrier denying boarding to passengers against their will shall ~~immediately~~ compensate the passengers concerned in accordance with Article 7(1), **without undue delay and at the latest within seven calendar days of the denied boarding.**

(b) The following paragraphs are added:

'4. Paragraphs 2 and 3 shall also apply to return flights where the passenger is denied boarding on the ground that the passenger did not take a previous flight of the same air transport contract.

5. Where the passenger, or an intermediary, demands the correction of a spelling mistake in the name or given name(s) of one or several passengers or in case of administrative change to those names, the operating air carrier shall correct or change this at least once up until 48 hours before departure without any additional charge to the passenger or the intermediary.'

4. Article 5 is amended as follows:

(-a) Paragraph 0 is added:

'0. In case of cancellation of a flight, the operating air carrier of the cancelled flight shall immediately inform the passengers concerned. The operating air carrier shall, at the same time, specify to the passengers concerned their specific rights under this Regulation applicable to the case, in particular as regards rerouting and reimbursement under Article 8 and assistance under Article 9, as well as the information on the process for requesting compensation defined in Article 7 and on the handling of complaints under Articles 15a and 16ac.

The operating air carrier shall, without undue delay, specify to the passengers concerned the reasons for the cancellation. The passengers are entitled, upon request, to receive in writing the reasons for the cancellation. The operating air carrier shall provide such

information in a clear manner within 7 seven calendar days of the submission of the request.’

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

‘The operating air carrier of the cancelled flight shall, without undue delay, offer to the passengers concerned, in a clear manner, the choice between reimbursement and re-routing in accordance with Article 8.

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

‘1a. The operating air carrier shall offer to the passengers concerned assistance in accordance with Article (9).

1b. Passengers shall have the right to receive, upon request, compensation by the operating air carrier of the cancelled flight in accordance with Articles 7(1) and 7(3) when they choose a reimbursement ~~and a return flight~~ in accordance with Article 8(1)(a) or rerouting in accordance with Article 8(1)(c), or, when they reach their final destination with a delay at arrival exceeding the thresholds defined in Article 7(1a) after they choose rerouting in accordance with Article 8(1)(b).

- (ac) Paragraph 2 is deleted.

- (b) Paragraphs 3 and 4 are replaced by the following:

‘3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that 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. Such extraordinary circumstances may only be invoked in so far as they affect the flight concerned or at least one of the three preceding ~~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. The burden of proof regarding the existence of that direct causal link shall rest with the operating air carrier.

4. The right to receive assistance under paragraph 1a and compensation under paragraph 1b shall not apply if the passengers have been informed of the cancellation at least 14 calendar days before the ~~scheduled~~ date of departure **indicated on the passenger’s ticket**. 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.’

(c) [...]

5. Article 6 is replaced by the following:

‘Article 6

Delay

0. When an operating air carrier expects a flight to be delayed ~~at departure or at arrival~~, it shall immediately inform the passengers concerned and, at the latest, on the ~~scheduled~~ time of departure **indicated on the passenger’s ticket** ~~indicated in the air transport contract~~. To the extent possible, passengers shall receive regular updates in real-time. The operating air carrier shall, at the same time, specify to the passengers concerned their specific rights under this Regulation applicable to the case, in particular as regards assistance under Article 9, the information on the process for requesting compensation defined in Article 7 and on the handling of complaints under Articles 15a and 16ac.

The operating air carrier shall, without undue delay, specify to the passengers concerned the reasons for the delays. The passengers are entitled, upon request, to receive in writing the reasons for the delay at arrival. The operating air carrier of the delayed flight shall provide such information in a clear manner within 7 calendar days of the submission of the request.

1. The operating air carrier shall offer to the passengers concerned assistance in accordance with Article 9.

1a. When the waiting time is prolonged by ~~of~~ at least three hours from the ~~scheduled~~ time of departure **indicated on the passenger’s ticket**, the operating air carrier shall, without undue delay, offer to the passengers concerned the choice between re-routing and reimbursement in accordance with Article 8.

2. Passengers shall have the right to receive, upon 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 exceeding the thresholds defined in Article 7(1a).

When the waiting time for their flight or alternative transportation is prolonged by at least the thresholds defined in Article 7(1a), the passengers concerned shall have the right to receive, upon request, compensation from the operating air carrier.

3. [...]

3a. This article shall also apply if the ~~scheduled~~ time of departure **indicated on the passenger's ticket** was postponed by the **operating** air carrier.

The right to receive assistance under paragraph 1 and compensation under paragraph 2 shall not apply if the passenger has been informed of such a change at least 14 calendar days before the ~~scheduled~~ time of departure **indicated on the passenger's ticket**. The burden of proof concerning the questions as to whether and when the passenger has been informed of the change in time shall rest with the operating air carrier.

4. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the delay at arrival was caused by extraordinary circumstances and the delay could not have been avoided even if the air carrier had taken all reasonable measures. Such extraordinary circumstances can only be invoked in so far as they affect the flight concerned or at least one of the three preceding 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 delay at departure of the subsequent flight. The burden of proof regarding the existence of that direct causal link shall rest with the operating air carrier.

