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PROPOSAL

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| Subject: | Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air |

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2013) 130 final



Brussels, 13.3.2013
COM(2013) 130 final

2013/0072 (COD)

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

(Text with EEA relevance)

{SWD(2013) 62 final}

{SWD(2013) 63 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. The current legal framework

Regulation (EC) No 261/2004¹ depending on the circumstances of the travel disruption, requires air carriers to:

provide passengers with assistance, such as meals, refreshments, telephone calls and hotel accommodation;

offer re-routing and refunds;

pay a flat-rate compensation of up to €600 per passenger, depending on the flight distance; and

proactively inform passengers about their rights.

The airline is not obliged to pay financial compensation if it can prove that the cancellation or delay was caused by extraordinary circumstances. However, the obligations for care and assistance are upheld even in such situations.

The Regulation also requires Member States to establish National Enforcement Bodies (NEBs) to ensure the correct application of the Regulation.

The rights of passengers under the Regulation should not be confused with their rights under the **Montreal Convention**: whilst the Convention provides for individualised damage to travellers, assessed on a case-by-case basis depending on the individual circumstances of the passenger, Regulation (EC) No 261/2004 establishes standardised entitlements (with regard to assistance and care) applicable to all passengers, regardless of their individual circumstances.

Under the **Montreal Convention** (as translated by **Regulation (EC) No 2027/97**² into EU law), a passenger may be entitled to compensation in case of **mishandled baggage** (but with a limit of about €1200), except if the airline can demonstrate it has taken all reasonable measures to avoid the damages or it was impossible to take such measures. Unlike Regulation (EC) No 261/2004, neither Regulation (EC) No 2027/97 nor the Montreal Convention requires the establishment of enforcement bodies to ensure their correct application.

¹ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, (OJ L46, 17.2.2004, p.1).

² 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)

1.2. Recent developments

Airlines often fail to offer passengers the rights to which they are entitled in instances of denied boarding, long delays, cancellations or mishandled baggage, in particular under Regulation (EC) No 261/2004 ("the Regulation") and Regulation (EC) No 2027/97.

The Commission EU **Citizenship Report** of October 2010 on dismantling obstacles to EU citizens' rights³ announced measures to ensure a set of common rights for passengers travelling by any transport mode across the EU and the adequate enforcement of these rights.

The Commission **White Paper on Transport** adopted on 28 March 2011 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".⁴

The **Commission Communication of 11 April 2011**⁵ reported on the varying interpretation being taken on the provisions of Regulation (EC) No 261/2004, due to grey zones and gaps in the current text, and the non-uniform enforcement across Member States. Furthermore, it is difficult for passengers to enforce their individual rights.

On 29 March 2012, the **European Parliament (EP)** adopted a resolution⁶ in response to the above Commission Communication. The EP believes that 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 concerning their rights should be the cornerstones of regaining passengers' trust. The EP regrets that the national enforcement bodies do not always ensure effective protection of passenger rights. With regard to Regulation (EC) No 261/2004, the EP asks the Commission to propose a clarification of the passengers' rights, in particular the notion of 'extraordinary circumstances'.

EU legislation must be in full conformity with the **Charter of Fundamental Rights**⁷. More specifically, it follows from Article 38 that a high level of consumer protection should be attained in all Union policies. Other relevant provisions include the right to the protection of personal data (Article 8), the prohibition of any form of discrimination and the integration of persons with disabilities (Articles 21 and 26) and the right to an effective remedy and to a fair trial (Article 47).

Case law has had a decisive impact on the interpretation of the Regulation. In case C-344/04 (IATA), the ECJ confirmed its full compatibility with the Montreal Convention and the complementarities between the two legal instruments. In case C-549/07 Wallentin-Herrman, the Court clarified when a technical problem in an aircraft should not be regarded as an

³ COM(2010) 0603, 16 Octobre 2010

⁴ Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system COM(2011) 144 final, see page 23: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0144:FIN:EN:PDF>

⁵ 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 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0174:FIN:EN:PDF>). COM (2011) 174 final

⁶ 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>

⁷ OJ C364, 18.12.2000, p. 1

‘extraordinary circumstance’. In the Sturgeon case (Joined Cases C-402/07 and C-432/07), the ECJ held that a long delay of at least three hours at arrival entitles passengers to compensation.

This proposal aims to promote the interest of air passengers by ensuring that air carriers comply with a high level of air passenger protection during travel disruptions, while taking into account the financial implications for the air transport sector and ensuring that air carriers operate under harmonised conditions in a liberalised market.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation process

A public consultation was carried out between 19 December 2011 and 11 March 2012; 410 submissions were received. The results are available on the Commission's website⁸. Moreover, a consultant undertook individual and more detailed interviews and consultations with 98 stakeholders from all stakeholder groups.

Finally, on 30 May 2012, the Commission and the European Economic and Social Committee co-organised a conference giving stakeholders the opportunity to respond to the results of the public consultation. The presentations and the minutes of the conference can be found on the Commission's website⁹.

The **consumer and passenger representatives** mainly focused on poor compliance and inadequate enforcement, especially with regard to financial compensation in case of delay. **Airlines and their associations** mainly considered that the financial cost of the Regulation is excessive, particularly that airlines face unlimited liability for incidents which are not their fault (e.g. volcanic ash cloud crisis in April 2010). The airlines heavily criticised the consequences of the Sturgeon judgement as causing excessive costs. The views of the **travel agent and tour operator associations** were similar to those of the airlines, but with some notable exceptions such as in regard to the right to rerouting or to the use of individual segments of a flight ticket ("no show" policy). **Airports** expressed strong opposition towards being given any responsibilities under the revised Regulation.

The **national and sub-national authorities** that responded to the public consultation expressed views on most issues which were similar to those of the consumer/passenger associations, but were more sensitive to economic, budgetary and legal constraints.

2.2. Impact assessment

The Commission has assessed four policy options in view of improving the application and enforcement of air passenger rights. They differ by the chosen trade-off between stronger enforcement and adjusted economic incentives for airlines: a heavier cost is an incentive for airlines for minimising costs of compliance and trying not to grant passengers their rights. A stronger sanctioning policy is an incentive for compliance. Therefore, for options where the cost imposed by the obligations of the Regulation is higher, the enforcement policy must be stricter and better coordinated, and vice versa.

⁸ http://ec.europa.eu/transport/passengers/consultations/2012-03-11-apr_en.htm

⁹ http://ec.europa.eu/transport/passengers/events/2012-05-30-stakeholder-conference_en.htm

Such a selection was considered because a full focus on enforcement without addressing the economic disincentives for compliance would require considerable public resources to be devoted to the enforcement bodies.

Option 1: focus on economic incentives (moderate change of enforcement): under option 1, enforcement is better coordinated, mainly via a better stream of information between the NEBs and the Commission. The option mainly focuses on the reduction of costs by replacing some of the obligations with regard to care (i.e. catering, accommodation) by the obligation for airlines to propose optional insurance to passengers.

Option 2: balancing stronger enforcement policy with economic incentives: enforcement policy is reinforced through stronger coordination of NEBs. NEBs would be required to improve the information they provide to the Commission about their activities and the Commission may request investigations, especially in cases involving several Member States. Additional costs flowing from enhanced care and assistance are compensated by adjustments in the global amount of financial compensation. This can be achieved by reducing the frequency of compensation payments via two variants:

- **Variante 2a:** increasing the time threshold after which the passenger has a right to compensation in case of delays from the current three hours to at least five;
- **Variante 2b:** extending the scope of "extraordinary circumstances" to include most technical defaults.

For both variants 2a and 2b, the impact assessment report analyses whether an additional adjustment of the lump-sum compensation amounts would be useful.

