



Brussels, 22.7.2024  
C(2024) 5056 final

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**Communication to the Commission**

**Approval of the content of a draft Commission Notice on the Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents**

## ANNEX

Draft Commission Notice on the Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents



Brussels, XXX  
[...] (2024) XXX draft

### COMMISSION NOTICE

**Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents**

## TABLE OF CONTENTS

1.	INTRODUCTION .....	5
2.	SCOPE OF REGULATION (EC) No 261/2004 .....	7
2.1.	Territorial scope.....	7
2.1.1.	Geographical scope.....	7
2.1.2.	Concept of ‘flight’ in accordance with Article 3(1)(a).....	8
2.1.3.	Flights within the scope of Regulation (EC) No 261/2004 .....	8
2.1.4.	Flights outside the scope of Regulation (EC) No 261/2004....	9
2.1.5.	Scope of Regulation (EC) No 261/2004 in relation to compensation or assistance received in a non-EU country and the effects on the recipients’ rights under Regulation (EC) No 261/2004 .....	9
2.2.	Material scope .....	10
2.2.1.	Non-application of Regulation (EC) No 261/2004 to passengers travelling by helicopter.....	10
2.2.2.	Non-application of Regulation (EC) No 261/2004 to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public .....	10
2.2.3.	Requirement for passengers to be present for check-in.....	11
2.2.4.	Application to operating air carriers .....	12
2.2.5.	Events to which Regulation (EC) No 261/2004 applies.....	12
2.2.6.	Non-application of Regulation (EC) No 261/2004 to multimodal journeys .....	12
2.2.7.	Scope of Regulation (EC) No 261/2004 in relation to Directive (EU) 2015/2302 (Package Travel Directive).....	12
3.	EVENTS GIVING RIGHTS UNDER REGULATION (EC) No 261/2004.	13
3.1.	Denied boarding .....	13
3.1.1.	Concept of ‘denied boarding’ .....	13
3.1.2.	Rights associated with denied boarding .....	15
3.2.	Cancellation.....	15
3.2.1.	Definition of cancellation .....	15
3.2.2.	Change of departure time .....	16
3.2.3.	Case of an aircraft that returns to its point of departure .....	16
3.2.4.	Diverted flight .....	17
3.2.5.	Burden of proof in the event of cancellation .....	17

3.2.6.	Rights associated with cancellation.....	17
3.3.	Delay.....	17
3.3.1.	Delay at departure.....	17
3.3.2.	‘Long delay’ at arrival .....	18
3.3.3.	Measuring the delay at arrival and concept of time of arrival .....	18
3.4.	Upgrading and downgrading .....	18
3.4.1.	Definition of upgrading and downgrading .....	18
3.4.2.	Rights associated with upgrading and downgrading .....	19
<b>4.</b>	<b>PASSENGERS’ RIGHTS</b> .....	<b>19</b>
4.1.	Right to information .....	19
4.1.1.	General right to information .....	19
4.1.2.	Information to be provided in case of delay, denied boarding or cancellation.....	20
4.2.	Right to reimbursement, re-routing or rebooking in the event of denied boarding or cancellation .....	21
4.3.	Right to care in the event of denied boarding, cancellation or delay at departure .....	24
4.3.1.	Concept of right to care .....	24
4.3.2.	Provision of meals, refreshments and accommodation .....	24
4.3.3.	Care in extraordinary circumstances or exceptional events ..	26
4.4.	Right to compensation in the event of denied boarding, cancellation, delay at arrival and re-routing, and reimbursement for downgrading ..	26
A.	<i>General</i> .....	26
B.	<i>Compensation in the event of denied boarding</i> .....	27
4.4.1.	Compensation, denied boarding and exceptional circumstances .....	27
4.4.2.	Compensation, denied boarding and connecting flights.....	27
4.4.3.	Amount of compensation .....	27
C.	<i>Compensation in the event of cancellation</i> .....	27
4.4.4.	General case.....	27
4.4.5.	Amount of compensation .....	28
4.4.6.	Obligation to inform passengers.....	28
D.	<i>Compensation in the event of long delay at arrival</i> .....	28
4.4.7.	‘Long delays’ at arrival.....	28
4.4.8.	Compensation for long delay at arrival in the case of connecting flights .....	29

4.4.9.	Compensation for long delay at arrival if a passenger accepts a flight to an airport alternative to that for which the booking was made .....	29
4.4.10.	Amount of compensation .....	29
4.4.11.	Calculation of the distance on the basis of the ‘journey’ to determine the compensation in the event of long delay at the final destination .....	30
E.	<i>Compensation in the event of re-routing</i> .....	30
4.4.12.	Requirement to re-route passengers in good time .....	30
4.4.13.	Re-routing and arrival more than 2 hours after the scheduled arrival time but less than 3 hours .....	31
F.	<i>Reimbursement in the event of downgrading</i> .....	31
4.4.14.	Calculation of the amount .....	31
G.	<i>Further compensation</i> .....	31
5.	<b>EXTRAORDINARY CIRCUMSTANCES</b> .....	32
5.1.	Principle.....	32
5.2.	‘Internal’ and ‘external’ events .....	33
5.2.1.	Concept.....	33
5.2.2.	‘Internal’ events .....	33
5.2.3.	‘External’ events.....	35
5.3.	Reasonable measures an air carrier can be expected to take in extraordinary circumstances .....	37
5.4.	Extraordinary circumstances on a previous flight with the same aircraft .....	38
6.	<b>PASSENGER RIGHTS IN THE CASE OF MASSIVE TRAVEL DISRUPTIONS</b> .....	38
6.1.	General .....	38
6.2.	Right to re-routing or reimbursement.....	38
6.3.	Right to care .....	39
6.4.	Right to compensation .....	39
7.	<b>COMPENSATION, REIMBURSEMENT, RE-ROUTING AND CARE IN THE CASE OF MULTIMODAL JOURNEYS</b> .....	40
8.	<b>COMPLAINTS TO NATIONAL ENFORCEMENT BODIES, ALTERNATIVE DISPUTE RESOLUTION ENTITIES AND CONSUMER PROTECTION UNDER THE CONSUMER PROTECTION COOPERATION REGULATION</b> .....	40
8.1.	Complaints to national enforcement bodies .....	40
8.2.	Alternative dispute resolution (ADR) .....	41

8.3.	Further means to assist stakeholders in applying Regulation (EC) No 261/2004 .....	42
9.	BRINGING ACTION UNDER REGULATION (EC) No 261/2004 .....	43
9.1.	Jurisdiction under which action can be brought under Regulation (EC) No 261/2004 .....	43
9.2.	Time limit for bringing an action under Regulation (EC) No 261/2004 .....	44
10.	<b>AIR CARRIER LIABILITY UNDER THE MONTREAL CONVENTION .....</b>	<b>44</b>

## 1. INTRODUCTION

Regulation (EC) No 261/2004 of the European Parliament and of the Council <sup>(1)</sup> entered into force on 17 February 2005. The Regulation sets a minimum level of quality standards for passenger protection, adding an important consumer dimension to the liberalisation of the aviation market.

The Commission's White Paper on Transport, adopted on 28 March 2011 <sup>(2)</sup>, mentioned among its initiatives the need to 'develop a uniform interpretation of EU law on passenger rights and a harmonised and effective enforcement, to ensure both a level playing field for the industry and a European standard of protection for the citizens'.

With regard to air transport, the Commission Communication of 11 April 2011 <sup>(3)</sup> showed how the provisions of Regulation (EC) No 261/2004 were being interpreted in various ways, due to grey zones and gaps in the current text, and that the enforcement varied between Member States. Furthermore, it revealed that it is difficult for passengers to assert their individual rights.

On 29 March 2012, the European Parliament adopted a resolution <sup>(4)</sup> in response to the Commission Communication of 11 April 2011. Parliament highlighted the measures that it considered essential for regaining passengers' trust, in particular proper application of the existing rules by Member States and air carriers, enforcement of sufficient and simple means of redress, and providing passengers with accurate information on their rights.

In order to clarify rights, ensure better application of Regulation (EC) No 261/2004 by air carriers, and ensure the Regulation's enforcement by national enforcement bodies, the Commission presented a proposal for an amendment to Regulation (EC) No 261/2004 and to Regulation (EC) No 2027/97 <sup>(5)</sup> <sup>(6)</sup> in 2013. The proposal is currently being examined by the EU legislature <sup>(7)</sup>.

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<sup>(1)</sup> 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 295/91 (OJ L 46, 17.2.2004, p. 1, ELI: <http://data.europa.eu/eli/reg/2004/261/oj>).

<sup>(2)</sup> Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system (COM(2011) 144 final), see page 23 (<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0144:FIN:EN:PDF>).

<sup>(3)</sup> Communication from the Commission to the European Parliament and the Council on the application of Regulation 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 (COM(2011) 174 final) (<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0174:FIN:EN:PDF>).

<sup>(4)</sup> European Parliament resolution on the functioning and application of established rights of people travelling by air (2011/2150(INI)) (<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-99>).

<sup>(5)</sup> Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents (OJ L 285, 17.10.1997, p. 1, ELI: <http://data.europa.eu/eli/reg/1997/2027/oj>).

<sup>(6)</sup> 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 (COM(2013) 130 final of 13.3.2013).

<sup>(7)</sup> 2013/0072(COD).

As announced in its Communication of 7 December 2015 on an aviation strategy for Europe <sup>(8)</sup>, the Commission adopted Interpretative Guidelines on Regulation (EC) No 261/2004 and on Council Regulation (EC) No 2027/97 <sup>(9)</sup> in 2016.

Case-law has had a significant impact on the interpretation of Regulation (EC) No 261/2004. On many occasions, the Court of Justice of the European Union (the ‘Court’) has been requested by national courts to clarify certain provisions, including key aspects of the Regulation. Its interpretative judgments reflect the current state of EU law, which has to be applied by national authorities. An evaluation conducted in 2010 <sup>(10)</sup> and an impact assessment carried out in 2012 <sup>(11)</sup> both highlighted the abundance of rulings made by the Court. It is thus clear that steps need to be taken to ensure a common understanding and proper enforcement of Regulation (EC) No 261/2004 across the EU.

These Interpretative Guidelines update the previous Guidelines on air passenger rights to include the relevant Court rulings handed down between 2016 and the publication of these Guidelines. Among other things, they aim to provide greater clarity on a number of provisions contained in Regulation (EC) No 261/2004, in particular in the light of the Court’s case-law <sup>(12)</sup>. This should allow the current rules to be more effectively and consistently enforced. A new section on massive travel disruptions has been added (Section 6).

These Guidelines are intended to tackle the issues most frequently raised by national enforcement bodies, passengers and their associations, the European Parliament and industry representatives. They do not seek to cover all provisions in an exhaustive manner, nor do they create any new legal provisions. It should also be noted that interpretative guidelines have no bearing on the interpretation of EU law provided by the Court <sup>(13)</sup>.

These Guidelines also relate to Regulation (EC) No 2027/97 and to the Convention for the Unification of Certain Rules for International Carriage by Air (the ‘Montreal Convention’) <sup>(14)</sup>. Regulation (EC) No 2027/97 serves a twofold purpose: firstly, aligning EU legislation on air carriers’ liability in respect of passengers and their baggage with the provisions of the Montreal Convention, to which the EU is one of the contracting parties, and secondly, extending the application of the Convention’s rules to cover air services provided in the territory of a Member State.

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<sup>(8)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An Aviation Strategy for Europe (COM(2015) 598 final of 7.12.2015).

<sup>(9)</sup> Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents (OJ L 285, 17.10.1997, p. 1, ELI: <http://data.europa.eu/eli/reg/1997/2027/oj>).

<sup>(10)</sup> Steer Davies Gleave, *Evaluation of Regulation 261/2004 – Final report – Main report*, February 2010.

<sup>(11)</sup> Commission staff working document Impact Assessment accompanying the 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 delays of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, Brussels (SWD(2013) 62 final of 13.3.2013) and Proposal for a regulation amending Regulation (EC) No 261/2004 (COM(2013) 130 final).

<sup>(12)</sup> Clear references to the relevant Court cases are systematically mentioned in the text; if there is no such reference, it corresponds to the Commission’s interpretation of the Regulation.

<sup>(13)</sup> See Article 19(1) of the Treaty on European Union.

<sup>(14)</sup> Council Decision 2001/539/EC of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) (OJ L 194, 18.7.2001, p. 38, ELI: <http://data.europa.eu/eli/convention/2001/539/oj>).



In addition, these Guidelines address questions of jurisdiction in relation to Regulation (EU) No 1215/2012 of the European Parliament and of the Council <sup>(15)</sup>.

As announced in its Sustainable and Smart Mobility Strategy <sup>(16)</sup>, the Commission has reviewed the passenger rights framework, and proposed additional amendments to Regulation (EC) No 261/2004 on 29 November 2023 <sup>(17)</sup>. With these Interpretative Guidelines, the Commission does not seek to replace or supplement that proposal nor the proposal of 2013 to amend Regulation (EC) No 2027/97, but rather to ensure better application and enforcement of Regulation (EC) No 261/2004 and Regulation (EC) No 2027/97.

## **2. SCOPE OF REGULATION (EC) No 261/2004**

### **2.1. Territorial scope**

#### *2.1.1. Geographical scope*

Article 3(1) of Regulation (EC) No 261/2004 limits the Regulation's scope to passengers departing from an airport located in the territory of a Member State to which the Treaty applies and passengers departing from an airport located in a third country (that is to say, in a country that is not a Member State) to an airport situated in the territory of a Member State to which the Treaty applies if the operating air carrier is licensed in a Member State (an 'EU carrier').

According to Article 355 of the Treaty on the Functioning of the European Union (TFEU), EU law does not apply to the countries and territories listed in Annex II to the TFEU <sup>(18)</sup>. Instead, these countries and territories are subject to the special arrangements for association set out in Part Four of the TFEU. Moreover, EU law does not apply to the Faeroe Islands <sup>(19)</sup>. Therefore, these territories are to be considered as non-EU countries within the meaning of Regulation (EC) No 261/2004 <sup>(20)</sup>.

By contrast, pursuant to Article 355 (1) TFEU, the provisions of the Treaties apply to Guadeloupe, French Guiana, Martinique, Mayotte, Réunion, Saint Barthélemy, Saint-Martin, the Azores, Madeira and the Canary Islands. Therefore, these territories are part of Member States to which the Treaty applies within the meaning of Regulation (EC) No 261/2004.

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<sup>(15)</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1, ELI: <http://data.europa.eu/eli/reg/2012/1215/oj>).

<sup>(16)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Sustainable and Smart Mobility Strategy – putting European transport on track for the future (COM(2020) 789 final of 9.12.2020).

<sup>(17)</sup> Proposal for a regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union (COM(2023) 753 final of 29.11.2023).

<sup>(18)</sup> See Annex II to the TFEU ([http://ec.europa.eu/archives/lisbon\\_treaty/index\\_en.htm](http://ec.europa.eu/archives/lisbon_treaty/index_en.htm)).

<sup>(19)</sup> Article 355(5)(a) TFEU.

<sup>(20)</sup> The Regulation is applicable to Iceland and Norway in accordance with the Agreement on the European Economic Area and to Switzerland in accordance with the Agreement between the European Community and the Swiss Confederation on Air Transport (1999).

### 2.1.2. *Concept of 'flight' in accordance with Article 3(1)(a)*

The Court has found that a journey involving outbound and return flights cannot be regarded as a single flight. The concept of 'flight' within the meaning of Regulation (EC) No 261/2004 must be interpreted as consisting essentially of an air transport operation, being as it were a 'unit' of such transport, performed by an air carrier that fixes its itinerary <sup>(21)</sup>. Consequently, Article 3(1)(a) of Regulation (EC) No 261/2004 does not apply to the case of an outbound and return journey in which passengers who originally departed from an airport located in the territory of a Member State, travel back to this airport on a flight operated by a non-EU air carrier and departing from an airport located in a non-EU country. The fact that the outbound and return flights are the subject of a single booking has no effect on the interpretation of this provision <sup>(22)</sup>.

