

# Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) Regulation</p> <p>2001/0305(COD)</p> <p>Procedure completed</p>	
<p>Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights</p> <p>See also <a href="#">2000/0145(COD)</a> See also <a href="#">2004/0049(COD)</a> See also <a href="#">2005/0007(COD)</a> See also <a href="#">2005/0241(COD)</a> See also <a href="#">2006/0130(COD)</a> See also <a href="#">2008/0237(COD)</a> See also <a href="#">2008/0246(COD)</a> See also <a href="#">2017/2876(RSP)</a></p> <p>Subject 3.20.01 Air transport and air freight 4.60.06 Consumers' economic and legal interests</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>DELE</b> EP Delegation to Conciliation Committee		10/07/2003
		PPE-DE <a href="#">LISI Giorgio</a>	
	Former committee responsible		
	<b>RETT</b> Regional Policy, Transport and Tourism		22/01/2002
		PPE-DE <a href="#">LISI Giorgio</a>	
	<b>RETT</b> Regional Policy, Transport and Tourism		22/01/2002
	PPE-DE <a href="#">LISI Giorgio</a>		
Former committee for opinion			
<b>JURI</b> Legal Affairs and Internal Market	The committee decided not to give an opinion.		
<b>ENVI</b> Environment, Public Health, Consumer Policy			19/02/2002
	PSE <a href="#">WHITEHEAD Phillip</a>		
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">General Affairs</a>	<a href="#">2558</a>	26/01/2004
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2525</a>	22/09/2003
	<a href="#">Agriculture and Fisheries</a>	<a href="#">2494</a>	17/03/2003
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2472</a>	05/12/2002
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2452</a>	03/10/2002
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2420</a>	25/03/2002
European Commission	Commission DG	Commissioner	
	Energy and Transport		

Key events			

20/12/2001	Legislative proposal published	COM(2001)0784	Summary
16/01/2002	Committee referral announced in Parliament, 1st reading		
25/03/2002	Debate in Council	<a href="#">2420</a>	
10/09/2002	Vote in committee, 1st reading		Summary
09/09/2002	Committee report tabled for plenary, 1st reading	<a href="#">A5-0298/2002</a>	
03/10/2002	Debate in Council	<a href="#">2452</a>	
23/10/2002	Debate in Parliament		
24/10/2002	Decision by Parliament, 1st reading	<a href="#">T5-0514/2002</a>	Summary
03/12/2002	Modified legislative proposal published	<a href="#">COM(2002)0717</a>	Summary
17/03/2003	Council position published	<a href="#">15855/1/2002</a>	Summary
27/03/2003	Committee referral announced in Parliament, 2nd reading		
12/06/2003	Vote in committee, 2nd reading		Summary
11/06/2003	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0221/2003</a>	
02/07/2003	Debate in Parliament		
03/07/2003	Decision by Parliament, 2nd reading	<a href="#">T5-0329/2003</a>	Summary
22/09/2003	Parliament's amendments rejected by Council		
29/09/2003	Formal meeting of Conciliation Committee		
14/10/2003	Final decision by Conciliation Committee		Summary
13/10/2003	Report tabled for plenary, 3rd reading	<a href="#">A5-0464/2003</a>	
30/11/2003	Joint text approved by Conciliation Committee co-chairs	<a href="#">3676/2003</a>	
17/12/2003	Debate in Parliament		
18/12/2003	Decision by Parliament, 3rd reading	<a href="#">T5-0591/2003</a>	Summary
26/01/2004	Decision by Council, 3rd reading		
11/02/2004	End of procedure in Parliament		
12/02/2004	Final act signed		
17/02/2004	Final act published in Official Journal		

### Technical information

Procedure reference	2001/0305(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation

	<p>See also <a href="#">2000/0145(COD)</a></p> <p>See also <a href="#">2004/0049(COD)</a></p> <p>See also <a href="#">2005/0007(COD)</a></p> <p>See also <a href="#">2005/0241(COD)</a></p> <p>See also <a href="#">2006/0130(COD)</a></p> <p>See also <a href="#">2008/0237(COD)</a></p> <p>See also <a href="#">2008/0246(COD)</a></p> <p>See also <a href="#">2017/2876(RSP)</a></p>
Legal basis	EC Treaty (after Amsterdam) EC 080-p2
Stage reached in procedure	Procedure completed
Committee dossier	CODE/5/19804