5. [...]

6. The following Articles are inserted:

'Article 6-2a

Tarmac delay

0. In the event of tarmac delay, the operating air carrier shall, to the extent possible, provide passengers with regular and real-time updates.

1. Subject to safety or security 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 **on board** and that persons mentioned in Article 11 receive the

required attention unless those services would extend the tarmac delay or 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 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 that 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.

Commented [ES-MITMS2]: ES would prefer 2 hours instead of the proposed 3 hours.

3. Passengers disembarked in accordance with paragraph 2 shall be entitled to the rights provided for under Article 6 and Article 11, taking into account the tarmac delay and the ~~scheduled~~ time of departure **indicated on the passenger's ticket.**

Article 6a

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

1. Where a passenger misses a connecting flight **during a journey** as a result of a disruption on a previous flight, the operating air carrier of the preceding disrupted flight shall be responsible for providing to the passenger re-routing in accordance with Article 8(1)(b), and assistance in accordance with Article 9.

1a. When the operating air carrier cannot re-route the passenger within three hours of the ~~scheduled~~ time of departure **indicated on the passenger's ticket** of the missed connecting flight, the operating air carrier shall, without undue delay, offer to the passengers concerned, in a clear manner, the choice between reimbursement and re-routing in accordance with Article 8.

2. Upon request, passengers shall also have a right to compensation by the air carrier operating the disrupted flight in accordance with Articles 7(1) and 7(3), if the passenger reaches its final destination with a delay at arrival exceeding the thresholds defined in Article 7(1a).

When the waiting time for their flight or alternative transportation is prolonged by at least the thresholds defined in Article 7(1a), from the time of departure indicated on

the passenger's ticket, of the missed connecting flight, the passengers concerned shall have the right to receive, upon request, compensation from the operating air carrier.

2a. Where, a passenger plans and makes a stopover, the airport where the stopover is made shall be regarded as the final destination of the passenger.

3. [...]

4. [...] ~~This Article shall also apply to third country air carriers operating a connecting flight to an airport located in the territory of a Member State to which the Treaty applies.~~

7. Article 7 is amended as follows:

(a) Paragraph 1 is replaced by the following:

‘1. In case of disruption, the following compensation amounts shall apply under the conditions defined in Articles 4, 5, 6 or 6a and in this Article:

- (a) 300 EUR for ~~flights~~ **journeys** of 3500 kilometres or less **and all intra-Union journeys**;
- (b) 500 EUR for ~~flights~~ **journeys** above 3500 kilometres.’

(aa) Paragraph 1a is added:

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

- (a) ~~five hours for flights~~ **journeys** of 3500 kilometres or less **and all intra-Union journeys**;
- (b) nine hours for ~~flights~~ **journeys** above 3500 kilometres.

(ab) Paragraph 1b is added:

‘1b. 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. In case of a connecting flight, only the initial point 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.’

Commented [ES-MITMS3]: This wording would include the outermost regions, including the Canary Islands, in the first segment of compensation when there are flights with EU countries that would exceed the 3.500 km threshold. Therefore Spain does not support this addition because it considers that it is detrimental to the possible compensation received by passengers flying to/from these outermost regions on flights over 3.500 km.

Commented [ES-MITMS4]: ES is not in favour of changing the current threshold (3 hours) because this 5 hour proposal would leave out most of the delays of usual flights in Europe. However, if two segments are finally introduced, we would be in favour of establishing 3 and 5 hours in each segment.

Commented [ES-MITMS5]: With this new wording, flights between 1.500 and 3.500 km will lose not only in the compensation threshold (from 3 to 5 hours) but also in the amount of compensation (from 400 euros in 2004 to 300 euros in 2026). This is going to be difficult to justify publicly.

Commented [ES-MITMS6]: See previous comment.

(b) 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 disruption occurs during re-routing, the passenger's right to compensation can arise only once during his travel to the final destination.

3. Requests for compensation under this Article shall be submitted by the passenger within six months from the actual or ~~scheduled~~ date of departure **indicated on the passenger's ticket**. Within 14 calendar days of the submission of the 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, a **clear and substantiated** explanation according to Article 5(3) or to Article 6(4) on extraordinary circumstances. In case the operating air carrier does not pay the requested compensation, the passenger may submit a complaint in accordance with Article 16ac.

3a. The compensation shall be paid in cash or, if agreed by the passenger in a signed document or any other digital means on a durable medium, by other means.

4. [...]

5. [...]

(ba) Paragraph 4 is deleted.