If a passenger's journey – from the passenger's first departure to the passenger's final destination – consists of several flights, these flights are considered as a whole for the purposes of the Regulation if they were booked as a single unit or – in other words – the subject of a single booking. Therefore, when determining whether Regulation (EC) No 261/2004 applies, the place of initial departure and the final destination of the entire journey must be taken into account, regardless of any stopovers or airports used during the journey <sup>(23)</sup>.

### 2.1.3. *Flights within the scope of Regulation (EC) No 261/2004*

In several rulings, the Court has clarified that the Regulation can apply to travel disruptions on connecting flights that happened outside the EU or to incidents on connecting flights operated by a non-EU carrier.

A flight disruption can fall within the scope of Regulation (EC) No 261/2004 even if it happened outside the EU on a connecting flight from the EU to a non-EU country with a stopover outside the EU and with a change of aircraft. The Court confirmed that the right to compensation for long delays of flights applies if two or more flights were booked as a single unit <sup>(24)</sup>.

As regards the party liable to compensate the passenger in case of a travel disruption, the Court has made clear that any operating air carrier that participated in the performance of at least one of the connecting flights is liable to pay this compensation, regardless of whether or not the flight operated by this carrier was the cause of the travel disruption <sup>(25)</sup>.

Thus, in case of connecting flights that were the subject of a single reservation and were performed under a code-share agreement with an EU air carrier performing the first flight (leg) and a non-EU air carrier performing the second leg, a passenger may bring an action for compensation against the EU air carrier, even if the cause of the delay arose in the second leg <sup>(26)</sup>.

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<sup>(21)</sup> Case C-173/07, *Emirates Airlines*, ECLI:EU:C:2008:400, paragraph 40.

<sup>(22)</sup> Case C-173/07, *Emirates Airlines*, ECLI:EU:C:2008:400, paragraph 53.

<sup>(23)</sup> Case C-537/17, *Wegener*, ECLI:EU:C:2018:361, paragraph 18; Case C-191/19, *Air Nostrum*, ECLI:EU:C:2020:339, paragraph 26; Case C-451/20, *Airhelp*, ECLI:EU:C:2022:123, paragraph 25; Case C-436/21, *flightright*, ECLI:EU:C:2022:762, paragraph 20.

<sup>(24)</sup> Case C-537/17, *Wegener*, ECLI:EU:C:2018:361, paragraph 25.

<sup>(25)</sup> Case C-502/18, *České aerolinie*, ECLI:EU:C:2019:604, paragraphs 20 to 26

<sup>(26)</sup> Case C-502/18, *České aerolinie*, ECLI:EU:C:2019:604, paragraph 33.

Similarly, in the case of connecting flights, booked as a single unit, from a non-EU country to the EU with a stopover in the EU, the Court has ruled that if the cause of a long delay arises in the first flight operated under a code-share agreement by a non-EU air carrier, a passenger may bring an action for compensation against the EU air carrier that performed the second flight <sup>(27)</sup>.

If a connecting flight from the EU to a non-EU country was operated in its entirety by a non-EU air carrier and the booking was made with an EU air carrier, a passenger is entitled to compensation from the non-EU air carrier that operated the flights on behalf of that EU air carrier, if this passenger reached their final destination with a delay of more than 3 hours caused in the second leg of the said flight <sup>(28)</sup>.

While the above-mentioned examples concerned connecting flights carried out by air carriers under code-share agreements, the Court has made it clear that no provision of the Regulation makes the classification as a connecting flight subject to the condition that there is a specific legal relationship between the carriers operating the flights that make up the connecting flight <sup>(29)</sup>.

Therefore, Regulation (EC) No 261/2004 also applies to passengers on a connecting flight made up of a number of flights operated by separate operating air carriers that do not have a specific legal relationship, if these flights have been combined by a travel agency that has charged an overall price and has issued a single ticket for this operation <sup>(30)</sup>.

#### *2.1.4. Flights outside the scope of Regulation (EC) No 261/2004*

Regulation (EC) No 261/2004 does not apply to passengers on connecting flights operated by an EU air carrier that were the subject of a single booking if both the airport of departure of the first leg of the journey, and the airport of arrival of the second leg of the journey, are located in a non-EU country, and only the airport where the stopover takes place is located in the territory of a Member State <sup>(31)</sup>. The Court thus clarified that the applicability of the Regulation in case of a connecting flight should be established solely on the basis of the geographical locations of the first airport of departure and of the airport of the passenger's final destination. If both are outside the EU's territory, passengers on such flights are not covered by Regulation (EC) No 261/2004, even if they had one or more stop-overs in the EU.

#### *2.1.5. Scope of Regulation (EC) No 261/2004 in relation to compensation or assistance received in a non-EU country and the effects on the recipients' rights under Regulation (EC) No 261/2004*

Article 3(1)(b) of Regulation (EC) No 261/2004 stipulates that the Regulation applies to passengers departing from an airport located outside of the EU (i.e. in a non-EU country) and travelling to the EU if the flight is operated by an air carrier licensed in an EU Member State (an 'EU air carrier'), unless they received benefits or compensation and were given assistance in that non-EU country.

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<sup>(27)</sup> Case C-367/20, *KLM Royal Dutch Airlines*, ECLI:EU:C:2020:909, paragraph 33.

<sup>(28)</sup> Case C-561/20, *United Airlines*, ECLI:EU:C:2022:266, paragraph 44.

<sup>(29)</sup> Case C-436/21, *flightright*, ECLI:EU:C:2022:762, paragraph 28.

<sup>(30)</sup> Case C-436/21, *flightright*, ECLI:EU:C:2022:762, paragraph 31.

<sup>(31)</sup> Case C-451/20, *Airhelp*, ECLI:EU:C:2022:123, paragraph 41.

The question may arise as to whether passengers flying to the EU from a non-EU country airport are entitled to rights under Regulation (EC) No 261/2004 if the following entitlements were already given under a non-EU country's passenger rights legislation:

- (1) benefits (for instance a travel voucher) or compensation (the amount of which may differ from that stipulated in Regulation (EC) No 261/2004); and
- (2) assistance (such as reimbursement or re-routing pursuant to Article 8 as well as meals, drinks, hotel accommodation and communication facilities as specified in Article 9 of the Regulation).

Here, the word 'and' is important. For example, if passengers have only been provided with one of these two entitlements (for instance benefits and compensation under (1)), they can still claim the other one (in this case assistance under (2)).

If both these entitlements were given at the point of departure either on the basis of local legislation or on a voluntary basis, passengers cannot claim any further rights under Regulation (EC) No 261/2004 as the Regulation would not apply<sup>(32)</sup>.

However, the Court<sup>(33)</sup> has found that it cannot be accepted that a passenger may be deprived of the protection granted by Regulation (EC) No 261/2004 solely on the ground that the passenger may benefit from *some* compensation in the non-EU country. In this regard, the operating air carrier should show that the compensation granted in the non-EU country corresponds to the purpose of the compensation guaranteed by Regulation (EC) No 261/2004 or that the conditions to which the compensation and assistance are subject and the various means of implementing them are equivalent to those provided for by Regulation (EC) No 261/2004.

## **2.2. Material scope**

### *2.2.1. Non-application of Regulation (EC) No 261/2004 to passengers travelling by helicopter*

According to Article 3(4) of Regulation (EC) No 261/2004, the Regulation applies only to fixed wing aircrafts operated by a licensed air carrier. Therefore, it does not apply to helicopter services.

### *2.2.2. Non-application of Regulation (EC) No 261/2004 to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public*

Pursuant to Article 3(3) of Regulation (EC) No 261/2004, the Regulation does not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public.

'Travelling free of charge' means that a passenger is transported by the air carrier without any pecuniary obligation on the part of the passenger. Cases where the air fare is reduced to zero but passengers still have to pay for taxes and other charges in order to receive their tickets, would not fall under this term.

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<sup>(32)</sup> Case C-367/20, *KLM Royal Dutch Airlines*, ECLI:EU:C:2020:909, paragraphs 18 and 25.

<sup>(33)</sup> Case C-257/14, *van der Lans*, ECLI:EU:C:2015:618, paragraph 28.

If a ticket was obtained at a reduced rate, the determining factor is whether this reduction is reserved to a specific group of people or if it is open to anyone who wishes to book, even if they might have to fulfil certain conditions or requirements. Such tickets would still be considered as ‘publicly available’ and their holders would be covered by the Regulation.

However, special fares offered by air carriers to their staff do fall under this provision. Regulation (EC) No 261/2004 does not apply, either, to a passenger who travels on a preferential fare ticket issued by an air carrier as part of an event sponsorship operation, the benefit of which is restricted to certain specified people and the issue of which requires prior and individual authorisation from that air carrier <sup>(34)</sup>.

By contrast, Article 3(3) stipulates that the Regulation does apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an air carrier or tour operator.

As regards infants, the Court has held that passengers who travel free of charge on account of their young age, but who do not have an allocated seat or a boarding pass and whose names do not appear on the reservation booked by their parents, are excluded from the scope of Regulation (EC) No 261/2004 <sup>(35)</sup>.

### 2.2.3. Requirement for passengers to be present for check-in

It follows from Article 3(2) of Regulation (EC) No 261/2004 that in order to be covered by the Regulation, passengers: (i) have to hold a confirmed reservation; and (ii) must present themselves for check-in in good time. The second requirement does not apply in the case of a flight cancellation.

These two conditions are cumulative: the passenger’s presence for check-in cannot be presumed by virtue of the fact that the passenger has a confirmed reservation on the flight concerned <sup>(36)</sup>. The effectiveness of Article 3(2) requires passengers to present themselves at the airport in good time, more specifically to a representative of the operating air carrier, in order to be transported to the intended destination, even if they have already checked in online before going to the airport <sup>(37)</sup>.

When it comes to proving that passengers had actually presented themselves for check-in, the Court has confirmed that passengers who hold a confirmed reservation on a flight and have taken that flight, must be considered to have properly satisfied the requirement to present themselves for check-in before the flight, without being required to produce, to this end, the boarding card or any other document confirming their presence, within the time limits laid down, for check-in for the delayed flight. It would be for the air carrier to prove that these passengers were not transported on this flight <sup>(38)</sup>.

The Court has confirmed that the requirement to have presented oneself for check-in is essential in cases where passengers wish to claim compensation for long delays of flights at arrival <sup>(39)</sup>. This is important to note in situations where passengers are informed

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<sup>(34)</sup> Case C-316/20, *SATA International – Azores Airlines*, ECLI:EU:C:2020:966, paragraph 19.

<sup>(35)</sup> Case C-686/20, *Vueling Airlines*, ECLI:EU:C:2021:859, paragraph 31.

<sup>(36)</sup> Case C-756/18, *easyJet Airline*, ECLI:EU:C:2019:902, paragraph 25.

<sup>(37)</sup> Case C-474/22, *Laudamotion GmbH*, ECLI:EU:C:2024:73, paragraph 21.

<sup>(38)</sup> Case C-756/18, *easyJet Airline*, ECLI:EU:C:2019:902, paragraphs 28, 29, 30 and 33.

<sup>(39)</sup> Case C-474/22, *Laudamotion GmbH*, ECLI:EU:C:2024:73, paragraph 34.

beforehand that their flight would be delayed, and decide not to show up at the airport, be it because they decided not to travel any longer or because they made their own arrangements for alternative transport.

#### 2.2.4. *Application to operating air carriers*

In accordance with Article 3(5) of Regulation (EC) No 261/2004, the operating air carrier is always responsible for the obligations under this Regulation and not, for example, another air carrier that may have sold the ticket. The notion of operating air carrier is described in recital 7 of Regulation (EC) No 261/2004 as the carrier ‘who performs or intends to perform a flight, whether with owned aircraft, under dry or wet lease, or on any other basis’<sup>(40)</sup>.

The Court has clarified that in the case of a ‘wet lease’ – where one airline (the lessor) provides an aircraft plus crew to another airline (the lessee) – the lessor cannot be regarded as the operating air carrier for the purposes of Regulation (EC) No 261/2004. This is because the lessee still bears the operational responsibility for the flight, and not the air carrier that leased out its aircraft and crew<sup>(41)</sup>.

As regards an air carrier’s operating licence, the Court has clarified that a company that has lodged an application for an operating licence that has not yet been issued at the time of performance of a scheduled flight cannot fall within the scope of Regulation (EC) No 261/2004. Therefore, in order for passengers to have the right to compensation under Article 5(1)(c) and Article 7(1) of Regulation (EC) No 261/2004, the air carrier must have a *valid* operating licence<sup>(42)</sup>.

#### 2.2.5. *Events to which Regulation (EC) No 261/2004 applies*

Regulation (EC) No 261/2004 protects passengers in the event of denied boarding, cancellation, delay, upgrading and downgrading. These events as well as the rights granted to passengers when they materialise are described in the sections below.

#### 2.2.6. *Non-application of Regulation (EC) No 261/2004 to multimodal journeys*

Multimodal journeys involving more than one mode of transport under a single transport contract are not covered as such by Regulation (EC) No 261/2004. More information on this is provided in Section 6.

#### 2.2.7. *Scope of Regulation (EC) No 261/2004 in relation to Directive (EU) 2015/2302 (Package Travel Directive)*

Article 3(6) and recital 16 of Regulation (EC) No 261/2004 stipulate that this Regulation also applies to flights within a package tour, except if a package tour is cancelled for reasons other than cancellation of the flight (for example, in the event of a hotel cancellation). It is also stated that the rights granted under Regulation (EC) No 261/2004 do not affect the rights granted to travellers under Directive (EU) 2015/2302 of the European Parliament and of the Council<sup>(43)</sup>. Travellers thus have, in principle, rights in

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<sup>(40)</sup> See also the definition of ‘operating air carrier’ in Article 2, point b.

<sup>(41)</sup> Case C-532/17, *Wirth*, ECLI:EU:C:2018:527, paragraph 26.

<sup>(42)</sup> Case C-292/18, *Breyer*, ECLI:EU:C:2018:99, paragraph 28.

<sup>(43)</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive

relation to both the package organiser under Directive (EU) 2015/2302 and the operating air carrier under Regulation (EC) No 261/2004. Article 14(5) of Directive (EU) 2015/2302 also provides that any right to compensation or price reduction under this Directive does not affect the rights of travellers under Regulation (EC) No 261/2004, but specifies that compensation or price reduction granted under passenger rights regulations and under this Directive must be deducted from each other in order to avoid overcompensation.

However, neither Regulation (EC) No 261/2004 nor Directive (EU) 2015/2302 deals with the question of whether it is the package organiser or the operating air carrier that ultimately has to bear the cost of their overlapping obligations<sup>(44)</sup>. Resolving such a matter will thus depend on the contractual provisions between organisers and air carriers and the applicable national law. Any arrangements made in this regard (including practical arrangements to avoid overcompensation) must not impact negatively on the passengers' ability to address their claims to either the package organiser or the air carrier and to obtain the appropriate entitlements under the rights that do not arise under Directive (EU) 2015/2302.

In this regard, the Court has ruled that pursuant to Article 8(2) of Regulation (EC) No 261/2004, passengers who have the right to hold the travel organiser liable for reimbursement of the cost of their air ticket under the Package Travel Directive, can no longer claim reimbursement of the cost of this ticket from the air carrier under Regulation (EC) No 261/2004, even if the tour organiser is financially incapable of reimbursing the cost of the ticket and has not taken any measures to guarantee such reimbursement<sup>(45)</sup>. In other words, passengers who are entitled to seek reimbursement from their travel organiser under Directive (EU) 2015/2302 are not able to seek reimbursement from the air carrier under Regulation (EC) No 261/2004.

However, a traveller may seek compensation directly from the air carrier for flights delayed for 3 hours or more or cancelled, even if there is no contract between this traveller and the respective air carrier and the flight is part of a package<sup>(46)</sup>.