Under option 2, there would be a limit of 3 or 4 days on the obligation of accommodation in situations of extraordinary events of long duration. To mitigate the impact on passengers, contingency planning and a quicker rerouting are introduced.

Option 3: focus on enforcement: this option entirely focusses on stronger enforcement and clarifies existing passenger rights to render their application more effective.

Option 4: centralised enforcement: option 4 entirely focuses on a fully centralised enforcement policy which must counteract the negative incentives from the compliance cost: a central EU enforcement body is therefore part of this option.

In options 3 and 4, an industry fund – financed by a levy on every airline ticket - would ensure continued care in cases of extraordinary events of long duration by reimbursing at least part of the costs airlines incurred.

All policy options have some common features such as:

- the clarification of a number of issues (e.g. extraordinary circumstances as mentioned above, rerouting obligations, care during tarmac delays, rights in case of missed connections, etc.);
- a functional separation of general enforcement and of individual complaint handling where the latter may be taken charge of by alternative dispute resolution bodies (ADR). Both, the air carriers and the bodies in charge of individual complaints would

be submitted to clear complaint handling procedures (including maximum response times);

- involvement of other market players: enhanced possibility for recourse of airlines against third parties responsible for disruptions; setting up of contingency plans among airport users.

The impact assessment concludes that option 2 is preferable over the others as it would most effectively and efficiently enhance passengers' rights while taking into account the financial impact on the air transport sector. Variant 2a is slightly preferred over 2b because keeping the delay threshold too short (as in 2b) might lead to more cancellations and because 2a ensures a better consistency between the right to compensation and the right to reimbursement (both arise at the earliest after 5 hours). The impact assessment does not indicate a preference with regard to further sub-variants of option 2a (i.e. adjusted compensation levels and/or multiple time thresholds for delay compensation).

Compliance costs for air carriers would be similar under option 2 compared to today's Regulation, but its upward potential would be limited in case a growing proportion of passengers claim their compensation or in an extraordinary event of long duration.

The Commission has decided to present a proposal in line with the conclusion of the impact assessment, i.e. corresponding to its option 2a, including a uniform 5-hour threshold for delay compensation for all intra-EU journeys. With regard to the sub-options, the proposal does not modify the compensation levels, but it introduces a longer threshold for delay compensation for extra-EU journeys of more than 3500 km, given the specific problems encountered by long-haul journeys to deal with the causes of delays far from the air carrier's home base (9 hours for extra-EU journeys between 3500 and 6000 km and 12 hours for extra-EU journeys of 6000 km and more).

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The proposal is based on Article 100(2) TFEU.

3.2. Subsidiarity and proportionality

Firstly, there is limited scope for Member States to act alone to protect consumers, as the Air Services Regulation (EC) No 1008/2008¹⁰ does not allow Member States to place additional requirements on air carriers operating intra-EU services.

Secondly, most of the problems with air passenger rights refer to divergences of application/enforcement of Regulations (EC) No 261/2004 and (EC) No 2027/97 across Member States weakening passengers' rights and affecting the level-playing field between air carriers. Only coordinated EU intervention can address these problems.

Furthermore, the proposal complies with the proportionality principle. Any additional costs for economic operators and national authorities are limited to those necessary to improve the

¹⁰ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 establishing common rules for the operation of air services in the Community, OJ L 293 of 31.10.2008.

application and enforcement of passengers' rights. Cost increases related to the provision of care and assistance or to compensation in case of long delays are offset by modifications in the time thresholds giving rise to the right to compensation.

3.3. Detailed explanation of the proposal

3.3.1. *Ensure effective and consistent enforcement of passenger rights*

The proposal aims to improve enforcement by clarifying key principles and implicit passenger rights that have given rise to many disputes between airlines and passengers in the past; and by enhancing and better coordinating the enforcement policies carried out on a national level.

3.3.1.1. Clarification of key principles

- **Definition of "extraordinary circumstances"**: the proposal clearly defines the term in line with the European Court's decision in the case C-549/07 (Wallentin-Herman), i.e. circumstances which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. Furthermore, for further legal certainty, the proposal introduces a non-exhaustive list of circumstances to be regarded as extraordinary and of circumstances to be regarded as non-extraordinary (Article 1(1e) of the proposal – Article 2(m) of the amended Regulation 261/2004 – and Annex 1).
- **Right to compensation in case of long delays**: the proposal explicitly introduces the right to compensation in case of long delays - as announced by the ECJ in the joined cases C-407/07 and C-432/07 (Sturgeon) - into the text of Regulation (EC) No 261/2004. However, to avoid an increase in cancellations (which are in general more inconvenient to passengers), the time threshold after which the right to compensation arises is proposed to be increased from three to five hours for all journeys within the EU. While a single threshold is proposed for the EU, for journeys to/from third countries, the threshold will be made dependent upon the journey distance to take into account the practical problems encountered by air carriers when addressing the causes of delays at remote airports (see below; paragraph 3.3.2) (Article 1(5) of the proposal – Article 6(2) of the amended Regulation (EC) No 261/2004).
- **Right to rerouting**: the proposal clarifies that if the air carrier cannot reroute the passenger on its own services within 12 hours, it must consider other carriers or other transport modes, subject to seat availability (Article 1(8) of the proposal – Article 8(5) of the amended Regulation (EC) No 261/2004).
- **Right to care**: where currently the time threshold for care is dependent on the flight distance (2, 3 or 4 hours), the proposal simplifies by introducing a single time threshold of 2 hours for flights of all distances (Article 1(5) of the proposal – Article 6(1)(i) of the amended Regulation (EC) No 261/2004).
- **Missed connecting flight**: the proposal confirms that passengers that miss a flight connection because their previous flight was delayed have a right to care (to be provided by the operating air carrier of the missed flight which is best positioned to provide this care) and, under certain circumstances, a right to compensation (to be provided by the air carrier operating the delayed flight as it was at the origin of the total delay). However, such right would only apply where the connecting flights are

part of a single contract of carriage as in that case the air carriers concerned have committed to and are aware of the intended connection between the flights. The air carriers retain the right to agree on distributing costs between themselves (Article 1(6) of the proposal – Article 6a of the amended Regulation (EC) No 261/2004).

- **Rescheduling:** the proposal confirms that passengers of flights rescheduled with a notice of period of less than two weeks in advance of the originally scheduled time have similar rights to delayed passengers (Article 1(5) of the proposal – Article 6 of the amended Regulation (EC) No 261/2004).
- **Tarmac delays:** the proposal clearly sets out the rights of passengers when their aircraft is delayed on the tarmac, in particular a right to disembark after five hours (in line with the right to reimbursement) (Article 1(5) of the proposal – Article 6(5) of the amended Regulation (EC) No 261/2004).
- **Partial ban of the "no show" policy:** the proposal confirms that passengers may not be denied boarding on a return journey of the same ticket on the grounds that they did not take the outward journey. However, such ban does not affect the right of airlines to impose particular rules with regard to the sequential use of flights within a same journey. The Commission decided against a full ban of the "no show" policy because it would impair airlines from offering indirect flights at lower prices than direct flights and therefore hurt competition (Article 1(3(b)) of the proposal – Article 4(4) of the amended Regulation (EC) No 261/2004).
- **Right to information:** passengers should have a right to information about the flight disruption as soon as the information is available (Article 1(13) of the proposal – Article 14 of the amended Regulation (EC) No 261/2004).

3.3.1.2. Ensure effective and consistent sanctioning

The proposal clarifies the role of the National Enforcement Bodies (NEBs) by clearly allocating the role of general enforcement to the NEBs while out-of-court handling of individual complaints will be a role for complaint handling bodies which may become Alternative Dispute Resolution Bodies (ADR) under the new ADR Directive¹¹. Both types of bodies will closely cooperate (Article 1(15) of the proposal – Articles 16 and 16a of the amended Regulation (EC) No 261/2004).

