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Subject: *Preparation of the Council meeting (Transport, Telecommunications and Energy) on 5 June 2014*

**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**

- Progress report

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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)

*Article 1*

Regulation 261/2004 is amended as follows:

**1a. Article 1(1) is amended as follows:**

**(a) Point (c) is replaced by the following:**

**"(c) their flight is delayed at departure or at arrival";**

**(b) The following points are added:**

**"(d) their flight is rescheduled;**

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

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 Community<sup>1</sup>;

(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 tours<sup>2</sup>;

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

**" 'ticket' means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or ticket seller;" ;**

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

**" 'reservation' means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier, organiser or ticket seller;" ;**

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

**" 'final destination' means the destination on the ticket presented when checking in, or, in the case of connecting flights, the destination of the last flight;" ;**

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<sup>1</sup> OJ L 293, 31.10.2008, p. 3.

<sup>2</sup> OJ L 158, 23.6.1990, p. 59.

(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 air<sup>3</sup>";

**(ca) The definition in point (k) is deleted;**

(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, ' and~~ **The case where, after take-off the aircraft** was subsequently forced to land at an airport other than the airport of destination or to return to the airport of departure, **and passengers of the concerned aircraft were transferred to other flights shall also** be considered as 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~~ **the actual control of the air carrier**. For the purposes of this Regulation, extraordinary circumstances shall include, **but shall not be limited to** the circumstances set out in the Annex;<sup>4</sup>

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<sup>3</sup> OJ L 204, 26.7.2006, p.1.

<sup>4</sup> The Presidency proposes to complement recital 3 with the following text: *"The circumstances that resulted in a delay or cancellation need to be assessed on a case-by-case basis in the light of such list, especially where multiple factors contributed to the travel disruption. Moreover, where extraordinary circumstances apply, an individual assessment is also needed to determine whether the travel disruption could not have been avoided even if the air carrier had taken all reasonable measures and hence whether the air carrier could be exempted from certain obligations under this Regulation."* DE proposes to complement the recital with the following text: *"It is possible to deviate from that list if an exceptional case so requires."*

DE and FI prefer a non-binding Annex allowing NEBs to divert from the Annex in justified cases and propose to add *"as a general rule"* in the text. EE, IE, LU, MT, NL, UK, PL, PT, RO, SE and the Commission prefer a binding Annex to ensure legal certainty.

(mm) **'unexpected flight safety shortcoming'** means one or several technical defect(s) and/or problems which:

- pose a risk to the safe operation of the aircraft,
- are first discovered shortly before or during the flight operation, and
- occur despite the fact that maintenance was executed correctly in accordance with the applicable safety rules.

The detailed criteria for technical defect(s) and/or problems to qualify as unexpected safety shortcomings are specified in Annex 2;<sup>5 6</sup>

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

(nn) **'feeder flight'** means a flight that carries passengers to a transfer point in order to take a connecting flight, if the flights are under the same contract of carriage;

(o) 'connecting flight' means a flight **that carries the passenger from a transfer point to which the passenger was transported by a feeder flight, which, if the flights are** 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. This excludes stopovers, i.e. the voluntary interruption of the performance of the contract of carriage by the passenger and agreed in advance by the air carrier as it appears on the ticket. Such a stopover point shall be regarded as a final destination;~~

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<sup>5</sup> AT and DE do not support the separation of technical defects in a new definition.

<sup>6</sup> DE proposes to move the following text from Annex 2, paragraph 1 to the definition of unexpected flight safety shortcomings: *"unless the defect is the result of damage caused by the carrier itself or its contracted agents working under the carrier's responsibility"*.

- (p) 'journey' means a flight or a continued series of ~~connecting~~ flights transporting the passenger from **the initial** airport of departure to his final destination in accordance with ~~the~~ **a single** contract of carriage. **The outward and the return journey are not the one and the same journey;**
- (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~~ **supervision** 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, **including the management fees charged by the air carrier**, 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~~ **the closing of the doors, or in any case the time when passengers can no longer leave the aircraft**, and the take-off time of the aircraft or, at arrival, the time between the touch-down of the aircraft and the 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.'~~
- (ab) **'third country' means any state to which the Treaty is not applicable or any part of Member States' territory that is not subject to Treaty provision;**
- (ac) **'delay at departure' means the difference of time between the scheduled time of departure indicated on the passenger's ticket and the actual time of departure of the flight;**
- (ad) **'delay at arrival' means the difference of time between the scheduled time of arrival indicated on the passenger's ticket, and the actual time of arrival;**
- (ae) **'class of transport' means a part of the passenger cabin of the aircraft characterised by different seats, a different seat configuration or any other difference in the standard service provided to passengers compared to other parts of the cabin;**
- (af) **'rerouting' means an alternative offer of transport at no extra cost to the passenger and allowing him to reach his final destination or an alternative destination agreed with the passenger;**
- (ag) **"change of schedule" means the postponement or advancement of the scheduled time of departure and/or arrival of the flight;**

(ah) "ticket seller" means the seller of an air ticket, other than an air carrier or an organiser, who arranges a contract of carriage on behalf of the air carrier with a passenger, whether for a flight on its own or as part of a package".

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~~ **denied boarding** referred to in Article 5 4 and in the case of ~~change of schedule referred to in Article 6~~, present themselves for boarding **after on-line check-in or check-in at the airport,**

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

or, if no **boarding** time is indicated,

- not later than 45 minutes before the scheduled departure time **as indicated on the passenger's ticket;** 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.";

(aa) In paragraph 3 the word 'tour operator' is replaced by the word 'organiser'. ;



(b) Paragraph 4 is replaced by the following:

"4. Without prejudice to Article 8(6), ~~6a(4a)~~, 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.~~"

(ba) Paragraph 5 is replaced by the following:

**"This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where no contract exists between the operating air carrier and the passenger, the performer of rights and obligations under this Regulation shall be regarded as doing so on behalf of the contracting parties.";**

(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 **or rescheduled** for reasons other than cancellation, ~~or~~ delay **or rescheduling** of the flight."

3. Article 4 is amended as follows:

(aa) Paragraph 1 is replaced by the following:

**"When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. This agreement with the volunteer on the benefits shall replace the passenger's right to compensation as laid down in Article 7(1), only if it is approved in a signed document by the volunteer and the passenger has received information in accordance with Article 14(2). Volunteers shall be offered by the operating air carrier assistance in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph, and care in accordance with Article 9.";**

(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~~ assist them in accordance with Article 7 8 and assist them offer care in accordance with Article 8 9. ~~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~~ The operating air carrier shall, without a request compensate the passenger within 10 days of the date of the denied boarding in accordance with Article 7.";**

(b) The following ~~two paragraphs are~~ is 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."<sup>7</sup>~~

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<sup>7</sup> BE, BG, FI, HU, MT, PL and the Commission do not agree with the deletion of the paragraph on no-show policy.