Documentation gateway					
Legislative proposal		<a href="#">COM(2001)0784</a> , <a href="#">OJ C 103 30.04.2002, p. 0225 E</a>	21/12/2001	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES0840/2002</a> <a href="#">OJ C 241 07.10.2002, p. 0029</a>	17/07/2002	ESC	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0298/2002</a>	10/09/2002	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0514/2002</a> <a href="#">OJ C 300 11.12.2003, p. 0443-0556 E</a>	24/10/2002	EP	Summary
Modified legislative proposal		<a href="#">COM(2002)0717</a> , OJ C 071 25.03.2003, p. 0188-0197 E	04/12/2002	EC	Summary
Council statement on its position		<a href="#">07252/2003</a>	10/03/2003	CSL	
Council position		<a href="#">15855/1/2002</a> <a href="#">OJ C 125 27.05.2003, p. 0063-0071 E</a>	18/03/2003	CSL	Summary
Commission communication on Council's position		<a href="#">SEC(2003)0361</a>	25/03/2003	EC	Summary
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A5-0221/2003</a>	12/06/2003	EP	
Text adopted by Parliament, 2nd reading		<a href="#">T5-0329/2003</a> OJ C 074 24.03.2004, p. 0668-0806 E	03/07/2003	EP	Summary
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2003)0496</a>	11/08/2003	EC	Summary
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		<a href="#">A5-0464/2003</a>	14/10/2003	EP	
Joint text approved by Conciliation Committee co-chairs		<a href="#">3676/2003</a>	01/12/2003	CSL/EP	
Text adopted by Parliament, 3rd reading		<a href="#">T5-0591/2003</a> OJ C 091 15.04.2004, p. 0523-0627 E	18/12/2003	EP	Summary
Follow-up document		<a href="#">COM(2007)0168</a>	04/04/2007	EC	Summary

Follow-up document		<a href="#">SEC(2007)0426</a>	04/04/2007	EC	
Follow-up document		<a href="#">COM(2011)0174</a>	11/04/2011	EC	Summary
Follow-up document		SEC(2011)0428	11/04/2011	EC	
Follow-up document		SWD(2014)0156	07/05/2014	EC	Summary

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Regulation 2004/261](#)

[OJ L 046 17.02.2004, p. 0001-0007](#) Summary

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

**PURPOSE** : to establish common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights. **CONTENT** : this proposed regulation would give passengers the right to financial compensation, an alternative flight or reimbursement of the ticket, and assistance at the airport in the event of denied boarding or cancellation of the flight. It would give passengers suffering long delays the right to an alternative flight or reimbursement. It would apply to all carriers departing from Community airports and to Community carriers flying from a non-Community to a Community airport (in some circumstances). It would replace Council Regulation 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport. Concretely, the new proposed Regulation foresees: 1) in the case of denied boarding: - the obligation on operators to call for volunteers to surrender reservations in exchange for agreed benefits (and also to give choice between alternative flight and reimbursement of ticket); - if nevertheless denied boarding, a passenger has three rights: higher financial compensation (between 375 and 1,500 Euros) and a choice between alternative flight and reimbursement of ticket and care while waiting (refreshments, meals, hotels); 2) in the case of cancellation: - obligation on operators to contact passengers and seek volunteers to surrender reservations; - a passenger that does not volunteer has these three rights: financial compensation as denied boarding (between 375 and 1,500 Euros) and choice between alternative flight and reimbursement of ticket and care while waiting (refreshments, meals, hotels); 3) in the case of a long delay: - a passenger has the right to choose between alternative flight and reimbursement of ticket; - special needs passengers and people with reduced mobility will be entitled to minimum care while waiting (refreshments, meals, hotels). ?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

The committee adopted the report by Giorgio LISI (EPP-ED, I) tabling a large number of amendments to the proposal under the codecision procedure (1st reading). The main amendments were as follows: - the committee added definitions of 'force majeure', 'denied boarding', 'cancelled flights', and 'a person with reduced mobility'; it also wanted to retain the definitions of 'final destination' and 'volunteer' given in the regulation currently in force; - for the purposes of clarity, the committee specified that the responsibilities and obligations set out in the regulation applied not only to the air carrier and the tour operator but also to the operating air carrier, both in the case of code sharing and where it is logistically impossible for the tour operator to meet the obligations laid down; furthermore, the tour operator and the marketing carrier should have full rights of recourse against the operating carrier whenever the latter bears responsibility for denied boarding, cancellation or flight delays; - the committee changed the figures governing compensation for denied boarding, proposing that passengers should receive compensation of EUR 200 for flights of less than 1000 kilometres, EUR 400 for flights between 1000 and 3500 km and EUR 600 for flights of 3500 km or more; - the committee added a clause stipulating that the Commission may adjust the amount of compensation every three years in line with any rise in the cost of living; - in the case of overbooking, available places should be allocated under a transparent procedure according to uniform criteria; - boarding should not be denied to a passenger travelling with a certified service dog or to passengers travelling with small children; - the choice of reimbursement or re-routing to be offered to passengers who are denied boarding should be allowed only within the validity of the ticket and subject to scheduling; - in the case of re-routing, the committee adjusted the criteria for reducing compensation to ensure that they were more in keeping with the time/distance ratio; - package tourists should not be covered by this regulation as they were covered by a separate directive; - the scope of the regulation should be extended to cover all carriers which fly to the Community; the committee therefore deleted a clause which would have limited the scope of the regulation to packages sold within EU territory; - from 1 January 2004, a ranking of user-friendliness should be published on a monthly basis; - lastly, the Commission was urged to enact similar rules for rail, ferry bus and coach transport so as to prevent distortions of competition between different modes of transport. ?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