The NEBs will adopt a more **proactive monitoring policy** than today and their role will be extended to the monitoring of **compliance with the baggage provisions** of Regulation (EC) No 2027/97 (and of the Montreal Convention) (Article 2(4) of the proposal – Article 6b of the amended Regulation (EC) No 2027/97).

The **exchange of information and the coordination** between the NEBs, and between the NEBs and the Commission, will be enhanced with reporting obligations and formal coordination procedures (Article 1(15) of the proposal – Article 16b of the amended Regulation (EC) No 261/2004).

3.3.1.3. Ensure effective handling of individual claims and complaints

¹¹ See the Commission's proposals: http://ec.europa.eu/consumers/redress_cons/adr_policy_work_en.htm

Under the proposal, air carriers should inform passengers, at the time of reservation, about their claim and complaint handling procedures, provide electronic means to submit complaints and give information about competent complaint handling bodies. Airlines will be required to respond within a deadline of two months to passengers (Article 1(15) of the proposal – Article 16a of the amended Regulation (EC) No 261/2004).

3.3.2. Better take into account the financial capacities of the air carriers

A limited number of measures aim to reduce the most costly aspects of Regulation (EC) No 261/2004:

- The right to compensation in case of delay will arise after five hours for all journeys within the EU. For journeys to/from third countries, to take into account the particular problems encountered by air carriers to handle causes of delays at remote airports, these thresholds will be made dependent upon the journey distance: 5 hours for extra-EU journeys of 3500 km or less, 9 hours for extra-EU journeys between 3500 and 6000 km, and 12 hours for extra-EU journeys of 6000 km and more (Article 1(5) of the proposal – Article 6(2) of the amended Regulation (EC) No 261/2004).
- In the case of delays and cancellations due to extraordinary circumstances, the air carrier may limit the right to accommodation to 3 nights with a maximum of EUR 100 per night and passenger (Article 1(9) of the proposal – Article 9(4) of the amended Regulation (EC) No 261/2004). However, the impact on passengers is mitigated by two additional measures: first, faster rerouting should reduce the risk of passengers being stranded for so long (see above); second, airports, air carriers and other actors in the air transport chain will be required to set up contingency plans to optimise the care and assistance to stranded passengers (Article 1(4) of the proposal – Article 5(5) of the amended Regulation (EC) No 261/2004). Furthermore, the limitation in the provision of accommodation does not apply to passengers with reduced mobility (PRMs), those persons accompanying them, pregnant women, persons in need of specific medical assistance and unaccompanied children - provided they have pre-notified the air carrier 48 hours before the scheduled time of departure (Article 1(11) of the proposal – Articles 11(3) and 11(4) of the amended Regulation (EC) No 261/2004).
- In view of the specificities of small-scale (regional) operations, air carriers are not compelled to provide accommodation to passengers of flights of less than 250 km on aircraft with a maximum capacity of 80 seats (except on connecting flights). Again, this derogation does not apply to PRM, persons accompanying them, pregnant women, persons in need of specific medical assistance and unaccompanied children (Articles 1(9) and 1(11) of the proposal – Articles 9(5), 11(3) and 11(4) of the amended Regulation 261/2004).
- The proposal specifies that national law may not restrict the air carriers' right to seek compensation from third parties responsible for delays or cancellations (Article 1(12) of the proposal – Article 13 of the amended Regulation (EC) No 261/2004).

3.3.3. Ensure better enforcement of passenger rights with regard to mishandled baggage

Taking into account the UN Convention on the Rights of Persons with Disabilities and the Charter of Fundamental Rights (Articles 21 and 26), **passengers with reduced mobility** should have the same right to free movement, freedom of choice and non-discrimination as other citizens.

The liability of air carriers with regard to **mobility equipment** will be increased up to the actual value of the equipment. This is achieved, in conformity with the Montreal Convention, by compelling air carriers to automatically offer the option to make a special declaration of interest laid out within the Convention, at no additional cost (Article 2(4) of the proposal – Article 6a of the amended Regulation (EC) No 2027/97).

The proposal enhances the transparency with regard to **baggage allowances**. It explicitly requires air carriers to clearly indicate the cabin and hold baggage allowances, at booking and at the airport (Article 2(4) of the proposal – Article 6d of the amended Regulation (EC) No 2027/97).

The proposal includes measures with regard to **musical instruments**. It compels air carriers to accept small instruments inside the passenger cabin, subject to certain conditions, and to clarify their rules with regard to the carriage of larger instruments in the cargo compartment (Article 2(4) of the proposal – Article 6e of the amended Regulation (EC) No 2027/97).

Taking into consideration the strict time limits of the Montreal Convention within which passengers can submit **claims for mishandled baggage** to air carriers, it is proposed that air carriers issue a claim form at the airport where passengers can complain about delayed, damaged or lost baggage (such as the common Property Irregularity Report or PIR) and then to accept this as a claim for the purposes of Regulation (EC) No 2027/97 and the Montreal Convention (Article 2(1) of the proposal – Article 3(2) of the amended Regulation (EC) No 2027/97).

Under the proposal, the National Enforcement Bodies designated under Regulation 261/2004 will also be responsible for the **enforcement** of the provisions of Regulation 2027/97 that relate to the rights of passengers with regard to delayed, lost or damaged baggage (Article 2(4) of the proposal – Article 6b of the amended Regulation (EC) No 2027/97).

3.3.4. Adapt liability limits in accordance to general price inflation

Regulation (EC) No 2027/97, as amended by Regulation (EC) No 889/2002, introduces the Montreal Convention into EU law and extends its scope to domestic flights (in addition to international flights). The Convention sets limits of liability with respect to the carriage of passengers, baggage and cargo, which have been revised upwards by 13.1% with effect from 30 December 2009. The present proposal updates the limits in the EU Regulation to take into account these revised amounts in the Convention (Articles 2(2) and 2(3) and annex 2 of the proposal – Articles 5(2) and 6(1) and the annex of the amended Regulation 2027/97).

4. BUDGETARY IMPLICATION

The proposal has no implications for the EU budget.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹²,

Having regard to the opinion of the Committee of the Regions¹³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91¹⁴, and Regulation (EC) No 2027/97 of the Council of 9 October 1997 on air carrier liability of the carriage of passengers and their baggage by air¹⁵ have significantly contributed to protecting the rights of air passengers when their travel plans are disrupted by denied boarding, long delays, cancellations or mishandled baggage.
- (2) A number of shortcomings revealed during the implementation of the rights under the Regulations, have however prevented their full potential in terms of passenger protection from being realised. In order to ensure a more effective, efficient and consistent application of air passenger rights across the Union, a series of adjustments

¹² OJ C , , p. .

¹³ OJ C , , p. .

¹⁴ OJ L46, 17.2.2004, p.1

¹⁵ OJ L285, 17.10.1997, p.1; modified in OJ L140, 30.5.2002, p.2

to the current legal framework is required. This was underlined in the Commission 2010 EU Citizenship Report on dismantling obstacles to EU citizens' rights¹⁶ which announced measures to ensure a set of common rights notably for air passengers and the adequate enforcement of these rights.