"5. Where the passenger, or ~~an intermediary acting on behalf of the passenger,~~ **an organiser** reports a spelling mistake in the name **or given name(s)** 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~~ **72** hours before departure without any additional charge to the passenger or the ~~intermediary~~ **organiser**, except where it is prevented from doing so by **applicable** national or international law **regarding security**".

4. Article 5 is amended as follows:

(a) Paragraph 1, ~~points (a) and (b) are~~ **is** 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'~~ 1.

**"In case of cancellation of a flight, the passengers concerned shall be offered by the operating air carrier in a clear and reliable manner:**

**(a) the choice between the options specified in Article 8; and**

**(b) the care in accordance with Article 9."**

(aa) The following paragraph 1a. is inserted:

**"1a. Passengers shall have the right to receive, on request, compensation by the operating air carrier in accordance with Article 7, unless:**

- (i) they are informed of the cancellation at least 14 days before the scheduled time of departure; or**
- (ii) they are informed of the cancellation less than 14 days before the originally scheduled time of departure and are offered re-routing, allowing them to reach their final destination:**
  - (a) no more than five hours after the scheduled time of arrival for**
    - (i) all journeys of less than 1500 kilometres;**
    - (ii) intra-Community journeys of 1500 kilometres or more;**
  - (b) no more than nine hours after the originally scheduled time of arrival for journeys to/from third countries between 1500 and 3500 kilometres;**
  - (c) no more than twelve hours after the originally scheduled time of arrival for all journeys to/from third countries of more than 3500 kilometres.<sup>8 9</sup> ;**

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<sup>8</sup> AT, DE and FI cannot support a 5-9-12 hour threshold. DK and SK would like to have a single threshold of 5 hours, without reference to distances. MT prefers a 3-7-10 hour threshold, while BE and ES a 3-5- 9 hour threshold. BG proposes to have a 3-hour threshold with a reduced compensation amount of 150 EUR. NL could accept 3 hours for short-haul flights, provided that the amounts are adjusted to maintain the proportionality of the EC proposed for delay compensation. RO, although supports the 5-9-12 hour thresholds, prefers as corresponding distances 3500/6000/ and longer. RO also considers that the new thresholds for the distances cannot be accepted as they are introducing discrimination between the air carriers and passengers of intra-Community and, respectively those of non-Community flights. For the same length of the flight (between 1500 and 3500 km) and for the same delay, passengers of intra Community flights are entitled to compensations, while passengers of non-Community flights are not.

<sup>9</sup> HR, IE, NL, LU, LV, SI, SE and UK propose to use the word "flight" in this paragraph.

(ab) The following paragraph 1b. is inserted:

**"1b. When paragraph 1a(ii) is applied, the operating air carrier shall not be obliged to pay compensation if the passenger is informed more than 24 hours before the scheduled time of departure and is offered re-routing no more than 1 hour before the originally scheduled time of departure, allowing him to reach his final destination within the threshold indicated in paragraph 1a(ii)." <sup>10</sup> ;**

(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~~ **both of the following conditions are met:**

- the cancellation is caused by extraordinary circumstances **or unexpected flight safety shortcomings;** and
- ~~that the cancellation could not have been avoided even if all reasonable measures~~ **the air carrier had been taken all reasonable measures. Such extraordinary circumstances can only be invoked in so far they affect the flight concerned or the previous flight operated by the same aircraft. "**

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<sup>10</sup> The Presidency proposes to insert a recital to clarify that the 1-hour flexibility is provided only to incentivise airlines to provide effective rerouting. DE prefers to move this paragraph to Article 8.

(ba) The following paragraph 3a. is inserted:

**"Notwithstanding paragraph 3, extraordinary circumstances affecting a single aircraft, such as items iii, iv, viii, ix, x and xi of Annex I, and unexpected flight safety shortcomings fulfilling the conditions of Annex II can only be invoked in so far as they affect the flight concerned, or if the scheduled time of departure of the flight concerned falls within 24 hours after the scheduled time of arrival of the first affected flight operated or scheduled to be operated by the same aircraft.**

**Member States may exempt from this provision flights operated to, from and within outermost regions, as referred to in Article 349 of the TFEU. In such a case, they shall inform the Commission thereof. The Commission shall make this information public through the internet.<sup>11</sup> ;**

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<sup>11</sup> ES proposes to limit the right to invoke extraordinary circumstances to two preceding flights in the case of short-haul flights, and one flight in the case of long haul flights. HU and RO do not support a concept based on hours and support the Commission proposal. In the FI view, recital explaining the appropriate treatment of major disruptions should be inserted. BE could support a distinction between flight, while DE and EE prefer a limitation lower than 24 hours, given that the time of arrival is the starting point of the limitation period, increasing the flexibility for airlines.

(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.~~

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<sup>12</sup> HU proposes to insert the following paragraph in Articles 5 and 6: "*Passengers who have exercised the right to reimbursement under Article 8(1) retain their right to compensation referred to in this Article.*"

5. Article 6 is replaced by the following:

*"Article 6*

**Long Delay**<sup>13</sup>

1. When an operating air carrier ~~reasonably~~ expects a flight to be delayed **at departure**, ~~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 **in a clear and reliable manner:**

(i) **the care in accordance with Article 9 while waiting for the departure of the delayed flight;**

~~when the delay is 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<sup>14</sup>, the assistance specified in Article 8(1)(a).

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<sup>13</sup> AT, DE and ES propose to introduce a right to rerouting in case of long delays.

<sup>14</sup> DE, ES and FI consider the 5-hour waiting time for assistance too long.



2. Passengers shall have a **the** right to **receive on request** compensation from the operating air carrier in accordance with Article 7 where ~~the~~ **they** passenger arrives at ~~its~~ **their** final<sup>15</sup> destination:
- (a) five hours or more after the **originally** scheduled time of arrival for
    - (i) all ~~intra-Community~~ journeys **of less than 1500 kilometres;**
    - (ii) ~~and for journeys to/from third countries of 3500 kilometres or less~~ **intra-Community journeys of 1500 kilometres or more;**
  - (b) nine hours or more after the **originally** scheduled time of arrival for journeys to/from third countries between **1500 and 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~~ **than 3500 kilometres.**<sup>16 17 18</sup>

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<sup>15</sup> HR, IE, NL, LU, SI, SE and UK propose to delete the word "*final*".

<sup>16</sup> A recital justifying the difference in treatment according to journey distance should be inserted. The Commission recalls that these thresholds are significantly higher for extra-EU flights compared to the Commission proposal.