The European Parliament adopted a resolution drafted by Giorgio LISI (EPP-ED, Italy) on compensation to air passengers. (Please refer to the

document dated 10/09/02.) Parliament also made the following amendments: -if no time is indicated by air carrier, travel agent or tour operator, passengers must arrive no later than sixty minutes before the published departure time; -with regard to re-routing, there is no right to compensation for distances over 1000 kms, if the arrival time of the alternative flight does not exceed the scheduled arrival time by more than one hour; -assistance may not apply in situations involving political unrest or long strikes in essential services or other circumstances beyond the air carriers control. Moreover, assistance should only be provided where local conditions allow for it to be delivered and under the condition that doing so would not further delay departure; -Member States should ensure that any claim for compensation under the principle that the agency responsible should pay can be made against any third party, i.e. even State or another authority with sovereign powers or by the undertakings designated in the Regulation.?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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Of the forty amendments adopted by the European Parliament, the Commission accepted fourteen (some with redrafting or in principle) and eight partially. The following elements have been incorporated: - a new recital has been introduced which incorporates the concept of "force majeure", replacing that of "exceptional circumstances beyond the responsibility of an air carrier". This will help clarify the circumstances in which air carriers are not responsible for cancellations or long delays. For guidance, examples are given of cases of force majeure. Accordingly, recital 7 has been modified and the reference to "exceptional circumstances beyond the responsibility of an air carrier" has been deleted; - objective : a reference to "force majeure" replaces that to "exceptional circumstances beyond the responsibility of an air carrier", in order to help clarify the circumstances where carriers are not responsible for cancellations or long delays; - definitions : a definition of "force majeure" is introduced, in harmony with that of Council Directive 90/314/EEC on package travel, package holidays and package tours. Definitions are given of "denied boarding" and of "volunteer", in order to clarify the text. However the conditions under which passengers enjoy rights (possession of a valid ticket and confirmed reservation and presentation for check-in within a time limit) are kept in Article 3, as they apply to all provisions of the regulation. "Cancellation" is defined, while the time limit on the coverage of cancellations is introduced. The standard definition of a "person with reduced mobility" of the European Civil Aviation Conference is introduced, to ensure consistency in meeting the special needs of these passengers; - scope : the time limit for presentation at the check-in desk, when an air carrier or tour operator does not stipulate a time, is changed from thirty to sixty minutes; - the term "person with reduced mobility" is used instead of "disabled passenger" with regard to boarding. Also the prohibition to deny boarding is extended to certified service dogs, as blind or poorly sighted passengers may only be able to travel if accompanied by them; - right to assistance : the condition "subject to availability" limits the right to rerouting at a later date at the passenger's convenience. This makes clear that air carriers and tour operators would not be obliged to organise flights specially for passengers affected by denied boarding or cancellation. In addition, the right to a free telephone call, telex, fax message and/or e-mail to the point of departure is introduced (in addition to one to the final destination). This will enable passengers to communicate with all those concerned by the disruption of their travel plans. Passengers are given the additional right to free transport, or reimbursement of expenses, for the journey from the airport to their place of accommodation and back. This will relieve them of sometimes heavy expenditure when affected by denied boarding, cancellation or long delay. The notion of "force majeure" is introduced to clarify the circumstances where carriers are not responsible for cancellations. The coverage of cancellations is limited to those made within seven days of departure, to avoid putting financial pressure on carriers or tour operators to maintain their programmes irrespective of demand. The time of seven days before the expected time of departure gives passengers time to change their travel arrangements. The "48 hours" proposed has been considered too short to give passengers the time needed to make new travel arrangements. The obligation is introduced to explain alternative means of travel to passengers affected by a cancellation, when contacted by a carrier or tour operator. The right of choice between a refund and an alternative flight is replaced by that to care while awaiting a later flight (meals, hotels, etc.). This will ensure good care of all passengers suffering long delays, including overnight accommodation when needed. The change will also prevent disruption and further delay that the provision of refunds or alternative flights might cause in certain circumstances; - the introduction of the concept of "force majeure", to clarify when carriers and tour operators are not responsible for care in the event of long delays. An additional sentence prevents passengers from claiming further compensation in court, when they have accepted to give up their reservations under conditions agreed with the air carrier or tour operator; - obligation to inform the passengers of their rights : requires carriers and tour operators, when denying boarding or cancelling, to inform passengers of the body designated to receive complaints has been introduced in order to facilitate the lodging of complaints. This helps passengers to exercise their rights; - admissibility of derogations : the proposal provides protection in the event of air carriers or tour operators introducing restrictive clauses into contracts (despite the prohibition to do so) and of passengers accepting compensation on that basis has been incorporated; - complaints : clarify that air passengers maintain their rights to go to court to claim further compensation, if they lodge a complaint; - report : An obligation on the Commission to report no later than five years after the entry into force of the regulation replaces that to report by 1st January 2008. On the other hand, as regards the amendments rejected by the Commission, these concern: - the exclusion of passengers on package tours so that the regulation would just apply to seat-only passengers; - the allocation of the available places, in the event of overbooking; - the rates of compensation namely 200-400-600 euros depending on three distance bands; - the organisation of care within one hour as it would be difficult to implement it and attempting to do so could cause further delays; - the creation of shared responsibility for meeting the obligations of the regulation, in the case of code-sharing between the carriers and when logistically impossible for a tour operator to fulfil these obligations; - the elimination of compensation in the case of delays of less than one hour; - the adjustment of levels in line with inflation every three years is rejected because the Commission has to report 5 years after the entry into force of the regulation and may make appropriate proposals; - the references to the last flight coupon on a ticket in case of successive flights for the definition of final destination; - the elimination to stipulate the check-in time in writing; - the prohibition for air carriers and tour operators from denying boarding to passengers travelling with small children; - the limitation of the obligation to reimburse tickets or to re-route passengers within the period of validity of the ticket; - requiring rules similar to those of the proposed regulation to be established for other modes of transport can not be accepted; - the elimination of the definition of the price on which a refund should be based in the event of down-grading, so preventing legal certainty to the detriment of passengers; - to limit the obligation to provide care to passengers in situations where local conditions allow it. This condition would weaken the protection of passengers and is not sufficiently precise to provide legal certainty; - the liability of authorities for denied boarding, cancellation and delays; - linking its obligation to report on the operation and on the result of this Regulation to the designation of enforcement bodies.?