### **3. EVENTS GIVING RIGHTS UNDER REGULATION (EC) No 261/2004**

#### **3.1. Denied boarding**

##### *3.1.1. Concept of 'denied boarding'*

The concept of 'denied boarding' relates not only to cases of overbooking but also to those cases where boarding is denied on other grounds, such as operational reasons<sup>(47)</sup>. In accordance with Article 2, point (j), of Regulation (EC) No 261/2004, 'denied boarding' does not cover a situation where there are reasonable grounds for refusing to carry

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2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1, ELI: <http://data.europa.eu/eli/dir/2015/2302/oj>). According to Article 29 of Directive (EU) 2015/2302, references to Directive 90/314/EEC in the Regulation are to be read as references to Directive (EU) 2015/2302.

<sup>(44)</sup> However, regarding the 'right of redress', see Article 13 of Regulation (EC) No 261/2004 and Article 22 of Directive (EU) 2015/2302.

<sup>(45)</sup> Case C-163/18, *Aegean Airlines*, ECLI:EU:C:2019:585, paragraph 44.

<sup>(46)</sup> Case C-215/18, *Primera Air Scandinavia*, ECLI:EU:C:2020:235, paragraph 38.

<sup>(47)</sup> Case C-22/11, *Finnair*, ECLI:EU:C:2012:604, paragraph 26.

passengers on a flight even though they presented themselves on time for the flight, such as reasons of health, safety or security, or inadequate travel documentation.

If the original flight of a passenger who holds a confirmed reservation is delayed and the passenger is re-routed on another flight, this does not constitute denied boarding within the meaning of Article 2, point (j), of Regulation (EC) No 261/2004.

If the passenger is refused carriage on the return flight because the operating air carrier has cancelled the outbound flight and re-routed the passenger on another flight, this would constitute denied boarding and give rise to additional compensation from the operating air carrier.

The Court has confirmed that the concept of ‘denied boarding’ also includes pre-emptive denied boarding, which refers to situations where an operating air carrier informs passengers in advance that it is going to deny them boarding against their will on a flight for which they had a confirmed reservation <sup>(48)</sup>.

The Court has also clarified that in the case of pre-emptive denied boarding, the air carrier owes the passengers compensation pursuant to Article 4(3) of Regulation (EC) No 261/2004 even if the passengers did not present themselves for boarding under the conditions set out in Article 3(2) of Regulation (EC) No 261/2004 <sup>(49)</sup>.

If passengers who hold a reservation including an outbound and a return flight are not allowed to board on the return flight because they did not take the outbound flight (‘no-show’), this might be considered as a violation of the terms and conditions of the air carrier. The same is true if passengers who hold a reservation including consecutive flights are not allowed to board a flight because they did not take the previous flight(s). Air carriers’ terms and conditions have to comply with national legislation transposing the provisions of EU law on consumer protection, such as those of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts <sup>(50)</sup>. The Court has not yet ruled on whether this constitutes denied boarding within the meaning of Article 2, point (j), of Regulation (EC) No 261/2004. Furthermore, such a practice might be prohibited by national law.

If passengers travelling with a pet are not allowed to board because they do not hold the relevant pet documentation or the transport of the animal does not comply with the air carrier’s terms and conditions, this does not constitute denied boarding.

However, if passengers are denied boarding due to a mistake made by ground staff when checking their travel documents (including visas), this constitutes denied boarding within the meaning of Article 2, point (j), of Regulation (EC) No 261/2004.

In this regard, the Court has ruled that Regulation (EC) No 261/2004 does not confer on the air carrier concerned the power to assess and decide unilaterally and definitively

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<sup>(48)</sup> Case C-238/22, *LATAM Airlines Group*, ECLI:EU:C:2023:815, paragraph 28.

<sup>(49)</sup> Case C-238/22, *LATAM Airlines Group*, ECLI:EU:C:2023:815, paragraph 39.

<sup>(50)</sup> OJ L 95, 21.4.1993, p. 29 (ELI: <http://data.europa.eu/eli/dir/1993/13/oj>); see also Case C-290/16, *Air Berlin v VZBV*, ECLI:EU:C:2017:523, paragraphs 46 to 49.



whether denied boarding is reasonably justified and, consequently, to deprive the passengers in question of the protection they are entitled to under this Regulation <sup>(51)</sup>.

The standard terms and conditions of carriage cannot contain a clause that limits or waives the air carrier's obligations under Regulation (EC) No 261/2004 to compensate the passenger in the event of denied boarding due to supposedly inadequate travel documentation <sup>(52)</sup>.

The situation is different if the air carrier and its crew refuse to allow a passenger to board due to security concerns based on reasonable grounds in accordance with Article 2, point (j). Air carriers should make full use of IATA's Timatic database and consult the public authorities (embassies and Ministries of Foreign Affairs) of the countries concerned to verify travel documents and (entry) visa requirements for countries of destination and keep appropriate records in order to prevent passengers being incorrectly denied boarding. Member States should make sure that they provide comprehensive and up-to-date information to IATA/Timatic regarding travel documentation, notably in relation to visa requirements or exemptions from these requirements.

As regards the travel of persons with disabilities or persons with reduced mobility, reference is made to Article 4 of Regulation (EC) No 1107/2006 of the European Parliament and of the Council <sup>(53)</sup> and the corresponding Interpretative Guidelines <sup>(54)</sup>.

### 3.1.2. *Rights associated with denied boarding*

Denial of boarding against the passenger's will gives: (i) a right to 'compensation' as defined in Article 7 of Regulation (EC) No 261/2004; (ii) a right for the passenger to choose between reimbursement, re-routing or rebooking at a later stage as provided in Article 8; and (iii) a right to 'care' according to Article 9.

## 3.2. **Cancellation**

### 3.2.1. *Definition of cancellation*

Article 2, point (l), of Regulation (EC) No 261/2004 defines 'cancellation' as the non-operation of a flight that was previously planned and on which at least one place was reserved.

Cancellation occurs in principle where the planning of the original flight is abandoned and passengers of this flight join passengers on a flight that was also planned, but independently of the original flight. Article 2, point (l), does not require an express decision of cancellation by the air carrier <sup>(55)</sup>.

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<sup>(51)</sup> Case C-584/18, *Blue Air – Airline Management Solutions*, ECLI:EU:C:2020:324, paragraphs 92 and 94.

<sup>(52)</sup> Case C-584/18, *Blue Air – Airline Management Solutions*, ECLI:EU:C:2020:324, paragraph 103.

<sup>(53)</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1, ELI: <http://data.europa.eu/eli/reg/2006/1107/oj>).

<sup>(54)</sup> Interpretative Guidelines on the application of Regulation (EC) N° 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, SWD(2012) 171 final of 11.6.2012 [to be updated after the adoption of the revised guidelines].

<sup>(55)</sup> Case C-83/10, *Sousa Rodriguez and Others*, ECLI:EU:C:2011:652, paragraph 29.

A flight that was carried out between the places of departure and arrival in accordance with the planned schedule but during which an unscheduled stopover took place cannot be regarded as cancelled <sup>(56)</sup>.

By contrast, the Court <sup>(57)</sup> considers that it cannot, as a rule, be concluded that there is a flight delay or cancellation on the basis of a ‘delay’ or a ‘cancellation’ being shown on the airport departures board or announced by the air carrier’s staff. Similarly, the fact that passengers recover their luggage or obtain new boarding cards is not, as a rule, a deciding factor to ascertain that a flight has been cancelled. These circumstances are not connected with the objective characteristics of the flight as such and may arise from different factors. In particular, the Court highlighted that these circumstances (i.e. the announcement of a flight as being ‘delayed’ or ‘cancelled’) can ‘be attributable to inaccurate classifications or to factors obtaining in the airport concerned or, yet again, they may be unavoidable given the waiting time and the fact that it is necessary for the passengers concerned to spend the night in a hotel’.

### 3.2.2. *Change of departure time*

Without prejudice to Section 3.3.1 and in order to avoid a situation where air carriers present a flight as continuously ‘delayed’ instead of ‘cancelled’, it was considered useful to highlight the distinction between a ‘cancellation’ and a ‘delay’. A flight may generally tend to be considered as cancelled when its flight number changes, but in practice, this might not always be a determining criterion. Indeed, a flight may experience such a long delay that it departs the day after it was scheduled and therefore is given an annotated flight number (e.g. XX 1234a instead of XX 1234) to distinguish it from the flight on this subsequent day that has the same number. However, in this case, it could still be considered as a delayed flight and not a cancelled flight. This should be assessed on a case-by-case basis.

By way of example, a flight is not regarded as having been ‘cancelled’ if the operating air carrier postpones the time of departure of the flight by less than 3 hours, without making any other changes to this flight <sup>(58)</sup>.

However, a flight must be regarded as having been ‘cancelled’ if the operating air carrier brings the departure time of the flight forward by more than 1 hour <sup>(59)</sup>.

### 3.2.3. *Case of an aircraft that returns to its point of departure*

The concept of ‘cancellation’ as stipulated in Article 2, point (1), of Regulation (EC) No 261/2004 also covers the case of an aircraft taking off but, for whatever reason, being subsequently forced to return to the airport of departure, where the passengers of the said aircraft are transferred onto other flights. Indeed, the fact that take-off occurred but that the aircraft then returned to the airport of departure without having reached the destination

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<sup>(56)</sup> Case C-32/16, *Wunderlich*, ECLI:EU:C:2016:753, paragraph 27.

<sup>(57)</sup> Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:2009:716, paragraphs 37 and 38.

<sup>(58)</sup> Joined Cases C-146/20, C-188/20, C-196/20 and C-270/20, *Azurair and Others*, ECLI:EU:C:2021:1038, paragraph 87.

<sup>(59)</sup> Case C-263/20, *Airhelp*, ECLI:EU:C:2021:1039, paragraph 35; Case C-395/20, *Corendon Airlines*, ECLI:EU:C:2021:1041, paragraph 23.

appearing in its itinerary means that the flight, as initially scheduled, cannot be considered as having been operated <sup>(60)</sup>.

#### 3.2.4. *Diverted flight*

If a flight is diverted to an airport that does not correspond to the airport indicated as the final destination in accordance with the original travel plan, it is to be treated in the same way as a cancellation unless the airport of arrival and the airport of the original final destination serve the same town, city or region, in which case it may be treated as a delay <sup>(61)</sup>. Thus, if a diverted flight lands at an airport that is different from the originally planned one and that does not serve the same town, city or region, passengers are entitled to compensation for cancellation of a flight <sup>(62)</sup>.

#### 3.2.5. *Burden of proof in the event of cancellation*

Article 5(4) of Regulation (EC) No 261/2004 imposes on air carriers the burden of proof as regards whether and when the passengers have been individually informed of the cancellation of their flight.

On the obligation to inform passengers of a cancellation, see also Section 4.4.6.

#### 3.2.6. *Rights associated with cancellation*

Cancellation of a flight gives: (i) a right to reimbursement, re-routing or return as defined in Article 8 of Regulation (EC) No 261/2004; (ii) a right to ‘care’ as defined in Article 9; and (iii) under Article 5(1), point (c), a right to ‘compensation’ as defined in Article 7. The underlying principle of Article 5(1), point (c), is that compensation is to be paid if the passenger has not been informed of the cancellation sufficiently in advance.

However, compensation does not have to be paid if the air carrier can prove, in accordance with Article 5(3), that the cancellation is caused by extraordinary circumstances that could not have been avoided even if all reasonable measures had been taken <sup>(63)</sup>.

### 3.3. **Delay**

#### 3.3.1. *Delay at departure*

Under Article 6(1) of Regulation (EC) No 261/2004, if the departure of a flight is delayed, passengers affected by this delay have the right to ‘care’ according to Article 9, and to reimbursement and a return flight according to Article 8(1), point (a). The underlying principle of Article 6(1) is that the rights depend on the duration of the delay and the distance of the flight. In this regard, it should be noted that the right to re-routing as laid down in Article 8(1), point (b), is not covered under Article 6(1) as it can be considered that the air carrier is trying, in the first place, to address the cause of the delay in order to minimise the inconvenience to the passengers.

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<sup>(60)</sup> Case C-83/10, *Sousa Rodríguez and Others*, ECLI:EU:C:2011:652, paragraph 28.

<sup>(61)</sup> Case C-826/19, *Austrian Airlines*, ECLI:EU:C:2021:318, paragraph 44.

<sup>(62)</sup> Case C-253/21, *TUIfly GmbH*, ECLI:EU:C:2021:840, paragraph 27.

<sup>(63)</sup> See Section 5 on extraordinary circumstances.

### 3.3.2. 'Long delay' at arrival

The Court has ruled that a delay at arrival of at least 3 hours gives the same rights in terms of compensation as a cancellation<sup>(64)</sup> (for more details, see Section 4.4.5 on compensation).

### 3.3.3. Measuring the delay at arrival and concept of time of arrival

The Court has concluded that the concept of 'time of arrival', which is used to determine the length of the delay to which passengers on a flight have been subject if arrival is delayed, corresponds to the time at which at least one of the doors of the aircraft is opened, the assumption being that, at that moment, the passengers are permitted to leave the aircraft<sup>(65)</sup>. The Commission considers that the operating air carrier should register the time of arrival on the basis of, for instance, a signed declaration by the flight crew or handling agent. The time of arrival should be provided free of charge upon request to the national enforcement body and the passengers as evidence of compliance with Regulation (EC) No 261/2004.

The 'scheduled arrival time' used as the starting point for calculating a delay is the time that is fixed in the flight schedule and indicated on the reservation (ticket or other proof<sup>(66)</sup>) held by the passenger concerned<sup>(67)</sup>.

To determine the extent of the delay in arrival suffered by a passenger on a diverted flight that landed at an airport that is different from the one for which the booking was made but that serves the same town, city or region, it is necessary to take as a reference the time at which the passenger actually reaches, at the end of the transfer, either the airport for which the booking was made or, as the case may be, another close-by destination agreed with the operating air carrier<sup>(68)</sup>.

If a flight was delayed at arrival by 3 hours or more and if this delay was partly due to an event that qualifies as an extraordinary circumstance and partly due to another cause, the delay attributable to the extraordinary circumstance must be deducted from the total delay of the flight concerned in order to assess whether compensation for the delay in arrival of this flight should be paid<sup>(69)</sup>.

## 3.4. Upgrading and downgrading

### 3.4.1. Definition of upgrading and downgrading

Upgrading and downgrading are covered in Article 10(1) and (2) of Regulation (EC) No 261/2004, respectively.

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<sup>(64)</sup> Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:C:2009:716, paragraph 69. See also Joined Cases C-581/10 and C-629/10, *Nelson and Others*, ECLI:EU:C:2012:657, paragraph 40, and Case C-413/11, *Germanwings*, ECLI:EU:C:2013:246, paragraph 19.

<sup>(65)</sup> Case C-452/13, *Germanwings*, ECLI:EU:C:2014:2141, paragraph 27.

<sup>(66)</sup> Joined Cases C-146/20, C-188/20, C-196/20 and C-270/20, *Azurair and Others*, ECLI:EU:C:2021:1038, paragraph 68.

<sup>(67)</sup> Case C-654/19, *FP Passenger Service*, ECLI:EU:C:2020:770, paragraph 25.

<sup>(68)</sup> Case C-826/19, *Austrian Airlines*, ECLI:EU:C:2021:318, paragraph 49.

<sup>(69)</sup> Case C-315/15, *Pešková and Peška*, ECLI:EU:C:2017:342, paragraph 54.

The corresponding passenger right is linked to a change of the cabin class or class of service, i.e. economy, business and first. It does not apply to advantages offered through a higher fare within the same class (e.g. as regards specific seating or catering). Thus purchasing a different fare within the same passenger class is not considered an upgrade or downgrade for the purpose of this Article. Similarly, passengers not receiving the cabin treatment commensurate to their booking (e.g. as regards seating or catering), but still travelling in the same class, are not being downgraded. However, they might be eligible for a reimbursement of the amount paid for a service but not received under the air carrier's terms and conditions and/or under national law.