<sup>17</sup> AT, DE and FI cannot support a 5-9-12 hour threshold. AT prefers a 3/5/7 hour threshold. DK and SK would like to have a single threshold of 5 hours, without reference to distances. MT prefers a 3-7-10 hour threshold, while BE and ES a 3-5- 9 hour threshold. BG proposes to have a 3-hour threshold with a reduced compensation amount of 150 EUR. NL could accept 3 hours for short-haul flights, provided that the amounts are adjusted to maintain the proportionality of the Commission proposal for delay compensation. RO, although supports the 5-9-12 hour thresholds, prefers as corresponding distances 3500/6000/ and longer. RO also considers that the new thresholds for the distances cannot be accepted as they are introducing discrimination between the air carriers and passengers of intra-Community and, respectively those of non-Community flights. For the same length of the flight (between 1500 and 3500 km) and for the same delay, passengers of intra Community flights are entitled to compensations, while passengers of non-Community flights are not.

<sup>18</sup> HR, IE, NL, LU, LV, SI, SE and UK propose to use the word "flight" in this paragraph.

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.~~ **The exemptions from compensation provided for in Article 5(3) and 5(3a) shall also apply to flights delayed at arrival.**
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. **Where the aircraft took off but was subsequently forced to land at an airport other than the airport for which the reservation was made. the passengers concerned shall be offered by the operating air carrier the options specified in Article 8(1) and the care in accordance with Article 9. Paragraphs 4 to 7 of this Article shall apply accordingly."** <sup>19</sup>

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<sup>19</sup> NL and PL suggest that for a diverted flight, Article 6 apply automatically. When the flight is cancelled, Article 5 should apply. The final sentence of the definition in Article 2, point (l) should therefore be deleted.

5a. The following Article is inserted:

**"Article 6-2a**

**Tarmac delay**

1. **Subject to safety constraints, where a tarmac delay occurs, the operating air carrier shall provide free of charge access to toilet facilities and drinking water on board, shall ensure adequate heating or cooling of the passenger cabin, and shall ensure that adequate medical attention is available if needed.**
2. **Where a tarmac delay at the airport of departure reaches a maximum of two hours in an airport situated in a territory of a Member State to which the Treaty applies, and unless the pilot has confirmed information that the aircraft will depart within the next 45 minutes<sup>20</sup>, the aircraft shall return to the gate or another suitable disembarkation point where passengers shall be allowed to disembark. If despite of such confirmed information, the aircraft has not departed after 2 hours and 45 minutes, it shall immediately return to the gate or another suitable disembarkation point where passengers shall be allowed to disembark. Beyond these deadlines, a tarmac delay can only be prolonged if there are safety, immigration or security-related reasons why the aircraft cannot leave its position on the tarmac.**
3. **Where a tarmac delay at the airport of arrival of the flight reaches a maximum of two hours in an airport situated in a territory of a Member State to which the Treaty applies, the aircraft shall proceed to the gate or another suitable disembarkation point where passengers shall be allowed to disembark unless there are safety, immigration or security-related reasons why the aircraft cannot leave its position on the tarmac.<sup>21</sup>**
4. **In addition to the rights in paragraphs 2 and 3, passengers shall be entitled to the rights specified in Article 6."**

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<sup>20</sup> ES cannot support 45 minutes. CY, IE, LV, NL, and UK propose to have 5 hours for tarmac delay. NL requests the deletion of paragraph 2a. BE proposes to refer only to the airport other than the airport for which the reservation was made.

<sup>21</sup> NL requests the deletion of paragraph 3.

6. The following Article is inserted:

*"Article 6a*

**Missed connecting flights**

1. Where a passenger misses a connecting flight, **in an airport situated in a territory of a Member State to which the Treaty applies**, as a result of a delay ~~or change of schedule~~ to a ~~preceding feeder~~ flight, the ~~Community~~ air carrier operating ~~the onward connecting that feeder~~ 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)(e).~~ **in accordance with Article 8, and care in accordance with Article 9.**
  
2. Where a passenger misses a connecting flight **in an airport situated in a territory of a Member State to which the Treaty applies**, as a result of a delay to a ~~preceding connecting feeder~~ flight, the passenger shall have a right to **receive** compensation by the ~~Community~~ air carrier operating that ~~preceding feeder~~ flight in accordance with Article 6(24). ~~For these purposes, the delay shall be calculated by reference to the scheduled time of arrival at the final destination.<sup>22</sup>~~ **, unless the originally scheduled transfer time at the transfer point was less than 90 minutes.<sup>23</sup>**

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<sup>22</sup> DE would prefer to retain the sentence on the calculation of the delay.

<sup>23</sup> The Presidency proposes to add a recital justifying the difference in the treatment of passengers of direct and connecting flights. CY, HR, FR, IE, LU, LV NL, PT, SI, SE and UK propose to add the following sentence at the end of paragraph 1: "*Compensation in accordance with Article 7 shall not be payable in respect of missed connecting flights.*" Paragraphs 2 and 3 would then be deleted.

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.'~~
- 4a. **Where, in accordance with a single contract of carriage, a passenger is carried on a part of the journey by another mode of transport stipulated in the contract of carriage, the passenger shall be informed at the time of reservation, of any arrangements or the absence thereof, between the air carrier and the other transport operators in the case of a missed connection, in particular as regards arrangements for providing care and assistance."**

7a. The following Article is inserted:

**"Article 6b**  
**Change of schedule<sup>24</sup>**

1. When an operating air carrier, after the reservation, unilaterally postpones the scheduled time of departure, Article 6 shall apply accordingly. However, the operating air carrier shall not be obliged to pay compensation if it can prove that the passenger has been informed of the change of schedule at least 14 days before the originally scheduled time of departure as indicated on the passenger's ticket.
2. When an operating air carrier, after the reservation, unilaterally advances the scheduled time of departure, Article 5 shall apply accordingly, unless the passenger has taken the rescheduled flight.
3. When the passenger misses a connecting flight in an airport situated in the territory of a Member State to which the Treaty applies, as a result of a postponement of the scheduled time of departure of the feeder flight or an advancement of the scheduled time of departure of the connecting flight, Article 6a shall apply accordingly.
4. Where the passenger's connecting time for a connecting flight is prolonged by at least two hours as a result of an advanced time of departure of the feeder flight, the passenger shall be offered care as in Article 9(1) (a).;

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<sup>24</sup> AT, NL, FR, SE and UK would prefer to move the provisions on change of schedule into the corresponding articles on cancellation, delay and connecting flights. In addition, NL proposes to delete paragraph 4. DE considers that in paragraph 2 a distinction has to be made: If the flight is missed due to the advancement of the scheduled time of departure Article 5 applies accordingly. If the flight is not missed the passenger shall have the rights of assistance under Article 8, if the advancement is more than [3/5] hours. FI and the Commission propose the deletion of the phrase "*unless the passenger has taken the rescheduled flight*", as it creates a situation where advancement of the schedule and cancellation are treated unequally. FR proposes to add at the end of paragraph 2 "*or a rerouted flight departing before the flight whose schedule was changed*".