- (3) In order to increase legal certainty for air carriers and passengers, a more precise definition of the concept of "extraordinary circumstances" is needed, which takes into account the judgement of the European Court of Justice in the case C-549/07 (Wallentin-Hermann). Such a definition should be further clarified via a non-exhaustive list of circumstances that are clearly identified as extraordinary or not.
- (4) In the case C-173/07 (Emirates), the European Court of Justice held that the concept of 'flight' within the meaning of Regulation No 261/2004 must be interpreted as consisting essentially of an air transport operation, as a 'unit' of such transport, performed by an air carrier which fixes its itinerary. In order to avoid uncertainty, a clear definition of a "flight" should now be provided, as well as for the associated notions of "connecting flight" and "journey".
- (5) In the case C-22/11 (Finnair), the European Court decided that the concept of 'denied boarding' must be interpreted as relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons. Given this confirmation, there is no reason to modify the current definition of "denied boarding".
- (6) Regulation (EC) No 261/2004 also applies to passengers that have booked their air transport as part of a package travel. However, it should be clarified that passengers may not cumulate corresponding rights, in particular under both this Regulation and Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours¹⁷. The passengers should be able to choose under which law they introduce their claims, but should not have the right to cumulate compensation for the same problem under both legal acts. Passengers should not be concerned about how air carriers and tour operators allocate such claims between them.
- (7) In order to improve levels of protection, passengers should not be denied boarding on the return journey of a two-way (return) ticket because they have not taken the outward journey.
- (8) At present, passengers are sometimes penalised for spelling errors in their names by the application of punitive administrative fees. Reasonable corrections of booking errors should be provided free of charge provided they do not imply a change of times, date, itinerary or passenger.
- (9) It should be clarified that in cases of cancellation the choice between receiving reimbursement, continuation of travel by rerouting or travel at a later date is the decision of the passenger and not that of the air carrier.
- (10) Airports and airport users such as air carriers and ground handling companies should cooperate to minimise the impact of multiple flight disruptions on passengers by

¹⁶ COM(2010) 603 final

¹⁷ OJ L158, 23.6.1990, p.59

ensuring their care and rerouting. To this end, they should prepare contingency plans for such occurrences and work together in the development of such plans.

- (11) Regulation (EC) No 261/2004 should explicitly include the right to compensation for passengers suffering long delays, in line with the judgement of the European Court of Justice in the Joined cases C-402/07 and C-432/07 (Sturgeon). At the same time, the thresholds above which delays give rise to a right to compensation should be increased to take account of the financial impact on the sector and to avoid any increase in the frequency of cancellations as a consequence. To ensure that citizens travelling within the EU face homogenous conditions for compensation, the threshold should be the same for all travel within the Union, but it should depend upon the journey distance for travel to and from third countries to take into account the operational difficulties encountered by air carriers to deal with delays on remote airports.
- (12) To ensure legal certainty, Regulation (EC) No 261/2004 should explicitly confirm that the changing of flight schedules has a similar impact on passengers to long delays and should therefore give rise to similar rights.
- (13) Passengers missing a connecting flight should be properly cared for while waiting for rerouting. In line with the principle of equal treatment, such passengers should be able to claim compensation on a similar basis to passengers whose flights are delayed or cancelled in light of the delay upon reaching the final destination of their journey.
- (14) In order to enhance passenger protection, it should be clarified that delayed passengers enjoy rights to care and compensation irrespective of whether they are waiting in the airport terminal or are already seated on board the aircraft. However, as the latter have no access to the services available in the terminal, their rights should be reinforced with regard to basic needs and with regard to the right to disembark.
- (15) Where a passenger has taken up the choice of rerouting at the earliest possibility, the air carrier often makes the rerouting conditional upon the availability of seats on its own services, thereby denying their passengers the option of being rerouted more quickly by alternative services. It should be established that after a certain period of time has elapsed, the carrier should offer rerouting on another carrier's services or on other transport modes where this can speed up rerouting. Alternative rerouting should be dependent upon the availability of seats.
- (16) Air carriers currently face unlimited liability for the accommodation of their passengers in the case of extraordinary circumstances of long duration. This uncertainty linked with the absence of any foreseeable limit in time may risk endangering a carrier's financial stability. An air carrier should therefore be able to limit the provision of care after a certain duration of time. Moreover, contingency planning and speedy rerouting should lessen the risk of passengers being stranded for long periods.
- (17) The implementation of certain passenger rights, in particular the right to accommodation, has been shown to be out of proportion to air carriers' revenues for certain small-scale operations. Flights performed by small aircraft on short distances should therefore be exempted from the obligation to pay for accommodation, although the carrier should still help the passenger to find such accommodation.

- (18) For disabled persons, persons with reduced mobility and other persons with special needs such as unaccompanied children, pregnant women and persons in need of specific medical attention, it may be more difficult to arrange accommodation when flight disruptions occur. Therefore, any limitations on the right for accommodation in cases of extraordinary circumstances or for regional operations should not apply to these categories of passenger.
- (19) The reasons behind the current level of long delays and cancelled flights in the EU are not attributable solely to air carriers. In order to incentivise all actors in the aviation chain to seek efficient and timely solutions to minimise the inconvenience that long delays and cancellations cause to passengers, air carriers should have the right to seek redress from any third party which contributed to the event triggering compensation or other obligations.
- (20) Passengers should not only be correctly informed about their rights in cases of flight disruption, but they should also be adequately informed about the cause of the disruption itself, as soon as the information becomes available. This information should also be provided where the passenger has acquired the ticket through an intermediary established in the Union.
- (21) In order to ensure a better enforcement of passenger rights, the role of the National Enforcement Bodies should be more precisely defined and clearly distinguished from the handling of individual passenger complaints.
- (22) Passengers should be adequately informed about the relevant procedures for submitting claims and complaints to air carriers and should receive a reply within a reasonable time period. Passengers should also have the option to complain about air carriers via out-of-court measures. However, since the right to an effective remedy before a tribunal is a fundamental right recognised in Article 47 of the Charter of Fundamental Rights of the European Union, those measures should neither prevent nor hinder passengers' access to courts.
- (23) In case C-139/11 (*Moré vs KLM*), the European Court of Justice clarified that the time-limits for bringing actions for compensation are determined in accordance with the national rules of each Member State.
- (24) A regular flow of information between the Commission and enforcement bodies would enable the Commission to better fulfil its monitoring and coordinating role of the national bodies and to support them.
- (25) In order to ensure uniform conditions for the implementation of Regulation (EC) No 261/2004, implementing powers should be conferred to the Commission. These powers should be exercised in accordance with Regulation (EC) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers¹⁸.
- (26) The advisory procedure should be used for adopting implementing decisions with regard to the content of the activity reports provided by the Member States to the Commission.

¹⁸ OJ L55, 28.2.2011, p.13

- (27) In order to ensure that the damage to or loss of mobility equipment is compensated to its full value, air carriers should offer free of charge to persons with reduced mobility the opportunity to make a special declaration of interest, which pursuant to the Montreal Convention, allows them to seek full compensation for loss or damage.
- (28) Passengers are sometimes confused about the baggage they are allowed to take on board, in terms of dimensions, weight or number of items. In order to ensure that passengers are fully aware of the baggage allowances included in their ticket, both for cabin and hold baggage, air carriers should clearly indicate these allowances at booking and at the airport.
- (29) Musical instruments should as far as possible be accepted as baggage within the passenger cabin and, where this is not possible, should where possible be carried under the appropriate conditions in the cargo compartment of the aircraft. Regulation (EC) No 2027/97 should be amended accordingly.
- (30) In order to ensure the correct and consistent application of the rights conferred to passengers by Regulation (EC) No 2027/97, the National Enforcement Bodies designated under Regulation (EC) No 261/2004 should also monitor and enforce the rights under Regulation (EC) No 2027/97.
- (31) Given the short deadlines for the submission of complaints for lost, damaged or delayed baggage, air carriers should give passengers the possibility to submit a complaint by providing a complaint form at the airport. This could also take the form of the common Property Irregularity Report (PIR).
- (32) Article 3(2) of Regulation (EC) No 2027/97¹⁹ has become obsolete as insurance matters are now regulated by Regulation (EC) No 785/2004. It should accordingly be deleted.
- (33) It is necessary that the monetary limits expressed in Regulation (EC) No 2027/97 should be amended in order to take into account economic developments, as reviewed by the International Civil Aviation Organization (ICAO) in 2009 pursuant to Article 24(2) of the Montreal Convention.
- (34) In order to ensure the continued correspondence between Regulation (EC) No 2027/97 and the Montreal Convention, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. This power will allow the Commission to amend the monetary limits expressed in Regulation (EC) No 2027/97 in case they are adapted by the International Civil Aviation Organization (ICAO) pursuant to Article 24(2) of the Montreal Convention.
- (35) This Regulation should respect fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably consumer protection, the right to protection of personal data, the prohibition of

