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Committee on Transport and Tourism

2013/0072(COD)

6.9.2013

*****I**

DRAFT REPORT

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 (COM(2013)0130 – C7-0066/2013 – 2013/0072(COD))

Committee on Transport and Tourism

Rapporteur: Georges Bach

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	71

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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 (COM(2013)0130 – C7-0066/2013 – 2013/0072(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0130),
 - having regard to Article 294(2) and Article 100(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0066/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 11 July 2013¹,
 - having regard to the opinion of the Committee of the Regions²,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on the Internal Market and Consumer Protection (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

² Not yet published in the Official Journal.

Amendment 1

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) In the case C-22/11 (*Finnair*), the European Court decided that the concept of ‘denied boarding’ must be interpreted as relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons. ***Given this confirmation, there is no reason to modify the current*** definition of “denied boarding”.

Amendment

(5) In Case C-22/11 *Finnair*, the Court of Justice decided that the concept of ‘denied boarding’ must be interpreted as relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons. ***The*** definition of “denied boarding” ***should cover cases where the scheduled time of departure has been changed to an earlier departure with the consequence that a passenger misses the flight.***

Or. en

Justification

The current definition of ‘denied boarding’ needs to be modified in order to include cases where a passenger misses a flight because the departure time has been brought forward.

Amendment 2

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Regulation (EC) No 261/2004 also applies to passengers that have booked their air transport as part of a package travel. However, it should be clarified that passengers may not cumulate corresponding rights, in particular under both this Regulation and Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours. The passengers should be able to choose under which law they introduce their claims, but should not have the right to cumulate compensation for the same

Amendment

(6) Regulation (EC) No 261/2004 also applies to passengers that have booked their air transport as part of a package travel. However, it should be clarified that passengers may not cumulate corresponding rights, in particular under both this Regulation and Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours. The passengers should be able to choose under which law they introduce their claims, but should not have the right to cumulate compensation for the same

problem under both legal acts. **Passengers should not be concerned about how air carriers and tour operators allocate such claims between them.**

problem under both legal acts.

Or. en

Justification

The deletion of the last sentence clarifies the fact that Regulation 261/2004 and the package travel Directive 90/314/EEC are two distinct legal acts, which means that passengers need to address their claims to the operating airline only. If, however, obligations coincide under Regulation 261 and the package travel directive, passengers can choose the legislation under which to make a claim.

Amendment 3

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) In order to improve levels of protection, passengers **should** not be denied boarding on the return journey of a two-way (return) ticket because they have not taken the outward journey.

Amendment

(7) In order to improve levels of protection, passengers **must** not be denied boarding on the return journey of a two-way (return) ticket because they have not taken the outward journey.

Or. en

Justification

The objective of this rule should be a clear ban on the practice.

Amendment 4

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) At present, passengers are sometimes penalised for spelling errors in their names by the application of punitive administrative fees. **Reasonable** corrections of booking errors should be provided free of charge provided they do

Amendment

(8) At present, passengers are sometimes penalised for spelling errors in their names by the application of punitive administrative fees. Corrections of booking errors should be provided free of charge provided they do not imply a change of

not imply a change of times, date, itinerary or passenger.

times, date, itinerary or passenger.

Or. en

Justification

The notion of ‘reasonable’ corrections leaves too much space for interpretation.

Amendment 5

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) It should be clarified that in cases of cancellation the choice between receiving reimbursement, continuation of travel by *rerouting* or travel at a later date is the decision of the passenger and not that of the air carrier.

Amendment

(9) It should be clarified that in cases of cancellation the choice between receiving reimbursement, continuation of travel by *re-routing* or travel ***later on the same day or*** at a later date is the decision of the passenger and not that of the air carrier.

Or. en

Amendment 6

Proposal for a regulation

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The financial protection of passengers in the event of airline failure is a key component of an effective passenger rights regime. In order to strengthen air passengers’ protection in the event of cancellations of flights due to the insolvency of an air carrier or the suspension of an air carrier’s operations due to the revocation of its operating licence, air carriers should be obliged to provide sufficient evidence of security for the reimbursement of passengers or their repatriation.

Justification

The requirement to provide sufficient evidence of security leaves room for several measures which air carriers can take in order to protect passengers in case of insolvency. Other options could include a fund or insurance.

Amendment 7**Proposal for a regulation
Recital 10***Text proposed by the Commission*

(10) **Airports** and airport users such as air carriers **and** ground handling companies should cooperate to minimise the impact of multiple flight disruptions on passengers by ensuring their care and *rerouting*. To this end, they should prepare contingency plans for such occurrences and work together in the development of such plans.

Amendment

(10) **The airport managing body** and airport users such as air carriers, ground handling companies **and navigation service providers** should cooperate to minimise the impact of multiple flight disruptions on passengers by ensuring their care and *re-routing*. To this end they should prepare contingency plans for such occurrences and work together **with national, regional or local authorities** in the development of such plans. **Existing contingency plans should if necessary be adapted accordingly.**

Justification

Many airports already have contingency plans which should be adapted if necessary. The involvement of national, regional or local authorities in the creation of such plans is necessary, in particular for cases of mass disruption.

Amendment 8**Proposal for a regulation
Recital 10 a (new)***Text proposed by the Commission**Amendment*

(10a) Air carriers should set up procedures and coordinated action in order to provide adequate information to

stranded passengers. Those procedures should clearly indicate who is to be responsible at each airport for arranging the care, assistance, re-routing or reimbursement and should set out the processes and conditions for the provision of those services.

Or. en

Amendment 9

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) Regulation (EC) No 261/2004 should explicitly include the right to compensation for passengers suffering long delays, in line with the judgement of the European Court of Justice in the Joined *cases* C-402/07 and C-432/07 (*Sturgeon*). ***At the same time, the thresholds above which delays give rise to a right to compensation should be increased to take account of the financial impact on the sector and to avoid any increase in the frequency of cancellations as a consequence.*** To ensure that citizens travelling within the *EU* face homogenous conditions for compensation, the threshold should be the same for all travel within the Union, but it should depend upon the journey distance for travel to and from third countries to take into account the operational difficulties encountered by air carriers *to deal* with delays *on* remote airports.

Amendment

(11) Regulation (EC) No 261/2004 should explicitly include the right to compensation for passengers suffering long delays, in line with the judgement of the European Court of Justice in the Joined *Cases* C-402/07 and C-432/07 *Sturgeon*. To ensure that citizens travelling within the *Union* face homogenous conditions for compensation, the threshold should be the same for all travel within the Union, but it should depend upon the journey distance for travel to and from third countries to take into account the operational difficulties encountered by air carriers *in dealing* with delays *at* remote airports.

Or. en

Justification

This amendment takes account of the rapporteur's position with regard to the thresholds above which delays should give rise to a right to compensation. It is the rapporteur's view that these thresholds should be set in line with the judgement of the ECJ in the Sturgeon case,

which grants passengers, in case of long delays, i.e. more than three hours, the same rights as passengers whose flights are cancelled.

Amendment 10

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) As regards the amount of compensation, the same amount should be applicable for all flights within the Union, irrespective of the distance involved. For flights from third countries, the amount of compensation should be in relation to the distance of the flight.

Or. en

Justification

The rapporteur takes the view that the amount of compensation should be the same for all journeys within the EU, but should depend on distance in the case of travel to and from third countries, in order to take account of the operational difficulties encountered by air carriers in dealing delays at remote airports.