7. Article 7 is amended as follows replaced by the following:

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

## **"Article 7**

### **Right to compensation**

**1. Where reference is made to this Article, the following compensation amounts shall apply:**

**(a) EUR 250 for:**

**(i) all flights<sup>25</sup> of 1500 kilometres or less; and**

**(ii) intra-Community flights between 1500 - 3500 kilometres;**

**(b) EUR 400 for:**

**(i) all intra-Community flights of more than 3500 kilometres, and**

**(ii) flights to/from third countries between 1500 and 3500 kilometres;**

**(c) EUR 600 for flights to/from third countries of 3500 kilometres or more.**

**In determining the distance, the basis shall be the final destination.<sup>26</sup>**

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

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<sup>25</sup> AT, CZ, DE, DK and FI propose to use the word "*journey*" in paragraph 1 and clarify how compensation is paid for connecting flights. Commission draws attention to the fact that modifying the distance bands would have a serious impact on the amounts of compensation.

<sup>26</sup> RO and IE cannot support this paragraph as it introduces discrimination (as regards the level of compensation) between the passengers of intra-Community and, respectively those of non-Community flights for the flights between 1500 - 3500 km. RO supports the text of the current Regulation in force. CY, HR, IE, LU, LV, NL, PT, SI and SE propose the deletion of the last sentence.

2. Where the passenger has opted for the continuation of his travel pursuant to Article 8(1)(b), **and another cancellation or missed connection occurs during rerouting**, the **passenger's** right to compensation can arise only once **for the same reason** during his travel to the final destination, ~~even if a new cancellation or missed connection should arise during rerouting.~~<sup>27</sup>
3. The compensation referred to in paragraph 1 shall be paid **within 10 days of the passenger's request** in cash, by electronic bank transfer, bank orders, **credit/debit card refund** or bank cheques. **Following appropriate information to the passenger regarding his rights under this Regulation, with the confirmed agreement of the passenger compensation may also be paid in travel vouchers and/or other services.**
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."~~

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<sup>27</sup> SE proposes the deletion of "*final*". IE, FR, NL, PL, UK and the Commission propose the deletion of "*for the same reason*".



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~~ **10** days of the passenger's request, by the means provided for in Article 7(3), of the ~~flight~~ **ticket** 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 **after the originally scheduled time of departure;**
  - (b) continuation of the passengers' travel plans by re-routing them, ~~under comparable transport conditions,~~ to their final destination at the earliest opportunity **after the originally scheduled time of departure;** 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](#).
- 2a. **When the passenger exercises his right to re-routing in accordance with paragraph 1 (b), the air carrier may offer an alternative flight departing earlier than the originally scheduled time of departure, if the passenger so agrees. Where the passenger refuses an earlier rerouting, he shall still be entitled to the option of rerouting at the earliest opportunity after the originally scheduled time of departure.**

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, **at comparable comfort conditions as set out in the transport contract**, use services operated by another air carrier, involve a different routing, or, **where appropriate for the distance to be travelled**, 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 **foreseeably** 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 1008/2008, 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."~~ <sup>28</sup>

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<sup>28</sup> FR, ES and FI would prefer to reinstate this paragraph on the continued application of this Regulation even if rerouting is done by another mode of transport.

9. Article 9 is amended as follows:

(a) Paragraphs 1 **and 2**, ~~point e is~~ **are** replaced by the following:

~~"(e) transport between the airport and place of accommodation (hotel, place of residence of the passenger or other)"~~

**"1. Where reference is made to this Article, and when:**

- (i) the delay at departure is at least of two hours, or**
- (ii) the time of departure of the rerouting pursuant to Article 8(1)(b) is at least two hours<sup>29</sup> after the initial time of departure of the cancelled flight or the flight where boarding was denied, or**
- (iii) in the case of a missed connecting flight, the rerouting pursuant to Article 8(1)(b) or the return flight under Article 8(1)(a) prolongs the passenger's waiting time for the connection by at least two hours,**

**passengers shall be offered promptly and free of charge:**

- (a) meals and refreshments in a reasonable relation to the waiting time;**
- (b) the choice between two telephone calls, fax messages, e-mails or other web-based message services.**

**2. In addition, where a stay of one or more nights becomes necessary, passengers shall be offered free of charge:**

- (a) hotel accommodation;**

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<sup>29</sup> IE suggests to have 3 hours in this point, to limit the obligation of the air carrier to provide care only when physically possible. Commission disagrees with this approach.

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

(aa) **Paragraph 3 is deleted. ;**

(b) The following paragraphs are added:

- "4. ~~If the operating air carrier can prove that the cancellation, delay at departure 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~~ **the air carrier** 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.<sup>30</sup> 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.<sup>31</sup>
5. ~~The obligation to offer accommodation under paragraph 1(b) shall not apply~~ **Member States may decide to exempt air carriers from the obligation to offer accommodation under paragraph 2(a) where the flight concerned departs from an airport in its territory, 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 deeder or a connecting flight. If the operating air carrier chooses to apply this exemption, it shall nevertheless provide the passengers with information about available accommodation. Member States that choose to apply this exemption shall inform the Commission about their decision before the exemption enters into force.**

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<sup>30</sup> HU, LV and MT are against the deletion of the monetary limit to accommodation. DK and SE propose to have a 5-night limitation in this paragraph.

<sup>31</sup> AT, BE, CY, DE, HU, MT and SK propose to add a new provision, giving the possibility of arranging accommodation personally when the air carrier failed to provide accommodation. BE adds that this should not lead to situations where air carriers systematically discharge themselves from their initial obligations in this regard. ES considers that the passenger should have the right to look for accommodation and if chooses to do so, a price cap on accommodation should be introduced in order to ensure consistency also with paragraph 7.

6. Where a passenger opts for reimbursement pursuant to Article 8(1)(a) while being at the **first point of** 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.
7. **When exercising their rights under this Article, passengers shall cooperate in limiting the expenses for the air carrier as far as it is reasonable and appropriate."**

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

**"Article 10**

**Upgrading and downgrading**

- 1. If an operating air carrier places a passenger in a class of transport higher than that for which the ticket was purchased, it shall not be entitled to any supplementary payment.**
- 2. If an operating air carrier places a passenger in a class of transport lower than that for which the ticket was purchased, it shall within 10 days, by the means provided for in Article 7(3), reimburse**
  - (a) 30% of the ticket price for all flights of 1500 kilometres or less, or**
  - (b) 50% of the ticket price for all intra-Community flights of more than 1500 kilometres, except flights between the European territory of the Member States and the French outermost regions, and for all other flights between 1500 and 3500 kilometres, or**
  - (c) 75% of the ticket price for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French outermost regions.**
- 3. Where the price of the concerned flight is not indicated on a multi-flight ticket, the reimbursement mentioned in paragraph 2 shall be calculated in proportion of the flight to the total distance covered by the ticket."**

