



## PASSENGER RIGHTS

Common rules have been drawn up in an effort to ensure that passengers receive at least a minimum level of assistance in the event of serious delays to or cancellation of their journey, irrespective of the mode of transport used, and, in particular, to protect more vulnerable travellers. The rules also provide for compensation schemes. A wide range of derogations may be granted for rail and road transport services, however, and court actions challenging the application of the rules are still common.

### LEGAL BASIS

Articles 91(1) and 100(2) of the Treaty on the Functioning of the European Union (TFEU).

### OBJECTIVES

European Union legislation on passenger rights seeks to ensure that passengers enjoy a harmonised minimum level of protection, irrespective of the mode of transport used, with a view to facilitating mobility and encouraging the use of public transport.

### RESULTS

The EU has over time adopted a body of rules designed to protect passengers, irrespective of the mode of transport they use. These rules build on previous legislation on the protection of consumers<sup>[1]</sup> and package holidays<sup>[2]</sup> and on the applicable international conventions<sup>[3]</sup>, the Charter of Fundamental Rights and the relevant national provisions. However, they are proving difficult to apply, leading to frequent court cases. The European Court of Justice plays a leading role in interpreting the rules.

---

[1]Including Directive 93/13/EEC on unfair terms in consumer contracts, Directive 2005/29/EC on unfair business-to-consumer commercial practices in the internal market, Regulation (EC) No 2006/2004 on consumer protection cooperation, and Directive 2011/83/EU on consumer rights.

[2]Directive 90/314/EEC on package travel, package holidays and package tours. From 1 July 2018, this text (including the relevant provisions of Regulation (EC) No 2006/2004 and Directive 2011/83/EU) has been replaced by a new directive which takes into account the now dominant role of the internet in package holiday marketing (Directive (EU) 2015/2302 of 25 November 2015).

[3]Rules on carrier liability in the event of accidents have been brought into line with the appropriate international conventions: Montreal Convention for air transport (transposed into EU law and extended to cover domestic flights by Regulation (EC) No 889/2002); Athens Convention for maritime transport (relevant provisions transposed into EU law and extended to cover domestic transport by Regulation (EC) No 392/2009); Convention concerning International Carriage by Rail (relevant provisions transposed into EU law and extended to cover domestic transport by Regulation (EC) No 1371/2007). In cases not covered by these conventions or their transposition into EU law, the relevant national provisions apply (bus or coach transport and inland waterway transport).



The rules lay down a set of basic rights common to all modes of transport, such as non-discrimination, special protection for reduced-mobility passengers<sup>[4]</sup>, traveller information, national enforcement bodies, and arrangements for handling complaints. In the event of cancellation or significant delay, the rules also provide for mandatory compensation and assistance schemes specific to each mode of transport.

**A. Air transport: Regulations (EC) No 261/2004 and (EC) No 1107/2006**

Regulation (EC) No 261/2004 has been the cause of numerous disputes and has been clarified in a series of rulings<sup>[5]</sup>.

**Denied boarding:**

- The carrier must first call for volunteers, who are offered: (i) a freely negotiated sum in compensation, and (ii) the choice between either being reimbursed within seven days (and, if necessary, a free flight to the initial point of departure) or being rerouted or continuing their journey as soon as possible, or at a mutually agreed later date;
- Passengers who cannot board must be offered: (i) assistance (meal, telephone calls and accommodation if necessary), (ii) the choice between either being reimbursed within seven days (and, if necessary, a free flight to the initial point of departure) or being rerouted or continuing their journey as soon as possible, or at a mutually agreed later date, and (iii) an immediate predetermined sum in compensation as follows:

<b>Flights ≤ 1 500 km</b>	<b>Flights 1 500-3 500km Flights EU ≥ 1 500 km</b>	<b>Flights ≥ 3 500</b>
EUR 250 (EUR 125 if rerouted and arriving less than two hours late)	EUR 400 (EUR 200 if rerouted and arriving less than three hours late)	EUR 600 (EUR 300 if rerouted and arriving less than four hours late)

**Cancellation:**

- Assistance (meal, telephone calls and accommodation, if necessary)<sup>[6]</sup>;
- A choice between (i) being reimbursed within seven days (and, if necessary, a free flight to the initial point of departure) or (ii) being rerouted or continuing their journey as soon as possible or (iii) at a mutually agreed later date;

[4]Reduced-mobility passengers should, for example, receive appropriate assistance without being required to pay additional charges – provided that the carrier has been informed in advance: 36 hours before departure for bus or coach travel and 48 hours beforehand for all other means of transport.