The definition of downgrading (or upgrading) applies to the class of service for which the ticket was purchased and not to any advantages offered through a frequent flyer programme or other commercial programme provided by an air carrier or tour operator.

#### *3.4.2. Rights associated with upgrading and downgrading*

In the case of upgrading, an air carrier cannot request any supplementary payment. In the case of downgrading, compensation in the form of reimbursement of a percentage of the price of the ticket is provided for in Article 10(2), points (a), (b) and (c), of Regulation (EC) No 261/2004.

The price to be taken into account in determining the reimbursement for the passengers affected is the price of the flight on which they were downgraded unless this price is not indicated on the ticket entitling the passenger to transport on this flight. In this case, it must be based on the part of the price of the ticket corresponding to the quotient of the distance of this flight divided by the total distance that the passenger is entitled to travel. This price does not include taxes and charges indicated on the ticket as long as neither the requirement to pay these taxes and charges nor their amount depends on the class for which the ticket was purchased <sup>(70)</sup>.

## **4. PASSENGERS' RIGHTS**

### **4.1. Right to information**

#### *4.1.1. General right to information*

Article 14(1) of Regulation (EC) No 261/2004 specifies the text of a notice that must be legible and displayed at check-in in a manner clearly visible to passengers. This notice should be displayed physically or electronically in as many relevant languages as possible. This has to be done not only at the airport check-in desk, but also on kiosks at the airport, online and ideally also at the boarding gate.

In addition, whenever an air carrier gives partial, misleading or wrong information to passengers on their rights – either individually or on a general basis through media advertisements or publications on its website – this should be considered as an infringement of Regulation (EC) No 261/2004 in accordance with Article 15(2) read together with recital 20 and may also constitute an unfair and misleading commercial

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<sup>(70)</sup> Case C-255/15, *Mennens*, ECLI:EU:C:2016:472, paragraphs 32 and 43.

business-to-consumer practice under Directive 2005/29/EC of the European Parliament and of the Council <sup>(71)</sup>.

In the event of delay, denied boarding or cancellation, the operating air carrier is required to inform the air passengers of the precise name and address of the company from which these passengers may claim compensation and, where appropriate, to specify the documents that must be attached to their claim for compensation. By contrast, the operating air carrier is not required to inform the air passengers of the exact amount of compensation that they may potentially obtain <sup>(72)</sup>.

#### 4.1.2. Information to be provided in case of delay, denied boarding or cancellation

Article 14(2) of Regulation (EC) No 261/2004 provides that an operating air carrier denying boarding or cancelling a flight must provide each passenger affected with a written notice setting out the rules for compensation and assistance. It further states that the air carrier must ‘also provide each passenger affected by a delay of at least two hours with an equivalent notice’. The requirement to provide affected passengers with a detailed written explanation of their rights thus explicitly applies to cases of denied boarding, cancellation and delay. However, considering that a delay can be suffered at departure but can also materialise at the final destination, the operating air carrier should also seek to inform passengers affected by a delay of at least 3 hours at their final destination. Only in this way can each passenger be properly informed in accordance with the express requirements of Article 14(2) <sup>(73)</sup>. Such an approach is fully compliant with the Court’s ruling in the *Sturgeon* case <sup>(74)</sup>, which established that passengers who suffer a delay of at least 3 hours must be treated in the same way as passengers whose flights are cancelled, for the purpose of the right to compensation under Article 7 of Regulation (EC) No 261/2004.

The requirement to provide information pursuant to Article 14(2) of Regulation (EC) No 261/2004 has no bearing on the information requirements of other provisions of EU law, in particular Article 8(2) of Directive 2011/83/EU of the European Parliament and of the Council <sup>(75)</sup> and Article 7(4) of Directive 2005/29/EC. Omitting material information and providing misleading information on the rights of passengers may also constitute an unfair commercial business-to-consumer practice under Directive 2005/29/EC.

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<sup>(71)</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) (OJ L 149, 11.6.2005, p. 22, ELI: <http://data.europa.eu/eli/dir/2005/29/oj>).

<sup>(72)</sup> Joined Cases C-146/20, C-188/20, C-196/20 and C-270/20, *Azurair and Others*, ECLI:EU:C:2021:1038, paragraph 108.

<sup>(73)</sup> Information provided to passengers on the list of national enforcement bodies in the EU can refer to the Commission’s website, which contains all contact details of the national enforcement bodies.

<sup>(74)</sup> Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:C:2009:716, paragraph 69.

<sup>(75)</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64, ELI: <http://data.europa.eu/eli/dir/2011/83/oj>).

## 4.2. Right to reimbursement, re-routing or rebooking in the event of denied boarding or cancellation

Article 8(1) of Regulation (EC) No 261/2004 imposes on air carriers the obligation to offer passengers a triple choice, between the following:

- reimbursement of the ticket price <sup>(76)</sup> <sup>(77)</sup> and, in the case of connections, a return flight to the airport of departure at the earliest opportunity;
- re-routing to their final destination either at the earliest opportunity; or
- re-routing at a later date at the passenger's convenience under comparable transport conditions, subject to availability of seats.

If an operating air carrier has to offer the choice between reimbursement and re-routing, the air carrier must present the passengers concerned with comprehensive information on all the options concerning reimbursement and re-routing. Pursuant to Article 5(2) of Regulation (EC) No 261/2004, passengers must receive information on re-routing from the operating air carrier when informed of the cancellation. The passengers concerned are under no obligation to actively contribute to seeking the relevant information themselves <sup>(78)</sup>.

As a general principle, if the passenger is denied boarding or is informed about the cancellation of the flight and is correctly informed of the available options, the choice offered to passengers under Article 8(1) is to be made only once. In such cases, as soon as the passenger has chosen one of the three options under Article 8(1), points (a), (b) and (c), the air carrier no longer has any obligations linked to the other two options. Nonetheless, the obligation to pay compensation may still apply according to Article 5(1), point (c), read together with Article 7.

The air carrier should simultaneously offer the choice between reimbursement and re-routing. In the case of connecting flights, the air carrier should simultaneously offer the choice between reimbursement and a return flight to the airport of departure and re-routing. The air carrier has to bear the costs for re-routing or a return flight. If the air carrier does not comply with its obligation to offer re-routing or return under comparable transport conditions at the earliest opportunity, it must reimburse the costs for an alternative flight to the passenger's final destination or a return flight incurred by the passenger. The burden of proving that re-routing was performed at the earliest opportunity lies with the operating air carrier <sup>(79)</sup>. The same applies to the return flight to the first point of departure. If the air carrier does not offer the choice between reimbursement and re-routing and, in the case of connecting flights, reimbursement and a return flight to the airport of departure and

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<sup>(76)</sup> The ticket price is reimbursed for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan. In principle, if the passengers choose to return to their airport of departure, the part or parts of the journey already made no longer serve any purpose in relation to the original travel plan.

<sup>(77)</sup> The price of the ticket to be taken into consideration for the purposes of determining the reimbursement owed by the air carrier to a passenger in the event of cancellation of a flight includes the difference between the amount paid by that passenger and the amount received by the air carrier, which corresponds to a commission collected by a person acting as an intermediary between those two parties, unless that commission was set without the knowledge of the air carrier (Case C-601/17, *Harms*, ECLI:EU:C:2018:702, paragraph 20).

<sup>(78)</sup> Case C-354/18, *Rusu*, ECLI:EU:C:2019:637, paragraph 56.

<sup>(79)</sup> Case C-354/18, *Rusu*, ECLI:EU:C:2019:637, paragraph 62.

re-routing, but decides unilaterally to reimburse the passenger, the passenger is entitled to a further reimbursement of the price difference with the new ticket under comparable transport conditions.

If the booking was made through a third party, such as a booking platform, the onus is on the air carrier, in the event of cancellation of a flight, to offer assistance to the passengers concerned such as offering them reimbursement of the ticket, at the price at which it was bought, and, where necessary, a return flight to the first point of departure <sup>(80)</sup>.

However, if an air carrier can demonstrate that it has contacted the passengers who have accepted to give their personal contact details, and that it has sought to provide the assistance required by Article 8, but the passengers have nonetheless made their own assistance or re-routing arrangements, then the air carrier may conclude that it is not responsible for any additional costs the passengers have incurred and may decide not to reimburse them.

As regards the form in which the reimbursement is to be made, the structure of Article 7(3) shows that the reimbursement of the cost of the ticket is made, primarily, by a sum of money. By contrast, reimbursement in travel vouchers and/or other services is presented as a subsidiary means of reimbursement, since it is subject to the supplementary condition of the ‘signed agreement of the passenger’ <sup>(81)</sup>.

In this connection, the Court has clarified that the concept of ‘agreement’ is to be understood, in accordance with its usual meaning, as free and informed consent. Therefore, in the context of Article 7(3), this concept requires the passengers’ free and informed consent to obtaining reimbursement of the cost of their ticket in the form of a travel voucher <sup>(82)</sup>.

Concerning the term ‘signed agreement’, the Court has also clarified that there does not necessarily have to be a handwritten or digital signature of the passenger if the passengers concerned have received the clear and full information enabling them to make an effective and informed choice and to give free and informed consent to the reimbursement of the cost of their ticket by a travel voucher rather than by a sum of money. If these conditions are met, the ‘signed agreement’ can be deemed to have been given if the passenger has filled in the relevant part of an online form on the website of the air carrier <sup>(83)</sup>.

If passengers are offered the option of continuation or re-routing of a journey, this must be ‘under comparable transport conditions’. Whether transport conditions are comparable can depend on a number of factors and must be decided on a case-by-case basis. Depending on the circumstances, the following good practices are recommended:

- (a) if possible, passengers should not be downgraded to transport facilities of a lower class compared with the one on the reservation (in the event of downgrading, the compensation provided for in Article 10 applies);

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<sup>(80)</sup> Case C-601/17, *Harms*, ECLI:EU:C:2018:702, paragraph 12.

<sup>(81)</sup> Case C-76/23, *Cobult*, ECLI:EU:C:2024:253, paragraph 20.

<sup>(82)</sup> Case C-76/23, *Cobult*, ECLI:EU:C:2024:253, paragraph 22.

<sup>(83)</sup> Case C-76/23, *Cobult*, ECLI:EU:C:2024:253, paragraphs 29, 34 and 37.



(b) 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;

(c) reasonable efforts are to be made to avoid additional connections;

(d) when using another air carrier or an alternative mode of transport for the part of the journey not completed as planned, the total travel time should be as close as reasonably possible to the scheduled travel time of the original journey, in the same class of carriage or a higher one if necessary;

(e) 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; and

(f) if assistance for people with a disability or reduced mobility was booked for the original journey, such assistance should also be available on the alternative route.

In order for the operating air carrier to be exempted from its obligation to pay compensation under Article 7, it must deploy all the resources at its disposal to ensure reasonable, satisfactory and timely re-routing, including seeking alternative direct or indirect flights that may be operated by other air carriers, whether or not belonging to the same airline alliance, arriving at a scheduled time that is not as late as the next flight of the air carrier concerned<sup>(84)</sup>. An air carrier can only be considered to have deployed all the resources at its disposal by re-routing the passenger concerned on the next flight operated by it if there are no seats available on another direct or indirect flight enabling the passengers concerned to reach their final destination at a time that is not as late as the next flight of the air carrier concerned, or if the implementation of such re-routing constitutes an intolerable sacrifice for the air carrier concerned in the light of the capacities of its undertaking at the relevant time<sup>(85)</sup>.

If the re-routed flight accepted under Article 8(1), point (b) or (c), is also cancelled or delayed at arrival by at least 3 hours, a new right to compensation under Article 7 arises<sup>(86)</sup>. The Commission recommends that options be clearly spelled out to passengers if assistance is to be provided.

If a passenger has booked an outbound flight and a return flight separately with different air carriers and the outbound flight is cancelled, reimbursement is due for this flight only. However, in the case of two flights that are part of the same contract but still operated by different air carriers, in addition to their right to compensation from the operating air carrier, passengers should be offered two options in the event of cancellation of the outbound flight:

- a) to be reimbursed for the whole ticket (i.e. both flights); or
- b) to be re-routed on another flight for the outbound flight.

Lastly, in the very specific setting of the repatriation of stranded passengers during the outbreak of the COVID-19 pandemic, the Court has ruled that a repatriation flight

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<sup>(84)</sup> Case C-74/19, *Transportes Aéreos Portugueses*, ECLI:EU:C:2020:460, paragraph 59.

<sup>(85)</sup> Case C-74/19, *Transportes Aéreos Portugueses*, ECLI:EU:C:2020:460, paragraph 61.

<sup>(86)</sup> Case C-832/18, *Finnair*, ECLI:EU:C:2020:204, paragraphs 31 and 33.

organised by a Member State in the context of consular assistance, following the cancellation of a flight, does not constitute ‘re-routing, under comparable transport conditions, to [the] final destination’, within the meaning of Article 8(1), point (b), of Regulation (EC) No 261/2004, which must be offered by the operating air carrier to the passenger whose flight has been cancelled. Thus a passenger who is required to pay a compulsory contribution to the costs incurred by the Member State concerned does not have a right to reimbursement of this contribution at the expense of the operating air carrier on the basis of Regulation (EC) No 261/2004 <sup>(87)</sup>.

By contrast, in order to obtain compensation from the operating air carrier concerned, such a passenger may invoke before a national court the failure of the operating air carrier to comply, firstly, with its obligation to reimburse the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made or no longer serving any purpose in relation to the passenger’s original travel plan, and, secondly, with its obligation to provide assistance, including its duty to provide information under Article 8(1) of Regulation (EC) No 261/2004. Such compensation must nevertheless be limited to what, in the light of the specific circumstances of each case, proves necessary, appropriate and reasonable to remedy the shortcomings of that operating air carrier <sup>(88)</sup>.

### **4.3. Right to care in the event of denied boarding, cancellation or delay at departure**

#### *4.3.1. Concept of right to care*

If passengers, following an incident of denied boarding, cancellation or delay at departure, agree with the air carrier on re-routing at a later date at their own convenience (Article 8(1), point (c)), the right to care ends. In fact, the right to care subsists only as long as passengers have to wait for re-routing, under comparable transport conditions, to their final destination at the earliest opportunity (Article 8(1), point (b)), or a return flight (Article 8(1), point (a), second indent).

#### *4.3.2. Provision of meals, refreshments and accommodation*

The intention of Regulation (EC) No 261/2004 is to ensure that the needs of passengers waiting for their return flight or re-routing are appropriately taken care of. The extent of appropriate care will have to be assessed on a case-by-case basis, with due regard to the needs of passengers in the relevant circumstances and the principle of proportionality (i.e. according to the waiting time). The price paid for the ticket or the temporary nature of the inconvenience suffered should not interfere with the right to care.

With regard to Article 9(1), point (a), on meals and refreshments, the Commission considers the expression ‘in a reasonable relation to the waiting time’ to mean that operating air carriers should provide passengers with appropriate care corresponding to the expected length of the delay and the time of day (or night) at which it occurs, including at the transfer airport in the case of connecting flights, in order to reduce the inconvenience suffered by the passengers as much as possible, while bearing in mind the principle of proportionality. Particular attention has to be given to the needs of people with a disability or reduced mobility and unaccompanied children.

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<sup>(87)</sup> Case C-49/22, *Austrian Airlines*, ECLI:EU:C:2023:454, paragraph 33.

<sup>(88)</sup> Case C-49/22, *Austrian Airlines*, ECLI:EU:C:2023:454, paragraph 50.

Furthermore, passengers should be offered care free of charge in a clear and accessible way, including, where possible, via electronic means of communication. This means that passengers should not be left to make arrangements themselves, e.g. finding and paying for accommodation or food. Instead, operating air carriers are obliged to actively offer care. Operating air carriers should also ensure, where available, that accommodation is accessible for people with a disability and their service dogs.

If care has not been offered even though it should have been, passengers who have had to pay for meals and refreshments, hotel accommodation, transport between the airport and the place of accommodation and/or telecommunication services can obtain reimbursement of the expenses incurred from the air carrier, if these were necessary, reasonable and appropriate <sup>(89)</sup>.