Amendment 11

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(12) To ensure legal certainty, Regulation 2004/261 (EC) should explicitly confirm that the changing of flight schedules has a similar impact on passengers to long delays and should therefore give rise to similar rights.

(12) To ensure legal certainty, Regulation (EC) No 261/2004 should explicitly confirm that the changing of flight schedules has a similar impact on passengers to long delays ***or denied boarding*** and should therefore give rise to similar rights.

Or. en

Amendment 12

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) Passengers missing a connecting flight should be properly cared for while waiting for *rerouting*. In line with the principle of equal treatment, such passengers should be able to claim compensation on a similar basis to passengers whose flights are delayed or cancelled in light of the delay upon reaching the final destination of their journey.

Amendment

(13) Passengers missing a connecting flight ***due to a change of schedule or delay*** should be properly cared for while waiting for *re-routing*. In line with the principle of equal treatment, such passengers should be able to claim compensation on a similar basis to passengers whose flights are delayed or cancelled in light of the delay upon reaching the final destination of their journey.

Or. en

Amendment 13

Proposal for a regulation

Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) In principle, it should be the air carrier causing the change of schedule or the delay that is obliged to offer assistance and re-routing. However, in order to reduce the economic burden on the air carrier concerned, the compensation to be paid to the passenger should be in relation to the delay of a preceding connecting flight at the transfer point.

Or. en

Justification

The rapporteur takes the view that in light of the large number of carriers operating regional short-haul flights within the EU, the financial burden arising from compensation payments should be reduced for those carriers. With this in mind, a twofold condition is added for reasons of proportionality, to apply where the preceding air carrier has caused only a short delay which in the end results in the passenger missing the connecting flight and a much

longer delay in reaching the final destination.

Amendment 14

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) Air carriers currently face unlimited liability for the accommodation of their passengers in the case of extraordinary circumstances of long duration. ***This uncertainty linked with the absence of any foreseeable limit in time may risk endangering a carrier's financial stability.*** An air carrier should ***therefore*** be able to limit the provision of care after a certain duration of time. Moreover, contingency planning and speedy *rerouting* should lessen the risk of passengers being stranded for long periods.

Amendment

(16) Air carriers currently face unlimited liability for the accommodation of their passengers in the case of extraordinary circumstances of long duration. An air carrier should, ***however***, be able to limit the provision of care ***as regards the costs of accommodation and, in cases where passengers arrange the accommodation themselves, as regards costs and care*** after a certain duration of time. Moreover, contingency planning and speedy *re-routing* should lessen the risk of passengers being stranded for long periods.

Or. en

Justification

In case of massive disruptions, it should be up to all parties involved (authorities, airports, airlines, hotels and passengers) to accept shared responsibility in order to resolve the situation. The airline's obligation to provide care may be limited as regards the cost of the accommodation per night and per passenger. An exception to this rule may be introduced where passengers arrange their accommodation themselves. In this case, the airline may limit the cost of the accommodation and care after a certain time.

Amendment 15

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) Passengers should not only be correctly informed about their rights in cases of flight disruption, but they should also be adequately informed about the cause of the disruption itself, as soon as the information becomes available. This

Amendment

(20) Passengers should not only be correctly informed about their rights in cases of flight disruption, but they should also be adequately informed about the cause of the disruption itself, as soon as the information becomes available. This

information should also be provided where the passenger has acquired the ticket through an intermediary established in the Union.

information should also be provided **by the air carrier** where the passenger has acquired the ticket through an intermediary established in the Union.

Or. en

Justification

The air carrier is the only reliable source for information about the causes of flight disruptions.

Amendment 16

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) In case C-139/11 (*Moré vs KLM*), the European Court of Justice clarified that the time-limits for bringing actions for compensation are determined in accordance with the national rules of each Member State.

Amendment

(23) In Case C-139/11 *Moré v KLM*, the Court of Justice clarified that the time-limits for bringing actions for compensation are determined in accordance with the national rules of each Member State. ***As regards out-of-court settlements, time-limits are determined in accordance with Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)***¹.

¹ *OJ L 165, 18.6.2013, p. 65.*

Or. en

Amendment 17

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) In order to ensure that the damage to or loss of mobility equipment is compensated to its full value, air carriers should offer free of charge to persons with reduced mobility the opportunity to make a special declaration of interest, which pursuant to the Montreal Convention, allows them to seek full compensation for loss or damage.

Amendment

(27) In order to ensure that the damage to or loss of mobility equipment is compensated to its full value, air carriers should offer free of charge to **disabled persons or** persons with reduced mobility the opportunity to make a special declaration of interest, which pursuant to the Montreal Convention allows them to seek full compensation for loss or damage.

Or. en

Amendment 18

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) Passengers are sometimes confused about the baggage they are allowed to take on board, in terms of dimensions, weight or number of items. In order to ensure that passengers are fully aware of the baggage allowances included in their ticket, both for cabin and hold baggage, air carriers should clearly indicate these allowances **at** booking and at the airport.

Amendment

(28) Passengers are sometimes confused about the baggage that they are allowed to take on board, in terms of dimensions, weight or number of items. In order to ensure that passengers are fully aware of the baggage allowances included in their ticket, both for cabin and hold baggage, air carriers should clearly indicate these allowances **prior to** booking, **in all distribution channels including computerised reservation systems**, and **at check-in** at the airport. **Organisers should inform passengers accordingly.**

Or. en

Justification

For the sake of transparency, the information should also be available through all the distribution channels, in particular in the computerised reservation systems through which

the vast majority of air tickets are booked. About 70 % of air tickets in Europe are sold through intermediaries.

Amendment 19

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) Given the short deadlines for the submission of complaints for lost, damaged or delayed baggage, ***air carriers should give passengers*** the possibility to submit a complaint ***by providing*** a complaint form ***at the airport***. This could also take the form of the common Property Irregularity Report (PIR).

Amendment

(31) Given the short deadlines for the submission of complaints for lost, damaged or delayed baggage, ***a special baggage claim service should be set up at all airports where passengers have*** the possibility to submit a complaint ***upon arrival. For this purpose, air carriers should provide*** a complaint form ***to passengers***. This could also take the form of the common Property Irregularity Report (PIR). ***A Union-wide standardised claim form should be set out in Annex 2a to this Regulation.***

Or. en

Justification

For practical reasons a special baggage claim service should be available at all airports, in order to speed up and facilitate the procedure. A standardised EU-wide claim form should be made available alongside the revised regulation.

Amendment 20

Proposal for a regulation

Article 1 – point -1 (new)

Regulation (EC) No 261/2004

Article 1 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(-1) In Article 1(1) the following point is inserted:

‘(ca) they miss a connecting flight.

Or. en

Justification

In the light of the new Article 6a on ‘missed connecting flights’, the subject of the Regulation defined under Article 1(1) needs to be modified accordingly.

Amendment 21

Proposal for a regulation

Article 1 – point 1 – point b a (new)

Regulation (EC) No 261/2004

Article 2 – point g

Text proposed by the Commission

Amendment

Point (g) is replaced by the following:

‘(g) “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 or organiser.’

Or. en

Justification

This amendment is in line with the new definition in Article 2, point d.

Amendment 22

Proposal for a regulation

Article 1 – point 1 – point c

Regulation (EC) No 261/2004

Article 2 – point i

Text proposed by the Commission

Amendment

‘«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;’

‘“**disabled person or** 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;’

Or. en

Amendment 23

Proposal for a regulation

Article 1 – point 1 – point c a (new)

Regulation (EC) No 261/2004

Article 2 – point j

Text proposed by the Commission

Amendment

(ca). Point (j) is replaced by the following:

‘(j) “denied boarding” means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation. A flight for which the scheduled time of departure has been brought forward with the consequence that the passenger misses that flight shall be considered a flight for which the passenger has been denied boarding.’