[5]In March 2013, the Commission proposed that these rules should be clarified (and the definition of 'extraordinary circumstances' in particular should be improved) to facilitate application of the rules (COM(2013)0130). The proposal is still under discussion and was given a first reading in Parliament on 5 February 2014 (P7\_TA(2014)0092). In the meantime, the Commission adopted an interpretation of the rules currently in force on the basis of case law (COM(2016)3502 of 10 June 2016).

[6]The CJEU has ruled that this assistance is due irrespective of the grounds for cancellation, and with no time limit or monetary limit other than that represented by the expenses actually incurred by the passenger.



- Immediate compensation, as in the case of denied boarding, unless the passenger was notified in advance of the flight's cancellation<sup>[7]</sup> or there are extraordinary circumstances<sup>[8]</sup>.

Delays of at least two hours for flights of 1 500 km or less, at least three hours for flights of between 1 500 and 3 500 km and intra-EU flights of more than 1 500 km, and at least four hours for flights over 3 500 km:

- Assistance (meal, telephone calls and accommodation, if necessary);
- In the event of a delay longer than three hours, passengers should be offered reimbursement within seven days (and, if necessary, a free flight to the initial point of departure) and compensation as in the event of cancellation<sup>[9]</sup>.

Upgrading/downgrading:

- The carrier may not demand any extra payment when it upgrades a passenger;
- In the event of downgrading, the carrier must reimburse the passenger within seven days as follows: (i) 30% of the ticket price for flights of 1 500 km or less, (ii) 50% for flights of between 1 500 and 3 500 km and intra-EU flights of more than 1 500 km, and (iii) 75% for flights of over 3 500 km.

Reduced-mobility passengers:

Reduced-mobility passengers and those accompanying them should always be given priority for boarding. Where boarding is denied, or in the event of a flight cancellation or delay, irrespective of the duration of the delay, they should always be offered assistance (meals, telephone calls and accommodation, if necessary) as soon as possible.

The Commission presented a new proposal amending Regulation (EC) No 261/2004 in March 2013 ([COM\(2013\)0130](#)) with a view to further enhancing the enforcement of the EU rules by clarifying key principles and implicit passenger rights that have given rise to many disputes between airlines and passengers in the past. The co-decision process is still ongoing and final solutions are yet to be agreed between Parliament and the Council of the EU.

## **B. Rail transport: Regulation (EC) No 1371/2007**

Member States may derogate from the majority of these rules for domestic rail passenger services (until 2024) and local services (i.e. urban, suburban and regional services), and for international services if a significant part of the journey is provided outside the EU<sup>[10]</sup>.

Cancellation or delay of over 60 minutes:

- A choice between (i) being rerouted or continuing their journey as soon as possible, or (ii) at a mutually agreed later date, or (iii) being reimbursed within one month (and, if necessary, a free return journey to the initial point of departure);

---

[7]At least two weeks before the flight date. This deadline may be shortened in the event of rerouting.

[8]CJEU case law has restricted this to cases of *force majeure*.

[9]The CJEU has acknowledged that passengers whose flights have been delayed by over three hours are comparable to passengers whose flights have been cancelled. Regulation (EC) No 261/2004 provided only for the possibility of reimbursement for delays of over five hours.

[10]In 2017, the Commission proposed amending the regulation to restrict the use of national derogations. The proposal is being considered by the legislative authority.



- Where no reimbursement is made entitlement to transport stands, with compensation to be paid within one month at the request of the passenger (except if he or she was informed of the delay before purchasing the ticket) as follows: 25% of the ticket price paid for delays of between 60 and 119 minutes and 50% for longer delays;
- A meal at the station or on board the train, if possible, and accommodation, if necessary and possible;
- The carrier is not held liable if the cancellation or delay is due to unavoidable extraordinary circumstances; compensation is always due, however, even in such circumstances<sup>[11]</sup>.

The recast of Regulation (EC) No 1371/2007 launched by the Commission in September 2017 ([COM\(2017\)0548](#)) provides the foundation for an even clearer framework for the relationship between carriers and customers. The European Parliament adopted a resolution on the proposal in November 2018. In October 2019, the decision by the Committee on Transport and Tourism to enter into interinstitutional negotiations on the text was announced in plenary.

### C. Maritime and inland waterway transport: Regulation (EU) No 1177/2010

The rights of passengers travelling by sea or inland waterway (for journeys of more than 500 m, using motorised vessels carrying more than 12 passengers and three crew members) can be enforced only if (i) the port of embarkation or (ii) the port of destination is situated in the EU and if the service is operated by a European Union carrier. Cruise-ship passengers must embark at an EU port in order to enjoy these rights and are not covered by some of the provisions concerning delays.