10a. The following Article 10a shall be inserted:

**"Article 10a**

**Airport contingency plans**

- 1. At Union airports whose annual traffic has been over five million passengers<sup>32</sup> 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. The contingency plan shall be set up to ensure that adequate information is given to stranded passengers and shall contain arrangements in order to minimise their waiting time and discomfort.**
- 2. The contingency plan shall be set up with the participation of the Airport Users Committee-pursuant to Council Directive 96/67/EC on access to the groundhandling market at Community airports. The contingency plan shall also contain the contact data of the person(s) designated by each air carrier in order to represent it on the spot in relation with the authorities, airport managing body and passengers in the case of multiple cancellations and/or delays of flights. The air carrier shall ensure that the designated person(s) has the necessary means to assist passengers in accordance with the obligations arising from this Regulation in case of cancellation, delay, or denied boarding.**
- 3. The airport managing body shall communicate the contingency plan and any amendments to it to the National Enforcement Body designated pursuant to Article 16 or any other authority designated for this purpose.**

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<sup>32</sup> MT and the Commission prefer a threshold of 3 million passengers.

4. **Member States may lower the threshold referred to in paragraph 1, but not to less than 3 million passengers, for airports situated in their territory. At airports below the threshold set, the airport managing body shall make all reasonable efforts to coordinate airport users and to make arrangements with airport users to inform stranded passengers in such situations.** " <sup>33</sup>

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<sup>33</sup> LU and NL would prefer to delete paragraph 4 due to the possible effect on airlines in different Member States if the derogation is applied.



11. The following paragraph is added to Article 11 **is replaced by the following:**

**"Article 11**

**Disabled persons and persons with reduced mobility or special needs**

1. **Operating air carriers shall give priority to carrying disabled persons or persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied minors.**<sup>34</sup>
2. **In applying the care and assistance in accordance with Articles 8 and 9 ~~in cases of denied boarding, cancellation and delays of any length~~, the operating air carrier shall pay particular attention to the needs of the persons mentioned in paragraph 1. Air carriers shall provide this care and assistance as soon as possible.**
- 2a. **When setting up the contingency plan under Article 10a, air carriers and airport managing bodies shall pay particular attention to the specific needs of the passengers mentioned in paragraph 1.**
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, Articles 9(4) and 9(5) shall not apply to passengers mentioned in paragraph 1, and pregnant women 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, at the time when the cancellation, change of schedule or delay at departure is announced. 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. "~~<sup>35</sup>

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<sup>34</sup> HU considers that the term "*unaccompanied minors*" should be clarified.

<sup>35</sup> CZ, DE and FI oppose the requirement of notification.

11a. The title of Article 12 is replaced by the title "Further rights". Paragraph 1 is replaced by the following:

"1. This Regulation shall not affect rights and claims of the passenger granted under other legal acts, including under Directive 90/314/EC. However, if these rights safeguard the same interest or have the same objective, the compensation or price reduction granted under Articles 7 or 10(2) of this Regulation and the compensation or price reduction granted under the other legal acts, shall be deducted from each other." <sup>36</sup>

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~~ <sup>37</sup> 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."

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<sup>36</sup> DE proposes to delete the phrase "*if these rights safeguard the same interest or have the same objective*" due to its potential restriction of liability in the context of the Montreal Convention.

<sup>37</sup> ES, SI and the Commission do not support the deletion of the reference "*or of national law*".

13. Article 14 is replaced by the following:

*"Article 14*

**Obligations to inform passengers of their rights**

1. ~~The airport managing body and the~~ operating air carrier shall ensure that **on its website at the time of reservation**, 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 clearly legible form and** in a manner clearly visible to passengers: "If you are denied boarding or if your flight is cancelled or delayed for at least two hours **or is rescheduled**, ask at the check-in counter or boarding gate for the **information** notice stating your rights, particularly with regard to assistance, **care** and possible compensation." **This information notice shall be displayed at least in the language(s) of the place of departure and in English.**
  - 1a. **The operating air carrier shall on its website include the information notice referred to in paragraph 1 on the rights of passengers under this Regulation. The operating air carrier shall also provide this information in paper or in the electronic form during the reservation process.**
2. An operating air carrier **calling for volunteers under Article 4(1)**, 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 Articles **16 and** 16a shall also be given to the passenger in written form.

- 2aa. The Commission may adopt implementing acts that define a standardised information notice to be used by the air carriers for the purposes of paragraphs 1a and 2. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 16c(2).**
- 2a. At the time of the reservation, air carriers, organisers and ticket sellers shall provide information to the passenger on the deadline and on the procedure by which he/she can request the correction of a spelling mistake as specified in Article 4(5), without any additional charge.**
- 2b. Air carriers, organisers and other ticket sellers shall make available, including on their website, information on the air carrier's complaint handling processes in relation to the rights set out in this Regulation and on the relevant contact addresses, to which passengers can file claims, including via electronic means of transmission, as well as information on the body or bodies designated under Article 16(1) and 16a(3).**
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 time of 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.~~ **Passengers shall also be informed of the reasons for the cancellation or delay, and of the estimated time of departure as soon as this information is available.**
6. Where the passenger does not acquire a ticket directly from the operating air carrier, but via an ~~intermediary~~ **organiser or ticket seller** established within the Union, ~~this intermediary~~ **the organiser or ticket seller** 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, **after the passenger has been informed of the purpose of this transfer of data.** The air carrier may use these contact details **obtained pursuant to this paragraph** exclusively for the purpose of fulfilling **its** information obligations under this ~~Article~~ **Regulation** 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 data<sup>38</sup>.
7. An ~~intermediary~~ **organiser or ticket seller** 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. **In such case, the airline shall fulfil its information obligations under this Article towards the organiser or ticket seller who shall ensure the correct and timely transmission of the information to the passenger."**

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<sup>38</sup> OJ L 281, 23.11.1995, p.31

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.~~
  - 2a. **The National Enforcement Body may also investigate and decide on enforcement actions based on information contained in individual complaints submitted by passengers.**
3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive. **In particular, such sanctions shall be sufficient to provide carriers with a financial incentive to comply consistently with the Regulation.**<sup>39</sup>

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<sup>39</sup> FI, IE and UK propose to delete the second sentence of this paragraph. NL, and PL propose the harmonisation of sanctions and enforcement measures by NEBs.

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~~ **June** of the following calendar year, the National Enforcement Bodies shall publish ~~statistics~~ **a report** on their activity, **on the enforcement action and its outcome**, including ~~on~~ sanctions applied. **These reports shall be submitted to the Commission and also be made available on the websites of the National Enforcement Bodies.**
6. Air carriers shall communicate ~~their~~ **the** contact details, ~~for matters covered by this Regulation~~ **data of the person(s) or of a body designated to act on their behalf on a permanent basis, in the Member State where they operate for matters covered by this Regulation,** to the relevant National Enforcement Bodies."