Or. en

Justification

The current definition of ‘denied boarding’ needs to be modified in order to include cases where a passenger misses a flight because the departure time has been brought forward..

Amendment 24

Proposal for a regulation

Article 1 – point 1 – point e

Regulation (EC) No 261/2004

Article 2 – point o

Text proposed by the Commission

Amendment

(o) «connecting flight» means a flight which, under a single contract of carriage, is intended to enable the passenger to arrive at a transfer point in order to depart

(o) ‘connecting flight’ means a flight which, under a single contract of carriage **and on the basis of a single reservation**, is intended to enable the passenger to arrive

on another flight, or, *where appropriate* in the context, means that other flight departing from the transfer point;

at a transfer point in order to depart on another flight, or, in the context *of Article 6a*, means that other flight departing from the transfer point;

Or. en

Justification

'A single reservation' is added for clarification to avoid problems in cases where separate tickets are bought together in a single transaction. The addition of Article 6a refers to the provisions regarding connecting flights.

Amendment 25

Proposal for a regulation

Article 1 – point 1 – point e

Regulation (EC) No 261/2004

Article 2 – point s

Text proposed by the Commission

(s) « ticket price » means the full price paid for a ticket *and* including the air fare, and all applicable taxes, charges, surcharges and fees paid for all optional and non-optional services included in the ticket;

Amendment

(s) 'ticket price' means the full price paid for a ticket, including the air fare and all applicable taxes, charges, surcharges and fees paid for all optional and non-optional services included in the ticket.

The ticket price always includes costs for the check-in, the provision of the tickets and the issuing of the boarding card, the carrying of a minimum luggage allowance and essential items, as well as all costs related to payment, such as credit card costs;

Or. en

Justification

For the sake of clarity and comparability, a basic package of services to be included in the ticket price needs to be defined.

Amendment 26

Proposal for a regulation

Article 1 – point 1 – point e

Regulation (EC) No 261/2004

Article 2 – point t

Text proposed by the Commission

(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;

Amendment

(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; **where a ticket price is not known, the value of any refund shall be the supplement paid for a premium seat on the flight;**

Or. en

Justification

The concept of ‘flight price’ as proposed by the Commission does not work where the flight is provided as part of a package holiday, since the ‘flight price’ is not mentioned on the ticket. The proposed amendment aims at remedying this situation. The additional part of the definition sets the refund level to the value of a premium seat on the flight concerned. This definition should apply in the context of a partial refund following a downgrading.

Amendment 27

Proposal for a regulation

Article 1 – point 1 – point e

Regulation (EC) No 261/2004

Article 2 – point w

Text proposed by the Commission

(w) «tarmac delay» means, at departure, the time the aircraft remains on the ground between the **start** of boarding of the passengers and the take-off time of the aircraft or, at arrival, the time between the touch-down of the aircraft and the start of disembarkation of the passengers;

Amendment

(w) ‘tarmac delay’ means, at departure, the time the aircraft remains on the ground between the **end** of boarding of the passengers and the take-off time of the aircraft or, at arrival, the time between the touch-down of the aircraft and the start of disembarkation of the passengers;

Or. en

Justification

Boarding time as such should not include tarmac delay, as it depends on the size of the aircraft. The delay should be calculated in absolute terms and not in relation to each aircraft.

Amendment 28

Proposal for a regulation

Article 1 – point 2 – point a

Regulation (EC) No 261/2004

Article 3 – paragraph 2 – point a – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The amendment modifies the text in accordance with the new Article 6a on ‘missed connecting flight’.

Amendment 29

Proposal for a regulation

Article 1 – point 2 – point a a (new)

Regulation (EC) No 261/2004

Article 3 – paragraph 3

Text proposed by the Commission

Amendment

Paragraph 3 is replaced by the following:

‘3. This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an air

carrier or *organiser*.’

Or. en

Justification

This amendment is in line with the new definition in Article 2, point d.

Amendment 30

Proposal for a regulation

Article 1 – point 2 – point b

Regulation (EC) No 261/2004

Article 3 – paragraph 4

Text proposed by the Commission

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

Amendment

‘4. Without prejudice to Article 8(6), this Regulation shall only apply to passengers transported by motorised fixed wing aircraft. However, where a part of the journey is carried out, in accordance with a contract of carriage, by another mode of transport or by helicopter, **Article 6a** 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.’

Or. en

Amendment 31

Proposal for a regulation

Article 1 – point 2 – point c

Regulation (EC) No 261/2004

Article 3 – paragraph 6

Text proposed by the Commission

‘6. This Regulation shall also apply to passengers transported according to package travel contracts but shall not affect

Amendment

‘6. This Regulation shall also apply to **air** passengers transported according to package travel contracts but shall not affect

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

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

Or. en

Justification

This amendment has been introduced for clarification. Regulation 261/2004 and the package travel Directive 90/314/EEC are two distinct legal acts. It must be clear that passengers cannot accumulate rights under both legal acts.

Amendment 32

Proposal for a regulation

Article 1 – point 3 – point a

Regulation (EC) No 261/2004

Article 4 – paragraph 3

Text proposed by the Commission

Amendment

Paragraph 3 is replaced by the following:

deleted

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

Or. en

Justification

The existing regulation provides for the application of Article 9 without any delay. This should remain the case. Passengers who are denied boarding for reasons for which they are not responsible should not have to wait two hours before refreshments are provided as required by Article 9(1)(a) during the pre-boarding period.

Amendment 33

Proposal for a regulation

Article 1 – point 3 – point b

Regulation (EC) No 261/2004

Article 4 – paragraph 4

Text proposed by the Commission

Amendment

‘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.

‘4. Passengers shall not be denied boarding at the return journey on the grounds that he/she did not take the outward journey *of a return ticket* or did not pay an additional charge for this purpose. *If boarding is denied to passengers against their will on such grounds, paragraphs 1 and 2 shall apply. In addition, the operating air carrier shall immediately compensate the passengers concerned in accordance with Article 7 and shall assist them in accordance with Articles 8 and 9.*

Or. en

Justification

The practice adopted by airlines is contrary to the interests of consumers and ought in future to be prohibited by a clear legal basis. With regard to the application of Article 9, reference is made to the previous amendment.

Amendment 34

Proposal for a regulation

Article 1 – point 3 – point b

Regulation (EC) No 261/2004

Article 4 – paragraph 5

Text proposed by the Commission

Amendment

5. Where the passenger, or an intermediary

5. Where the passenger, or an intermediary

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acting on behalf of the passenger, reports *a* spelling *mistake* in the name of one or several passengers included in the same contract of carriage that may lead to a denial of boarding, the air carrier shall correct *this* at least once up until 48 hours before departure without any additional charge to the passenger or the intermediary, except where it is prevented from doing so by national or international law.’

acting on behalf of the passenger, reports spelling *mistakes* in the name of one or several passengers included in the same contract of carriage that may lead to a denial of boarding, the air carrier shall correct *those mistakes* at least once up until 48 hours before departure without any additional charge to the passenger or the intermediary, except where it is prevented from doing so by national or international law.’

Or. en

Justification

Since mistakes can have a number of causes, the amendment shall ensure that more than one spelling mistake can be corrected.