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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The Council made a number of modifications to the proposal of the Commission, both regarding the form and substance. As far as the formal modifications are concerned, the Council endeavoured to make the texts simpler and easier to understand. The Council rearranged the text considerably in order notably to enhance their logical disposition. The main substantive modifications can be described as follows: - the Council agreed to simplify the text by laying all obligations to compensate and assist passengers on the operating air carrier, which is normally the best placed to meet such obligations because of its presence at airports. However, the operating air carrier has a right of redress in accordance with the law applicable, in particular the regulation should in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or any other person with whom the operating carrier has a contract; - in line with the amended by the Parliament and in view of the Montreal Convention, the Council felt it would be appropriate to provide a list of circumstances which may exempt the operating air carrier from its obligations under this Regulation. However, for reasons of legal clarity the Council decided not to list such circumstances under 'force majeure' but decided to use the concept of 'extraordinary circumstances'; - with regard to cancellation, the Council decided to refine the text by providing that the right to compensation depends not only on the moment in time at which the passenger is informed of the cancellation, but also on the adequacy of the re-routing that is offered to the passenger concerned; - as regards the levels of compensation, the Council agreed, in line with the amendment by Parliament, to adopt a system of three distance sections. The levels itself are almost equal to those recommended by the Parliament, namely EUR 250, EUR 400 and EUR 600; - taking account of the amendment by parliament, the Council has strengthened the rights passengers in the even to long delays of flights, by providing that passengers not only have the right to reimbursement or re-routing, but also, in principle, the right to care. By the way, the Council agreed that this latter right should in general also encompass the right to transport, free of charge, between the airport and the place of accommodation (hotel or other); - with regard to the situations of upgrading and downgrading, the Council decided to turn the provision into a separate Article, since in the situations concerned there is no denial of boarding. Moreover, in order to simplify handling at airports, the Council agreed that it would be appropriate to apply fixed percentages in order to calculate amounts of reimbursement; - finally, the Council decided to give more importance to the provisions regarding passengers with reduced mobility or special needs. It therefore incorporated the relevant amendment by Parliament and gave a horizontal character to the relevant provisions.?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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The Council is of the opinion that the amounts of compensation adopted by the Council, that is, 250, 400 and 600 are much lower than those it had proposed. The Commission would have preferred the amounts to be higher, but it recognises that the amounts adopted by the Council represent a substantial increase in comparison to the amounts provided for in the actual regulation. The Commission believes that the common position does not modify the objectives or the spirit of its proposal and therefore supports the common position.?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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MEPs adopted the report by Georgio LISI (EPP-ED, I) amending the Council's common position under the 2nd reading of the codecision procedure. It reinstated a number of key amendments adopted by Parliament at 1st reading: - the text should give a definition of "cancelled flight"; - the definition of "final destination" given in the regulation currently in force should be retained; - the check-in time should not have to be indicated in writing; - if no time is indicated by the air carrier, tour operator or an authorised travel agent, passengers should check in no later than 60 minutes before the published departure time, rather than 30 minutes as proposed; - the regulation should not apply to air passengers on package tours as they are covered by a separate directive; - the obligation to re-route passengers to their final destination should be limited; re-routing should take place "within the validity of the ticket". The committee further refined the 1st reading amendment by adding that re-routing should also be "subject to scheduling"; - it should be stipulated that tour operators should also be guaranteed a right of redress against the operating air carrier, whereas the proposal established a right of redress only for the operating air carrier against the tour operator; - Member States should ensure that any claim for compensation under the principle that the agency responsible should pay can be made against any third party, i.e. even state or other authorities with sovereign powers by the undertakings designated in the Regulation; - from 1 January 2004, a ranking of user-friendliness of airlines should be published on a monthly basis. The committee also adopted new amendments stipulating that: - when flights are cancelled, with or without prior notice, and whether or not there are extraordinary circumstances, the operating air carrier should offer passengers assistance in accordance with Articles 8 and 9 (re-routing and "care", such as free meals, refreshments, hotel accommodation, etc.). Moreover, passengers should be entitled to compensation in accordance with Article 7 unless they are informed of the cancellation and the re-routing assistance at least 5 days before the scheduled time of departure and unless the operating air carrier can prove that the cancellation is caused by extraordinary circumstances; - passengers should be offered assistance in accordance with Articles 8 and 9 when an air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure: (a) for two hours in the case of flights of 1500 km or less, or (b) for three hours in the case of all intra-Community flights of more than 1500 km and of all other flights between 1 500 and 3 500 km, or (c) for four hours or more in the case of all flights not falling under (a) or (b). Finally, an amendment was adopted with a view to harmonising the distance criteria as above with regard to compensation in the event of re-routing. ?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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The European Parliament adopted a resolution based on the report by Giorgio LISI (EPP-ED, Italy) and made several amendments to the common position. The key amendments were as follows: - a new recital states that passengers travelling on all modes of transport should be treated equally and distortions of competition between different modes of transport should be avoided; the text should give a definition of "cancelled flight"; - the definition of "final destination" given in the regulation currently in force should be retained; - the check-in time should not have to be indicated in writing; - if no time is indicated by the air carrier, tour operator or an authorised travel agent, passengers should check in no later than 60 minutes before the published departure time, rather than 30 minutes as proposed; - passengers should be offered assistance when an air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure: (a) for two hours in the case of flights of 1500 km or less, or (b) for three hours in the case of all intra-Community flights of more than 1500 km and of all other flights