If passengers reject the air carrier's reasonable care that has to be offered under Article 9 and make their own arrangements, the air carrier is not obliged to reimburse the expenses incurred by the passenger, unless provided otherwise under national law or agreed beforehand by the air carrier. In order to provide equal treatment between passengers, such reimbursement can never exceed the value of the aforementioned 'reasonable offer' of the air carrier. Passengers should also retain all receipts for the expenses incurred.

In any event, passengers who feel that they are entitled to have more of their expenses reimbursed or to obtain compensation for damage suffered as a result of a delay, including expenses, retain the right to base their claims on the provisions of the Montreal Convention as well as Article 3 of Regulation (EC) No 2027/97, and to take the air carrier to a national court or address themselves to the competent national enforcement body. In some Member States, passengers may have to turn to entities that provide alternative dispute resolution for consumer disputes (see Section 7.3).

Regarding the obligation to offer hotel accommodation free of charge, the Court has clarified that the wording 'shall be offered free of charge ... hotel accommodation' reflects the desire of the EU legislature to prevent passengers concerned from having to bear the burden of finding a hotel room and of paying the costs of this room themselves, as these passengers must be cared for by the air carrier, which must make the necessary arrangements for this purpose. However, it does not expressly follow from the wording of this provision that beyond the obligation to care for passengers, the EU legislature wished to impose on air carriers the obligation to take care of the accommodation arrangements as such <sup>(90)</sup>, for instance by booking a specific room in the name of the passenger.

On a similar line, the Court has stated that in the case of an incident at the hotel, the air carrier cannot be required, on the basis of Regulation (EC) No 261/2004 alone, to compensate a passenger for damage caused by fault on the part of employees of the hotel in which the accommodation is provided <sup>(91)</sup>.

It should be borne in mind that according to recital 18 of Regulation (EC) No 261/2004, care may be limited or declined if its provision would itself cause further delay to passengers awaiting an alternative or a delayed flight. If a flight is delayed late in the evening but can be expected to depart within a few hours and if dispatching passengers to hotels and bringing them back to the airport in the middle of the night could lead to a much

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<sup>(89)</sup> Case C-12/11, *McDonagh*, ECLI:EU:C:2013:43, paragraph 66.

<sup>(90)</sup> Case C-530/19, *Niki Luftfahrt*, ECLI:EU:C:2020:635, paragraph 24.

<sup>(91)</sup> Case C-530/19, *Niki Luftfahrt*, ECLI:EU:C:2020:635, paragraph 40.

longer delay, the air carrier should be allowed to decline to provide hotel accommodation and corresponding transfers. Similarly, if an air carrier is about to give vouchers for food and drinks but is informed that the flight is ready for boarding, it should be allowed to decline to provide this care. Apart from these cases, the Commission is of the opinion that this limitation is to be applied only in very exceptional cases, as every effort should be made to reduce the inconvenience suffered by passengers.

The right to care under Regulation (EC) No 261/2004 has no bearing on the obligations of organisers of packages under Directive (EU) 2015/2302.

#### *4.3.3. Care in extraordinary circumstances or exceptional events*

According to Regulation (EC) No 261/2004, the air carrier is obliged to fulfil the obligation of care even if the cancellation of a flight is caused by extraordinary circumstances, that is to say circumstances that could not have been avoided even if all reasonable measures had been taken. Regulation (EC) No 261/2004 contains nothing that would allow the conclusion to be drawn that it recognises a separate category of ‘particularly extraordinary’ events – beyond the extraordinary circumstances referred to in Article 5(3) – that would lead to the air carrier being exempted from all its obligations, including those under Article 9 of this Regulation, even in the case of extraordinary circumstances that persist over a long time, particularly since passengers are especially vulnerable in such circumstances and events <sup>(92)</sup>.

In exceptional events, the intention of Regulation (EC) No 261/2004 is to ensure that appropriate care is provided in particular to passengers waiting for re-routing under Article 8(1), point (b). However, penalties should not be imposed on airlines if they can prove that they have used their best endeavours to comply with their obligations under Regulation (EC) No 261/2004 taking into consideration the particular circumstances linked to the events and the principle of proportionality.

### **4.4. Right to compensation in the event of denied boarding, cancellation, delay at arrival and re-routing, and reimbursement for downgrading**

#### **A. General**

The operating air carrier is required to inform the passengers of the precise name and address of the air carrier from which they may claim compensation and, where appropriate, to specify the documents that must be attached to their claim for compensation. However, the operating air carrier is not required to inform the passengers of the exact amount of compensation that they may potentially obtain <sup>(93)</sup>.

In the event of denied boarding against the passenger’s will, Article 4(3) specifically states that the passenger must be compensated ‘immediately’. This would mean that if the compensation is not paid on the spot, at least a payment commitment must be made before the passenger leaves the airport.

Passengers whose flights have been cancelled or subject to a long delay may demand payment of the amount of the compensation in the national currency of their place of residence. This precludes national legislation or case-law that results in the dismissal of an

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<sup>(92)</sup> Case C-12/11, *McDonagh*, ECLI:EU:C:2013:43, paragraph 30.

<sup>(93)</sup> Joined Cases C-146/20, C-188/20, C-196/20 and C-270/20, *Azurair and Others*, ECLI:EU:C:2021:1038, paragraph 108.

action brought for this purpose on the sole ground that the claim was expressed in the national currency of the passenger's place of residence <sup>(94)</sup>.

## **B. Compensation in the event of denied boarding**

### *4.4.1. Compensation, denied boarding and exceptional circumstances*

Article 2, point (j), and Article 4(3) of Regulation (EC) No 261/2004 must be interpreted as meaning that compensation is always due in the event of denied boarding and air carriers cannot validly justify an instance of denied boarding and be exempted from paying compensation to passengers by invoking extraordinary circumstances <sup>(95)</sup>.

### *4.4.2. Compensation, denied boarding and connecting flights*

Passengers on connecting flights must be compensated if, travelling under a single contract of carriage with an itinerary involving directly connecting flights and a single check-in, they are denied boarding by an air carrier on the ground that the first flight included in their reservation has been subject to a delay attributable to this air carrier, who mistakenly expected these passengers not to arrive in time to board the second flight <sup>(96)</sup>. In contrast, if passengers have two separate tickets for two consecutive flights and delay of the first flight means that they are unable to check in on time for the following flight, air carriers are not obliged to pay compensation. However, if the delay of the first flight is over 3 hours, the passenger can be entitled to compensation from the air carrier operating this flight.

### *4.4.3. Amount of compensation*

The compensation is calculated in accordance with Article 7(1) of Regulation (EC) No 261/2004. It can be reduced by 50% if the conditions of Article 7(2) are fulfilled.

## **C. Compensation in the event of cancellation**

### *4.4.4. General case*

Compensation is due in the event of cancellation:

- if passengers are not informed sufficiently in advance, i.e. at least 2 weeks before the scheduled departure, and
- if they are not re-routed within the time limits set out in Article 5(1), point (c), of Regulation (EC) No 261/2004 (see Section E),
- unless the cancellation is caused by extraordinary circumstances that could not have been avoided even if all reasonable measures had been taken, in accordance with Article 5(3) (see Section 5 on extraordinary circumstances).

It is important to note that this compensation is to be distinguished from the compensation for long delay at arrival.

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<sup>(94)</sup> Case C-356/19, *Delfly*, ECLI:EU:C:2020:633, paragraph 34.

<sup>(95)</sup> Case C-22/11, *Finnair*, ECLI:EU:C:2012:604, paragraph 40.

<sup>(96)</sup> Case C-321/11, *Rodríguez Cachafeiro and Martínez-Reboredo Varela-Villamor*, ECLI:EU:C:2012:609, paragraph 36.

#### 4.4.5. *Amount of compensation*

The compensation is calculated in accordance with Article 7(1) of Regulation (EC) No 261/2004. It can be reduced by 50% if the conditions of Article 7(2) are fulfilled, i.e. if passengers are re-routed to their final destination after cancellation of their original flight and arrive there with a delay of not more than 2, 3 or 4 hours depending on the distance.

#### 4.4.6. *Obligation to inform passengers*

The operating air carrier still has to pay compensation if the passenger was not informed of a flight cancellation at least 2 weeks before the scheduled time of departure because the intermediary (e.g. travel agent, online travel agency) with whom the passenger had the contract of carriage did not pass on this information from the air carrier to the passenger in time, and the passenger did not expressly authorise the intermediary to receive the information sent by the operating air carrier<sup>(97)</sup>.

Similarly, the operating air carrier must pay the compensation provided for in Article 5(1), point (c), and Article 7 of Regulation (EC) No 261/2004 in the event of a flight cancellation of which the passenger was not informed at least 2 weeks before the scheduled time of departure, if this air carrier sent the information in good time to the only email address communicated to it in the course of the booking, without, however, being aware that this address could only be used to contact the travel agent through which the reservation had been made, and not the passenger directly, and that this travel agent did not send the information to the passenger in good time<sup>(98)</sup>, meaning at least 2 weeks before the scheduled time of departure.

### **D. *Compensation in the event of long delay at arrival***

#### 4.4.7. *'Long delays' at arrival*

As regards 'long delays', the Court has ruled that delayed passengers may suffer from a similar inconvenience as passengers whose flight is cancelled, consisting in a certain loss of time<sup>(99)</sup>. Based on the principle of equal treatment, passengers reaching their final destination with a delay of 3 hours or more are entitled to the same compensation (Article 7) as passengers whose flight is cancelled. The Court predominantly based its ruling on Article 5(1), point (c)(iii), of Regulation (EC) No 261/2004, in which the EU legislature attaches legal consequences, including the right to compensation, to situations in which passengers concerned by a flight cancellation are not offered re-routing allowing them to depart no more than 1 hour before the scheduled time of departure and to reach their final destination less than 2 hours after the scheduled time of arrival. The Court deduced from this that the right to compensation laid down in Article 7 of Regulation (EC) No 261/2004 aims to repair a loss of time of at least 3 hours. However, such a delay does not entitle passengers to compensation if the air carrier can prove that the long delay was caused by extraordinary circumstances that could not have been avoided even if all reasonable measures had been taken<sup>(100)</sup> (see Section 5 on extraordinary circumstances).

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<sup>(97)</sup> Case C-302/16, *Krijgsman*, ECLI:EU:C:2017:359, paragraph 31; Case C-263/20, *Airhelp*, ECLI:EU:C:2021:1039, paragraph 56.

<sup>(98)</sup> Case C-307/21, *Ryanair DAC*, ECLI:EU:C:2022:729, paragraph 30.

<sup>(99)</sup> Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:C:2009:716, paragraph 54.

<sup>(100)</sup> Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:C:2009:716, paragraph 69.

#### 4.4.8. *Compensation for long delay at arrival in the case of connecting flights*

The Court <sup>(101)</sup> takes the view that for the purposes of the compensation provided for in Article 7 of Regulation (EC) No 261/2004, a delay must be assessed in relation to the scheduled time of arrival at the passenger's final destination as defined in Article 2, point (h), of Regulation (EC) No 261/2004, which in the case of directly connecting flights must be understood as the destination of the last flight taken by the passenger.

In accordance with Article 3(1), point (a), of Regulation (EC) No 261/2004, passengers who missed a connection within the EU, or a connection outside the EU with a flight coming from an airport situated in the territory of a Member State, should be entitled to compensation, if they arrived at their final destination with a delay of more than 3 hours. Whether the air carrier operating the connecting flights is an EU air carrier or a non-EU air carrier is not relevant.

Missing connecting flights due to significant delays at security checks or passengers failing to respect the boarding time of their flight at their airport of transfer does not give entitlement to compensation.

In the case of connecting flights subject to a single reservation, compensation is not due if the air carrier transfers the passengers to a later flight for the first leg while still allowing them to board the second of their reserved flights in time <sup>(102)</sup>.

#### 4.4.9. *Compensation for long delay at arrival if a passenger accepts a flight to an airport alternative to that for which the booking was made*

If a passenger accepts a flight to an airport alternative to that for which the booking was made, compensation for long delay at arrival is due. The time of arrival to be used for calculating the delay is the actual time of arrival at the airport for which the booking was originally made or another close-by destination agreed with the passenger in accordance with Article 8(3) of Regulation (EC) No 261/2004 <sup>(103)</sup>. Costs incurred for the transport between the alternative airport and the airport for which the booking was originally made or another close-by destination agreed with the passenger are to be borne by the operating air carrier on its own initiative <sup>(104)</sup>. If the air carrier does not provide or offer this transport and the passengers have to make their own arrangements, the passengers have the right to reimbursement of the amounts incurred by them that, in the light of the specific circumstances of each case, stay within the limits of what is necessary, appropriate and reasonable <sup>(105)</sup>.

#### 4.4.10. *Amount of compensation*

It is important to point out that the compensation payable to a passenger under Article 7(1) of Regulation (EC) No 261/2004 may be reduced by 50% if the conditions laid down in Article 7(2) of the Regulation are met. Although Article 7(2) only refers to the re-routing

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<sup>(101)</sup> Case C-11/11, *Folkerts*, ECLI:EU:C:2013:106, paragraph 47.

<sup>(102)</sup> Case C-191/19, *Air Nostrum*, ECLI:EU:C:2020:339, paragraph 34.

<sup>(103)</sup> Case C-826/19, *Austrian Airlines*, ECLI:EU:C:2021:318, paragraph 49.

<sup>(104)</sup> Case C-826/19, *Austrian Airlines*, ECLI:EU:C:2021:318, paragraph 66.

<sup>(105)</sup> Case C-826/19, *Austrian Airlines*, ECLI:EU:C:2021:318, paragraph 73.

of passengers, the Court has found that the reduction in compensation should apply *mutatis mutandis* to passengers who suffer a long delay at arrival, of 3 hours or more <sup>(106)</sup>.

It follows that the compensation payable to a passenger whose flight is delayed by 3 hours or more, who reaches their final destination 3 hours or more after the arrival time originally scheduled, may be reduced by 50%, if the delay is less than 4 hours <sup>107</sup>.

In other words, if the delay at arrival is more than 3 and less than 4 hours for a journey of more than 3 500 km, the compensation can be reduced by 50% and therefore amounts to EUR 300 in accordance with Article 7(2) of Regulation (EC) No 261/2004.

However, if a flight has been brought forward an amount of time that gives rise to a right to compensation pursuant to Article 7, the operating air carrier is still required to pay the full amount. It does not have the possibility to reduce any compensation to be paid by 50% on the ground that it has offered the passengers re-routing, allowing them to arrive without delay at their final destination <sup>(108)</sup>.

#### 4.4.11. *Calculation of the distance on the basis of the ‘journey’ to determine the compensation in the event of long delay at the final destination*

The *Folkerts* case <sup>(109)</sup> explicitly referred to the concept of a ‘journey’ composed of several connecting flights. Article 2, point (h), of Regulation (EC) No 261/2004 defines the ‘final destination’ as the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight. According to Article 7(4) of Regulation (EC) No 261/2004, the distance that determines the compensation to be paid in case of long delay at the final destination should be based on the ‘great circle’ distance between the place of departure and the final destination, i.e. the ‘journey’, and not by adding up the ‘great circle’ distances between the different relevant connecting flights of which the ‘journey’ is composed <sup>(110)</sup>.

This rule for calculating the distance applies even if there was only a delay on the second leg, or if the long delay at arrival was caused by a cancellation of the second leg, which was to be operated by an air carrier other than the one with which the passenger concerned concluded the contract of carriage <sup>(111)</sup>. The same reasoning would apply to flights consisting of more than two legs.

### **E. Compensation in the event of re-routing**

#### 4.4.12. *Requirement to re-route passengers in good time*

Under Article 5(1), point (c), operating air carriers are not required to pay compensation under Article 7 if they re-route passengers as follows:

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<sup>(106)</sup> Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:C:2009:716, paragraph 63.

<sup>(107)</sup> Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:C:2009:716, paragraph 63.