Amendment 35

Proposal for a regulation

Article 1 – point 3 – point b a (new)

Regulation (EC) No 261/2004

Article 4 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(ba). The following paragraph is inserted:

‘5a. Paragraphs 1, 2 and 3 shall also apply where the passenger misses the flight because:

– the flight took off before the scheduled departure time, the passenger having arrived on time at the airport in accordance with Article 3(2); or

– the scheduled time of departure of the flight was brought forward and the passenger was not informed of this at least 24 hours in advance. The burden of proving that the passenger was informed in due time of the change of the scheduled time of departure shall rest with the operating air carrier.’

Or. en

Justification

There have been cases where the passenger was on time but the flight left earlier than scheduled. It should be clarified that this is a type of denied boarding.

Amendment 36

Proposal for a regulation

Article 1 – point 4 – point a

Regulation (EC) No 261/2004

Article 5 – paragraph 1 – point a

Text proposed by the Commission

‘(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

Amendment

‘(a) be offered by the operating air carrier the choice between reimbursement, continuation of their travel by *re-routing* or travel ***later on the same day or*** at a later date, in accordance with Article 8; and

Or. en

Amendment 37

Proposal for a regulation

Article 1 – point 4 – point a b (new)

Regulation (EC) No 261/2004

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

(ab) Paragraph 2 is replaced by the following:

‘2. When passengers are informed of the cancellation of the flight, they shall be fully informed by the operating air carrier or organiser of their rights in accordance with Article 5(1) and of possible alternative transport modes.’

Or. en

Justification

This amendment aims at strengthening the right to information of passengers in case of

cancellation.

Amendment 38

Proposal for a regulation

Article 1 – point 4 – point b

Regulation (EC) No 261/2004

Article 5 – paragraph 3

Text proposed by the Commission

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

Amendment

‘3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7 if it can prove that **two conditions are fulfilled:**

– that the cancellation is caused by extraordinary circumstances, and

– that the cancellation could not have been avoided even if all measures had been **correctly** taken.

Where technical defaults arise from such extraordinary circumstances, **they** can only be invoked in so far they affect the flight concerned or the previous flight operated by the same aircraft.’

Or. en

Justification

The amendment aims at clarifying that both conditions need to be fulfilled to exempt operating airlines from paying compensation in case of cancellation of a flight. The word ‘correctly’ leaves less room for interpretation regarding all measures that need to be taken in order to avoid cancellation.

Amendment 39

Proposal for a regulation

Article 1 – point 4 – point c

Regulation (EC) No 261/2004

Article 5 – paragraph 5

Text proposed by the Commission

‘5. At airports whose annual traffic has

Amendment

‘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.

been not less than **one and a half** million passengers for at least three consecutive years, the airport managing body, **in cooperation with the** airport users, in particular the air carriers, the suppliers of ground handling services, **the air navigation service providers and the airport retail outlets, shall set up** a proper contingency plan **that shall ensure adequate coordination of the airport and the airport users** in view of possible situations of multiple cancellations and/or delays of flights leading to a considerable number of passengers *being* stranded at the airport, including in cases of airline insolvency or revocation of the operating licence. **The setting-up of contingency plans shall also include the participation of the relevant national, regional or local authorities and organisations when appropriate.** 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.

Or. en

Justification

In the interests of passengers, the threshold of three million passengers per year for airports is deemed to be too high and should be reduced to 1.5 million. For the creation of contingency plans, the involvement of all airport users and of national, regional or local authorities needs to be clearly stated. The main objective to be reached by creating contingency plans is to ensure adequate coordination by all parties concerned.

Amendment 40

Proposal for a regulation

Article 1 – point 4 – point c a (new)

Regulation (EC) No 261/2004

Article 5 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(ca) The following paragraph 5a is added:

‘5a. While air carriers may not reduce their obligations as defined under this Regulation, the contingency plan provided for by paragraph 5 shall be set up to define coordinated action where this is necessary in order to ensure the provision of adequate information and assistance to the stranded passengers and in particular to disabled persons and persons with reduced mobility, notably with regard to:

- the provision of information to passengers stranded at or heading towards the airport to begin their air journey;***
- the provision of on-the-spot accommodation where large numbers of stranded passengers exceed the availability of hotel accommodation;***
- the provision of information and assistance to passengers affected by the limitations laid down in Article 9(4) and (5);***
- re-routing of stranded passengers by alternative carriers and transport modes, at limited or no cost for passengers, where the operating carrier has ceased operations.***

Or. en

Justification

This amendment is closely linked to the previous amendment to Article 5(5). It aims at indicating in a more detailed way what exactly contingency plans should include as regards information and assistance. The needs of disabled persons and persons with reduced mobility require particular attention.

Amendment 41

Proposal for a regulation

Article 1 – point 4 – point c b (new)

Regulation (EC) No 261/2004

Article 5 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

(cb) The following paragraph 5b is added:

‘5b. Air carriers shall develop and put in place detailed procedures which allow them to comply in an effective and consistent way with the present Regulation, especially in cases of delays, cancellations, denied boarding, mass disruptions and insolvency. Those procedures shall clearly indicate which representative of the airline is to be responsible at each airport for arranging the care, assistance, re-routing or reimbursement and shall define the processes and conditions for the provision of those services. The air carrier shall communicate those procedures and any changes thereto to the National Enforcement Body designated pursuant to Article 16.’

Or. en

Amendment 42

Proposal for a regulation

Article 1 – point 4 – point c c (new)

Regulation (EC) No 261/2004

Article 5 – paragraph 5 c (new)

Text proposed by the Commission

Amendment

(cc) The following paragraph 5c is added:

‘5c. In the event of cancellation of a flight due to the insolvency of an air carrier or suspension of operations of an air carrier

due to the revocation of its operating licence, passengers shall have the right to reimbursement or a return flight to the point of departure in accordance with point (a) of Article 8(1) and the right to care as specified in Article 9. Air carriers shall provide sufficient evidence of security for the costs of reimbursement and repatriation.'

Or. en

Justification

When an airline ceases operating, many passengers have no recourse against the airline to recover the cost of their unused tickets or to obtain repatriation if they are stranded abroad. In order to overcome this gap in passenger protection, the rapporteur proposes to amend the Commission's proposal for a regulation by inserting a provision which offers a similar protection to that offered to package travel customers under the package travel Directive 90/314/EEC. The obligation for air carriers to provide sufficient evidence of security leaves them a margin for taking the necessary measures such as creating funds or taking out insurance.

Amendment 43

Proposal for a regulation

Article 1 – point 5

Regulation (EC) No 261/2004

Article 6 – paragraph 1 – introductory wording

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The amendment clarifies that the provisions under this article remain in the sphere of the aviation sector.

Amendment 44

Proposal for a regulation

Article 1 – point 5

Regulation (EC) No 261/2004

Article 6 – paragraph 1 – point ii

Text proposed by the Commission

(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

Amendment

(ii) when the delay is of at least **three** hours and includes **night-time hours**, the assistance specified in *points (b) and (c) of Article 9(1)*; and

Or. en

Justification

The amendment is in accordance with the ECJ judgement in Joined Cases C-402/07 and C-432/07, Sturgeon vs Condor and Böck & Lepuschitz vs Air France, which grants passengers, in case of long delays, i.e. of more than three hours, the same rights as passengers whose flights are cancelled. The trigger point of five hours is therefore replaced by one of three hours.

Amendment 45

Proposal for a regulation

Article 1 – point 5

Regulation (EC) No 261/2004

Article 6 – paragraph 1 – point iii

Text proposed by the Commission

(iii) when the delay is of at least **five** hours, the assistance specified in *Article 8(1)(a)*.