Cancellation or delay of over 90 minutes on departure:

- Passengers should be informed of the delay or cancellation no later than 30 minutes after the scheduled departure time;
- A choice between (i) being rerouted or continuing their journey as soon as possible, or (ii) being reimbursed within seven days (and, if necessary, a free return journey to the initial point of departure) should be offered;
- Assistance (except if the passenger was informed of the delay before purchasing the ticket): meals, if possible, and accommodation on board or on land, if necessary; accommodation on land is restricted to three nights at a cost of EUR 80 per night; accommodation need not be provided if the cancellation or delay is caused by bad weather.

Significant delay on arrival:

Compensation should be paid within one month at the request of the passenger (except if he or she was informed of the delay before purchasing the ticket or if the delay was caused by bad weather or *force majeure*) as follows:

---

[11]In 2013, the CJEU ruled that rail passengers are entitled to partial reimbursement of the cost of their ticket in the event of a significant delay, even if that delay is attributable to *force majeure* (C-509/11). Under the proposal amending the regulation, submitted by the Commission in 2017, such automatic compensation would be abolished.



Compensation	25% of the ticket price paid	50% of the ticket price paid
Journey ≤ 4 hours	Delay ≥ 1 hours	Delay ≥ 2 hours
Journey 4 to 8 hours	Delay ≥ 2 hours	Delay ≥ 4 hours
Journey 8 to 24 hours	Delay ≥ 3 hours	Delay ≥ 6 hours
Journey ≥ 24 hours	Delay ≥ 6 hours	Delay ≥ 12 hours

#### D. Bus and coach transport: Regulation (EU) No 181/2011

The rights of passengers travelling by bus or coach can be enforced in full only on regular services of over 250 km where passengers board or alight in the territory of a Member State<sup>[12]</sup>. Until March 2021, Member States may derogate from the majority of the provisions of the regulation (leading to very different rules in different Member States that will ultimately provide less protection).

Cancellation or delay of over 120 minutes on departure:

- Passengers should be informed of the delay or cancellation no later than 30 minutes after the scheduled departure time;
- A choice between (i) being rerouted or continuing their journey as soon as possible, or (ii) being reimbursed within 14 days (and, if necessary, a free return journey to the initial point of departure) should be offered; if the carrier fails to offer the passenger this choice, the passenger must be reimbursed and also has the right to compensation amounting to 50% of the ticket price, to be paid within one month;
- For journeys of over three hours, if the service is 90 minutes late, assistance must be offered (meals and accommodation, if necessary, for a maximum of two nights at a cost of EUR 80 per night); accommodation does not need to be provided if the cancellation or delay is caused by bad weather or a natural disaster.

## ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has always been a strong advocate of passenger rights irrespective of the mode of transport used. Its main aim is now to ensure that the texts adopted in recent years are properly applied. Parliament has therefore called for more readily comprehensible rules, the provision of clear and accurate information to passengers before and during their journey, straightforward, quick complaints procedures and better enforcement of the existing rules. The main proposals contained in its two resolutions adopted in 2012 are that: the law should define clearly the 'exceptional circumstances' which release carriers from certain obligations; carriers should establish a permanent helpline, with calls charged at non-premium rates; there should be an obligation to handle passenger complaints within two months and measures to improve the effectiveness of national enforcement bodies.

Parliament has also come out in favour of improving existing rights, in particular as regards misleading or unfair terms in transport contracts, and improving access to

---

[12] Certain rights also apply to regular services covering a short distance (information, non-discrimination, reduced-mobility passenger access) or on occasional services (non-discrimination, compensation in the event of accident or damage to mobility equipment for reduced-mobility passengers).



transport infrastructure for reduced-mobility passengers and the introduction of new rights, such as minimum quality standards or rules which are such as to protect passengers making multimodal journeys. This last point would require Member States to refrain from making derogations when applying the rules on rail or road transport.

Main European Parliament decisions concerning passenger rights:

- Resolution of 25 November 2009 on passenger compensation in the event of airline bankruptcy, [OJ C 285 E, 21.10.2010, p. 42](#);
- Resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020, [OJ C 131 E, 8.5.2013, p. 9](#);
- Resolution of 29 March 2012 on the functioning and application of established rights of people travelling by air, [OJ C 257 E, 6.9.2013, p. 1](#);
- Resolution of 23 October 2012 on passenger rights in all transport modes, [OJ C 68 E, 7.3.2014, p. 21](#);
- Legislative resolution of 5 February 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long 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, [OJ C 93, 24.3.2017, p. 336](#);
- Resolution of 7 July 2015 on delivering multimodal integrated ticketing in Europe, [OJ C 265, 11.8.2017, p. 2](#).

Esteban Coito / Benjamin Klaus Wilhelm Blaser  
02/2020