¹⁹ 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.1p as modified by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002, OJ L 140, 30.5.2002, p.2

any form of discrimination and the integration of persons with disabilities, the right to an effective remedy and to a fair trial.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation 261/2004 is amended as follows:

1. Article 2 is amended as follows:

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

'«Community air carrier» means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Regulation (EC) No 1008/2008 of 24 September 2008 on common rules for the operation of air services in the Community²⁰.'

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

'«Organiser» means a person within the meaning of Article 2(2) of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours²¹;

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

'«person with reduced mobility» means any person as defined in Article 2(a) of Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air²².'

(d) The following sentence is added to the definition of "cancellation" in point (l):

'A flight where the aircraft took off but, for whatever reason, was subsequently forced to land at an airport other than the airport of destination or to return to the airport of departure, shall be considered a cancelled flight.'

(e) The following definitions are added:

(m) «extraordinary circumstances» means circumstances which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. For the purposes of this Regulation, extraordinary circumstances shall include the circumstances set out in the Annex;

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

²⁰ OJ L293, 31.10.2008, p. 3.

²¹ OJ L158, 23.6.1990, p. 59

²² OJ L204, 26.7.2006, p.1

- (o) «connecting flight» means a flight which, under a single contract of carriage, is intended to enable the passenger to arrive at a transfer point in order to depart on another flight, or, where appropriate in the context, means that other flight departing from the transfer point.
- (p) "journey" means a flight or a continued series of connecting flights transporting the passenger from an airport of departure to his final destination in accordance with the contract of carriage;
- (q) «airport» means any area specifically adapted for the landing, taking-off and manoeuvring of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services, including the installations needed to assist commercial air services;
- (r) «airport managing body» means a body which, in conjunction with other activities or not as the case may be, has as its objective under national laws, regulations or contracts the administration and management of the airport or airport network infrastructures and the coordination and control of the activities of the different operators present in the airports or airport network concerned;
- (s) « ticket price" means the full price paid for a ticket and including the air fare, and all applicable taxes, charges, surcharges and fees paid for all optional and non-optional services included in the ticket;
- (t) "flight price" means the value obtained by multiplying the ticket price by the ratio between the distance of the flight and the total distance of the journey(s) covered by the ticket;
- (u) «time of departure» means the time when the aircraft leaves the departure stand, pushed back or on its own power (off-block time);
- (v) «time of arrival» means the time when the aircraft reaches the arrival stand and the parking brakes are engaged (in-block time);
- (w) «tarmac delay» means, at departure, the time the aircraft remains on the ground between the start of boarding of the passengers and the take-off time of the aircraft or, at arrival, the time between the touch-down of the aircraft and the start of disembarkation of the passengers;
- (x) "night" means the period between midnight and 6 a.m.,
- (y) "unaccompanied child" means a child who travels without an accompanying parent or guardian and where the air carrier has accepted responsibility for care in accordance with its published rules.'

2. Article 3 is amended as follows:

(a) Paragraph 2 is replaced by the following:

'Paragraph 1 shall apply on the condition that passengers:

(a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5 and in the case of change of schedule referred to in Article 6, present themselves for boarding,

- as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the organiser or an authorised travel agent,

or, if no time is indicated,

- not later than 45 minutes before the scheduled departure time; or

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

(b) Paragraph 4 is replaced by the following:

'4. Without prejudice to Article 8(6), this Regulation shall only apply to passengers transported by motorised fixed wing aircraft. However, where a part of the journey is carried out, in accordance with a contract of carriage, by another mode of transport or by helicopter, this Regulation shall apply for the whole journey and the part of the journey carried out by another mode of transport shall be considered as a connecting flight for the purposes of this Regulation.'

(c) Paragraph 6 is replaced by the following:

'6. This Regulation shall also apply to passengers transported according to package travel contracts but shall not affect the rights of passengers under Council Directive 90/314/EEC. The passenger shall be entitled to present claims under this Regulation and under Council Directive 90/314/EEC, but may not in relation to the same facts cumulate rights under both legal acts if the rights safeguard the same interest or have the same objective. This Regulation shall not apply in cases where a package tour is cancelled or delayed for reasons other than cancellation or delay of the flight.'

3. Article 4 is amended as follows:

(a) Paragraph 3 is replaced by the following:

'3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Article 8. Where the passenger opts for rerouting at the earliest opportunity pursuant to Article 8(1)(b) and where the departure time is at least two hours after the initial departure time, the operating carrier shall assist the passenger in accordance with Article 9.'

(b) The following two paragraphs are added:

'4. Paragraphs 1, 2 and 3 shall also apply to return tickets where the passenger is denied boarding at the return journey on the grounds that he/she did not take the outward journey or did not pay an additional charge for this purpose.

5. Where the passenger, or an intermediary acting on behalf of the passenger, reports a spelling mistake in the name of one or several passengers included in the same

contract of carriage that may lead to a denial of boarding, the air carrier shall correct this at least once up until 48 hours before departure without any additional charge to the passenger or the intermediary, except where it is prevented from doing so by national or international law.'

4. Article 5 is amended as follows:

(a) Paragraph 1, points (a) and (b) are replaced by the following:

'(a) be offered by the operating air carrier the choice between reimbursement, continuation of their travel by rerouting or travel at a later date, in accordance with Article 8; and

'(b) be offered by the operating air carrier in the event of re-routing when the reasonably expected time of departure of the flight is at least 2 hours after the planned departure of the cancelled flight, the care specified in Article 9 and'

(b) Paragraph 3 is replaced by the following:

'3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7 if it can prove that the cancellation is caused by extraordinary circumstances and that the cancellation could not have been avoided even if all reasonable measures had been taken. Such extraordinary circumstances can only be invoked in so far they affect the flight concerned or the previous flight operated by the same aircraft. '

(c) The following paragraph 5 is added:

'5. At airports whose annual traffic has been not less than three million passengers for at least three consecutive years, the airport managing body shall ensure that the operations of the airport and of airport users, in particular the air carriers and the suppliers of ground handling services, are coordinated through a proper contingency plan in view of possible situations of multiple cancellations and/or delays of flights leading to a considerable number of passengers stranded at the airport, including in cases of airline insolvency or revocation of the operating licence. The contingency plan shall be set up to ensure adequate information and assistance to the stranded passengers. The managing body of the airport shall communicate the contingency plan and any amendments to it to the National Enforcement Body designated pursuant to Article 16. At airports below the above-mentioned threshold, the airport management body shall make all reasonable efforts to coordinate airport users and to assist and inform stranded passengers in such situations.