<sup>(108)</sup> Joined Cases C-146/20, C-188/20, C-196/20 and C-270/20, *Azurair and Others*, ECLI:EU:C:2021:1038, paragraph 94.

<sup>(109)</sup> Case C-11/11, *Folkerts*, ECLI:EU:C:2013:106, paragraph 18.

<sup>(110)</sup> Case C-559/16, *Bossen*, ECLI:EU:C:2017:644, paragraph 33.

<sup>(111)</sup> Case C-939/19, *flightright*, ECLI:EU:C:2020:316, paragraph 22; Case C-592/20, *British Airways*, ECLI:EU:C:2021:312, paragraph 36.



- if passengers are informed between 2 weeks and 7 days before the scheduled departure, re-routing must allow them to depart no more than 2 hours before the original scheduled time of departure and to reach their final destination less than 4 hours after the original scheduled time of arrival;

- if passengers are informed less than 7 days before the scheduled departure, re-routing must allow them to depart no more than 1 hour before the original scheduled time of departure and to reach their final destination less than 2 hours after the original scheduled time of arrival <sup>(112)</sup>.

#### 4.4.13. *Re-routing and arrival more than 2 hours after the scheduled arrival time but less than 3 hours*

The Court has confirmed that passengers who are informed of the cancellation of their flight less than 7 days before the scheduled time of departure are entitled to the compensation referred to in Article 5(1), point (c), if the re-routing offered by the air carrier enabled them to reach the final destination more than 2 hours but less than 3 hours after the scheduled time of arrival of the cancelled flight <sup>(113)</sup>.

However, if passengers re-route themselves, because they have been informed or have sufficient evidence that their flight will arrive at its destination with a long delay, they are not eligible for compensation if they reach their final destination (with the new flight) with a delay of less than 3 hours after the scheduled arrival time of their originally booked flight <sup>(114)</sup>.

### **F. *Reimbursement in the event of downgrading***

#### 4.4.14. *Calculation of the amount*

In accordance with Article 10 of Regulation (EC) No 261/2004, reimbursement is payable only for the flight on which the passenger has been downgraded and not for the whole journey included in a single ticket, which may include two or more connecting flights. The aforementioned reimbursement should be paid within 7 days.

### **G. *Further compensation***

Article 7 of Regulation (EC) No 261/2004 provides for standardised fixed compensation. Article 12 underlines that the provisions of Regulation (EC) No 261/2004 do not rule out a passenger's right to additional compensation. The Court has ruled that the concept of 'further compensation' allows a national court to award compensation, under the conditions provided for by the Montreal Convention or national law, for damage, including non-material damage, arising from breach of a contract of carriage by air <sup>(115)</sup>. A national court may deduct the compensation granted under Regulation (EC) No 261/2004 from further compensation but is not required to do so <sup>(116)</sup>.

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<sup>(112)</sup> Case C-130/18, *flightright GmbH*, ECLI:EU:C:2018:496, paragraph 23.

<sup>(113)</sup> Case C-130/18, *flightright GmbH*, ECLI:EU:C:2018:496, paragraph 23.

<sup>(114)</sup> Case C-54/23, *WY v Laudamotion GmbH and Ryanair DAC*, ECLI:EU:C:2024:74, paragraph 24.

<sup>(115)</sup> Case C-83/10, *Sousa Rodríguez and Others*, ECLI:EU:C:2011:652, paragraph 46.

<sup>(116)</sup> Case C-354/18, *Rusu*, ECLI:EU:C:2019:637, paragraph 47.

‘Further compensation’ as referred to in Article 12 of Regulation (EC) No 261/2004 can also comprise compensation from a tour operator on the basis of a right to price reduction under national law <sup>(117)</sup>.

## 5. EXTRAORDINARY CIRCUMSTANCES

### 5.1. Principle

In accordance with Article 5(3) of Regulation (EC) No 261/2004, an air carrier is exempted from paying compensation in the event of cancellation or long delay at arrival if it can prove that the cancellation or delay is caused by extraordinary circumstances that could not have been avoided even if all reasonable measures had been taken.

In order to be exempted from paying compensation, the air carrier must simultaneously prove:

- (a) the existence of extraordinary circumstances and the link between these circumstances and the delay or the cancellation; and
- (b) the fact that this delay or cancellation could not have been avoided even though the air carrier took all reasonable measures (see Section 5.3).

A given extraordinary circumstance can produce more than one cancellation or delay at final destination, such as in the case of an air traffic management decision as referred to in recital 15 of Regulation (EC) No 261/2004.

As a derogation from the main rule – i.e. the payment of compensation, which reflects the objective of consumer protection – the exemption in Article 5(3) must be interpreted strictly <sup>(118)</sup>. Therefore, all extraordinary circumstances surrounding events such as those listed in recital 14 of Regulation (EC) No 261/2004 – i.e. political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier – are not necessarily grounds for an exemption from the obligation to pay compensation, but require a case-by-case assessment <sup>(119)</sup>.

The Court has developed two cumulative conditions for the classification of events as extraordinary circumstances, which have been consistently applied throughout its case-law:

- (a) by its nature or origin, the event must not be inherent in the normal exercise of the activity of the air carrier concerned; and
- (b) by its nature or origin, the event must be outside that air carrier’s actual control <sup>(120)</sup>.

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<sup>(117)</sup> Case C-153/19, *DER Touristik GmbH*, ECLI:EU:C:2020:412, paragraph 36.

<sup>(118)</sup> Case C-549/07, *Wallentin-Hermann*, ECLI:EU:C:2008:771, paragraph 17, and the case-law cited.

<sup>(119)</sup> Case C-549/07, *Wallentin-Hermann*, ECLI:EU:C:2008:771, paragraph 22.

<sup>(120)</sup> Case C-549/07, *Wallentin-Hermann*, ECLI:EU:C:2008:771, paragraph 23; Case C-12/11, *McDonagh*, ECLI:EU:C:2013:43, paragraph 29; Case C-257/14, *van der Lans*, ECLI:EU:C:2015:618, paragraph 36; and later cases.

Air carriers may provide as proof extracts from logbooks or incident reports, or external documents and statements. If an air carrier refers to such proof in its reply to a passenger's claim or to the national enforcement body, it should include this proof in its reply. If the air carrier seeks to rely on the defence of extraordinary circumstances, such proof should be provided free of charge by the air carrier to the national enforcement body and the passengers in line with national provisions on access to documents.

## 5.2. 'Internal' and 'external' events

### 5.2.1. *Concept*

The Court has consistently held in its case-law relating to the concept of extraordinary circumstances within the meaning of Article 5(3) of Regulation (EC) No 261/2004 that events whose origin is 'internal' must be distinguished from those whose origin is 'external' to the operating air carrier <sup>(121)</sup>.

'External' events result from external circumstances that are more or less frequent in practice but which the air carrier does not control because they arise from a natural event or an act of a third party, such as another air carrier or a public or private operator interfering with flight or airport activity <sup>(122)</sup>. 'External' events generally qualify as extraordinary circumstances.

Events that are not 'external' should be qualified as 'internal' to the operating air carrier and thus are not extraordinary circumstances.

### 5.2.2. *'Internal' events*

#### – *Technical defects of the aircraft*

The Court <sup>(123)</sup> has clarified further that a technical problem that comes to light during aircraft maintenance or is caused by failure to maintain an aircraft cannot be regarded as extraordinary circumstances. The Court takes the view that even if a technical problem that has occurred unexpectedly is not attributable to poor maintenance and is not detected during routine maintenance checks, it does not fall within the definition of extraordinary circumstances if it is inherent in the normal exercise of the activity of the air carrier.

For instance, a breakdown caused by the premature malfunction of certain components of an aircraft may constitute an unexpected event. Nevertheless, such a breakdown remains intrinsically linked to the very complex operating system of an aircraft, which is operated by the air carrier in conditions – particularly meteorological conditions – that are often difficult or even extreme, it being understood, moreover, that no component of an aircraft lasts forever. Therefore, it must be held that such an unexpected event is inherent in the normal exercise of the air carrier's activity <sup>(124)</sup>.

The same holds true, in principle, for the failure of a part that is only replaced by a new part when it becomes defective (an 'on condition' part) <sup>(125)</sup>.

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<sup>(121)</sup> The Court made this distinction for the first time in Case C-28/20, *Airhelp Ltd*, ECLI:EU:C:2021:226, paragraph 39.

<sup>(122)</sup> Case C-28/20, *Airhelp Ltd*, ECLI:EU:C:2021:226, paragraph 41.

<sup>(123)</sup> Case C-549/07, *Wallentin-Hermann*, ECLI:EU:C:2008:771, paragraph 25.

<sup>(124)</sup> Case C-257/14, *van der Lans*, ECLI:EU:C:2015:618, paragraphs 40, 41 and 42.

<sup>(125)</sup> Case C-832/18, *Finnair*, ECLI:EU:C:2020:204, paragraph 43.

However, 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 would qualify as extraordinary circumstances. This holds true even if the manufacturer has informed the air carrier of the existence of the defect several months before the flight <sup>(126)</sup>.

– *Mobile boarding stairs*

The Court <sup>(127)</sup> has clarified that the collision of mobile boarding stairs with an aircraft cannot be considered as extraordinary circumstances exempting the air carrier from payment of compensation under Article 5(3) of Regulation (EC) No 261/2004. Mobile stairs or gangways can be regarded as indispensable to air passenger transport, and therefore air carriers are regularly faced with situations arising from the use of such equipment. A collision between an aircraft and a set of mobile boarding stairs is, hence, an internal event, inherent in the normal exercise of the activity of the air carrier. Extraordinary circumstances would apply, for example, when damage to the aircraft is due to an act external to the airport's normal services, such as an act of terrorism or sabotage.

– *Unexpected absence of crew members*

If a crew member whose presence is essential to the operation of a flight is unexpectedly absent shortly before the scheduled departure of this flight due to illness or even unexpected death, this does not fall within the concept of extraordinary circumstances within the meaning of Article 5(3) of Regulation (EC) No 261/2004 <sup>(128)</sup>.

– *Strikes by airline staff*

The Court has ruled that strikes by the staff of an operating air carrier cannot be qualified as an extraordinary circumstance if this strike is connected to demands relating to the employment relationship between the air carrier and its staff, such as in the case of pay negotiations <sup>(129)</sup>.

This finding also applies to strikes organised by trade unions <sup>(130)</sup> and 'wildcat strikes' called by airline staff following the surprise announcement of a restructuring of an air carrier <sup>(131)</sup>. A strike by the staff of an operating air carrier in solidarity with strike action launched against the parent company of this air carrier is also not covered by the concept of extraordinary circumstances <sup>(132)</sup>.

Strike measures taken to enforce the claims of these workers at the parent company do not fall within the concept of extraordinary circumstances within the meaning of Article 5(3) of Regulation (EC) No 261/2004; whether there were prior negotiations with employees' representatives is irrelevant in this regard <sup>(133)</sup>.

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<sup>(126)</sup> Case C-411/23, *D.*, ECLI:EU:C:2024:498, paragraph 42; see also case C-385/23, *Finnair*, ECLI:EU:C:2024:497, paragraphs 37 and 39.

<sup>(127)</sup> Case C-394/14, *Siewert*, ECLI:EU:C:2014:2377, paragraphs 19 and 20.

<sup>(128)</sup> Joined Cases C-156/22, C-157/22 and C-158/22, *TAP Portugal*, ECLI:EU:C:2023:393, paragraph 26.

<sup>(129)</sup> Case C-28/20, *Airhelp Ltd*, ECLI:EU:C:2021:226, paragraph 37.

<sup>(130)</sup> Case C-28/20, *Airhelp Ltd*, ECLI:EU:C:2021:226, paragraph 44.

<sup>(131)</sup> Case C-195/17, *Krüsemann and Others*, ECLI:EU:C:2018:258, paragraph 48.

<sup>(132)</sup> Case C-613/20, *Eurowings*, ECLI:EU:C:2021:820, paragraph 34.

<sup>(133)</sup> Case C-287/20, *Ryanair DAC*, ECLI:EU:C:2022:1, paragraph 33.

If, however, such a strike originates from demands that only the public authorities can satisfy and that, accordingly, are beyond the actual control of the air carrier concerned, it is capable of constituting an extraordinary circumstance <sup>(134)</sup>.

### 5.2.3. *'External' events*

In various cases, the Court has assessed situations arising from natural events or acts of third parties. These events can generally be qualified as extraordinary circumstances.

Some examples are set out below.

#### *a) Bird strike*

A collision between an aircraft and a bird as well as any damage caused by such a collision are not intrinsically linked to the operation of the aircraft. They are not by their nature or origin inherent in the normal exercise of the activity of the air carrier concerned and are therefore outside its actual control. Accordingly, such a collision may be classified as an extraordinary circumstance <sup>(135)</sup>.

The Court has also clarified that it is irrelevant whether the collision actually caused damage to the aircraft concerned. The objective of ensuring a high level of protection for air passengers pursued by Regulation (EC) No 261/2004, as specified in its recital 1, means that air carriers must not be encouraged to refrain from taking the measures necessitated by such an incident by prioritising the maintaining and punctuality of their flights over the objective of safety <sup>(136)</sup>.

In another case, the Court has found that the interruption of the take-off phase of an aircraft caused by a bird strike and resulting in an emergency braking manoeuvre damaging the aircraft's tyres falls within the concept of extraordinary circumstances within the meaning of Article 5(3) of Regulation (EC) No 261/2004 <sup>(137)</sup>.

#### *b) Collision with other aircrafts or airport vehicles*

A collision of an aircraft in a parking position with an aircraft of another airline caused by the movement of the aircraft of the other airline falls within the concept of extraordinary circumstances <sup>(138)</sup>.

A technical failure of an aircraft parked at the airport caused by a collision of a catering vehicle belonging to a third party with the aircraft is also capable of falling within the concept of extraordinary circumstances <sup>(139)</sup>.

#### *c) Damage to the aircraft caused by a foreign object*

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<sup>(134)</sup> Case C-28/20, *Airhelp Ltd*, ECLI:EU:C:2021:226, paragraph 45.

<sup>(135)</sup> Case C-315/15, *Pešková and Peška*, ECLI:EU:C:2017:342, paragraph 24.

<sup>(136)</sup> Case C-315/15, *Pešková and Peška*, ECLI:EU:C:2017:342, paragraph 25.

<sup>(137)</sup> Case C-302/22, *Freebird Airlines Europe Ltd.*, ECLI:EU:C:2022:748, paragraph 23.

<sup>(138)</sup> Case C-264/20, *Airhelp*, ECLI:EU:C:2021:26, paragraph 26.

<sup>(139)</sup> Case C-659/21, *Orbest*, ECLI:EU:C:2022:254, paragraph 27.

Damage to an aircraft caused by a foreign object, such as loose debris, lying on an airport runway falls within the notion of extraordinary circumstances <sup>(140)</sup>.

*d) Petrol on the runway*

The presence of petrol on a runway resulting in the closure of the airport and, consequently, the significant delay of a flight to or from this airport is covered by the concept of extraordinary circumstances if the petrol in question does not come from an aircraft of the air carrier operating the flight <sup>(141)</sup>.

*e) Breakdown of the aircraft refuelling system*

If the airport of origin of the flight or aircraft concerned is responsible for the aircraft refuelling system, a generalised breakdown in the supply of fuel can be regarded as an extraordinary circumstance <sup>(142)</sup>.

*f) Unruly passengers; medical emergencies*

If the unruly behaviour of a passenger causes the pilot in command of the aircraft to divert the flight concerned to an airport other than the airport of arrival in order to disembark this passenger or passengers and their baggage, this falls within the concept of extraordinary circumstances, unless the operating air carrier contributed to the occurrence of this behaviour or failed to take appropriate measures in view of the warning signs of such behaviour <sup>(143)</sup>.

In addition, the removal of a passenger from the aircraft due to a medical emergency would be covered by the concept of extraordinary circumstances.