Amendment

(iii) when the delay is of at least **three** hours, the assistance specified in *Article 8(1)*.

Or. en

Justification

The amendment is in accordance with the ECJ judgement in Joined Cases C-402/07 and C-432/07, Sturgeon vs Condor and Böck & Lepuschitz vs Air France, which grants passengers, in case of long delays, i.e. of more than three hours, the same rights as passengers whose flights are cancelled. The trigger point of five hours is therefore replaced by one of three hours. See also the amendment to Article 6(1), point (ii).

Amendment 46

Proposal for a regulation

Article 1 – point 5

Regulation (EC) No 261/2004

Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The following paragraph is inserted:

‘1a. Where an operating air carrier brings forward the scheduled time of departure by more than three hours, it shall offer passengers the reimbursement specified in point (a) of Article 8(1) or the re-routing specified in point (b) of Article 8(1). The passenger may himself organise his own re-routing and claim reimbursement of the corresponding costs if the operating air carrier fails to offer the choice of re-routing under point (b) of Article 8(1).’

Or. en

Justification

Where the revised schedule involves too long a delay, passengers shall be offered the possibility to ask for reimbursement or rerouting. In addition, in accordance with the new provision under Article 8(6a), passengers should be offered the possibility to organise rerouting for themselves and claim reimbursement of the associated costs if the operating air carrier fails to offer the choice of rerouting.

Amendment 47

Proposal for a regulation

Article 1 – point 5

Regulation (EC) No 261/2004

Article 6 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

(a) ***three*** hours or more after the scheduled time of arrival for all journeys *within the Union* and for journeys to/from third countries of 3 500 kilometres or less;

Justification

The amendment is in accordance with the ECJ judgement in Joined Cases C-402/07 and C-432/07, Sturgeon vs Condor and Böck & Lepuschitz vs Air France, which grants passengers, in case of long delays, i.e. of more than three hours, the same rights as passengers whose flights are cancelled. The rapporteur therefore suggests replacing the trigger point of five hours by one of three hours. The rapporteur shares, however, the Commission's view that the trigger points should be the same for all journeys within the EU.

Amendment 48**Proposal for a regulation****Article 1 – point 5**

Regulation (EC) No 261/2004

Article 6 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) **five** hours or more after the scheduled time of arrival for journeys to/from third countries **of more than 3 500** kilometres;

Justification

The Rapporteur shares the Commission's view that the thresholds should be dependent on the journey distance for travel to and from third countries in order to take account of the operational difficulties encountered by air carriers when dealing with delays at remote airports. However, the rapporteur does not share the Commission's point of view that the thresholds should be increased. It is therefore suggested that the trigger point of nine hours be replaced by one of five hours. The journey distances under Article 6(2) (a), (b) and (c) should be streamlined in order to create more clarity for airlines and passengers.

Amendment 49**Proposal for a regulation****Article 1 – point 5**

Regulation (EC) No 261/2004

Article 6 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

It is suggested that the trigger point of twelve hours and the trigger point of 6 000 km or more be deleted in order to streamline Article 6(2) and create more clarity for airlines and passengers. The deletion of point (c) follows the logic of the amendments to Article 6(2) (a) and (b), which set the trigger point at 3 500 km or less and at more than 3 500 km respectively. No other trigger point should exist.

Amendment 50

Proposal for a regulation

Article 1 – point 5

Regulation (EC) No 261/2004

Article 6 – paragraph 4

Text proposed by the Commission

Amendment

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.

4. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7 if it can prove that **two conditions are fulfilled:**

- 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 measures had been **correctly** taken.

Where technical defaults are invoked, such extraordinary circumstances can only be invoked *in so far as* they affect the flight concerned or the previous flight operated by the same aircraft.

Or. en

Justification

The amendment is in line with the amendment to Article 5(3). It aims at clarifying that both conditions need to be fulfilled to exempt operating airlines from paying compensation in case of long delays. The word 'correctly' leaves less room for interpretation regarding all measures which need to be taken in order to avoid cancellation.

Amendment 51

Proposal for a regulation

Article 1 – point 5

Regulation (EC) No 261/2004

Article 6 – paragraph 5

Text proposed by the Commission

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.

Amendment

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 **two** 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.

Or. en

Justification

The setting of the tarmac delay at a minimum of five hours before passengers are allowed to disembark seems too high and should be replaced by two hours.

Amendment 52

Proposal for a regulation

Article 1 – point 6

Regulation (EC) No 261/2004

Article 6 a – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Passengers missing their connecting flight should be offered assistance, care, rerouting and compensation by the preceding air carrier who has caused the delay at the transfer point, and not by the air carrier of the onward flight departing on time.

Amendment 53

Proposal for a regulation

Article 1 – point 6

Regulation (EC) No 261/2004

Article 6 a – paragraph 1 – point iii

Text proposed by the Commission

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

Amendment

(iii) when the scheduled time of departure of the alternative flight or other transport offered under Article 8 is at least 3 hours after the scheduled time of departure of the flight missed and the delay includes **night-time hours**, the assistance specified in points (b) and (c) of Article 9(1).

Or. en

Justification

The amendment is in line with the previous amendments regarding the trigger points in Article 6. In addition, clarification is needed, as the current wording may be misunderstood in the sense that accommodation would only be offered in compensation if a whole night is included in the delay.

Amendment 54

Proposal for a regulation

Article 1 – point 6

Regulation (EC) No 261/2004

Article 6 a – paragraph 2

Text proposed by the Commission

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

Amendment

2. Where a passenger misses a connecting flight as a result of **a change of schedule or** a delay to a preceding connecting flight **at the transfer point of 90 minutes or more**, the passenger shall have a right to compensation by the *Union* air carrier operating that preceding flight in accordance with Article 6(2). For these purposes, the **overall** delay shall be calculated by reference to the scheduled time of arrival at the final destination.

Or. en

Justification

This amendment aims at reducing the disproportionate financial burden for the first airline, which may be a regional feeder and which may have experienced only a short delay. A threshold of 90 minutes or more of delay of the preceding flight at the transfer point would give the passenger a right to compensation, provided that the delay at the final destination of the journey is more than 3 or 5 hours respectively. This twofold condition is justified if the preceding EU air carrier causes only a short delay which results in a much longer delay at the final destination.

Amendment 55

Proposal for a regulation

Article 1 – point 6

Regulation (EC) No 261/2004

Article 6 a – paragraph 4

Text proposed by the Commission

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

Amendment

4. Paragraphs 1 and 2 *also* apply to third-country air carriers operating a connecting flight from an airport *within the Union to another airport within the Union, or from an airport within the Union to an airport*

outside the Union.’

Or. en

Justification

The modification is necessary to ensure consistency with Article 3(1) on the scope of the Regulation and to avoid problems of extraterritoriality in relation to third-country carriers.

Amendment 56

Proposal for a regulation

Article 1 – point 7 – point a

Regulation (EC) No 261/2004

Article 7 – paragraph 1

Text proposed by the Commission

Amendment

(a) In Paragraph 1, the word “flights” is replaced by “journeys”. **deleted**

Or. en

Justification

This amendment is tabled in conjunction with the amendments that follow to Article 7(1), points (a), (b) and (c) of the current Regulation. The replacement of the word ‘flights’ by the word ‘journeys’ is taken up in these amendments.

Amendment 57

Proposal for a regulation

Article 1 – point 7 – point a a (new)

Regulation (EC) No 261/2004

Article 7 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(aa) In paragraph 1, point (a) is deleted.