8. Article 8 is replaced by the following:

‘Article 8

Right to reimbursement or re-routing

1. In case of disruption, passengers shall be offered, free of charge, the choice between the following options under the conditions defined in Articles 4, 5, 6, or 6a and in this Article:

- (a) automatic reimbursement within 14 calendar days from the date of **departure of the disrupted flight indicated on the passenger's ticket** ~~the passenger chose this option~~, in cash, or, if agreed by the passenger in a signed document or any other digital means on a durable medium, by other means, of the full cost of the tickets, for the **part of the journey** ~~flight or connecting flights~~ not made, and for the **part of the journey** ~~flight or connecting flights~~ already made if the **part of the journey** ~~flight or connecting flights~~ are no longer

serving any purpose in relation to the passenger's original ~~travel plan~~ **journey**, together with, when relevant, a return flight to the initial point of departure, at the earliest opportunity after the ~~scheduled~~ time of departure **indicated on the passenger's ticket** or, in agreement with the passenger, before that time;

- (b) continuation of the passengers' ~~journey/travel plans~~ by re-routing them to their final destination at the earliest opportunity after the ~~scheduled~~ time of departure **indicated on the passenger's ticket** or, in agreement with the passenger, before that time; or
- (c) re-routing to their final destination at a later date at the passenger's convenience, subject to availability of seats.

2. [...]

3. In order for the passenger to reach his or her destination as determined under paragraph 1 at the earliest opportunity, the operating air carrier shall, subject to availability and provided that these are under transport conditions as set out in the air transport contract, offer at least one of the following alternative options **for the passenger's consideration and to the passenger for agreement** in a signed document or any other digital means on a durable medium:⁷

- (a) a flight or connecting flights, following the same route as set out in the air transport contract,
- (b) a different routing, including to or from alternative airports compared to the airports stated in the air transport contract. In such case, the operating air carrier shall bear the cost of transferring the passenger to or from the alternative airports compared to the airports stated in the air transport contract,
- (c) the use of services operated by another air carrier or,
- (d) where appropriate for the distance to be travelled, the use of another mode of transport. ~~In such case, unless otherwise agreed between the operating air carrier and the passenger, this Regulation shall apply to the transport carried out by that other mode of transport.~~

⁷ A Recital will explain what comparable conditions are in line with point 4.2 of the Commission interpretative guidelines.

4. [...]

5. Where a passenger **informed the operating air carrier of his or her choice to continue** ~~chose the continuation of his or her journey-travel plans~~ in accordance with paragraphs 1(b) and 7, and if the operating air carrier has not offered a re-routing **within** ~~in accordance with paragraph 3 and the waiting time is prolonged by at least three hours~~, the passenger may arrange its own rerouting, in accordance with paragraph 3.

In case of a cancellation, the first subparagraph shall apply from the ~~scheduled~~ time of departure **indicated on the passenger's ticket**.

When doing so the passengers shall limit the expenses to the extent those are necessary, reasonable and appropriate. The operating air carrier shall reimburse the expenses **not exceeding 400% of the full cost of the ticket or tickets** incurred by the passenger within 14 calendar days of the submission of the request.

Commented [ES-MITMS7]: Nowhere in the Regulation is it being linked to the price of the ticket. It makes sense to limit the refund to the passenger as long as the conditions and class are similar to the one they had, but not the price.

6. [...]

7. A passenger may at any time choose between reimbursement ~~and a return flight~~ in accordance with Article 8(1)(a) or rerouting at a later date in accordance with Article 8(1)(c), until when the passenger has accepted a re-routing at the earliest opportunity offered by the operating air carrier in accordance with Article 8(1)(b) or until when the passenger has decided to self-reroute in accordance with Article 8(5).

The passenger shall inform the operating air carrier of his or her choice.'

9. Article 9 is amended as follows:

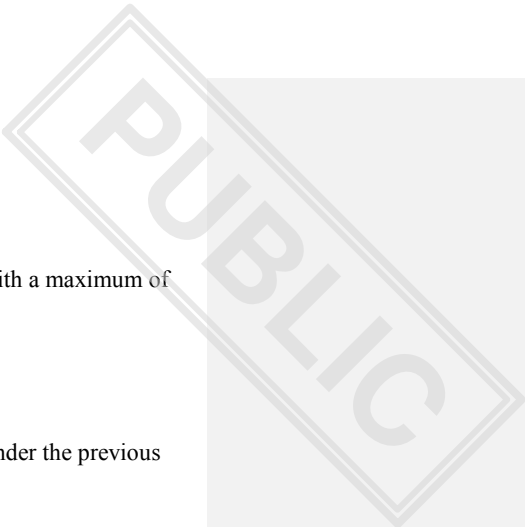
(-a) The title of the Article is replaced by the following:

'Article 9

Right to assistance

(a) Paragraph 1 is replaced by the following:

'1. In case of disruption and subject to the conditions defined in Articles 4, 5, 6, 6a and 6-2a and in this Article, and when the waiting time for their flight or alternative transportation is prolonged by at least two hours, passengers shall be offered free of charge:

- 
- (a) refreshments every two hours of waiting time;
 - (b) a meal after three hours and then every 5 hours of waiting time with a maximum of three meals per day;
 - (c) two telephone calls, text messages and internet access.

The operating air carrier may limit or decline the assistance provided under the previous subparagraph if its application would further delay the passengers.