*g) Volcano eruption*

Circumstances such as the closure of part of European airspace as a result of the eruption of the Eyjafjallajökull volcano constitute extraordinary circumstances within the meaning of Regulation (EC) No 261/2004 <sup>(144)</sup>.

*h) Airport congestion due to bad weather conditions*

In accordance with recital 14 of Regulation (EC) No 261/2004, the case of an operating air carrier being obliged to delay or cancel a flight at a congested airport due to bad weather conditions, including if these conditions result in capacity shortages, would stem from extraordinary circumstances.

*i) External strikes*

Strikes that are external to the activity of an air carrier, such as strike action taken by air traffic controllers or airport staff, may constitute extraordinary circumstances given that

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<sup>(140)</sup> Case C-501/17, *Germanwings*, ECLI:EU:C:2019:288, paragraph 34.

<sup>(141)</sup> Case C-159/18, *Moens*, ECLI:EU:C:2019:535, paragraph 22.

<sup>(142)</sup> Case C-308/21, *SATA International – Azores Airlines*, ECLI:EU:C:2022:533, paragraph 28.

<sup>(143)</sup> Case C-74/19, *Transport Aéreos Portugueses*, ECLI:EU:C:2020:460, paragraph 48.

<sup>(144)</sup> Case C-12/11, *McDonagh*, ECLI:EU:C:2013:43, paragraph 34.

such external strike action does not fall within the exercise of the air carrier's activity and is thus beyond its actual control <sup>(145)</sup>.

*j) Shortage of staff providing baggage loading services*

A situation where there is an insufficient number of staff of the airport operator responsible for the operations of loading baggage onto planes may constitute an extraordinary circumstance <sup>(146)</sup>.

**5.3. Reasonable measures an air carrier can be expected to take in extraordinary circumstances**

Whenever extraordinary circumstances arise, an air carrier must, in order to be released from the obligation to pay compensation, show that it could not have avoided them even if it had taken all reasonable measures to this effect.

In other words, if such circumstances do arise, it is incumbent on the operating air carrier to demonstrate that it adopted measures appropriate to the situation, deploying all its resources in terms of staff or equipment and the financial means at its disposal in order to avoid the delay or cancellation of the flight in question. However, it cannot be required to make sacrifices that are intolerable in the light of its capacities at the relevant time <sup>(147)</sup>.

Furthermore, the Court <sup>(148)</sup> has found that under Article 5(3) of Regulation (EC) No 261/2004, an air carrier can be required to organise its resources in good time so that it is possible to operate a programmed flight once the extraordinary circumstances have ceased, that is to say, during a certain period following the scheduled departure time. In particular, the air carrier should provide for a certain buffer time to allow it, if possible, to operate the flight in its entirety once the extraordinary circumstances have come to an end. Such buffer time is assessed on a case-by-case basis.

However, Article 5(3) cannot be interpreted as requiring, as a 'reasonable measure', provision to be made, generally and without distinction, for a minimum buffer time applicable in the same way to all air carriers in all situations if extraordinary circumstances arise. In this regard, air carriers will generally have more resources available at their home base compared to outbound destinations, giving them more possibilities to limit the impact of extraordinary circumstances. The assessment of the air carrier's ability to operate the programmed flight in its entirety in the new conditions resulting from the occurrence of extraordinary circumstances must be carried out in such a way as to ensure that the length of the required buffer time does not result in the air carrier being led to make intolerable sacrifices in the light of the capacities of its undertaking at the relevant time <sup>(149)</sup>.

As regards technical defects, the fact that an air carrier has complied with the minimum rules on maintenance of an aircraft cannot in itself suffice to establish that this air carrier has taken all reasonable measures to relieve it of its obligation to pay compensation <sup>(150)</sup>.

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<sup>(145)</sup> Case C-28/20, *Airhelp Ltd*, ECLI:EU:C:2021:226, paragraphs 42 and 43.

<sup>(146)</sup> Case C-405/23, *Touristic Aviation Services Limited*, ECLI:EU:C:2024:408, paragraph 30.

<sup>(147)</sup> Case C-74/19, *Transportes Aéreos Portugueses*, EU:C:2020:460, paragraph 36, and the case-law cited.

<sup>(148)</sup> Case C-294/10, *Eglītis and Ratnieks*, ECLI:EU:C:2011:303, paragraph 37.

<sup>(149)</sup> Case C-264/20, *Airhelp*, ECLI:EU:C:2021:26, paragraph 33.

<sup>(150)</sup> Case C-549/07, *Wallentin-Hermann*, ECLI:EU:C:2008:771, paragraph 43.

#### **5.4. Extraordinary circumstances on a previous flight with the same aircraft**

In order to be exempted from its obligation to compensate passengers in the event of a long delay or cancellation of a flight, an operating air carrier may rely on an extraordinary circumstance that affected a previous flight which it operated using the same aircraft, if there is a direct causal link between the occurrence of this circumstance and the delay or cancellation of the subsequent flight <sup>(151)</sup>.

In another case, the Court has specified that in case of a long delay at arrival, an operating air carrier may rely on an extraordinary circumstance that affected not this delayed flight but a previous flight operated by this air carrier using the same aircraft at aircraft turnaround three flights back in the rotation sequence of the aircraft, if there is a direct causal link between the occurrence of the extraordinary circumstance and the long delay at arrival of the subsequent flight <sup>(152)</sup>.

### **6. PASSENGER RIGHTS IN THE CASE OF MASSIVE TRAVEL DISRUPTIONS**

#### **6.1. General**

Regulation (EC) No 261/2004 does not contain specific provisions in the case of large-scale travel disruptions such as the volcano eruption in Iceland in 2010 or the outbreak of the COVID-19 pandemic in 2020. However, the right to compensation in case of cancellation is linked to the air carrier failing to give sufficient notice of the cancellation to the passenger. This aspect is thus covered by the considerations in Section 4.4 on right to compensation.

#### **6.2. Right to re-routing or reimbursement**

As regards re-routing, the circumstances of a massive travel disruption may interfere with the right to choose re-routing at the ‘earliest opportunity’. Air carriers may find it impossible to re-route the passenger to the intended destination within a short period of time. Moreover, it may not be clear for some time when re-routing will become possible. This situation may, for example, arise if a Member State suspends flights departing to or arriving from certain countries. Therefore, depending on the case, the earliest opportunity for re-routing may be considerably delayed or subject to considerable uncertainty. As a result, reimbursement of the ticket price or a re-routing at a later date ‘at the passenger’s convenience’ might be preferable for the passenger.

Regarding reimbursement, in cases where the passenger books the outbound flight and the return flight separately and the outbound flight is cancelled, the passenger is only entitled to reimbursement of the cancelled flight, that is to say, here, the outbound flight.

However, if the outbound flight and the return flight are part of the same booking, even if operated by different air carriers, passengers should be offered two options if the outbound flight is cancelled: to be reimbursed for the whole ticket (i.e. both flights) or to be re-routed on another flight for the outbound flight.

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<sup>(151)</sup> Case C-74/19, *Transportes Aéreos Portugueses*, EU:C:2020:460, paragraph 55.

<sup>(152)</sup> Case C-826/19, *Austrian Airlines*, ECLI:EU:C:2021:318, paragraph 57.



### **6.3. Right to care**

Regulation (EC) No 261/2004 does not contain any provisions that recognise a separate category of ‘particularly extraordinary’ events beyond the extraordinary circumstances referred to in its Article 5(3). Therefore, the air carrier is required to fulfil its obligations, including those under Article 9 of Regulation (EC) No 261/2004, even if the situation giving rise to these obligations lasts for a long period. In such circumstances and events, passengers are especially vulnerable<sup>(153)</sup>. If exceptional events occur, the intention of Regulation (EC) No 261/2004 is to ensure that appropriate care is provided in particular to passengers waiting for re-routing under Article 8(1), point (b), of Regulation (EC) No 261/2004.

### **6.4. Right to compensation**

The right to compensation for cancellation pursuant to Article 5(1) and Article 7 of Regulation (EC) No 261/2004 does not apply in the case of cancellations made more than 14 days in advance or if the cancellation is caused by extraordinary circumstances that could not have been avoided even if all reasonable measures had been taken by the air carrier.

The Commission considers that, if public authorities take measures intended to contain the effects of a crisis situation leading to massive travel disruptions, such measures are by their nature and origin not inherent in the normal exercise of the activity of air carriers and are outside their actual control.

Article 5(3) waives the right to compensation on condition that the cancellation in question ‘is caused’ by extraordinary circumstances that could not have been avoided even if all reasonable measures had been taken.

This condition should be considered fulfilled if public authorities either prohibit certain flights or restrict the movement of people in a manner that *de facto* excludes the operation of the flight in question.

This condition may also be fulfilled if the flight cancellation occurs in circumstances in which the corresponding movement of people is not entirely prohibited but limited to people benefiting from derogations (for example nationals or residents of the state concerned).

If no such person takes a particular flight, the flight would remain empty or be cancelled. In such situations, it may be legitimate for an air carrier not to wait until the last minute, but to cancel the flight in good time in order for appropriate organisational measures to be taken, including in terms of care that air carriers have to provide to their passengers. In such cases, and depending on the circumstances, a cancellation may still be viewed as ‘caused’ by the measure taken by the public authorities. Again, depending on the circumstances, this may also be the case for flights in the opposite direction to the flights directly concerned by the travel restrictions imposed by public authorities.

If the airline decides to cancel a flight and proves that this decision was justified on grounds of security or safety of the crew, such cancellation should also be considered as ‘caused’ by extraordinary circumstances.

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<sup>(153)</sup> Case C-12/11, *McDonagh*, ECLI:EU:C:2013:43, paragraph 30, and Point 4.3.3 of the Interpretative Guidelines.

The above considerations are not and cannot be exhaustive in that other specific circumstances arising in a specific crisis situation may also fall within the ambit of Article 5(3) of Regulation (EC) No 261/2004.

## **7. COMPENSATION, REIMBURSEMENT, RE-ROUTING AND CARE IN THE CASE OF MULTIMODAL JOURNEYS**

Multimodal journeys involving more than one mode of transport under a single transport contract (e.g. a journey by rail and air sold as a single journey) are not covered as such by Regulation (EC) No 261/2004, nor are they covered by any EU legislation on passenger rights in other modes of transport<sup>(154)</sup>. If a passenger misses a flight because of a delayed train, they would only benefit from the assistance to be granted under Regulation (EU) 2021/782 of the European Parliament and of the Council<sup>(155)</sup> in relation to the rail journey, and then only if they were delayed by 60 minutes or more at the destination<sup>(156)</sup>. By the same token, other provisions would apply in the case of a flight missed following a delayed ship or coach journey in the context of a single contract of carriage<sup>(157)</sup>. However, if the multimodal journey forms part of a combination with other travel services (e.g. accommodation) the package organiser concerned may be liable under Directive (EU) 2015/2302 also for the missed flights and the impact on the package as a whole.

## **8. COMPLAINTS TO NATIONAL ENFORCEMENT BODIES, ALTERNATIVE DISPUTE RESOLUTION ENTITIES AND CONSUMER PROTECTION UNDER THE CONSUMER PROTECTION COOPERATION REGULATION**

### **8.1. Complaints to national enforcement bodies**

Passengers may complain to any national enforcement body designated by a Member State about an alleged infringement of Regulation (EC) No 261/2004 at any EU airport or concerning any flight from a non-EU country to such an airport<sup>(158)</sup>.

To ensure that complaint procedures are dealt with efficiently and to provide a secure legal environment for air carriers and other businesses potentially involved, the Commission recommends that passengers be advised to make complaints to:

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<sup>(154)</sup> Such rules are proposed, see proposal COM(2013) 130 final and the proposal for a regulation of the European Parliament and of the Council on passenger rights in a multimodal context (COM(2023) 752 of 29.11.2023).

<sup>(155)</sup> Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations (OJ L 172, 17.5.2021, p. 1, ELI: <http://data.europa.eu/eli/reg/2021/782/oj>).

<sup>(156)</sup> Article 20 of Regulation (EU) 2021/782.

<sup>(157)</sup> See in this respect Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1, ELI: <http://data.europa.eu/eli/reg/2010/1177/oj>) and Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1, ELI: <http://data.europa.eu/eli/reg/2011/181/oj>).

<sup>(158)</sup> Article 16(2) of Regulation (EC) No 261/2004.

- the national enforcement body of the country of departure in the case of EU flights and flights from the EU to a non-EU country; and
- the national enforcement body of the country of arrival in the case of flights from outside the EU.

Passengers who consider that an air carrier has infringed their rights should make their complaints within a reasonable time and according to the time frames set by national law <sup>(159)</sup>.

Passengers should first complain to the air carrier. Only if they disagree with the air carrier's answer or in the absence of any satisfactory reply from the air carrier, passengers should lodge a complaint with a national enforcement body. The Commission recommends that the air carrier should reply within 2 months and that no restrictions are imposed regarding the use of one of the official languages of the EU.

It is important to note that the Court <sup>(160)</sup> has considered that under Regulation (EC) No 261/2004, national enforcement bodies are not required to act on such complaints in order to guarantee individual passengers' rights in each case. Hence, a national enforcement body is not required to take enforcement action against air carriers with a view to compelling them to pay the compensation provided for in Regulation (EC) No 261/2004 in individual cases, its sanctioning role as referred to in Article 16(3) of Regulation (EC) No 261/2004 consisting of taking measures in response to the infringements that the body identifies in the course of its general monitoring activities provided for in Article 16(1).

However, according to the Court, Regulation (EC) No 261/2004 does not prevent Member States from adopting legislation that obliges the national enforcement body to adopt measures in response to individual complaints <sup>(161)</sup>. Member States have discretion as to the powers that they wish to confer on their national bodies for the purpose of protecting passengers' rights.

These rulings have no bearing on the obligation of national enforcement bodies to provide complainants – in compliance with principles of good administration – with an informed answer following their complaints. The Commission considers that good practice would also require that passengers be informed about appeal possibilities or other action they can take if they do not agree with the assessment of their case. A passenger should have the right to decide whether they want to be represented by another person or entity.

## **8.2. Alternative dispute resolution (ADR)**

The EU legal framework on ADR is intended to enable consumers to effectively assert their rights in disputes with traders over the purchase of a product or a service. While the investment in terms of costs and time of going to court can be discouraging and informal tools can be insufficient, the quality-certified ADR bodies under Directive 2013/11/EU of

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<sup>(159)</sup> Case C-139/11, *Cuadrench Moré*, ECLI:EU:C:2012:741, paragraph 33.

<sup>(160)</sup> Joined Cases C-145/15 and C-146/15, *Ruijsenaars and Others*, ECLI:EU:C:2016:187, paragraphs 32, 36 and 38.

<sup>(161)</sup> Case C-597/20, *LOT*, ECLI:EU:C:2022:735, paragraph 26.

the European Parliament and of the Council <sup>(162)</sup> should resolve a dispute within 90 days, at no or only a nominal cost to the consumer.

Consumers have access to quality-certified ADR bodies if they are residents in the EU and the trader is established in the EU. If air carriers are not obliged under national law to participate in procedures before ADR bodies, it is desirable that they voluntarily commit to participating in relevant procedures and inform their customers of this.

Consumers' access to ADR bodies comes in addition to the possibility for passengers to complain to national enforcement bodies under Regulation (EC) No 261/2004.

### **8.3. Further means to assist stakeholders in applying Regulation (EC) No 261/2004**

There are a number of ways to assist stakeholders in applying Regulation (EC) No 261/2004.

The first one concerns the consumer protection cooperation pursuant to Regulation (EU) 2017/2394 of the European Parliament and of the Council <sup>(163)</sup>, which sets up a coordination and cooperation mechanism between national consumer enforcement authorities. Cooperation between these authorities is essential to ensure that consumer rights legislation is equally applied across the single market and to create a level playing field for businesses. Regulation (EU) 2017/2394 covers situations where the collective interests of consumers are at stake and confers additional investigation and enforcement powers on national authorities to stop breaches of consumer protection rules in cross-border cases.

