



**EUROPEAN COMMISSION**

**MEMO**

Brussels, 13 March 2013

## **Air Passenger Rights Revision - Frequently Asked Questions**

### **What is the current situation?**

Europe's success in securing and upholding passenger rights is one of the resounding achievements of EU transport policy. The EU's Air Passenger Rights Regulation 261/2004<sup>1</sup> came into force in February 2005 establishing minimum levels of assistance and compensation for passengers denied boarding or affected by long delays or cancellations.

The new rules have resulted in a significant change in behaviour in the airline industry, in particular reducing the use of denied boarding and commercial cancellations by airlines (with all the disruption that this causes for passengers) as ensuring overall a much fairer treatment for passengers when they travel.

The application of the EU passenger rights rules has constantly improved in the eight years since its entry into force, however, today a point has been reached where the limits of non-legislative action (such as guidelines and voluntary agreements) have been reached and where a revision of the legislation itself is necessary to ensure that passenger rights work in practice as they should.

### **What are the main problems?**

The main problem for passengers is that, while they have very strong passenger rights defined under EU law, they can have difficulty claiming them and feel frustrated when air carriers do not appear to apply them. This applies to their rights defined under Regulation 261/2004, but also to their rights with regard to lost, damaged or delayed baggage as defined in the Montreal Convention and in Regulation 2027/97<sup>2</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, JO L46/1 of 17-2-2004

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

For example, surveys carried out in Germany, Denmark, and the UK show that<sup>3</sup>:

- 75% of the surveyed passengers facing problems for delays or cancellations were offered re-routing, allowing them to pursue their travel plans.
- However, in the same surveys, other care such as meals, refreshment and accommodation was offered in less than 50% of cases.
- Only a fraction of the surveyed passengers that were entitled to financial compensation received it (2 to 4% in the Danish survey)
- Moreover the German survey showed that where passengers complained, more than 20% of them did not receive a response from the air carrier.

There are four main reasons underlying the failure to provide passengers their rights:

- **Legal grey areas:** lacking definitions and unclear provisions in the text of Regulation 261/2004 leave grey zones in the passengers' rights which have led to inconsistencies and loose standards in the application of the law;
- **Complaint handling:** Passengers encounter difficulties in enforcing their rights as airlines' complaint-handling procedures are ill-defined or because there is no complaint handling body to turn to.
- **Sanctioning:** inconsistent or insufficiently effective sanctioning policies by national authorities do not give sufficient incentives for compliance
- **Disproportionate financial costs:** the financial cost of some of the obligations imposed by the Regulation may become disproportionate for the airlines in certain circumstances (e.g. unlimited provision of accommodation in exceptional circumstances).

## What are we proposing?

The proposal clarifies key aspects of EU law which have been a source of difficulty for passengers and air carriers alike. It introduces new passenger rights where necessary. It provides passengers with effective complaint handling procedures and strengthens enforcement, monitoring and sanctioning policies to ensure a better application of all passenger rights. It also ensures that the obligations remain financially realistic. In addition, measures are proposed on price transparency and to enhance passengers' protection in case their airline becomes insolvent.

### 1: Clarifying Grey Areas

#### Information on delayed or cancelled flight

The current Regulation 261/2004 compels air carriers to provide passengers information on their rights, but does not contain requirements with regard to the on-the-spot information on the event itself. The proposal introduces an explicit obligation to **keep passengers informed about the situation** of their delayed or cancelled flight as soon as possible.

The carrier must inform passengers of the situation as soon as possible and in any **event no later than 30 minutes after the scheduled departure** time.

They must inform passengers of the estimated departure time as soon as this information is available.

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<sup>3</sup> Survey evidence was provided by Verbraucherzentrale Brandenburg, the Danish Consumer Council, *Which?* and the UK Civil Aviation Authority (more information in the Impact Assessment).

### **Extraordinary circumstances**

The term "extraordinary circumstances" is very important as, under those circumstances air carriers are not required to pay compensation to passengers. The term is not clearly defined in the current Regulation 261/2004.