between 1 500 and 3 500 km, or (c) for four hours or more in the case of all flights not falling under (a) or (b); - an amendment was adopted with a view to harmonising the distance criteria as above with regard to compensation in the event of re-routing; - the obligation to re-route passengers to their final destination should be limited; re-routing should take place "within the validity of the ticket". Re-routing should also be "subject to scheduling"; - Parliament amended the provisions on compensation in cases where a passenger is placed in a class lower than that for which his ticket was purchased; - it should be stipulated that tour operators should also be guaranteed a right of redress against the operating air carrier, whereas the proposal established a right of redress only for the operating air carrier against the tour operator; - Member States should ensure that any claim for compensation under the principle that the agency responsible should pay can be made against any third party, i.e. even state or other authorities with sovereign powers by the undertakings designated in the Regulation; - the Regulation will enter into force within 12 months of its publication rather than 3 months.?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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The European Parliament adopted 15 amendments at second reading, of which the Commission accepts 8 wholly or in part, as they are in line with the objectives of its proposal. Concerning the amendments accepted by the Commission, these concern: - changes the time limit for check-in, if an air carrier or tour operator does not stipulate one, from thirty to sixty minutes before the published departure time. The longer period is preferable because of the reinforcement of security procedures since 11th September 2001; - aligning the distance bands in the condition for assisting delayed passengers on those in Article 7, paragraph 1 (levels of compensation), so clarifying and simplifying the proposal. It would also limit the rights of passengers to assistance under Article 9 (meals and accommodation), removing the right to assistance under Article 8 (choice between reimbursement and re-routing). In fact assistance under Article 8 could cause disruption and further delay in certain circumstances, for instance when a delayed flight arrives while passengers are being refunded or transferred to alternative flights. It would also remove the exemption when an air carrier can prove that it was not responsible for the delay. This is justified, as it would ensure that passengers receive basic assistance in all circumstances; - aligning the distance bands in the condition for allowing the reduction of compensation in the case of shorter delays on those in Article 7, paragraph 1, (levels of compensation), so clarifying and simplifying the proposal; - adding "scheduling" to the end of Article 8, paragraph 1, point c. This would make clear that air carriers and tour operators were not obliged specially to organise unplanned flights in the event of denied boarding or of cancellation; - aligning the distance bands in the condition for reimbursement in the event of down grading from a higher to a lower class on those in Article 7, paragraph 1, (levels of compensation), so clarifying and simplifying the proposal; - allowing tour operators to make claims against operating carriers, as well as the reverse. This is reasonable, as either could be responsible for creating situations under which obligations towards passengers had to be met. However, this addition should be expressed in a similar way to the right already created by the common position for the sake of clarity and consistency; - postponing for one year the Commission's report. This would allow it time to gather fuller information on the operation and results of the regulation; - changing the regulation's date of entry into force from three to twelve months after its publication. This would give air carriers and tour operators time to introduce new contracts and otherwise prepare for the application of the proposal. On the other hand, the amendments rejected by the Commission refer to: - adding a recital to the effect that passengers travelling by all modes of transport should be treated equally. While the Commission intends to take initiatives to protect the rights of passengers using other modes of transport, the question is outside the scope of the present proposal; - changing a recital in such a way that the effects of many decisions concerning air traffic control would be considered as extraordinary circumstances under which air carriers were not responsible for the consequences of cancellations. This would go unjustifiably far in limiting the responsibility of carriers for the consequences of cancellations; - excluding a "retailer" of package travel from the definition of "tour operator" and hence from the scope of the proposal. The definition in the common position is identical to that in Directive 90/314/EEC on package travel, package holidays and package tours. It should be maintained so as not to introduce different definitions into Community law and so cause confusion; - reducing rights to financial compensation and to re-routing, by restricting the "final destination" to that reachable without difficulties through connecting flights (when connecting flights are used). The term "without difficulties" is not sufficiently clear and could cause legal uncertainty. If interpreted widely, it would limit the obligations on carriers and so restrict the rights of passengers to an unacceptable degree; - defining a "cancelled flight" as one not made but listed in a computer reservation system during seven days before the expected departure. However, this would greatly restrict the rights of passengers. First, some carriers do not use computer reservation systems while others make part of their reservations directly with customers. In these cases, flights not made would never be classed as cancellations, because not listed in a computer reservation system. Second, if a carrier were to remove a flight from a computer reservation system, whether during these seven days or before that period, it would not be considered as cancelled. In both ways, the amendment would frustrate the purpose of the proposal and, in particular, would conflict with Article 5 paragraph 1 of the common position, which strikes a satisfactory balance between the interests of passengers and air carriers; - limiting the right to re-routing to the period of validity of a ticket. Such a restriction is not justified and could lead in practice to passengers having different rights to re-routing solely because of the validity of their tickets; - removing the clause to the effect that courts are allowed to deduct compensation granted under the regulation from the damages that they award. The clause should be kept, as it would permit courts to avoid awarding double damages against air carriers (the damages that they grant plus the compensation that carriers are obliged to give under the proposed regulation). - allowing air carriers to make claims against public agencies that would include air traffic management bodies and managing bodies of airports. This is outside the scope of this proposal.?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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The Conciliation Committee reached agreement on the regulation on compensation and assistance to air passengers for denied boarding. The main elements of the compromise package can be summarised as follows: - the regulation will determine the amount of compensation to be paid to passengers in the case of denied boarding on the basis of a three-distance band system, which distinguishes between three categories of flights: a) flights of less than 1.500 km; b) intra-Community flights of more than 1.500 km or all other flights between 1.500 km and 3.500 km; c) all flights not falling under (a) or (b). The Council accepted Parliament's proposal to extend this system for defining passengers' rights to delays, the compensation to be paid to passengers when offered re-routing and the level of reimbursement in the event of down-grading, thus establishing a single, clearer and more transparent framework for all eventualities; - with regard to delays or a flight cancellation, the compromise provides for the introduction of a three-tier system. In the case of long delays (2 hours or more, depending on the distance of the flight) passengers shall be offered in all cases (and not just in "extraordinary circumstances") meals and refreshments corresponding to the waiting time as well as two telephone calls, telex, fax or e-mails, free of charge; when the expected time of departure is not until the next day,