15. The following Articles are inserted:

*"Article 16a*

**Passenger claims and complaints**

**Complaints and disputes**

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.~~

**Air carriers shall set up or have in place a mechanism for the handling of complaints, including requests for monetary redress arising from rights and obligations set out in this Regulation. This mechanism shall also be available online and in all languages which may be used for reservation with the given air carrier. These mechanisms shall be easily accessible and operated in a transparent way.**



2. ~~If a Passenger wants to make a complaint to the air carrier with regard to his rights under this Regulation, he shall~~ **may submit complaints, including requests for monetary redress<sup>40</sup> to the operating air carrier** ~~it~~ **within 3 6 months** from the date on which the flight was performed or was scheduled to be performed. ~~Within 7 10 days of receiving the submission of the complaint, the carrier shall confirm the receipt of the complaint to the passenger. Within two months of receiving the submission of the complaint, the carrier shall provide a full~~ **justified answer to the passenger, including, where relevant, an explanation on extraordinary circumstances or unexpected flight safety shortcomings. The answer shall also contain the relevant contact details of bodies designated under paragraph 3 for out-of court dispute resolution, including postal address, phone number, website and e-mail address.**
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.~~ **Without prejudice to Directive 2013/11/EU<sup>41</sup> Member States shall ensure that air passengers can submit disputes regarding monetary redress under this Regulation to a national body or bodies responsible for the out-of-court resolution of disputes.<sup>42</sup> Member States shall inform the Commission of the body or bodies that has been designated in accordance with this paragraph. Member States may decide to apply this paragraph to disputes between air carriers and consumers only.**

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<sup>40</sup> DE considers that the term "*request for monetary redress*" has to cover claims for compensation, claims for reimbursement and claims for prize reduction, and therefore suggests to use the term "*claims for monetary remedies*" or "*claims for payment*".

<sup>41</sup> A recital along the lines of the Council Legal Service's interpretation of the ADR Directive will be inserted.

<sup>42</sup> A recital clarifying that the passenger is not obliged to retain a lawyer for requests of monetary redress and out-of court dispute resolution will be inserted (see also doc. 7995/14).

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.~~

**Without prejudice to Directive 2013/11/EU, Member States shall ensure that the out-of-court dispute resolution is available free of charge or at a nominal fee to passengers, and the designated body or bodies under paragraph 3 shall as a minimum:**<sup>43</sup>

**- meet the requirements of article 7(1) subparagraphs (a), (h) and (j) and Article 7(2) of that Directive;**

**- provide a substantiated reply to the passenger with the outcome of their dispute resolution procedure within the time limits set out in Article 8(e) of Directive 2013/11/EU and in the case of highly complex disputes at the latest 9 months from the date on which the designated body has received the complete complaint file.**<sup>44</sup>

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. Where the body or bodies designated under paragraph 3 are different from those entrusted with the enforcement of this Regulation under Article 16(1), they shall cooperate and exchange information.~~<sup>45</sup>

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<sup>43</sup> DE suggests to delete the term "*as a minimum*" and add the following sentence instead: "*Member states may maintain or introduce rules that go beyond those laid down by this paragraph, in order to ensure a higher level of consumer protection.*"

<sup>44</sup> DE does not support the addition in the last sentence on highly complex issues.

<sup>45</sup> DE and SE prefer to delete paragraph 5.

6. The procedures under paragraphs 2 and 3 and the passenger's participation to such procedures shall be without prejudice to his right to seek redress through court proceedings or submit complaints within the meaning of Article 16(2a), subject to periods of limitation in accordance with national law.<sup>46</sup> ;

**Article 16aa**  
**Burden of proof<sup>47</sup>**

The burden of proof shall rest with the operating air carrier concerning:

- the information of the passenger on:
  - (i) the cancellation or change of schedule of a flight within the time limits set out in Articles 5(1a) and 6b(1);
  - (ii) denied boarding, and the cancellation, delay or change of schedule of their flight according to the obligations set out in Article 14;
- the offer of re-routing allowing the passenger to reach the final destination earlier than the time limits as provided in Article 5 (1a) (ii) (a) to (c);
- when extraordinary circumstances and the related reasonable measures are invoked to exempt the air carrier from its obligation of compensation under Articles 5 and 6;
- extraordinary circumstances or unexpected flight safety shortcomings which have caused the cancellation or the delay at arrival and the ensuing unavoidability of cancellation or delay at arrival even if the operating air carrier has taken all reasonable measures according to Article 5(3), Article 6(4) and Article 9(4);

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<sup>46</sup> NL, PL and UK propose to insert a two-year period of limitation for introducing claims.

<sup>47</sup> This Article will be reviewed by experts with a view to simplification and its possible limitation to cases of a potential civil law dispute.

- **extraordinary circumstances or unexpected flight safety shortcomings which have affected the flight concerned or preceding flights according to Article 5 (3a);**
- **the originally scheduled transfer time at the transfer point which was less than 90 minutes according to Article 6a (2);**
- **the consent of the passenger according to Articles 7(3), 8 (2a), (3) and (4). ;**

### *Article 16b*

#### **Cooperation between Member States and the Commission**

1. The Commission shall support dialogue **and exchange of information between the National Enforcement Bodies** Member States concerning ~~national interpretation and~~ **the application of this Regulation through the Committee referred to in Article 16c(1). This exchange of information will particularly concern infringements, sanctions and best practices of enforcement.**
  - 1a. **At the request of the Commission, the National Enforcement Bodies shall send relevant information concerning the national interpretation and application of this Regulation.**
- ~~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 **by the National Enforcement Bodies** arise, ~~and~~ particularly concerning the interpretation of extraordinary circumstances **and unexpected flight safety shortcomings**. ~~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(1).
5. ~~At the request of~~ **In case of a specific suspected practice by one or several air carriers simultaneously in several Member States**, the Commission ~~may request~~, the ~~National Enforcement Bodies shall~~ **Member States concerned** to investigate **this** specific ~~suspected practice by one or several air carriers~~ and **to report its their** findings to the Commission within ~~4~~ **6** months of the request. **The Commission shall support the exchange of information and the coordination of the respective National Enforcement Bodies with regard to the issue concerned.**<sup>48</sup> ;

#### *Article 16c*

#### **Committee procedure**<sup>49</sup>

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.

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<sup>48</sup> AT and DE would prefer to delete this paragraph and FI opposes the 6-month deadline.

<sup>49</sup> AT and HU do not see the need for this Article. DK, FR, ES and UK would prefer to use the examination procedure.

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~~ **XX.XX.20XX [3 years following the entry into force of the Regulation]** 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~~ **include information** 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. Annexes 1 and 2 set out in Annex 1 to this Regulation ~~is~~ **are** added as ~~Annex 1~~ to Regulation (EC)No 261/2004.