5. Article 6 is replaced by the following:

'Article 6

Long delay

1. When an operating air carrier reasonably expects a flight to be delayed, or an operating carrier postpones the scheduled time of departure, beyond its originally scheduled time of departure, passengers shall be offered by the operating air carrier:

- (i) when the delay is of at least two hours, the assistance specified in Article 9(1)(a) and 9(2); and
- (ii) when the delay is of at least five hours and includes one or several nights, the assistance specified in Article 9(1)(b) and 9(1)(c); and
- (iii) when the delay is of at least five hours, the assistance specified in Article 8(1)(a).

2. Passengers shall have a right to compensation from the operating air carrier in accordance with Article 7 where the passenger arrives at its final destination:

(a) five hours or more after the scheduled time of arrival for all intra-Community journeys and for journeys to/from third countries of 3500 kilometres or less;

(b) nine hours or more after the scheduled time of arrival for journeys to/from third countries between 3500 and 6000 kilometres;

(c) twelve hours or more after the scheduled time of arrival for journeys to/from third countries of 6000 kilometres or more.

3. Paragraph 2 shall also apply where the operating air carrier has modified the scheduled times of departure and arrival causing a delay compared to the time of arrival of the original schedule, unless the passenger was informed of the schedule change more than fifteen days in advance of the originally scheduled time of departure.

4. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the delay or change of schedule is caused by extraordinary circumstances and that the delay or change of schedule could not have been avoided even if all reasonable measures had been taken. Such extraordinary circumstances can only be invoked insofar they affect the flight concerned or the previous flight operated by the same aircraft.

5. Subject to safety constraints, where a tarmac delay exceeds one hour, the operating air carrier shall provide free of charge access to toilet facilities and drinking water, shall ensure adequate heating or cooling of the passenger cabin, and shall ensure that adequate medical attention is available if needed. Where a tarmac delay reaches a maximum of five hours, the aircraft shall return to the gate or another suitable disembarkation point where passengers shall be allowed to disembark and to benefit from the same assistance as specified in paragraph 1, unless there are safety-related or security-related reasons why the aircraft cannot leave its position on the tarmac.'

6. The following Article is inserted:

'Article 6a

Missed connecting flight

1. Where a passenger misses a connecting flight as a result of a delay or change of schedule to a preceding flight, the Community air carrier operating the onward connecting flight shall offer the passenger:

(i) the assistance specified in Article 9(1)(a) and 9(2) if the passenger's waiting time for the connection is prolonged by at least two hours; and

(ii) re-routing as specified in Article 8(1)(b); and

(iii) when the scheduled time of departure of the alternative flight or other transport offered under Article 8 is at least 5 hours after the scheduled time of departure of the flight missed and the delay includes one or several nights, the assistance specified in Article 9(1)(b) and 9(1)(c).

2. Where a passenger misses a connecting flight as a result of a delay to a preceding connecting flight, the passenger shall have a right to compensation by the Community air carrier operating that preceding flight in accordance with Article 6(2). For these purposes, the delay shall be calculated by reference to the scheduled time of arrival at the final destination.

3. Paragraph 2 shall be without prejudice to any indemnity arrangements made between affected air carriers.

4. Paragraphs 1 and 2 apply also to third country air carriers operating a connecting flight to or from an EU airport.'

7. Article 7 is amended as follows:

(a) In Paragraph 1, the word "flights" is replaced by "journeys".

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

2. Where the passenger has opted for the continuation of his travel pursuant to Article 8(1)(b), the right to compensation can arise only once during his travel to the final destination, even if a new cancellation or missed connection should arise during rerouting.

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques.

4. The distances given in paragraph 1 shall be measured by the great circle route method.

5. The air carrier may reach a voluntary agreement with the passenger that replaces the compensation provisions set out in paragraph 1, provided that this agreement is confirmed by a document signed by the passenger which reminds the passenger of his rights to compensation under this Regulation.'

8. Article 8 is replaced by the following:

Article 8

Right to reimbursement or re-routing

1. Where reference is made to this Article, passengers shall be offered, free of charge, the choice between three options:

(a) - reimbursement within seven days of the passenger's request, by the means provided for in Article 7(3), of the flight price, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,

- a return flight to the first point of departure, at the earliest opportunity;

(b) continuation of the passengers' travel plans by re-routing them, under comparable transport conditions, to their final destination at the earliest opportunity; or

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

2. Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC.

3 If an operating air carrier offers a passenger a flight to or from an airport alternative to that for which the reservation was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport to that for which the reservation was made, or, with regard to the destination airport, to another neighbouring destination agreed with the passenger.

4. Where agreed by the passenger, the return flight or flights referred to in paragraph 1(a) or the re-routing referred to in paragraph 1(b) or 1(c) may use services operated by another air carrier, involve a different routing, or use another mode of transport.

5. Where passengers choose the option referred to in paragraph 1(b), they shall, subject to availability, have the right to re-routing via another air carrier or another mode of transport where the operating air carrier cannot transport the passenger on its own services and in time to arrive at the final destination within 12 hours of the scheduled arrival time. Notwithstanding Article 22(1) of Regulation (EC) No 1008/2008²³, the **other air carrier or other transport operator** shall not charge the contracting carrier a price that goes beyond the average price paid by its own passengers for equivalent services in the last three months.

6. Whenever passengers are offered, pursuant to paragraph 1, a total or partial rerouting by another mode of transport, this Regulation shall apply to the transport carried out by that other mode of transport as if it were carried out by fixed wing aircraft.'

9. Article 9 is amended as follows:

(a) Paragraph 1, point c is replaced by the following:

²³ OJ L293, 31.10.2008, p.3

'(c) transport between the airport and place of accommodation (hotel, place of residence of the passenger or other)'

(b) The following paragraphs are added:

'4. If the operating air carrier can prove that the cancellation, delay or change of schedule is caused by extraordinary circumstances and that the cancellation, delay or change of schedule could not have been avoided even if all reasonable measures had been taken, it may limit the total cost of accommodation provided according to paragraph 1(b) to EUR 100 per night and per passenger and to a maximum of 3 nights. If the operating air carrier chooses to apply this limitation, it shall nevertheless provide the passengers with information about available accommodation after the three nights, in addition to the continued obligations for information specified in Article 14.

5. The obligation to offer accommodation under paragraph 1(b) shall not apply where the flight concerned is of 250 km or less and scheduled to be operated by an aircraft with a maximum capacity of 80 seats or less, except where the flight is a connecting flight. If the operating air carrier chooses to apply this exemption, it shall nevertheless provide the passengers with information about available accommodation.

6. Where a passenger opts for reimbursement pursuant to Article 8(1)(a) while being at the departure airport of his journey, or opts for rerouting at a later date pursuant to Article 8(1)(c), the passenger shall have no further rights with regard to care under Article 9(1) in relation to the relevant flight.'

10. In paragraph 2, points (a), (b) and (c) of Article 10, the term 'price of the ticket' is replaced by 'flight price'.

11. The following paragraph is added to Article 11:

'3. The operating air carrier shall not apply the limitations set out in Articles 9(4) and 9(5) if the passenger is a person with reduced mobility or any person accompanying him/her, an unaccompanied child, a pregnant woman or a person in need of specific medical assistance, on condition the air carrier or its agent or the organiser has been notified of their particular needs for assistance at least 48 hours before the scheduled time of departure of the flight, Such notification shall be deemed to cover the entire journey and the return journey if both journeys have been contracted with the same air carrier.'

12. Article 13 is replaced by the following:

'Article 13

Right of redress

In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation or of national law may be interpreted as restricting its right to seek compensation for the costs incurred under this Regulation from any third parties which contributed to the event triggering compensation or other obligations.'

13. Article 14 is replaced by the following:

‘Article 14

Obligations to inform passengers

1. The airport managing body and the operating air carrier shall ensure that at the check-in desks (including at self-service check-in machines) and at the boarding gate, a clearly legible notice containing the following text is displayed in a manner clearly visible to passengers: «If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the notice stating your rights, particularly with regard to assistance and possible compensation».