they shall also be offered hotel accommodation and transport to and from the place of accommodation; moreover, when the delay is at least 5 hours, passengers shall have the option to choose between reimbursement of the full price of the ticket together with, when relevant, a return flight to the initial point of departure. In the event of cancellation, the same rights apply as for passengers subject to delays; - the time limit for check-in for passengers to be able to benefit from the regulation is set at 45 minutes before departure; - tour operators or other third parties, other than a passenger, should have the right to seek reimbursement or compensation from the air carrier for expenses that they have incurred or losses they have suffered because of actions by the operating air carrier; - helicopters are excluded from the scope of the regulation; - the issue of the equal treatment of all modes of transport is addressed in a declaration by the Commission; - the Regulation will enter into force 12 months after its publication in the Official Journal, rather than 3 months as originally proposed, in order to allow all involved parties to adapt more smoothly to the various changes introduced by the new legislation. ?

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The European Parliament approved the joint text agreed by the Conciliation Committee and the Commission Statement on the text regarding the issue of the equal treatment of all modes of transport. (Please see the document of 14/10/03).?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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**PURPOSE:** to establish common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights. **LEGISLATIVE ACT:** Regulation 261/2004/EC of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation 295/91/EEC. **CONTENT:** The Council adopted the Regulation in line with the common position that was agreed with the European Parliament within the Conciliation Committee. The Irish and UK delegations voted against it and the German delegation abstained. This Regulation repeals Council Regulation 295/91/EEC which established common rules for a denied boarding compensation system in scheduled air transport. It establishes minimum rights for passengers when they are denied boarding against their will, their flight is cancelled or their flight is delayed. The new Regulation raises the standards of protection set by Regulation 295/91/EEC both by strengthening the rights of passengers and ensuring that air carriers operate under harmonised conditions in a liberalised market. Since the distinction between scheduled and non-scheduled air services is weakening, such protection should apply to passengers not only on scheduled but also on non-scheduled flights, including those forming part of package tours. Furthermore, the protection accorded to passengers departing from an airport located in a Member State are extended to those leaving an airport located in a third country for one situated in a Member State, when a Community carrier operates the flight. 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. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them. Passengers will receive compensation from the airline or travel operators amounting to: - EUR 250 for all flights of 1500 kilometres or less, - EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres, - EUR 600 for all flights exceeding 3 500 kilometres.. This will create a strong incentive to make volunteering attractive and a powerful deterrent to denying boarding. In addition to financial compensation, passengers denied boarding will continue to benefit from the choice between reimbursement of their ticket and an alternative flight, and meals, refreshments and hotel accommodation. When airlines or tour operators cancel flights on their own responsibility, passengers will have the right to compensation at the rate fixed for denied boarding, unless they are informed two weeks before the scheduled time of departure, or they are informed on due time and re-routed at a time very close to that of their original flight. In addition, in case of cancellations, passengers are entitled to three other rights: - meals and refreshments, and - hotel accommodation, when a cancellation obliges a passenger to stay overnight, and - reimbursement, when a cancellation delays a passenger for at least five hours. When airlines reasonably expect a long delay, they will be obliged to give passengers: - meals and refreshments, and - hotel accommodation, when a delay obliges a passenger to stay overnight, and - reimbursement, when a delay delays a passenger for at least five hours. **ENTRY INTO FORCE:** 17/02/2005.?