## *Article 2*

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

**1a. Article 2 is amended as follows:**

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

**"(b) 'Community air carrier' shall mean an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Regulation (EC) No 1008/2008;" ;**

**(b) The following definition is added:**

**"(h) 'mobility equipment' shall mean any equipment whose purpose is to provide mobility to the disabled persons or persons with reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006<sup>50</sup>, or assist them in their mobility."**

**1. The following sentence is added to paragraph 1 of Article 3, and paragraph 2 shall be deleted 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. "This includes the liability of a Community air carrier concerning passenger or baggage delay."~~

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<sup>50</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p.1

1b. Article 3a is replaced by the following:

**"Article 3a**

**'The supplementary sum which, in accordance with Article 22(2) of the Montreal Convention, and without prejudice to Article 6a, may be demanded by a Community air carrier when a passenger makes a special declaration of interest in delivery of their baggage at destination, shall be based on a tariff which is related to the additional costs involved in transporting and insuring the baggage concerned over and above those for baggage valued at or below the liability limit. The tariff shall be made available to passengers on request.'**

2. Paragraphs 1 and 2 of Article 5 is are replaced by the following:

**"1. In case of death or injury of passengers<sup>51</sup>, the Community air carrier shall without delay, and in any event not later than fifteen days after the identity of the natural person entitled to compensation has been established, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the hardship suffered.**

2. Without prejudice to paragraph 1, an advance payment **in case of death of passengers** shall not be less than ~~the equivalent in euro of 18 096 SDRs~~ **16%** per passenger, ~~in the event of death. The Commission shall be empowered, by means of a delegated act in accordance with Article 6e, to adjust this amount in light of a~~ **of the limit of liability under Article 21(1) of the Montreal Convention and in line with the decisions by the International Civil Aviation Organisation to review the limit of liability 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."**

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<sup>51</sup> DE and RO propose to add a reference to '*serious injury*'. AT supports the Commission proposal.



3. **Article 6 shall be amended as follows:**

- (a) 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~~ **in line with the** decisions by the International Civil Aviation Organization pursuant to Article 24(2) of the Montreal Convention.";<sup>52</sup>

- (b) **Article 6(2) shall be replaced by the following:**

**"2. In addition to the information requirements set out in paragraph 1, all air carriers shall in respect of carriage by air purchased in the Union, provide each passenger with a written indication of:**

- **the applicable limit for ~~that flight~~ the journey governed by the contract of carriage on the carrier's liability in respect of death or injury, if such a limit exists,**
- **the applicable limit for ~~that flight~~ the journey governed by the contract of carriage on the carrier's liability in respect of destruction, loss of or damage to baggage and a warning that baggage greater in value than this figure should be brought to the airline's attention at check-in or fully insured by the passenger prior to travel;**
- **the applicable limit for ~~that flight~~ the journey governed by the contract of carriage on the carrier's liability for damage occasioned by delay. "**

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<sup>52</sup> FR opposes the delegated acts foreseen in this paragraph.

(c) The following paragraph is added:

**"4. All air carriers shall provide at the airports and points of sale situated on the territory of a Member State to which the Treaty applies and on their websites a form which allows the passenger to immediately file a complaint about damaged, delayed or lost baggage. The date of submission of such a complaint shall be considered by the air carrier as the filing date of the complaint pursuant to Article 31(2) and 31(3) of the Montreal Convention, even if the air carrier requests further information at a later date. 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. "**

4. The following Articles are inserted:

*"Article 6a*

1. Whenever carrying checked ~~wheelchairs or other~~ **in** mobility equipment ~~or assistive devices~~, the **Community** air carrier ~~and its agents~~ shall ~~offer~~ **ensure that** each **disabled person or person** with reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006<sup>53</sup> **is offered** 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~~ **over. The special declaration may be offered free of charge.**<sup>54</sup>
- ~~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. ;

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

<sup>54</sup> FI, HU, and the Commission consider that the special declaration should always be made available free of charge.

*Article 6b*<sup>55</sup>

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.~~~~
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. ;~~

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<sup>55</sup> A recital will be inserted on the need for effective enforcement. PL opposes such a recital. Commission opposes the deletion of this Article.

### 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~~ **Without prejudice to Regulation (EC) No 1008/2008, Community air carriers** 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, **including those referred to in paragraph 1a**, and **in the** 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. **This information shall also indicate at what conditions fragile or valuable items, such as musical instruments, sports equipment and children's pushchairs shall be transported in the passenger cabin or in the cargo hold of the aircraft.** 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.
  - 1a. **Without prejudice to Regulation (EC) No 1107/2006, carry-on baggage allowances may only be expressed in maximum dimensions and/or maximum weights of the total carry-on baggage allowance per passenger, but without a restriction to a specific number of items of baggage. In addition to the prescribed maximum cabin baggage allowance, passengers shall be permitted to carry in the cabin, at no extra cost, essential personal items or belongings, including, in reasonable number, items purchased after having passed the first boarding pass check. The additional allowance for such items purchased may also be expressed in maximum dimensions and/or maximum weights.** <sup>56</sup>

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<sup>56</sup> CZ, IE, LV, NL and UK consider that as long as sufficient information is provided to the passenger, further rules on baggage should not be introduced and these aspects should be left to the commercial decision of the carrier. CZ proposes to delete the word "*purchased*" in the last sentence.

2. Where ~~extraordinary circumstances~~ **specific reasons**, 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~~ **This Article** does not affect the restrictions on carry-on baggage established by EU and international security **and safety** rules such as Regulations (EC) No 300/2008, ~~and~~ (EC) No 820/2008 **and (EC) No 216/2008**. ;

*Article 6e<sup>57</sup>*

- ~~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."~~

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<sup>57</sup> A recital will be inserted encouraging the transportation of musical instruments under appropriate conditions.

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~~ **XX.XX.20XX [3 years following the entry into force of the Regulation ]** 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*. **Regulation (EC) No 261/2004, as amended by this Regulation, shall apply from XX.XX.20XX [24 months following its entry into force]. Regulation (EC) No 2027/97, as amended by this Regulation, shall apply to rights and obligations** arising from contracts concluded after its entry into force.

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: non-exhaustive list of circumstances considered as extraordinary<sup>58</sup> circumstances for the purposes of this Regulation**

1. The following circumstances shall be considered as extraordinary:
  - i. natural disasters ~~rendering impossible~~ **and/or environmental disasters which are deemed to affect** 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~~ **unlawful acts, incompatible with** the safe operation of the flight;  
**iii.(a) war or political instability where the competent national public authorities of the country of departure of the journey advise against travel;**
  - iv. ~~life threatening~~ health risks or medical emergencies (**such as serious illness**) **discovered at short notice before flight departure, or** necessitating the interruption or deviation of the flight ~~concerned~~;
  - v. air traffic management restrictions or closure of airspace ~~or an airport~~;  
**v.(a) unscheduled closure of an airport;**

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<sup>58</sup> DE and FI prefer a non-binding Annex allowing NEBs to divert from the Annex in justified cases and propose to add "*as a general rule*" in the text. EE, IE, LU, MT, NL, UK, PL, PT, RO, SE and the Commission prefer a binding Annex to ensure legal certainty.