Now the key principle for what kind of circumstances qualify as extraordinary is clarified. The Commission's proposal defines "extraordinary circumstances" as circumstances which are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. It goes further to provide examples of circumstances which are considered extraordinary. For example, natural disasters or strikes by air traffic controllers should be seen as extraordinary, but technical problems identified during routine aircraft maintenance should not. This will give a lot more certainty to airlines and passengers alike.

### **Long delays and tarmac delays**

Today, passengers enjoy a right to assistance for delays of 2, 3 or 4 hours depending on flight distance. Following a judgement by the European Court of Justice, they may claim compensation at delays from 3 hours (except in extraordinary circumstances).

In case of delays, passengers need, above all, to be given clear information as well as care and assistance while they wait. For that reason, in addition to the new information requirements (see section above), the proposal strengthens passengers' rights to care and assistance – so it is activated always after a two hour delay, whatever the flight distance.

The real priority, however, for stranded passengers is just to get home or to where they want to be as soon as possible. On financial compensation, therefore, the proposal confirms the Court decision in the text of the Regulation but fixes the deadline for compensation at 5 hours for all intra-EU flights and short international flights of less than 3,500 km. For the remaining international flights the deadline is 9 hours for flights of less than 6,000 km and 12 hours for flights of more than 6,000 km. The aim is to give the air carriers a reasonable time to solve the problem and encourage them to operate the flight, not just cancel it. A threshold of three hours is in most cases too short for spare parts or replacement aircraft to be flown in, especially for technical failures at an airport away from a carrier's bases. The current provisions tend to incentivise cancellations to the detriment of passengers (because the problem cannot be remedied within a very short deadline).

Today's rules with regard to assistance are implicitly also applicable to delays on the tarmac, i.e. where the passengers are waiting on board the aircraft. This includes the right to refreshments/meals and the right to renounce to the flight after 5 hours. The proposal renders these rights explicit and in addition gives a right, where the tarmac delay exceeds one hour, to air conditioning, to the use of toilets, to medical assistance and to drinking water. In addition, to render the right to travel renunciation effective, the passenger may request disembarkation after a delay of 5 hours.

### **Re-routing**

Today, passengers may be stranded for a long time while waiting for rerouting with another flight of the same air carrier. At what point the carrier must allow the passenger to rerouting via another airline is not clear and has led to many disputes between air carriers and passengers.

The proposal brings the necessary clarity by stating that, where the air carrier cannot ensure the rerouting within 12 hours on its own services, it must offer rerouting with other air carriers or other transport modes where available.

## **Connecting flights**

The rights to assistance and to compensation where a passenger misses a connecting flight because his first flight was late are currently not clearly defined. The proposal clearly defines these rights i.e. assistance after 2 hours and compensation if delay at arrival of more than 5 hours for all intra-EU flights and short international flights of less than 3,500 km. For the remaining international flights the deadline is 9 hours for flights of less than 6,000 km and 12 hours for flights of more than 6,000 km.

## **2. New Rights**

### **Rescheduling**

Currently, it is not clear whether a passenger whose flight has been rescheduled enjoys similar rights as passengers of delayed or cancelled flights. The proposal clearly defines this equality of treatment where the flight was rescheduled less than 2 weeks before its original departure time.

### **Misspelt names**

Under the proposal, the passenger may request – free of charge – the correction of spelling mistakes in his name up to 48 hours before departure.

### **No Show policy (partial use of ticket / return flights)**

Following complaints from passengers, the proposal establishes that a passenger may not be denied boarding on the return flight of his ticket on the grounds that he did not take the outbound part of the return ticket.

### **New rights with regard to mishandled baggage:**

- **Mobility equipment**

Because of liability limits defined in the Montreal Convention, airlines may often compensate lost or damaged mobility equipment of passengers with reduced mobility for less than the actual value of this equipment. Under the proposal, air carriers must offer such passengers the possibility – at no additional cost – to declare the actual value of the mobility equipment at check-in and hence to raise the carrier's liability limits to this actual value.

- **Musical instruments**

Musicians often do not know in advance under which conditions fragile and often very expensive instruments will be taken on board. Under the proposal, the air carriers must accept smaller instruments into the passenger cabin and must clearly indicate the terms and conditions for the transport of larger instruments in the cargo hold.