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

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

- (a) hotel accommodation ~~or other comparable accommodation~~;
- (b) transport from the airport to the place of accommodation and return.’

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

‘2a. The operating air carrier may use vouchers to fulfil its obligations under paragraphs 1(a), 1(b) and 2. The vouchers provided in accordance to paragraph 1 shall be usable in all shops providing food and refreshments at the airport where the passengers concerned are stranded, on board their flight, and, as appropriate, at the accommodation provided under paragraph 2, point (a).

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 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 disrupted flight shall reimburse the expenses incurred by the passengers within 14 calendar days of the submission of the request for reimbursement.

2c. At all Union airports, the airport managing body shall put in place arrangements to ensure that drinking water and recharging stations for electronic devices can be made available, free of charge, regardless of the time of day, flight, terminal.’

(ac) Paragraph 3 is deleted.

(b) The following paragraphs are added:

'4. If the disruption is caused by extraordinary circumstances and the disruption 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 three nights.

5. [...]

6. Where a passenger opts for reimbursement pursuant to Article 8(1)(a) while being at the initial 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.'

10. 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, without request, within 14 calendar days of the downgrading, by the means provided for in Article 7(3), provide the passenger with a compensation at least equivalent to:

(a) 40% of the flight price for flights of 3500 kilometres or less, or

(b) 75% of the flight price for flights above 3500 kilometres.

3. Where, the price of the flight is not indicated on the ticket, the compensation mentioned in paragraph 2 shall be calculated in proportion of the flight to the total distance covered by the air transport contract, calculated in accordance with Article 7(1b).

4. The flight price excludes taxes and charges indicated on the tickets, as long as neither the requirement to pay those taxes and charges nor their amount depends on the class for which that tickets have been purchased.

5. This Article shall not apply to advantages offered through a higher fare within the same class of transport such as specific seating or catering.'

10a. The following Article is inserted:

'Article 10a
Airport contingency plans

1. At Union airports whose annual traffic is above 5 million passengers the airport managing body shall ensure that the operations of the airport managing body and of airport essential service providers, 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 the passengers as defined under Article 11.

2. The contingency plan shall be set up in particular 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 the providers of groundhandling services and other airport essential service providers. The contingency plan shall also contain the contact data of the person(s) designated by the air carriers participating in the Airport Users Committee in order to represent them on the spot 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 disruption.

3. The airport managing body shall communicate the contingency plan to the Airport Users Committee referred to in Council Directive 96/67/EC and, upon request, to the National Enforcement Body entrusted with the enforcement of this Regulation under Article 16(1).

3a. 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.

4. At Union airports below the threshold set in paragraph 1 or not covered by paragraph 3a, 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 situations of multiple cancellations and/or delays of flights leading to a considerable number of passengers stranded at the airport.

11. Article 11 is replaced by the following:

'Article 11

Passengers with specific needs

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

1. This Article shall apply to any persons with disabilities, persons with reduced mobility, infants, unaccompanied children, ~~and pregnant women and persons in need of specific medical assistance~~, provided that the operating air carrier has been notified of their particular needs for assistance at the latest at the time when the disruption is announced. **It shall also apply to persons in need of specific medical assistance provided that the operating air carrier has been notified of their particular needs for assistance at the time of the purchase of the ticket.**

Such notification shall be deemed to cover ~~the flight and connecting flights~~ **all journeys** under an air transport contract.

1a. At the latest at check-in, and subject to seat availability, any person accompanying the persons mentioned in paragraph 1 or accompanying a child shall be offered, free of charge, the possibility to be seated on adjacent seats.

~~1ba. At boarding, operating air carriers shall give priority to persons mentioned in paragraph 1 and any persons or recognised assistance dogs accompanying them. Subject to seat availability, any persons accompanying the persons mentioned in paragraph 1 shall be offered, free of charge, the possibility to be seated on adjacent seats.~~

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(4) shall not apply to a passenger mentioned in paragraphs 1 and 1a, as well as to any persons or recognised assistance dogs accompanying them.’

11a. Article 12, is amended as follows:

(a) The title is replaced by the following:

‘Article 12
Further rights’

(b) Paragraph 1 is replaced by the following:

‘1. This Regulation shall not affect rights and claims of the passenger granted under other legal acts. The compensation granted under Articles 7 or 10(2) of this Regulation **may be deducted from compensation granted under other legal acts such as Directive (EU) 2015/2302** ~~and the compensation granted under other legal acts, shall be deducted from each other,~~ if those rights safeguard the same interest or have the same objective.

In particular, unless provided for in this paragraph, this Regulation shall not affect rights and claims under Directive (EU) 2015/2302. 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, if these rights safeguard the same interest or have the same objective.

Notwithstanding the right of a package travel organiser to seek redress or refunds in accordance with Article 22 of Directive (EU) 2015/2302, ~~Without~~ without prejudice to Article 13 of this Regulation, and by way of derogation from Article 8(1)(a), if the flight is part of a package travel contract under Directive (EU) 2015/2302, passengers shall have no ~~claim~~ **right to** reimbursement under this Regulation insofar as a corresponding right arises from Directive (EU) 2015/2302.