- vi. meteorological conditions incompatible with **the safe operation of the flight safety; and or resulting in capacity restrictions at the airport of departure or of arrival;**
- vii. labour disputes ~~at the operating air carrier or~~ at essential service providers such as airports, ~~and~~ Air Navigation Service Providers **or groundhandling service providers;**<sup>59</sup>
- viii. **disruptive passenger behaviour endangering the safe operation of the flight;**
- ix. **collision of birds or of foreign objects with the aircraft during a flight operation which may cause damage that requires immediate compulsory checks and possible repair;**
- x. **damage to the aircraft caused by third parties for whom the air carrier, in the absence of contractual relations, is not responsible on the ground prior to departure of the flight and requiring immediate assessment or repair.**
- xi. **damage to the aircraft which could affect the safety of the flight or the integrity of the aircraft and requires immediate assessment and/or repair and is caused by meteorological events (for example: lightning strikes, hailstones, thunderstorms, severe turbulence etc.).**

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)."~~

<sup>59</sup>

A recital shall be inserted to include the possibility of strikes at the air carrier to qualify as extraordinary circumstances under certain circumstances (when they are unannounced and not fault of the air carrier). DE would prefer a clarification in this paragraph that labour disputes within the airline concerned are extraordinary circumstances.

**"Annex 2: List of criteria to be fulfilled by technical defect(s) and/or problems in order to qualify as unexpected flight safety shortcomings (Article 2(mm))"<sup>60</sup>**

**1. Flight safety risk**

In accordance with Regulation (EC) No 216/2008, or for third country carriers with ICAO Annex 6, and unless the defect is the result of damage caused by the carrier itself or its contracted agents working under the carrier's responsibility<sup>61 62</sup>, either:

- a) The defect is related to the airworthiness of the aircraft, is not listed in the Minimum Equipment List (MEL) and results in the defect having to be fixed before the flight can operate in accordance with Point M.A.403 of (EC) No 2042/2003; or,
- b) The defect is outside the limits set by the MEL, and it necessitates an immediate termination action of the flight operation; or
- c) Several defects occur which are listed in the MEL, and in accordance with Commission Regulation (EU) No 965/2012 the commander decides that it is not safe to operate the aircraft with the combination of these defects.

**2. Time of discovery**

First discovery of the relevant defect is made during or after the pre-flight check and before the engine shutdown at the destination of the flight.

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<sup>60</sup> AT and DE do not support the separation of technical defects in a new definition.

<sup>61</sup> The reference to damage caused by the carrier or its contracted agents will remain in the introductory paragraph until safety experts provide justification for its relevance only for point (a).

<sup>62</sup> DE proposes to move the following text from Annex 2, paragraph 1 to the definition of unexpected flight safety shortcomings: *"unless the defect is the result of damage caused by the carrier itself or its contracted agents working under the carrier's responsibility"*.

3. **Proper maintenance**

**Maintenance has been executed in accordance with the up-to-date approved maintenance programme, by an appropriate qualified maintenance organisation and using the prescribed maintenance data as specified in accordance with Annex IV of Regulation (EC) No 216/2008, or for third country carriers with ICAO Annex 6."**

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"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 (*the air carrier shall indicate between brackets the 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.~~

- **the damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents, or**
- **that the damage was solely due to the negligence or other wrongful act or omission of a third party.**

## ADVANCE PAYMENTS

If a passenger is killed or injured,<sup>63</sup> 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 (*the amount is 16% per passenger of the limit of liability referred in the preceding paragraph and shall remain 16% whenever the amount is adapted in accordance with Article 6; the air carrier shall also indicate between brackets the 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 (*the air carrier shall indicate between brackets the approximate amount in local currency*).

## BAGGAGE LOSS, DAMAGE OR DELAYS

In case of baggage loss, damage or delay, the air carrier is liable for damage **unless it took all reasonable measures to avoid the damage resulting from such delay or when it was impossible to take such measures. The liability for baggage delay is up to 1 113 SDRs** (*the air carrier shall indicate between brackets the approximate amount in local currency*), the compensation limit being applicable per passenger and not per piece of checked baggage.

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<sup>63</sup> DE and RO propose to add a reference to '*serious injury*'.

## DESTRUCTION, LOSS OR DAMAGE TO BAGGAGE

The air carrier is liable for damage sustained in case of destruction, loss or damage to baggage up to 1 131 SDRs (*the air carrier shall indicate between brackets the approximate amount in local currency*), the compensation limit being applicable per passenger and not per piece of baggage.

~~, unless a higher limit has been agreed upon between the carrier and the passenger through a special declaration of interest. For~~ **In the case of** damaged or lost **checked** baggage, the air carrier is ~~not~~ liable if **unless** the damage ~~or loss~~ is caused by an inherent **defect**, quality or ~~defect~~ **vice** 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 **the** case of **unchecked baggage** (hand luggage), including personal items, the ~~airline~~ **air carrier** is only liable if the damage has resulted from its fault **or that of its servants or agents**.

## HIGHER LIMITS FOR CHECKED 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 air carrier shall indicate between brackets the approximate amount in local currency*). 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.~~

## EXONERATION

If the carrier proves that any damage covered by the liability rules applied by Community air carriers as required by Regulation (EC) 2027/97 and the Montreal Convention, including death or injury, was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

## 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. **The passenger must complain in writing within a time limit to complain of 7 days applies in the case the of damage to checked baggage, was damaged and within a time limit of 21 days in case it was of delayed baggage, in both cases from the date on which the baggage was placed at the passenger's disposal. In order to easily meet facilitate compliance with these deadlines, the air carrier must offer passengers the possibility to fill in file a complaint form at the airport through a form. 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. Such complaint form must be accepted by the air carrier at the airport as a complaint. The date of submission of such a complaint shall be considered by the air carrier as the filing date of the complaint pursuant to Articles 31(2) and 31(3) of the Montreal Convention, even if the air carrier requests further information at a later date.**



## LIABILITY OF CONTRACTING AND ACTUAL CARRIERS<sup>64</sup>

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~~. **one or the other of the two carriers.**

### 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 **relevant** national legislation ~~of the Member States.~~"

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<sup>64</sup> DE proposes to change the title as follows “*Liability of community air carriers and contracting ~~and actual~~ air carriers*” and to substitute “*air carrier*” by “*Community air carrier*” in the first sentence.