- **Submission of complaints**

Under the proposal, air carriers must provide forms which allow the submission of complaints right at the airport and which the air carriers must accept as valid claims (this way the passenger can easily introduce a claim within the strict deadlines for baggage claims imposed by the Montreal Convention).

- **National Enforcement Authorities**

Today, passengers' rights with regard to baggage as defined in the Montreal Convention are not enforced by any authority. Under the proposal, the national enforcement bodies appointed under Regulation 261/2004 will also be responsible for the enforcement of compensation rules for mishandled baggage.

- **Transparency**

The proposal establishes new requirements for transparency of information on cabin and checked baggage so passengers must be informed of the exact baggage allowances and of any additional charges on baggage at the time of booking and at the airports.

### **3. Enforcement, Complaint-handling and Sanctioning**

#### **Monitoring and sanctions**

The National Enforcement Bodies (NEBs) responsible for the application and enforcement of passenger rights apply different sanctioning policies and they differently interpret various parts of the Regulation. The proposal reinforces the coordination and exchange of information among the NEBs with the support of the Commission. The latter can also request the launch of investigations. The NEBs must also take a more preventive role by constantly monitoring airline policies and not just reacting to complaints. They will also provide technical support to the complaint handling bodies in charge of passengers' individual complaints.

#### **Complaint handling and enforcing individual rights**

Today, passengers often do not know how to submit complaints to the airline or the latter does not reply.

Under the proposal, airlines will have to provide clear complaint-handling procedures (web form, e-mail address). They will also have to reply to passengers within given deadlines (one week for the acknowledgement of receipt and a formal reply within a deadline of two months).

Where disputes arise, passengers will be able to turn to out-of-court complaint handling bodies that will seek to resolve the dispute (in an inexpensive and simple way).

#### **Insolvency**

While in theory passenger rights are fully applicable where the cancellation is due to the insolvency of the air carrier, in practise the latter is often not in position to provide these rights, in particular the rerouting.

National authorities will be invited to coordinate their actions to ensure appropriate monitoring of the financial position of air carriers and where necessary adopt a coordinated approach to the suspension of their operations to minimise the impact on passengers. EU air transport associations will be encouraged to formalise the existing voluntary agreements on the provision of rescue fares and their effective promotion. Will be also encouraged a wider and more systematic availability of relevant insurance products across the EU, and the wider and more systematic availability of information about credit card refund schemes or similar products that allow passengers to protect themselves against the risk of insolvency under national law.

The Commission will closely monitor the application of these measures. Two years after the adoption of this text, the Commission will review their performance and effectiveness.

## **Price Transparency**

Price transparency is not directly covered by the proposals but is an essential element in the protection afforded to consumers by EU rules<sup>4</sup>. One of the cornerstones of the liberalised European aviation market is the freedom of companies to freely set up their prices which allows competition and contributes to the abundance of available air services at affordable prices. This freedom is however not absolute, price transparency rules apply.

In this area application of these rules must still reach its adequate level. Daily enforcement action is already taken at Member State level to ensure that the price transparency rules that protect the passenger are properly applied in full respect of EU regulations. But a stronger cooperation in the field of enforcement is needed. The Commission is currently assessing taking co-ordination actions in order to better challenge those operators lagging behind and to make sure that they meet price transparency requirements for the benefit of passengers.

## **4. Disproportionate Financial Burden**

### **Limit to assistance**

Under current rules, air carriers must provide refreshments, meals and accommodation for an indefinite period of time, potentially threatening their financial survival (e.g. ash cloud crisis). There is no limit to assistance even if there is a major disruption beyond its control. Under the proposal, the provision of accommodation will be limited to three nights in exceptional circumstances. This limitation does not apply to passengers with reduced mobility, persons accompanying them, unaccompanied children, pregnant women and persons with specific medical needs.

### **Contingency planning**

The impact of the above-mentioned limitation to accommodation in extraordinary circumstances is mitigated by the previously mentioned obligation for faster rerouting and by an obligation for airports, air carriers and other airport users to prepare contingency plans to care for passengers stranded in mass disruptions.