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.’

12. 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 or of national law may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable.’

13. Article 14 is replaced by the following:

‘Article 14

Obligations to inform passengers

0. The operating air carrier shall include on its website and mobile application an information notice specifying rights under this Regulation, including complaint handling process.

0a. When offering tickets for a flight or connecting flights 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~~e) the rights and obligations of the passenger, the operating air carrier and the intermediary under this Regulation, as attached to the air transport contract, including information on the reimbursement process; and

(~~c~~d) the deadline and the procedure by which passenger can request a change in name as specified in Article 4(5), without any additional charge.

(~~d~~e) the terms and conditions.

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.

0b. An intermediary or an air carrier which sells tickets covered by a combination of 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 subsequent connecting flights under separate air transport contract. Such information shall be provided in a clear manner when selling the tickets.

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

1. The airport managing body 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 clear: «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. To that end, airport managing bodies shall cooperate with operating air carriers.

2. [...]

3. [...]

4. [...]

5. [...]

6. [...]

7. [...]

13a. 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 available in the language of the air transport contract and a language that is internationally used. 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 manner of the contact details of the body or bodies designated by Member States pursuant to Article 16 and of the body or bodies responsible for the out-of-court resolution of disputes under Article 16ac 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 six months of the disruption that it concerns. Within 30 calendar days of the submission of 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 will receive a final reply within a period of less than two months from the date of submission of the complaint. The answer shall also contain, in case where the dispute could not be resolved, the relevant contact details of the body or bodies designated under Articles 16 or of the body or bodies responsible for the out-of-court resolution of disputes under 16ac, including postal address, 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 16ac, or to seek redress through court proceedings, subject to periods of limitation in accordance with national law.

~~4. Passengers travelling under a package travel contract may only submit a complaint to an organiser under this Article in relation to rights granted under this Regulation.~~

14. Article 16 is replaced by the following:

‘Article 16

Enforcement

1. Each Member State shall designate a National Enforcement Body or National Enforcement Bodies responsible for the enforcement of this Regulation as regards flights and connecting flights to and from airports situated on its territory. The Member States shall inform the Commission of the body or bodies that have been designated in accordance with this paragraph.

Commented [ES-MITMS8]: ES prefers “journeys” to “flights”.

2. The National Enforcement Body shall closely monitor the compliance of with the requirements of this Regulation and take the measures necessary to ensure that the rights of passengers are respected.

2a. Passengers may report to the National Enforcement Body alleged infringements of this Regulation. The National Enforcement Body may investigate and decide on enforcement actions based on information contained in those reports.

Commented [ES-MITMS9]: 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 **and intermediaries** with a financial incentive to comply consistently with the Regulation.

4. [...]

5. Four years after the date of application of this Regulation and then every five years, the National Enforcement Bodies shall publish on their websites a report on their activity, on the enforcement action and its outcome, including on sanctions applied. These reports shall also be submitted to the Commission.

Commented [ES-MITMS10]: We consider that every 5 years is too long. We suggest that the Commission could determine the minimum content of this report.

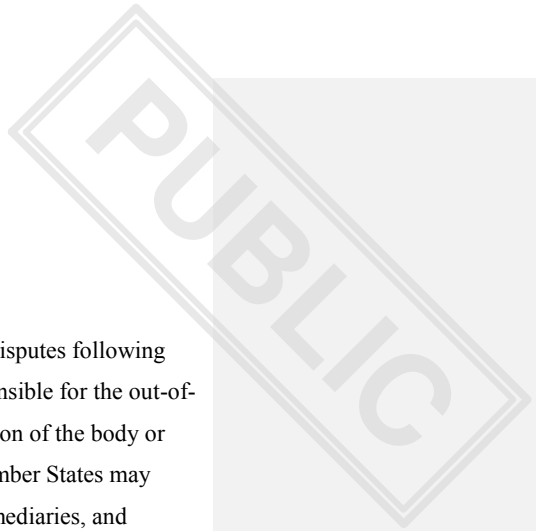
6. Operating air carriers and intermediaries shall communicate the required contact data of the person(s) or of a body designated to act and to receive documents issued by the National Enforcement Body or Bodies on their behalf on a permanent basis, in the Member State where they operate, for matters covered by this Regulation, to the National Enforcement Bodies. National Enforcement Bodies may exchange this information with each other for the purpose of enforcing this Regulation.’

Commented [ES-MITMS11]: What is the purpose of asking intermediaries for this information if they are not going to be asked for anything under the NEB on the basis of the Regulation? The contact is needed for accountability purposes, and in the case of intermediaries nothing is required of them by the NEB on the basis of the Regulation.

15. The following Article is inserted:

‘Article 16a

[...]