Regulation (EU) 2017/2394 lists Regulation (EC) No 261/2004 on air passenger rights as one of the legal instruments that protect consumers' interests. This means that the passenger rights laid down in Regulation (EC) No 261/2004 can be enforced under the coordination and cooperation mechanism set up by Regulation (EU) 2017/2394 if the collective interests of consumers are at stake in a cross-border context.

Directive (EU) 2020/1828 <sup>(164)</sup> provides another instrument to enforce passenger rights on a larger scale. It follows from this Directive that representative actions are actions brought by qualified entities before national courts or administrative authorities on behalf of groups of consumers to seek injunctive measures (i.e. to stop traders' unlawful practices), redress measures (such as refund or compensation) or both injunctive and redress measures. The Directive aims to protect the collective interests of consumers in many areas, in particular in travel and tourism. It applies to actions brought against infringements of Regulation (EC) No 261/2004, which it lists among the acts of EU law that fall within its scope. Furthermore, passengers who encountered problems in cross-border situations can turn to

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<sup>(162)</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63, ELI: <http://data.europa.eu/eli/dir/2013/11/oj>).

<sup>(163)</sup> Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1, ELI: <http://data.europa.eu/eli/reg/2017/2394/oj>).

<sup>(164)</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1, ELI: <http://data.europa.eu/eli/dir/2020/1828/oj>).

the European Consumer Centres Network<sup>(165)</sup> (ECC-Net). The ECC-Net informs consumers of their rights under EU and national consumer legislation, gives free-of-charge advice on possible ways of dealing with consumer complaints, provides direct assistance to resolve complaints in an amicable way with traders, and redirects consumers to an appropriate body if the ECC-Net cannot help. Passengers can also turn to national consumer organisations for information and direct assistance in asserting their rights under Regulation (EC) No 261/2004.

## **9. BRINGING ACTION UNDER REGULATION (EC) No 261/2004**

### **9.1. Jurisdiction under which action can be brought under Regulation (EC) No 261/2004**

As a preliminary point, it should be observed that Regulation (EC) No 261/2004 does not contain rules on the international jurisdiction of Member State courts, so that the issue of jurisdiction must be examined in the light of Regulation (EU) No 1215/2012<sup>(166)</sup>.

For flights from one Member State to another Member State, carried out on the basis of a contract with a single operating air carrier, a claim for compensation under Regulation (EC) No 261/2004 can be brought, at the applicant's choice, to the national court that has jurisdiction over either the place of departure or the place of arrival, as stated in the contract of carriage<sup>(167)</sup>, in application of Regulation (EU) No 1215/2012. Under Article 4(1) of Regulation (EU) No 1215/2012, passengers also retain the option of bringing the matter before the courts of the defendant's (i.e. the air carrier's) domicile.

In several rulings, the Court has confirmed that also in case of connecting flights consisting of a confirmed single booking for the entire journey and divided into several legs, passengers can bring an action at either the place of departure or the place of arrival. Specifically, the Court has ruled that under Regulation (EU) No 1215/2012, an action may be brought before the national court of the place of arrival of the second leg if the carriage on both flights was operated by two different air carriers and the action for compensation is based on an irregularity that took place on the first of these flights, operated by the air carrier with which the passengers concerned do not have contractual relations<sup>(168)</sup>.

Similarly, an action may be brought before the national court of the place of departure of the first leg if the claim for compensation arises from the cancellation of the final leg of the journey and is brought against the air carrier in charge of this last leg<sup>(169)</sup>.

However, in the case of connecting flights consisting of two or more legs on which transport is performed by separate air carriers, an action cannot be brought before the national court of the place of arrival of the first leg if the claim for compensation arises exclusively from a delay of the first leg of the journey caused by a late departure and is brought against the air carrier operating this first leg<sup>(170)</sup>.

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<sup>(165)</sup> <https://www.eccnet.eu>

<sup>(166)</sup> Case C-204/08, *Rehder*, ECLI:EU:C:2009:439, paragraph 28.

<sup>(167)</sup> Case C-204/08, *Rehder*, ECLI:EU:C:2009:439, paragraph 47.

<sup>(168)</sup> Joined Cases C-274/16, C-447/16 and C-448/16, *flightright*, ECLI:EU:C:2018:160, paragraph 78.

<sup>(169)</sup> Case C-606/19, *flightright*, ECLI:EU:C:2020:101, paragraph 36.

<sup>(170)</sup> Case C-20/21, *LOT Polish Airlines*, ECLI:EU:C:2022:71, paragraph 27.

On the question of the correct addressee for legal proceedings, the Court has held that a court of a Member State does not have jurisdiction to hear a dispute concerning a claim for compensation directed against an airline established in another Member State on the ground that this company has a branch in the territorial jurisdiction of the court seised if this branch was not involved in the legal relationship between the airline and the passenger concerned <sup>(171)</sup>.

On the question whether an air carrier can prohibit in its terms and conditions that passengers mandate a third party to make claims on their behalf, the Court has clarified that Article 15 of Regulation (EC) No 261/2004 precludes the inclusion, in a contract of carriage, of a clause that prohibits the transfer of rights enjoyed by air passengers against the operating air carrier by virtue of the provisions of the Regulation <sup>(172)</sup>.

If a flight was part of a package travel contract, under Regulation (EU) No 1215/2012, a passenger may bring an action for compensation against an operating air carrier, even if no contract was concluded between the passenger and the air carrier <sup>(173)</sup>.

As regards jurisdiction for claims under the Montreal Convention, the Court has clarified the following: while the territorial jurisdiction for a claim for compensation under Regulation (EC) No 261/2004 should be assessed under Regulation (EU) No 1215/2012, jurisdiction for a supplementary claim for further damage falling within the scope of the Montreal Convention should be assessed under this Convention <sup>(174)</sup>.

## **9.2. Time limit for bringing an action under Regulation (EC) No 261/2004**

Regulation (EC) No 261/2004 does not set time limits for bringing an action before the national courts. This issue is subject to the national legislation of each Member State on the limitation of action. The 2-year limitation of action under the Montreal Convention is not relevant to claims brought under Regulation (EC) No 261/2004 and does not affect Member States' national legislation because the compensation measures laid down by Regulation (EC) No 261/2004 fall outside the Convention's scope as they aim to address an inconvenience suffered by passengers, while remaining additional to the system for damages laid down by the Convention. Hence, the deadlines may differ between Member States <sup>(175)</sup>.

## **10. AIR CARRIER LIABILITY UNDER THE MONTREAL CONVENTION**

The Convention for the Unification of Certain Rules for International Carriage by Air, commonly known as the 'Montreal Convention', was agreed in Montreal on 28 May 1999. The EU is a contracting party to this Convention and some of the Convention's provisions have been incorporated into EU law by Regulation (EC) No 2027/97, which aims to protect air passengers' rights in the EU along with Regulation (EC) No 261/2004.

(a) Compatibility of Regulation (EC) No 261/2004 with the Montreal Convention:

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<sup>(171)</sup> Case C-464/18, *Ryanair*, ECLI:EU:C:2019:311, paragraph 36.

<sup>(172)</sup> Case C-11/23, *Eventmedia Soluciones SL*, ECLI:EU:C:2024:194, paragraph 26.

<sup>(173)</sup> Case C-215/18, *Primera Air Scandinavia*, ECLI:EU:C:2020:235, paragraph 38.

<sup>(174)</sup> Case C-213/18, *Guaitoli and Others*, ECLI:EU:C:2019:927, paragraph 44.

<sup>(175)</sup> Case C-139/11, *Cuadrench Moré*, ECLI:EU:C:2012:741, paragraph 33.

The Court <sup>(176)</sup> has confirmed that the requirements to provide compensation for delay at arrival and to provide assistance in the event of delay at departure are compatible with the Montreal Convention. In this connection, the Court has considered that the loss of time inherent in a flight delay constitutes an ‘inconvenience’ rather than ‘damage’, which the Montreal Convention aims to address. This reasoning was based on the finding that excessive delay will first cause an inconvenience that is almost identical for every passenger and Regulation (EC) No 261/2004 provides for standardised and immediate compensation, while the Montreal Convention provides for redress that requires a case-by-case assessment of the extent of the damage caused and can consequently only be the subject of compensation granted subsequently on an individual basis. Hence, Regulation (EC) No 261/2004 operates at an earlier stage than the Montreal Convention. Therefore, the obligation to compensate passengers whose flights are delayed under Regulation (EC) No 261/2004 falls outside the scope of the Montreal Convention, but remains additional to the system for damages laid down by it.

- (b) Regulation (EC) No 2027/97 is only applicable to passengers flying with an ‘air carrier’, namely an air transport company with a valid operating licence <sup>(177)</sup> within the meaning of Article 2(1), point (b), of that Regulation.
- (c) Under Article 17 of the Montreal Convention, a passenger is a person who has been carried on the basis of a ‘contract of carriage’ within the meaning of Article 3 of this Convention even if an individual or collective document of carriage has not been issued <sup>(178)</sup>.
- (d) The concept of ‘accident’ within the meaning of Article 17(1) of the Montreal Convention, which establishes the liability of an air carrier for damage sustained in the case of death or bodily injury of a passenger, has been interpreted by the Court in several rulings, for example in these cases:
  - (i) **Coffee spill** - situations occurring on board an aircraft in which an object used when serving passengers causes bodily injury to a passenger, such as a hot coffee spill, without it being necessary to examine whether these situations stem from a hazard typically associated with aviation <sup>(179)</sup>, can constitute an ‘accident’.
  - (ii) **Fall on stairway** - a situation in which, for no ascertainable reason, passengers fall on a mobile stairway set up for the disembarkation of passengers of an aircraft and injures themselves constitutes an ‘accident’ within the meaning of Article 17(1) of the Montreal Convention, including if the air carrier concerned has not failed to fulfil its diligence and safety obligations in this regard <sup>(180)</sup>.
  - (iii) **Hard landing** - the concept of ‘accident’ does not cover a landing that has taken place in accordance with the operating procedures and limitations applicable to the aircraft in question, including the tolerances and margins stipulated in respect of the performance factors that have a significant impact on landing, and taking into account the rules of the trade and best practice in

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<sup>(176)</sup> Case C-344/04, *IATA and ELFAA*, ECLI:EU:C:2006:10, paragraphs 43, 45, 46 and 47; Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:C:2009:716, paragraph 51.

<sup>(177)</sup> Case C-240/14, *Prüller-Frey*, ECLI:EU:C:2015:567, paragraph 29.

<sup>(178)</sup> Case C-6/14, *Wucher Helicopter*, ECLI:EU:C:2015:122, paragraphs 36, 37 and 38.

<sup>(179)</sup> Case C-532/18, *Niki Luftfahrt*, ECLI:EU:C:2019:1127, paragraph 43.

<sup>(180)</sup> Case C-589/20, *Austrian Airlines*, ECLI:EU:C:2022:424, paragraph 24.

- the field of aircraft operation, even if the passenger concerned perceives this landing as an unforeseen event <sup>(181)</sup>.
- (iv) A **psychological injury** caused to a passenger by an ‘accident’ within the meaning of Article 17(1) of the Montreal Convention that is not linked to ‘bodily injury’ within the meaning of this provision must be compensated in the same way as such a bodily injury, if the passengers demonstrate the existence of an adverse effect on their psychological integrity of such gravity or intensity that it affects their general state of health and that it cannot be resolved without medical treatment <sup>(182)</sup>.
- (v) **Inadequate first aid** administered on board an aircraft to a passenger that aggravated the bodily injuries caused by an ‘accident’ within the meaning of Article 17(1) of the Montreal Convention must be regarded as forming an integral part of this accident <sup>(183)</sup>.
- (e) Article 22(2) of the Montreal Convention should be read together with Article 3(3) of the Convention and be interpreted as meaning that the right to compensation and the limits to an air carrier’s liability of 1 288 Special Drawing Rights (SDR) in the event of destruction, loss, damage or delay of baggage apply also to a passenger who claims this compensation by virtue of the loss, destruction, damage or delay of baggage checked in in another passenger’s name, if the baggage did in fact contain the first passenger’s own belongings. Therefore, each passenger affected by destruction, loss, damage or delay of baggage registered under somebody else’s name must be entitled to compensation up to the limit of 1 288 SDR if the passengers can prove that their belongings were in fact contained in the registered baggage. It is for each passenger concerned to prove this satisfactorily before a national judge, who can take into consideration the fact that the passengers are members of the same family, have bought their tickets jointly or have travelled together <sup>(184)</sup>.
- (f) The sum set out in Article 22(2) of the Montreal Convention – which is the limit to the air carrier’s liability in the event of destruction, loss or delay of or damage to checked baggage that has not been the subject of a special declaration of interest in delivery – constitutes a maximum amount of compensation. It does not constitute a fixed rate, and the passenger has no automatic right to this amount <sup>(185)</sup>.
- (g) Article 22(2) of the Montreal Convention – which sets the limit to an air carrier’s liability for the damage resulting, among other things, from the loss of baggage – includes both material and non-material damage <sup>(186)</sup>. This Article also applies in case of destruction, loss, damage or delay in the carriage of checked wheelchairs or other mobility equipment or assistive devices as defined in Article 2, point (a), of Regulation (EC) No 1107/2006. In this case, the liability of the air carrier is limited to the amount mentioned in the previous paragraph, unless the passenger has made, at the time when the checked baggage was handed over to the air carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires.

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<sup>(181)</sup> Case C-70/20, *Altenrhein Luftfahrt*, ECLI:EU:C:2021:379, paragraph 43.

<sup>(182)</sup> Case C-111/21, *Laudamotion*, ECLI:EU:C:2022:808, paragraph 33.

<sup>(183)</sup> Case C-510/21, *DB v Austrian Airlines*, ECLI:EU:C:2023:550, paragraph 28.

<sup>(184)</sup> Case C-410/11, *Espada Sanchez*, ECLI:EU:C:2012:747, paragraph 35.

<sup>(185)</sup> Case C-86/19, *Vueling Airlines*, ECLI:EU:C:2020:538, paragraph 35.

<sup>(186)</sup> Case C-63/09, *Walz*, ECLI:EU:C:2010:251, paragraph 39.



- (h) On the interpretation of Articles 19, 22 and 29 of the Montreal Convention, the Court <sup>(187)</sup> has considered that an air carrier may be liable under the Convention to an employer in the event of damage caused by delay in a flight on which its employees were passengers. Therefore, the Convention should be interpreted as applying not only to damage caused to passengers themselves, but also to damage suffered by an employer with whom a transaction for the international carriage of a passenger was entered into. In its ruling, the Court added that air carriers are, however, guaranteed that their liability may not be engaged for more than the limit applicable to each passenger as laid down by the Convention multiplied by the number of employees/passengers concerned.
- (i) A complaint must be made in writing within the periods referred to in Article 31(2) of the Montreal Convention, failing which no action may be brought against the air carrier. This requirement is fulfilled if the complaint is recorded in the information system of the air carrier by its representative, if the passenger can check the accuracy of the text of the complaint, as taken down in writing and entered in that system, and can, where appropriate, change or supplement it, or even replace it, before the expiry of the period laid down in Article 31(2) of the Convention. Finally, making a complaint is not subject to further substantive requirements in addition to that of giving notice to the air carrier of the damage sustained <sup>(188)</sup>.
- (j) In case of a claim for compensation for damage falling under Article 19 of the Montreal Convention, the passenger has the choice between several courts determined by the Convention itself under its Article 33: the court of the domicile of the carrier, the court of the principal place of business of the carrier, the court of the place where the carrier has a place of business through which the contract has been made, or the court at the place of destination. In this case, it does not matter if this place is located within the EU, since the jurisdiction is based on the Convention, to which the EU is a party.
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<sup>(187)</sup> Case C-429/14, *Air Baltic Corporation*, ECLI:EU:C:2016:88, paragraphs 29 and 49.

<sup>(188)</sup> Case C-258/16, *Finnair*, ECLI:EU:C:2018:252, paragraphs 31, 37, 47 and 54.