## **Regional operations**

As for small-scale regional operations – flights with small aircraft on short distances – the cost of the obligations under the Regulation can go out of proportion with the carriers' revenue. The proposal lifts the obligation to provide accommodation to passengers of flights of less than 250 km and with aircraft with less than 80 seats. Again this derogation does not apply to passengers with reduced mobility, persons accompanying them, unaccompanied children, pregnant women and persons with specific medical needs.

## **Sharing the economic burden**

Today, some national provisions may hinder air carriers from seeking redress from third parties responsible for the flight disruption. Under the proposal, national law may not restrict the air carriers' right to seek compensation from responsible third parties. This provision does not affect passengers for whom the only responsible contact remains the air carrier.

[IP/13/219](#)

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<sup>4</sup> Price Transparency is regulated by Regulation 1008/2008 of 24 September 2008 on common rules for the operation of air services in the Community (Recast)

## Air passenger rights – summary

The 10 basic passenger rights (see attached MEMO for details)

10 Basic rights (current situation)	The new proposal
<p><b>1. RIGHT TO NON-DISCRIMINATION IN ACCESS TO TRANSPORT</b></p> <p>All passengers have equal access to transport and are in particular protected against discrimination based on nationality, residence or disability.</p>	<p>No change needed</p>
<p><b>2. RIGHT TO MOBILITY ACCESSIBILITY AND ASSISTANCE AT NO ADDITIONAL COST FOR DISABLED PASSENGERS AND PASSENGERS WITH REDUCED MOBILITY (PRM)</b></p> <p>PRM have the right to be assisted at no additional cost when travelling by all modes of transport to allow them to enjoy the same possibilities to travel as other citizens.</p>	<ul style="list-style-type: none"> <li>• no limitations to the right to care for PRMs</li> <li>• compensation to its full value of damaged or lost mobility equipment (if checked-in)</li> </ul>
<p><b>3. RIGHT TO INFORMATION BEFORE PURCHASE AND AT THE VARIOUS STAGES OF TRAVEL, NOTABLY IN CASE OF DISRUPTION</b></p> <p>Passengers have the right to be correctly informed of the ticket price, their rights and the circumstances of their journey in a timely and relevant manner before the journey as well as during and after the travel in case of disruption.</p>	<p>Better information of passengers about the occurrence and the nature of the disruption and about their rights. The carrier must inform the passengers of the situation as soon as possible and in any event <u>no later than 30 minutes after</u> the scheduled departure time, and of the estimated departure time as soon as this information is available.</p> <p>Air carriers will also provide clear information about baggage allowances, both for cabin and checked baggage, at booking and at the airport.</p>
<p><b>4. RIGHT TO RENOUNCE TRAVELLING (REIMBURSEMENT) WHEN THE TRIP IS DISRUPTED</b></p> <p>In the event of long delayed, cancelled travel or denied boarding, passengers have the right to the reimbursement of the full ticket price.</p>	<p>Right to renounce to travel clarified with respect to tarmac delays: after maximum 5 hours, the passenger has the right to renounce to the travel and have the ticket price reimbursed. In case of tarmac delays, this includes the right to disembark.</p>
<p><b>5. RIGHT TO THE FULFILMENT OF THE TRANSPORT CONTRACT (REROUTING OR REBOOKING) IN CASE OF DISRUPTION</b></p> <p>In the event of long delayed, cancelled travel or denied boarding, passengers have the right to receive an alternative service of transport, as soon as possible, or to rebook</p>	<p>Reinforcement of the passenger's triple choice between reimbursement, immediate rerouting or alternative flight at a later date. In particular with regard to re-routing: where the carrier cannot provide the rerouting on its own services within 12 hours, it must offer rerouting via alternative carriers or alternative transport</p>