Or. en

Justification

This amendment applies in conjunction with the amendments to Article 7(1), point (b) and (c) of the existing Regulation, which aim at facilitating the application of the current system and

at creating more clarity for passengers and airlines. The Rapporteur proposes to streamline the trigger points and compensation amounts by introducing the following margins: EUR 300 for all internal Community flights (independent of the flight distance); EUR 300 for all other flights up to a distance of 3 500 km; EUR 600 for all other flights of more than 3 500 km.

Amendment 58

Proposal for a regulation

Article 1 – point 7 – point a b (new)

Regulation (EC) No 261/2004

Article 7 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(ab) In paragraph 1, point (b) is replaced by the following:

‘(b) EUR 300 for all journeys within the Union, and for all other journeys of 3 500 kilometres or less;’

Or. en

Justification

This amendment applies in conjunction with the amendments to Article 7(1), point (a) and (c) of the existing Regulation, which aim at facilitating the application of the current system and at creating more clarity for passengers and airlines. The Rapporteur proposes to streamline the trigger points and compensation amounts by introducing the following margins: EUR 300 for all internal Community flights (independent of the flight distance); EUR 300 for all other flights up to a distance of 3 500 km; EUR 600 for all other flights of more than 3 500 km.

Amendment 59

Proposal for a regulation

Article 1 – point 7 – point a c (new)

Regulation (EC) No 261/2004

Article 7 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(ac) In paragraph 1, point (c) is replaced by the following:

‘(c) EUR 600 for all journeys of more than 3 500 kilometres.’

Justification

This amendment applies in conjunction with the amendments on Article 7(1), point (a) and (b) of the existing Regulation, which aim at facilitating the application of the current system and at creating more clarity for passengers and airlines. The Rapporteur proposes to streamline the trigger points and compensation amounts by introducing the following margins: EUR 300 for all internal Community flights (independent of the flight distance); EUR 300 for all other flights up to a distance of 3 500 km; EUR 600 for all other flights of more than 3 500 km.

Amendment 60**Proposal for a regulation****Article 1 – point 7 – point b**

Regulation (EC) No 261/2004

Article 7 – paragraph 3

Text proposed by the Commission

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

Amendment

3. ***In agreement with the passenger***, the compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer ***or bank order***.

Justification

Problems occur with carriers that pay out compensation by bank cheques.

Amendment 61**Proposal for a regulation****Article 1 – point 7 – point b**

Regulation (EC) No 261/2004

Article 7 – paragraph 5

Text proposed by the Commission

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

Amendment

5. The air carrier may reach a voluntary agreement with the passenger that replaces the compensation provisions set out in paragraph 1 ***in at least an equivalent manner with other non-monetary benefits (e.g. air travel vouchers to the value of 100% of the entitlement to compensation)***,

Regulation.'

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.'

Or. de

Justification

A lower limit of 100% of the value of the entitlement should be set so as to adequately preserve passengers' entitlement to compensation. It is important to make it clear that the voluntary agreement applies only to the arrangements for compensation and not to the entitlement to compensation as such.

Amendment 62

Proposal for a regulation

Article 1 – point 8

Regulation (EC) No 261/2004

Article 8 – paragraph 1 – point a – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 63

Proposal for a regulation

Article 1 – point 8

Regulation (EC) No 261/2004

Article 8 – paragraph 5

Text proposed by the Commission

5. Where passengers choose the option

Amendment

5. Where passengers choose the option

referred to in *paragraph 1(b)*, they shall, subject to availability, have the right to re-routing via another air carrier or another mode of transport where the operating air carrier cannot transport the passenger on its own services and in time to arrive at the final destination within 12 hours of the scheduled arrival time. ***Notwithstanding Article 22(1) of Regulation (EC) No 1008/2008, 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.***

referred to in *point (b) of paragraph 1*, they shall, subject to availability ***and provided that reasonable and comparable alternatives exist***, have the right to re-routing, ***at the earliest opportunity***, via another air carrier or another mode of transport where the operating air carrier cannot transport the passenger on its own services and in time to arrive at the final destination within 12 hours of the scheduled arrival time. ***The passenger shall have the right to refuse the re-routing via another mode of transport, and in that case shall maintain his rights to care as specified in Article 9 while waiting for the re-routing.***

Or. en

Justification

There should be no price limitations or conditions that oblige the use of a mode of transport because of the shortcomings of another mode. Furthermore, it is unclear how the notion of ‘a price that goes beyond the average price paid by its own passengers for equivalent services in the last three months’ could be enforced in practice. In addition, the amendment specifies that the obligation to organise the transport of a passenger remains with the operating air carrier whose services are disrupted.

Amendment 64

Proposal for a regulation

Article 1 – point 8

Regulation (EC) No 261/2004

Article 8 – paragraph 6

Text proposed by the Commission

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.***

Amendment

6. Whenever passengers are offered, pursuant to paragraph 1, a total or partial *re-routing* by another mode of transport, ***Article 6a*** shall apply to the transport carried out by that other mode of transport ***in accordance with the re-routing agreements in place between the operating airline and the other mode of transport.***

Justification

It should be noted that rerouting agreements exist between different modes of transport which detail the conditions of such rerouting and would be applicable in these particular cases.

Amendment 65

Proposal for a regulation

Article 1 – point 8 a (new)

Regulation (EC) No 261/2004

Article 8 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(8a) In Article 8 the following paragraph is added:

‘6a. The passenger may himself organise his own re-routing and claim reimbursement of the corresponding costs if the operating air carrier fails to offer the choice of re-routing under point (b) of paragraph 1.’

Or. en

Justification

The passenger should also have the option of organising rerouting himself without losing the right to claim reimbursement of the costs that arise..

Amendment 66

Proposal for a regulation

Article 1 – point 9 – point -a (new)

Regulation (EC) No 261/2004

Article 9 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(-a) In paragraph 1, point (a) is replaced by the following:

‘(a) meals and refreshments;’

Or. en

Justification

The wording 'in a reasonable relation to the waiting time' should be deleted, because for all cases where reference is made to Article 9(1)(a) – cancellation, long delays and connecting flights – a 'two hours waiting time after the initial departure time' is proposed to be introduced in the revised Regulation.

Amendment 67

Proposal for a regulation

Article 1 – point 9 – point a a (new)

Regulation (EC) No 261/2004

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

(aa) Paragraph 2 is replaced by the following:

'2. In addition, passengers shall be offered free of charge two telephone calls and fax messages or e-mails.'

Or. en

Justification

Telex outdated.

Amendment 68

Proposal for a regulation

Article 1 – point 9 – point a b (new)

Regulation (EC) No 261/2004

Article 9 – paragraph 3

Text proposed by the Commission

Amendment

(ab) Paragraph 3 is replaced by the following:

'3. In applying this Article, the operating air carrier shall pay particular attention to the needs of *disabled persons and persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied*

children.’

Or. en

Amendment 69

Proposal for a regulation

Article 1 – point 9 – point b

Regulation (EC) No 261/2004

Article 9 – paragraph 4

Text proposed by the Commission

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

Amendment

,4. If the operating air carrier can prove that the cancellation, delay or change of schedule is caused by extraordinary circumstances and that the cancellation, delay or change of schedule could not have been avoided even if all reasonable measures had been taken **correctly**, it may limit the accommodation provided according to paragraph 1(b) to **EUR 125** per night and per passenger. ***If the passenger arranges his own accommodation, the air carrier may limit the costs of the accommodation to EUR 125 per night*** and 3 nights. If the operating air carrier chooses to apply this limitation, it shall nevertheless provide the passengers with information about available accommodation after the three nights. ***This shall at all events be without prejudice to the obligation of operating air carriers to provide accommodation, and the carrier shall comply with this obligation as a priority***, in addition to the continued obligations for information specified in Article 14.