2. An operating air carrier denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with this Regulation, including information on possible limitations pursuant to Articles 9(4) and 9(5). It shall also provide each passenger affected by a delay or a change of schedule of at least two hours with an equivalent notice. The contact details of the competent complaint handling bodies designated under Article 16a shall also be given to the passenger in written form.

3. In respect of blind and visually impaired persons, the provisions of this Article shall be applied using appropriate alternative means.

4. The airport managing body shall ensure that general information on passenger rights is clearly and visibly displayed within the passenger areas of the airport. It shall also ensure that passengers present at the airport are informed about the cancellation of their flight and about their rights in case the airline unexpectedly ceases operations as in the case of insolvency or revocation of its operating licence.

5. In the event of cancellation or delay in departure, passengers shall be informed by the operating air carrier of the situation as soon as possible and in any event no later than 30 minutes after the scheduled departure time, and of the estimated departure time as soon as this information is available, provided the air carrier has received the passenger's contact details in accordance with paragraphs 6 and 7 in case the ticket was acquired via an intermediary.

6. Where the passenger does not acquire a ticket directly from the operating air carrier, but via an intermediary established within the Union, this intermediary shall provide the passenger's contact details to the air carrier, on condition that the passenger has given his explicit and written authorisation. This authorisation may only be given on an "opt-in" basis. The air carrier may use these contact details exclusively for the purpose of fulfilling the information obligation under this Article and not for marketing purposes and shall delete the contact details within 72 hours after the completion of the contract of carriage. The processing, access and storage of these data shall be undertaken in accordance with Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data²⁴.

²⁴ OJ L 281, 23.11.1995, p.31

7. An intermediary shall be exempted from paragraph 6 if it can prove the existence of an alternative system that ensures that the passenger is informed without the transmission of the relevant contact details.'

14. Article 16 is replaced by the following:

'Article 16

Enforcement

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

2. The National Enforcement Body shall closely monitor compliance with the requirements of this Regulation and take the measures necessary to ensure that the rights of passengers are respected. For this purpose, air carriers and airport managing bodies shall provide the relevant documents to the National Enforcement Body at its request. In order to carry out its functions, the National Enforcement Body shall also take account of the information submitted to it by the body designated under Article 16a. It may also decide on enforcement actions based on individual complaints transmitted by the body designated under Article 16a.

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.

4. Where the bodies designated under Articles 16 and 16a differ, reporting mechanisms shall be set up to ensure the exchange of information between the various bodies in order to help the National Enforcement Body to carry out its tasks of supervision and enforcement and for the body designated under Article 16a to collect the information necessary to examine individual complaints.

5. For each year, at the latest at the end of April of the following calendar year, the National Enforcement Bodies shall publish statistics on their activity, including on sanctions applied.

6. Air carriers shall communicate their contact details, for matters covered by this Regulation, to the National Enforcement Bodies of the Member States in which they operate.'

15. The following Articles are inserted:

'Article 16a

Passenger claims and complaints

1. At the time of reservation, air carriers shall provide information to passengers on their claim and complaint handling processes in relation to the rights set out in this Regulation and on the relevant contact addresses, to which passengers can submit claims and complaints, including via electronic means of transmission. The air

carrier shall also inform passengers of the body or bodies competent for handling passenger complaints.

2. If a passenger wants to make a complaint to the air carrier with regard to his rights under this Regulation, he shall submit it within 3 months from the date on which the flight was performed or was scheduled to be performed. Within 7 days of receiving the complaint, the carrier shall confirm the receipt of the complaint to the passenger. Within two months of receiving the complaint, the carrier shall provide a full answer to the passenger.

3. In accordance with relevant EU and national law, each Member State shall designate a national body or bodies responsible for the out-of-court resolution of disputes between air carriers and passengers with regard to the rights covered by this Regulation.

4. Each passenger may complain to any national body designated under paragraph 3, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory. Such complaints may be submitted at the earliest two months after a complaint was submitted to the concerned carrier unless the carrier has already provided a final reply to such complaint.

5. Within 7 days of receiving the complaint, the designated body shall confirm receipt of the complaint and shall send a copy to the appropriate National Enforcement Body. The time taken to provide the final reply to the complainant shall not be longer than three months from the receipt of the complaint. A copy of the final reply shall also be provided to the National Enforcement Body.

Article 16b

Cooperation between Member States and the Commission

1. The Commission shall support dialogue between Member States concerning national interpretation and application of this Regulation through the Committee referred to in Article 16c.

2. Member States shall provide annually a report on their activities to the Commission, at the latest at the end of April of the following calendar year. The Commission may decide on the issues to be addressed in these reports via implementing acts. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 16c.

3. The Member States shall regularly send relevant information concerning the national interpretation and application of the Regulation to the Commission, which will make this information available in electronic form to other Member States.

4. At the request of a Member State, or on its own initiative, the Commission shall examine cases where differences in the application and enforcement of any of the provisions of this Regulation arise and particularly concerning the interpretation of extraordinary circumstances; and shall clarify the provisions of the Regulation, with a view to promoting a common approach. To this end, the Commission may adopt a recommendation after consultation of the Committee referred to in Article 16c.

5. At the request of the Commission, the National Enforcement Bodies shall investigate specific suspected practice by one or several air carriers and report its findings to the Commission within 4 months of the request.

Article 16c

Committee procedure

1. The Commission shall be assisted by the Passenger Rights Committee, composed of two representatives of each Member State and of which at least one will represent a National Enforcement Body. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

16. Article 17 is replaced by the following:

'Article 17

Report

The Commission shall report to the European Parliament and the Council by 1 January 2017 on the operation and the results of this Regulation, in particular with regard to the impact of the compensation for long delays and the limitation of accommodation in extraordinary circumstances of long duration. The Commission shall also report on the enhanced protection of air passengers on flights from third countries operated by non-Community carriers, in the context of international air transport agreements. The report shall be accompanied where necessary by legislative proposals.

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

Article 2

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

1. Paragraph 2 of Article 3 is replaced by the following:

'2. The Community air carrier shall provide a complaint form at the airport which allows the passenger to immediately submit such a complaint about damaged or delayed baggage. Such a complaint form, which may take the form of a Property Irregularity Report (PIR), shall be accepted by the air carrier at the airport as a complaint pursuant to Article 31(2) of the Montreal Convention. This possibility shall not affect the right of the passenger to submit a complaint via other means within the deadlines given by the Montreal Convention.'

2. Paragraph 2 of Article 5 is replaced by the following:

'2. Without prejudice to paragraph 1, an advance payment shall not be less than the equivalent in euro of 18 096 SDRs per passenger in the event of death. 'The Commission shall be empowered, by means of a delegated act in accordance with

Article 6c, to adjust this amount in light of a decision by the International Civil Aviation Organisation pursuant to Article 24(2) of the Montreal Convention. Any adjustment in the before mentioned amount shall also modify the corresponding amount in the Annex.'

3. The following sentence is added to Article 6(1):

'The Commission shall be empowered, by means of a delegated act in accordance with Article 6c, to adjust the amounts mentioned in the Annex, with the exception of the amount mentioned in Article 5(2), in light of a decision by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention.'

4. The following Articles are inserted:

Article 6a

1. Whenever carrying checked wheelchairs or other mobility equipment or assistive devices, the air carrier and its agents shall offer each person with reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006²⁵ the option to make, free of charge, a special declaration of interest pursuant to Article 22(2) of the Montreal Convention, at booking and at the latest when the equipment is handed to the carrier.

2. In case of destruction, loss of or damage to mobility aids, the liability of the air carrier shall be limited to the sum declared by the person at the time when the checked mobility equipment is handed over to the Community air carrier.