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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The Commission has presented its communication on the operation and the results of this Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

In order to have independent and unbiased quantitative and qualitative data on the application of this Regulation, the Commission contracted an external consultant. One of the most important characteristics of this study was the broad and intensive consultation of as many stakeholders as possible, including consumer associations and passenger federations.

After more than two years of application of the Regulation, progress has been made but substantial improvement is necessary if more consistent application of the rules by airlines and more consistent enforcement of the rules by the Member States are to be achieved. In contrast with the past, stranded passengers now have specific rights, but too often they are in a weak position compared to the airlines.

To address the issues for improvement, the Commission considers work in a number of areas to be necessary:

**Improve enforcement:** the Commission needs to enhance cooperation with and between the national enforcement bodies (NEB) in order to ensure an appropriate level of service to the public and better cooperation as a network. At a later stage, cooperation between the national enforcement bodies might take the form of a 'Code of Good Practice' dealing with issues not addressed by the Regulation such as: the timescale for complaint submission by passengers and the replies delivered by NEB, the conditions under which complaints can be referred between NEB and the languages acceptable for referred complaints as well as the improvement of the quality of statistics.

Clarify interpretation of those aspects of the Regulation which are unclear: the Commission intends to issue a communication setting out its interpretation of the Regulation after consulting with the NEB. It is expected that such Communication, while not being legally binding, will carry significant weight with airlines, facilitate the enforcement process and also make it easier for consumers to understand their rights under the Regulation.

Establish clarity between delays and cancellations: it would be helpful to discuss with airlines and NEB more precise criteria for differentiating between delays and cancellations. It would also be useful to improve collection of data to ensure that the status of a flight is clearly recorded both for purposes of enforcement of passenger rights and for better monitoring of overall service quality in the industry.

Establish guidelines on 'Exceptional Circumstances': exceptional circumstances seem to provide a source of persistent dispute between passengers, airlines and NEB. Assessment of such claims for cancelled flights accounts for about 30% of all complaints and takes up more than 70% of the resources of national authorities. As it stands at present, the Regulation makes no provision for financial compensation for delays.

Enhance the role of the NEB: given developments in passenger rights for other modes of transport, setting-up different NEB for different modes of transport once passenger rights have been created in all areas might be inefficient. The concept of ECC (European Consumer Centres), which are already dealing with cross-border (international nature of transport) complaints, could be an approach to help NEB in their day-to-day tasks. In addition, complaints could be centralised in this type of structure thereby ensuring that complaints handling is harmonised with no conflict of interest. It would also facilitate statistical follow up and monitoring (centralised), emphasising once more the horizontal and harmonised approach to passenger rights for each mode of transport. If there is a breach of the new Regulation, the ECC concerned could then forward the complaint to the appropriate Civil Aviation Authority or to a national ministry for legal action against the air carrier.

Over the next six months, the Commission will organise as many meetings as may be needed with the NEB to tighten up and strengthen enforcement procedures. The Commission will consider intensifying infringement proceedings against Member States where, after that six month period, enforcement regimes do not appear to be effective and dissuasive. During the coming six months, the Commission will examine, at airports, whether airlines provide passengers with the information, assistance and compensation. In particular, the Commission will check whether the information boards at check-in and the written notices in cases of flight disruptions are available and handed out.

In order to improve the information available on air passenger rights, the Commission will provide updated information material to the public before the summer of 2007.

## Compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

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The Commission presents a Communication on the application of Regulation (EC) 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.

The Regulation became applicable in 2005 and in 2007 the Commission issued a [Communication](#) where the main shortcomings related to the application of the Regulation were identified with a set of remedial measures. After 6 years, the Commission is again assessing the implementation of the Regulation. This report is part of the Commission's work to remove obstacles to preventing citizens from effectively exercising their rights under EU law, as launched by the [EU Citizenship Report](#) 2010 "Dismantling the obstacles to EU citizens' rights".

Thus, the objective of this report is threefold: (i) to list the developments since the adoption that may have an impact on the application of the Regulation; (ii) to follow up the measures undertaken since 2007, taking stock of the improvements in its application and the remaining obstacles; (iii) to identify further actions to ensure at short term further improvement of its application within the current legal framework provided by the Regulation, and to evaluate possible changes that may help to better achieve its political goals.