Article 16ac

Out-of-court resolution of disputes

Member States shall ensure that air passengers can submit individual disputes following complaints or requests under this Regulation to a body or bodies responsible for the out-of-court resolution of disputes. Member States shall inform the Commission of the body or bodies responsible for the handling of disputes under this Article. Member States may decide to apply this paragraph to disputes between air carriers or intermediaries, and consumers only.

Article 16b

[...]

Article 16c

[...]

16. Article 17 is replaced by the following:

Article 17

Review and Report

1. Every three 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 two preceding years.

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

2. **Three years after the date of application of this Regulation and** ~~Every five years~~ **thereafter from the date of application of this Regulation,** the Commission shall report to the European Parliament and the Council on the operation, enforcement, and the results of this Regulation.

In the first report three years after the date of application of this Regulation, the Commission shall assess the necessity and the feasibility of revising the scope of this Regulation with a view to further enhancing passengers' protection and the level playing field between Union and Third country air carriers as well as connectivity aspects. In particular, the Commission shall assess the risks of conflict of jurisdictions and difficulties related to enforcement and shall recommend ways to mitigate those risks and address those difficulties.

Commented [ES-MITMS12]: Ok.

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

The report shall also include a review of 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.

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

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

Brussels, 16 May 2025
(OR. en)

Interinstitutional File:
2013/0072 (COD)

7503/25
ADD 2 REV 2

LIMITE

AVIATION 36
CONSOM 53
CODEC 344

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	7503/2/25 ADD 2 REV 1
Subject:	Proposal for a regulation amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air - Compromise proposed by the Polish Presidency on Regulation (EC) No 2027/97

In view of the Working Party on Aviation of 19 May 2025, delegations will find, in Annex, a revised compromise proposed by the Presidency on Regulation 2027/97.

Changes compared to the previous version are highlighted in **bold underlined** and ~~striketrough~~.

Delegations are requested to send their comments, if any, in writing to avia-mar@consilium.europa.eu by 20 May 2025.

Article 2

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

-1. Paragraph 1 of Article 2 is amended as follows:

(a) Point (b) is replaced by the following:

‘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;¹

(b) Point (h) is added:

‘(h) ‘mobility equipment’ shall mean any equipment that is intended to assist persons with disabilities and persons with reduced mobility with their mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006².

(c) Point (i) is added:

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

(d) Point (j) is added:

‘(j) ‘accessible format’ means a format that the person with disabilities or with reduced mobility¹ 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.’

¹ Alignment of definition and terminology throughout the text will be part of the legal-linguistic revision.

² 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.

(e) Point (k) is added:

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

(f) Point (l) is added:

‘(l) ‘personal item’ means a piece of unchecked baggage, **constituting a necessary aspect of the carriage of passengers**, which complies with security and safety requirements, with ~~minimum~~ **maximum** dimensions of 40x30x15cm or on condition that it fits under the front seat.’

(g) Point (m) is added:

‘(m) ‘hand baggage’ means a piece of unchecked baggage which is not a personal item and which complies with security and safety requirements, with a total sum of its height, width and depth not exceeding 115cm, with each of those dimensions not exceeding 56cm and with maximum weight of 10kg.’

Commented [ES-MITMS1]: It is more appropriate to regulate these definitions in the amendment of Regulation (EC) N° 1008/2008 and not in this Regulation.

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

‘This includes the liability of a Union air carrier concerning passenger or baggage delay.’

1. Paragraph 2 of Article 3 is deleted.

1a. Article 3a is replaced b:

‘Article 3a

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 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 reflects the additional costs of transport and insurance for baggage valued above the liability limit. The tariff shall be made available to passengers on request.’

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

'1. In case of death or injury of passengers, the 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.'

2. 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 minimum amount of liability set under Article 21(1) of the Montreal Convention and by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention.

3. [...]

3a. The following indent is added at the end of Article 6(2):

- an information to disabled person or person with reduced mobility on their right to make, free of charge, a special declaration of interest on the value of their mobility equipments.

3b. The following paragraphs are added to Article 6:

'4. All air carriers and intermediaries shall, on their mobile applications and on their websites, provide a form which allows the passenger to immediately file an online or an on-paper complaint about damaged, delayed or lost baggage. The date of submission of the form shall be considered by the air carrier or the intermediary as the filing date of the complaint pursuant to Article 31(2) and 31(3) of the Montreal Convention, even if the air carrier or the intermediary requests further information at a later date. This paragraph shall not affect the right of the passenger to submit a complaint via other means within the deadlines given by the Montreal Convention.

5. All information provided pursuant to this Article shall be in accessible format.

6. All information obligations pursuant to this Article shall also apply to intermediaries, when selling carriage by air to, from of within the Union.'