3. In case of destruction, loss, damage or delay in the carriage of checked wheelchairs or other mobility equipment or assistive devices, the Community air carrier shall be liable to pay a sum not exceeding the sum declared by the passenger; unless it proves that the sum claimed is greater than the person's actual interest in delivery at destination.

Article 6b

1. The National Enforcement Body designated under Article 16 of Regulation 261/2004 shall ensure compliance with this Regulation. For this purpose, it shall monitor:

- the terms and conditions of air transport contracts;
- the systematic offer of a special declaration of interest for checked mobility equipment, and of an appropriate level of compensation in case of damage caused to mobility equipment;
- the payment of an advance payment under Article 5(1) when applicable;
- the application of Article 6.

²⁵ 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

2. For the purpose of monitoring the protection of passengers with reduced mobility and disabled passengers in case of damage to their mobility equipment, the National Enforcement Body shall also examine and take account of the information on complaints concerning mobility equipment submitted to the bodies designated under Article 16a of Regulation 261/2004.

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.

4. In their annual reports pursuant to Article 16(6) of Regulation 261/2004, the National Enforcement Bodies shall also publish statistics on their activity and on the sanctions applied with regard to the application of this Regulation.

Article 6c

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 6(1) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

3. The delegation of power referred to in Article 6(1) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 6(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.'

Article 6d

1. Whilst air carriers have full commercial freedom to establish the conditions under which they permit baggage to be carried, they shall clearly indicate, at booking and at the check-in desks (including at self-service check-in machines), the maximum baggage allowance passengers are permitted to carry within the cabin and hold of the aircraft on each of the flights included within a passenger's reservation, including any restrictions on the number of items that would be applied within a given maximum baggage allowance. Where additional charges are applied for the carriage of baggage air carriers shall clearly indicate details of those charges at booking and on request at the airport.

2. Where extraordinary circumstances, such as safety reasons or a change of the aircraft type since the booking was made, preclude the carriage in the cabin of items included in the carry-on baggage allowance, the air carrier may carry them in the hold of the aircraft, but at no extra cost to the passenger.

3. These rights do not affect the restrictions on carry-on baggage established by EU and international security rules such as Regulations (EC) No 300/2008 and (EC) No 820/2008

Article 6e

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

2. Where a musical instrument is too large to be stowed safely in a suitable baggage compartment within the cabin or under an appropriate passenger seat, an air carrier may request the payment of a second fare where such musical instruments are carried as hand luggage on a second seat. Where a second seat is purchased an air carrier should make reasonable efforts to seat the passenger and the musical instrument concerned together. Where available and if requested, musical instruments shall be carried in a heated part of an aircraft cargo hold subject to applicable safety rules, space constraints and the technical specifications of the aircraft concerned. An air carrier shall clearly indicate in its terms and conditions the basis on upon which musical instruments will be transported and the applicable charges.'

5. Article 7 is replaced by the following:

'Article 7

The Commission shall report to the European Parliament and the Council by 1 January 2017 on the operation and the results of this Regulation. The report shall be accompanied where necessary by legislative proposals.'

6. The Annex to Regulation 2027/97 is replaced by Annex 2 to the present Regulation.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Annex 1

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

1. The following circumstances shall be considered as extraordinary:

- i. natural disasters rendering impossible the safe operation of the flight;
- ii. technical problems which are not inherent in the normal operation of the aircraft, such as the identification of a defect during the flight operation concerned and which prevents the normal continuation of the operation; or a hidden manufacturing defect revealed by the manufacturer or a competent authority and which impinges on flight safety;
- iii. security risks, acts of sabotage or terrorism rendering impossible the safe operation of the flight;
- iv. life-threatening health risks or medical emergencies necessitating the interruption or deviation of the flight concerned;
- v. air traffic management restrictions or closure of airspace or an airport;
- vi. meteorological conditions incompatible with flight safety; and
- vii. labour disputes at the operating air carrier or at essential service providers such as airports and Air Navigation Service Providers.

2. The following circumstances shall not be considered as extraordinary:

- i. technical problems inherent in the normal operation of the aircraft, such as a problem identified during the routine maintenance or during the pre-flight check of the aircraft or which arises due to failure to correctly carry out such maintenance or pre-flight check; and
- ii. unavailability of flight crew or cabin crew (unless caused by labour disputes).

Annex 2

'ANNEX

AIR CARRIER LIABILITY FOR PASSENGERS AND THEIR BAGGAGE

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

COMPENSATION IN THE CASE OF DEATH OR INJURY

There are no financial limits to the liability for passenger injury or death caused by an accident on board the aircraft or during any of the operations of embarkation and disembarkation. For damages up to 113,100 SDRs (approximate amount in local currency), the carrier cannot exclude or limit its liability. Above that amount, the air carrier is not liable if it proves that it was not negligent or otherwise at fault, or that the damage was solely due to the negligence or other fault of a third party.

ADVANCE PAYMENTS

If a passenger is killed or injured, the air carrier must make an advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation. In the event of death, this advance payment shall not be less than 18 096 SDRs (approximate amount in local currency).

PASSENGER DELAYS

In case of passenger delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for passenger delay is limited to 4 694 SDRs (approximate amount in local currency).

BAGGAGE LOSS, DAMAGE OR DELAY

In case of baggage loss, damage or delay, the air carrier is liable for damage up to 1 113 SDRs (approximate amount in local currency), the compensation limit being applicable per passenger and not per piece of checked baggage, unless a higher limit has been agreed upon between the carrier and the passenger through a special declaration of interest. For damaged or lost baggage, the air carrier is not liable if the damage or loss is caused by an inherent quality or defect of the baggage. For delayed baggage, the air carrier shall not be liable when it has taken all reasonable measures to avoid the damage resulting from the delay of the baggage or when it was impossible to take such measures. In case of hand luggage, including personal items, the airline is only liable if the damage has resulted from its fault.

HIGHER LIMITS FOR BAGGAGE

A passenger can benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee if so required. Such supplementary fee

shall be based on a tariff which is related to the additional costs involved in transporting and insuring the baggage concerned over and above the liability limit of 1 131 SDRs. The tariff shall be made available to passengers upon request. Disabled passengers and passengers with reduced mobility shall systematically be offered free of charge the option of making a special declaration of interest for the transportation of their mobility equipment.

TIME LIMIT FOR COMPLAINTS ON BAGGAGE

If the baggage is damaged, delayed, lost or destroyed, the passenger must in all cases write and complain to the air carrier as soon as possible. A time limit to complain of 7 days applies in case the baggage was damaged and 21 days in case it was delayed, in both cases from the date on which the baggage was placed at the passenger's disposal. In order to easily meet these deadlines, the air carrier must offer passengers the possibility to fill in a complaint form at the airport. Such complaint form, which may also take the form of a Property Irregularity Report (PIR), must be accepted by the air carrier at the airport as a complaint.

LIABILITY OF CONTRACTING AND ACTUAL CARRIERS

If the air carrier actually performing the flight is not the same as the contracting air carrier, the passenger has the right to address a complaint or to make a claim for damages against either. This includes cases where a special declaration of interest at delivery has been agreed with the actual carrier.

TIME LIMIT FOR ACTION

Any action in court to claim damages must be brought within two years from the date of arrival of the aircraft, or from the date on which the aircraft ought to have arrived.

BASIS FOR THE INFORMATION

The basis for the rules described above is the Montreal Convention of 28 May 1999, which is implemented in the Community by Regulation (EC) No 2027/97 (as amended by Regulation (EC) No 889/2002 and by Regulation (EU) No xxx) and national legislation of the Member States.'