Or. de

Justification

The limit of EUR 100 per night per person for accommodation should be raised. The duration of accommodation should be unlimited except in cases in which the passenger organises his accommodation himself. In this case, passengers may reasonably be expected to accept that

air carriers should limit the period during which accommodation costs will be paid. The decisive point is that, even in exceptional circumstances, carriers should as a priority be required to provide actual accommodation.

Amendment 70

Proposal for a regulation

Article 1 – point -10 (new)

Regulation (EC) No 261/2004

Article 10 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

(-10) The introductory wording of Article 10(2) is replaced by the following:

‘2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven *working* days, by the means provided for in Article 7(3), reimburse’

Or. en

Amendment 71

Proposal for a regulation

Article 1 – point -11 (new)

Regulation (EC) No 261/2004

Article 11 – paragraph 2

Text proposed by the Commission

Amendment

(-11) Article 11(2) is replaced by the following:

‘2. In cases of denied boarding, cancellation and delays of any length, disabled persons and persons with reduced mobility and any persons accompanying them, as well as unaccompanied children, shall have the right to care in accordance with Article 9 as soon as possible.

The accommodation provided for disabled persons and persons with reduced

mobility shall be accessible, the information concerning their rights shall be provided by means of communication which are adapted to their needs and the needs of guide and assistance dogs shall also be met.'

Or. en

Justification

The needs of disabled persons and persons with reduced mobility should be further protected by this amendment.

Amendment 72

Proposal for a regulation

Article 1 – point 11

Regulation (EC) No 261/2004

Article 11 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 73

Proposal for a regulation

Article 1 – point 12

Regulation (EC) No 261/2004

Article 13

Text proposed by the Commission

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

Amendment

In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, **and without prejudice to existing contracts for disclaimer between third parties**, no provision of this Regulation or of national law may be interpreted as restricting its right to **recover** the costs incurred under this Regulation from any third parties which contributed to the event triggering compensation or other obligations.

Or. en

Justification

Existing contracts for disclaimer (e.g. between airports and airlines) should remain unaffected by this provision. It must be clear that passengers are not concerned.

Amendment 74

Proposal for a regulation

Article 1 – point 13

Regulation (EC) No 261/2004

Article 14 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In Article 14, the following paragraph is inserted:

‘1a. During their operating hours, air carriers shall ensure, at each airport where they operate, the presence of contact personnel or a third party commissioned by the air carrier concerned, who is to provide passengers with the necessary information regarding

their rights, including complaint procedures, to assist and to take immediate action in the event of flight disruption and lost or delayed baggage.'

Or. en

Justification

The presence of a local point of contact representing the air carrier at the airport, with the ability to take immediate action on behalf of the carrier in case of necessity would help to ensure that passengers enjoy the rights to which they are entitled. Only airlines have all available information in case of flight disruptions and baggage that is lost or returned late. The provision of information to passengers about their rights and possibilities for complaints and claims needs to be improved.

Amendment 75

Proposal for a regulation

Article 1 – point 13

Regulation (EC) No 261/2004

Article 14 – paragraph 3

Text proposed by the Commission

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

Amendment

3. In respect of ***disabled persons or persons with reduced mobility, in particular*** blind and visually impaired persons, the provisions of this Article shall be applied using appropriate alternative means.

Or. en

Justification

The amendment is in line with previous amendments regarding the full definition of a 'disabled person or person with reduced mobility' and enlarges the group of persons to all disabled persons and persons with reduced mobility.

Amendment 76

Proposal for a regulation

Article 1 – point 13

Regulation (EC) No 261/2004

Article 14 – paragraph 4

Text proposed by the Commission

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.

Amendment

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. ***On the basis of the information received,*** it shall also ensure that passengers present at the airport are informed about ***the causes and their rights in cases of delays and flight disruptions, such as*** the cancellation of their flight, and about their rights in *the event that* the airline unexpectedly ceases operations, *for example in the event of its* insolvency or revocation of its operating licence.

Or. en

Justification

Airport managing bodies do not have information regarding individual passengers. They need to receive the information from air carriers, in the first place, in order to comply with the obligation above.

Amendment 77

Proposal for a regulation

Article 1 – point 13

Regulation (EC) No 261/2004

Article 14 – paragraph 6

Text proposed by the Commission

6. Where the passenger does not acquire a ticket directly from the operating air carrier, but via an intermediary established within the Union, *this* intermediary shall provide the passenger's contact details to the air carrier, on condition that the passenger has given ***his explicit and written authorisation***. ***This authorisation*** may only be given on an "opt-in" basis. The air carrier may use *these* contact details exclusively for the purpose of fulfilling the information obligation under

Amendment

6. Where the passenger does not acquire a ticket directly from the operating air carrier, but via an intermediary established within the Union, *that* intermediary shall provide the passenger's contact details to the air carrier, on condition that the passenger has given his ***consent***. ***That consent*** may only be given on an "opt-in" basis. The air carrier may use *those* contact details exclusively for the purpose of fulfilling the information obligation under this Article and not for marketing purposes,

this Article and not for marketing purposes and shall delete the contact details within 72 hours after *the* completion of the contract of carriage. The processing, access and storage of *these* data shall be undertaken in accordance with Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

and shall delete the contact details within 72 hours after completion of the contract of carriage. The ***passenger's consent to the transfer of his/her contact details to the air carrier and to*** the processing, access and storage of *those* 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.

Or. en

Justification

Passenger consent should be acquired in accordance with applicable data protection legislation, which does not specify the precise form of consent ('written'). The term 'authorisation' is replaced by 'consent', in line with the wording used in the European data protection legislation.

Amendment 78

Proposal for a regulation

Article 1 – point 13

Regulation (EC) No 261/2004

Article 14 – paragraph 7

Text proposed by the Commission

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

Amendment

7. An intermediary shall be exempted from *its obligations under* 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 ***or where the passenger has opted not to provide his contact details.***

Or. en

Justification

Intermediaries should not be held responsible for the provision of information where passengers have opted not to provide their contact details.

Amendment 79

Proposal for a regulation

Article 1 – point 14

Regulation (EC) No 261/2004

Article 16 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Each Member State shall designate a National Enforcement Body responsible for the enforcement of this Regulation as regards ***infringements of this Regulation at airports situated on its territory***, 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.

Or. en

Justification

The Regulation is equally applicable to infringements at airports situated on the territory of the EU Member States.

Amendment 80

Proposal for a regulation

Article 1 – point 14

Regulation (EC) No 261/2004

Article 16 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Significant differences exist between Member States concerning the sanctions that can be

imposed on airlines for not respecting Regulation 261/2004 (a maximum of EUR 4.5 million in Spain compared with less than EUR 1 000 in Poland and Romania). Often the maximum level for sanctions is below the cost that airlines may face when complying with the Regulation. In these cases, there is no economic incentive for air carriers to respect the present Regulation. Sanctions should be severe enough that companies see a financial incentive to comply consistently with the Regulation.

Amendment 81

Proposal for a regulation

Article 1 – point 14

Regulation (EC) No 261/2004

Article 16 – paragraph 4

Text proposed by the Commission

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.