4. The following Articles are inserted:

'Article 6a

1. Whenever carrying checked in mobility equipment or recognised assistance dogs, the Union air carrier shall ensure that each disabled person or person with reduced mobility is offered the option to make, in accessible format, a special declaration of interest pursuant to Article 22(2) of the Montreal Convention, at booking, at the same time as the notification pursuant to Article 6 of Regulation (EC) No 1107/2006, and at the latest when the equipment is handed over to the air carrier and, in the case of recognised assistance dog, at boarding. In such case, the Union air carrier shall not request the passengers concerned an additionnal fee. When the equipment is destroyed, lost, damaged or delayed, or in case of death or injury of a recognised assistance dog the Union air carrier may require from the disabled person or person with reduced mobility to support the amount of the interest in the declaration with a proof of the cost of replacement, including temporary replacement, of the mobility equipment or the recognised assistance dog.

When selling carriage by air on behalf of an Union air carrier, intermediaries shall offer the passengers concerned the option to make, in accessible format, a special declaration of interest pursuant to Article 22(2) of the Montreal Convention, at booking and at the same time as the notification pursuant to Article 6 of Regulation (EC) No 1107/2006. This special declaration of interest shall be given under the same conditions as set out in the previous paragraph. The intermediary shall transmit the declaration to the Union air carrier as soon as possible.

2. [...]

3. In case of destruction, loss, damage or delay in the carriage of checked mobility equipment or in case of death or injury of a recognised assistance dog, the 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.

4. Where paragraph 3 applies, and without prejudice to Articles 7, 8 and Annex I fourth subparagraph of Regulation 1107/2006, the Union air carriers shall rapidly make all reasonable efforts to provide immediately needed temporary replacements for checked mobility equipment and temporary solutions in replacement of recognised assistance dogs. The disabled person or the person with reduced mobility shall be permitted to keep that temporary replacement free of charge until the compensation referred to in paragraph 3 has

been paid or until the Union air carriers have compensated the legal or natural persons for the costs of ~~other~~ **needed** temporary replacement of mobility equipment or of a recognised assistance dogs.

5. Compliance with paragraph 4 shall not constitute a recognition of liability of the Union air carrier.

Article 6b

[...]

Article 6c

[...]

Article 6d

1. Without prejudice to Regulation (EC) No 1008/2008, when selling carriage by air to, from ~~or~~ within the Union, all air carriers and intermediaries, shall clearly indicate, in accessible format, at booking, as well as on their mobile applications and on their website, and also, for air carriers, make available on request at the airport (including at self-service check-in machines):

- the maximum baggage allowance in terms of dimension and weight that passengers are permitted to carry within the cabin, and in the hold of the aircraft for the respective fare class for 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, infant seats shall be transported in the passenger cabin or in the cargo hold of the aircraft,
- without prejudice to paragraph 1a, potential additional charges applied for the carriage of checked and unchecked baggage, **including musical instruments referred in Article 6e**,

Commented [ES-MITMS2]: See comment on musical instruments in Article 6e.

- the specific reasons which may preclude the carriage in the cabin of unchecked baggage pursuant to paragraph 2.

1a. Without prejudice to Regulation (EC) No 1107/2006, ~~Union~~ air carriers shall permit passengers to carry a personal item in the cabin and at no extra cost.

1b. Without prejudice to Regulation (EC) No 1107/2006, ~~Union~~ air carriers shall permit passengers to carry hand baggage in the cabin.

2. Where specific reasons, such as safety reasons, capacity reasons or a change of the aircraft type since the reservation was made, preclude the carriage in the cabin of a personal item referred in paragraph 1a or hand baggage referred in paragraph 1b, the air carrier may carry such unchecked baggage in the hold of the aircraft, but at no extra cost to the passenger.

2a. Paragraphs 1a, 1b and 2 shall apply to all flights operated by Union air carriers and to all flights departing from the Union.

However, paragraph 1b shall not apply to flights operated by air carriers with aircraft types where the hand baggage does not fit in the overhead compartments.

3. This Article does not affect the restrictions on unchecked baggage established by EU and international security and safety rules such as Regulation (EC) No 300/2008 and Commission Implementing Regulation (EU) 2015/1998.

Article 6e

1. A Union air carrier shall permit a passenger to carry a musical instrument in the passenger cabin of an aircraft subject to applicable security and safety rules and the technical specifications and constraints of the aircraft concerned. Musical instruments shall be accepted for carriage within an aircraft cabin provided such instruments can be stowed safely in a suitable baggage compartment within the cabin or under an appropriate passenger seat. An air carrier may determine that a musical instrument shall form part of a passenger's unchecked baggage allowance and not be carried in addition to that allowance.'

Commented [ES-MITMS3]: ES considers that it is technically better to address this issue in the revision of Regulation (EC) N° 1008/2008 rather than in this Regulation.

Commented [ES-MITMS4]: ES is not against applying to musical instruments but it should also be applied to other disciplines (e.g. sports equipment or sports teams). The scope should be extended and be generic because we consider that covering the whole casuistry in the Regulation is very complicated given that it would be very varied and difficult to regulate specifically. Therefore, we consider that it would be better to leave a general provision addressing this in the Regulation rather than this specific case of musical instruments.

In any case, it is necessary to make it clear what can be carried in the cabin or not and that the passenger knows it. In other words, the important thing is that the information provided by the air carrier is clear.