The paper discusses developments since 2007 and notes that the number of passengers has increased by roughly 35% since 2000. It examines relevant case law and the lessons drawn from the volcano crisis of April 2010, stating that there is no doubt that, without the Regulation, the chaos and cost for both European citizens and society as a whole would have been much bigger. NEBs now have to take the necessary measures against those few carriers which have refused to comply with the Regulation, to avoid both distortion of competition among carriers and passengers' frustration at any lack of compliance with the law.

Nonetheless, the volcano has illustrated some of the structural limits of the Regulation, which have been tested under the magnified scale of the crisis. The proportionality of some current measures, like the unlimited liability regarding the right to care under major natural disasters, may merit assessment. Member States and the Commission need to reflect on how to ensure that, in the future, this vital support which in the volcano crisis was provided solely by part of the industry is correctly shared and financed. An assessment of the financial cost of the crisis is taking place. However this requires industry to provide the necessary relevant data, which may not yet be available given that a large number of passenger claims are still pending with NEBs or the competent national Courts. Among the measures aimed at preserving the mobility of passengers in a crisis situation, the Commission will explore possible ways to enhance the level of preparedness of all the different actors concerned. The temporary lifting of operational restrictions such as night flight restrictions could be envisaged.

Follow up since 2007: regarding the application of the Regulation the Commission in its Communication of 2007 identified different areas for improvement, namely, the lack of:

- uniform interpretation and enforcement throughout the EU;
- clear and easily accessible means of complaint handling; and
- adequate information to passengers.

The paper outlines the actions taken to help harmonise the application and enforcement of the Regulation. It concludes, however, that:

- the difficulties in the application linked to the lack of both uniform interpretation and consistent enforcement at national level are still high;
- the striking differences between complaint handling procedures, deadlines to answer passengers and the non-legally binding nature and the scope of the NEBs' opinions frustrate passengers as well as weaken the application of the Regulation;
- passengers' awareness of their rights does not appear to have increased.

While some of the shortcomings are directly linked to the Regulation, part of them stems from fragmented consumer protection legislation and the enforcement of such legislation in practice, particularly in cross-border situations.

The report identifies 12 actions to overcome the obstacles that passengers and the industry still face when applying and enjoying the rights provided by the Regulation. In the short term, these actions build on the mechanisms already in place. In the medium term, the Commission will carry out an assessment to evaluate the impact of the current Regulation and the different scenarios that may help to improve the protection of APR and to keep pace with evolving socio-economic realities. This should allow the Commission to announce in 2012 which further measures, including those of a legislative nature, may appear necessary.

Thus, the Commission will:

- work with relevant Member States to identify and overcome obstacles in national law hampering proper application and uniform enforcement of the Regulation, and will assess the opportunity to remove them by the opening of infringement procedures if necessary;
- implement a mandate and internal working rules for the existing NEB network which will cover the various APR regulations- to improve their coordination at an appropriate level and to facilitate the adoption of common and relevant decisions on the interpretation and enforcement of the Regulation, including further clarification on extraordinary circumstances and on a reasonable and proportionate right to care;
- encourage better coordination at national level between the authority that issued the operating licence and the NEB to enhance enforcement measures, and between the different national bodies appointed as NEBs to step up the exchange of information about carriers' compliance;
- structure its contacts with all other key stakeholders through the creation of an APR Consultative Group, reflecting industry and passenger perspective on all issues related to air passengers' rights. It will also work with the future APR Consultative Group to encourage air carriers to establish reasonable and precise timeframes to handle passenger claims;
- encourage NEBs to make use of effective tools to exchange information, including on relevant national administrative and judicial decisions, to seek further coordination of their databases and further reporting on the application of the Regulation;
- promote a better level playing field among operators across the European area, particularly by encouraging the publication of issued sanctions and/or of the operators' overall performance in complying with the Regulation;
- work with relevant Member States to identify and overcome shortcomings in their current national complaint handling bodies and procedures to lead towards a more efficient, quick and consistent complaint handling (at EU level) while ensuring the indispensable flow of information between the complaint handling and the enforcement bodies;
- ensure proper coordination of passenger rights legislation with the ongoing revision of existing or future EU measures on enforcement and redress, like those on alternative dispute resolution mechanisms or collective consumer redress;
- promote a more uniform and quick handling of complaints, notably by submitting to the NEB network Group a common standard form to request information from carriers and a proposal on the competent NEB;
- work with the NEB Network and the APR Consultative Group to encourage airlines and other relevant operators to regularly report to NEBs on relevant data on the application of the Regulation;
- raise passengers' awareness on their rights, through widespread communication tools, such as the on-going Commission information campaign on passengers' rights, as well as through existing consumer networks, as the European Consumer Centres;
- launch in 2011 an impact assessment to assess the proportionality of the current measures in the light of experience and the costs of the regulation for stakeholders, with a view to propose further measures on Air Passenger Rights and in coordination with the revision of the Package Travel Directive (Directive 90/314/EEC) in 2012.