<p>at their best convenience. The choice must be offered by the carrier as soon as the disruption takes place, in a clear and uncontroversial way.</p>	<p>modes where available.</p>
<p><b>6. RIGHT TO GET ASSISTANCE IN CASE OF LONG DELAY AT DEPARTURE OR AT CONNECTING POINTS</b></p> <p>Stranded passengers have the right to be provided a minimum level of care immediately, on the spot at terminals/stations and/or on board while waiting for the beginning or the continuation of the delayed journey or for their rerouting.</p>	<ul style="list-style-type: none"> <li>• Clarification of the rights of passengers in case of missed connecting flights (for care/assistance)</li> <li>• The right to care is prioritised. It is not anymore dependant on the flight distances but is always after 2 hours</li> <li>• Right to care clarified in case of tarmac delay (where a tarmac delay exceeds one hour, the carrier must provide, free of charge, access to toilet facilities and drinking water, must ensure adequate heating or cooling of the passenger cabin, and must ensure that adequate medical attention is available when needed).</li> <li>• Airports, air carriers and other airport users must prepare contingency plans to care for passengers stranded in mass disruptions (including in case of airline insolvency).</li> </ul>
<p><b>7. RIGHT TO COMPENSATION</b></p> <p>Under certain conditions in case of long delayed or cancelled travel and always in case of denied boarding in air, passengers are entitled to a standardised financial compensation for the trouble suffered. Such compensation varies for each mode according to the time lost due to the disruption, the distance of the journey and/or the ticket price.</p>	<p>Right to compensation in case of long delays is confirmed by its integration into the text of the Regulation: the delay threshold is extended from three to five hours for all intra-EU flights and short international flights (to encourage carriers to operate and not cancel flights) The thresholds are 9 hours or 12 hours for the remaining international flights.</p> <p>New right to compensation for rescheduled flights (when notified less than 2 weeks in advance)</p> <p>Clarification of the right to compensation in case of missed connection flights: depending on the circumstances, the passenger may claim compensation from the operating carrier of the delayed flight.</p> <p>Rights in case of denied boarding reinforced with the right to have spelling mistakes corrected and with a partial ban of the "no show" policy (no denied boarding on return flight just because outbound flight was not taken)</p>



<p><b>8. RIGHT TO CARRIER LIABILITY TOWARDS PASSENGERS AND THEIR LUGGAGE</b></p> <p>Under International conventions and EU Law, carriers are liable for passengers and their luggage. In case of death, injury and baggage problems and in some cases of delay, passengers may be entitled to compensation to be determined according to the damage they suffered. Such compensation can be limited depending on the applicable law.</p>	<p>Strengthened enforcement for baggage rules and specific rules for mobility equipment and music instruments: National authorities will be responsible for the enforcement of compensation rules for mishandled baggage and the new rules on the transport of musical instruments make sure that their carriage is not refused on other grounds than safety or technical specificities of the aircraft.</p>
<p><b>9. RIGHT TO A QUICK AND ACCESSIBLE SYSTEM OF COMPLAINT HANDLING</b></p> <p>Passengers have the right to lodge a complaint with the carrier if dissatisfied. In case of lack of answer after a certain time-limit, or dissatisfaction with the carriers' answer, they have the right to lodge a complaint within the competent National Enforcement Body, which should treat it within a reasonable timeframe. Out of Court and Court procedures are also available under EU and national law (e.g. Alternative Dispute Resolution systems, national or European Small Claim Procedure at Court).</p>	<ul style="list-style-type: none"> <li>• Air carriers must provide efficient means to passengers to submit complaints. While passengers have to submit their claim within 3 months after the departure time, carriers must also reply within given deadlines (one week for the acknowledgment of receipt and two months for the formal reply).</li> <li>• Passengers will be able to turn to out-of-court complaint handling bodies which will treat the complaints within reasonable times and which will act with the support of the national enforcement bodies.</li> </ul>
<p><b>10. RIGHT TO FULL APPLICATION AND EFFECTIVE ENFORCEMENT OF EU PASSENGER RIGHTS</b></p> <p>Passengers have the right to count on a proper application by carriers and on an effective enforcement of EU rules from National Enforcement Bodies</p>	<ul style="list-style-type: none"> <li>• The proposal reinforces the coordination and exchange of information among the National Enforcement Bodies with the support of the Commission. The latter can also request the launch of (joint) investigations by the national authorities.</li> </ul>