2. Subject to applicable security and safety rules, where a musical instrument is too large to be stowed safely in a suitable baggage compartment within the cabin or under an appropriate passenger seat, an air carrier may request the payment a second fare where such musical instruments are carried as unchecked baggage on a second seat. Furthermore, passengers may be required to select and purchase adjacent seats for both the passenger and the musical instrument, one always being a window seat for the musical instrument. Where available and if requested, musical instruments shall be carried in a heated part of an aircraft cargo hold subject to applicable safety rules, space constraints and the technical specifications of the aircraft concerned.

5. Article 7 is replaced by the following:

‘Article 7

The Commission shall report to the European Parliament and the Council by [date to be indicated at a later stage] on the operation and the results of this Regulation.’

6. The Annex to Regulation (EC) No 2027/97 is replaced by Annex 2 to the present Regulation.

Brussels, 16 May 2025
(OR. en)

Interinstitutional File:
2013/0072 (COD)

7503/25
ADD 3 REV 2

LIMITE

AVIATION 36
CONSOM 53
CODEC 344

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	7503/3/25 ADD 3 REV 1
Subject:	Proposal for a regulation amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air

- Compromise proposed by the Polish Presidency on Annex I

In view of the Working Party on Aviation of 19 May 2025, delegations will find, in Annex, a revised compromise proposed by the Presidency on Annex I.

Changes compared to the previous version are highlighted in **bold underlined** and ~~striketrough~~.

Delegations are requested to send their comments, if any, in writing to avia-mar@consilium.europa.eu by 20 May 2025.

Annex 1**'Annex: non-exhaustive lists of circumstances considered as extraordinary circumstances and circumstances not to be considered as extraordinary for the purposes of this Regulation**

1. The following circumstances shall be considered as extraordinary:
 - (a) Circumstances not connected with the operation of the aircraft, such as:
 - i. natural and/or environmental disasters which are deemed to affect the safe operation of the flight;
 - ii. meteorological conditions and damage to the aircraft linked to meteorological events which are deemed to prevent the safe operation of the flight (such as: lightning strikes, hailstones, thunderstorms, severe turbulence, strong wind, etc.);
 - iii. war or insurrection which are deemed to affect the safe operation of the flight;
 - iv. 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 which are deemed to affect the safe operation of the flight.
 - (b) fault on the part of a passenger, including:
 - i. disruptive passenger behaviour which are deemed to affect the safe operation of the flight or delaying the flight departure;
 - 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, such as:

- PUBLIC
- i. security risks, damages caused by acts of sabotage or terrorism, or unlawful acts, which are deemed to affect the safe operation of the flight;
 - ii. hidden manufacturing or design defect revealed, by the manufacturer or a competent authority and which are deemed to affect the safe operation of the flight;
 - iii. air traffic management or airport capacity 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. strikes at essential service providers such as airport managing body, Air Navigation Service Providers, groundhandling service providers, or at the operating air carrier where strikes are linked to demands outside the remit of that cannot be met by the operating carrier;
 - vi. unexpected of a crew member essential to the operation of the flight, due to illness or death, when it occurs outside the operating air carrier's home bases or due to pandemic;
 - vii. damage to the aircraft caused by third parties, for whom the air carrier is not responsible, on the ground and which is deemed to affect the safe operation of the flight;
 - viii. damage to an aircraft tyre caused by a foreign object and which is deemed to affect the safe operation of the flight;
 - ix. contaminated runway of an airport which is deemed to affect the safe operation of the flight;
 - x. unexpected flight safety shortcomings (provided they are not covered under 2(i)); and
 - xi. after departure, health risks or medical emergencies (such as serious illness) of a crew member necessitating the interruption or deviation of the

Commented [ES-MITMS1]: Concerns remain about the treatment of technical failures. As 2(i) stands, virtually all technical failures will end up as extraordinary circumstances. ES is in favour of maintaining the status quo so that technical failures are not considered as extraordinary circumstances.

flight.

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

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

ii. operational decisions, late crew / check-in / boarding procedures; and

iii. unavailability of flight crew or cabin crew (unless caused by strikes covered under 1(c)v or unexpected absences due to illness or death covered under 1(c)vi). '

Commented [ES-MITMS2]: ES is generally not in favour of technical failures being considered as an extraordinary circumstance.

Please give some examples of paragraph 2.i.

Please find bellow possible examples to indicate whether they are considered extraordinary circumstances or not:

Example 1:

During the pre-flight check carried out by the crew, a hydraulic fluid leak is detected that is out of tolerance, requiring a repair that ultimately results in the flight being cancelled or delayed for more than 5 hours (the aircraft has made flights previously that day without the failure having occurred).

Example 2:

With the passengers on board, when starting an engine, an engine failure occurs in the flight systems that makes the aircraft unable to depart (real case), the flight is disembarked and the flight is cancelled or delayed for more than 5 hours (the aircraft has made flights earlier that day without the failure having occurred).