Amendment

4. In accordance with Directive 2013/11/EU, cooperation mechanisms shall be set up *between the National Enforcement Body and the body designated under Article 16a which shall include mutual information exchanges* 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 *and technical expertise* necessary *for the handling of* individual complaints. *In addition, a Union-wide mechanism shall be set up between all bodies designated by under this Article and Article 16a to ensure the exchange of information about infringements, sanctions and best practices of enforcement between all Member States.*

Or. en

Justification

In accordance with the new ADR Directive, such information and cooperation mechanisms are foreseen between NEBs and ADR bodies at the level of each Member State. It is the rapporteur's view that in addition, similar mechanisms should also exist at intra-Community level. A regular EU-wide exchange of information among all NEBs and ARD bodies would improve the application of the Regulation. Closer cooperation between all NEBs has already been requested in the context of previous resolutions and would not interfere with the Commission's role in this regard.

Amendment 82

Proposal for a regulation

Article 1 – point 14 a (new)

Regulation (EC) No 261/2004

Article 16 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

14a. In Article 16, the following paragraph is inserted:

‘6a. Pending the transposition by Member States of the provisions of Directive 2013/11/EU, each passenger may complain to any National Enforcement Body about an alleged infringement of this Regulation at any airport situated on the territory of a Member State, or concerning flights from any airport situated on the territory of a Member State or flights from a third country to such airports.

Or. en

Justification

This amendment is introduced in order to ensure that the NEBs still constitute the competent complaint handling bodies until the entry into force of the ADR Directive in 2015. Until the creation of the new conflict resolution body, passengers should still have the possibility of submitting individual complaints to any national enforcement body.

Amendment 83

Proposal for a regulation

Article 1 – point 15

Regulation (EC) No 261/2004

Article 16 a – paragraph 1

Text proposed by the Commission

Amendment

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

1. Air carriers shall provide information to passengers on their claim and complaint handling processes ***and the relevant time-limits under paragraph 2 of this Article***, 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.

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 ***and, if relevant, the organiser*** shall also inform passengers of the body or bodies competent for handling passenger complaints, ***as designated by Member States under this Article and Article 16. The relevant information shall be given at the time of booking, shall be accessible to all, shall be clearly indicated in the passenger's ticket and on the air carrier's websites, and shall be handed out at the air carrier's desks at airports. A complaint form shall be provided to passengers.***

Or. en

Justification

The information provided to passengers concerning claim and complaint procedures needs to be reinforced. If necessary, the organiser shall forward general information to passengers concerning the procedures, including the contact addresses for the competent bodies.

Amendment 84

Proposal for a regulation

Article 1 – point 15

Regulation (EC) No 261/2004

Article 16 a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In Article 16a, the following paragraph is inserted:

'1a. The burden of proof regarding the provision of the requisite information to passengers shall lie with the air carrier.'

Or. en

Amendment 85

Proposal for a regulation

Article 1 – point 15

Regulation (EC) No 261/2004

Article 16 a – paragraph 2

Text proposed by the Commission

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

Amendment

2. If a passenger wants to make a complaint to the air carrier with regard to his rights under this Regulation, he shall submit it within *three* months from the date on which the flight *took place* or was scheduled to *take place*, ***without prejudice to his right of access to the judicial system and to out-of court resolution after the expiry of that three-month period.*** Within *seven* days of receiving the complaint, the ***air*** carrier shall confirm receipt *thereof* to the passenger. Within two months of receiving the complaint, the ***air*** carrier shall provide a full answer to the passenger. ***Where the air carrier does not provide that full answer within that two-month period, it shall be deemed to accept the passenger's claims.***

Or. en

Justification

The amendment aims at underlining the fact that national law is obliged to provide a judicial remedy and that this is not an option. The rights laid out under the Regulation must be enforceable (see Sousa Rodríguez and Mc Donagh case law).

Amendment 86

Proposal for a regulation

Article 1 – point 15

Regulation (EC) No 261/2004

Article 16 a – paragraph 3

Text proposed by the Commission

3. ***In accordance with relevant EU and national law***, each Member State shall

Amendment

3. ***Member States shall ensure that air passengers can submit disputes with air***

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.

carriers concerning rights and obligations established by this Regulation to independent, efficacious and efficient out-of-court resolution mechanisms. To that end, 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 and obligations covered by this Regulation. For disputes falling within the scope of Directive 2013/11/EU, only that Directive shall apply. Air carriers shall adhere to the ADR system provided for by Directive 2013/11/EU.

Or. en

Justification

The amendment updates the text in accordance with the new Directive 2013/11/EU on Alternative Dispute Resolution (ADR), which stipulates that Member States must create a national body or bodies to satisfy both the ADR Directive and this revised Regulation.

Amendment 87

Proposal for a regulation

Article 1 – point 15

Regulation (EC) No 261/2004

Article 16a – paragraph 4

Text proposed by the Commission

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.***

Amendment

4. ***On receipt of the full answer from the air carrier, the passenger concerned*** 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 any airport situated on the territory of a Member State or from a third country to such airports.*** Such complaints may be submitted ***within a pre-specified time-limit, which shall be set at not less than one year from the date on which the passenger submitted the complaint or claim to the carrier concerned.***

Justification

The amendment adjusts the article in accordance with the new Directive 2013/11/EU on Alternative Dispute Resolution (ADR).

Amendment 88**Proposal for a regulation****Article 1 – point 15**

Regulation (EC) No 261/2004

Article 16 a – paragraph 5

Text proposed by the Commission

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.

Amendment

5. Where a designated body has received a complaint, it shall notify the parties to the dispute as soon as it has received all documents containing the information relating to the complaint. It shall send a copy of the documents relating to the complaint to the appropriate National Enforcement Body. The time taken to provide the final reply to the complainant shall not be longer than **90 calendar days from the date on which the designated body has received the complete complaint file**. A copy of the final reply shall also be provided to the National Enforcement Body.

Justification

The amendment adjusts the article in accordance with the new Directive 2013/11/EU on Alternative Dispute Resolution (ADR).

Amendment 89**Proposal for a regulation****Article 1 – point 15**

Regulation (EC) No 261/2004

Article 16 a – paragraph 5 a (new)

Text proposed by the Commission

Amendment

In Article 16a the following paragraph is inserted:

‘5a. Air carriers shall communicate their contact details, for matters covered by this Regulation, to the bodies, designated under this Article, of the Member States in which they operate.’

Or. en

Amendment 90

Proposal for a regulation

Article 1 – point 15

Regulation (EC) No 261/2004

Article 16 b – paragraph 1

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 91

Proposal for a regulation

Article 1 – point 16

Regulation (EC) No 261/2004

Article 17

Text proposed by the Commission

Amendment

The Commission shall report to the European Parliament and the Council by 1 January 2017 on the operation and the results of this Regulation, in particular with regard to the impact of the compensation for long delays and the limitation of

The Commission shall report to the European Parliament and the Council by 1 January 2017 on the operation and the results of this Regulation, in particular with regard to the impact of the compensation for long delays and the limitation of

accommodation in extraordinary circumstances of long duration. The Commission shall also report on the enhanced protection of air passengers on flights from third countries operated by non-*Community* carriers, in the context of international air transport agreements.

accommodation in extraordinary circumstances of long duration, ***issues concerning the interpretation of extraordinary circumstances, the statistics published by the National Enforcement Bodies on their activities, including on sanctions and their findings regarding suspected practices by air carriers, the progress made in establishing national bodies responsible for the out-of-court resolution of disputes and the activities of the latter.*** The Commission shall also report on the enhanced protection of air passengers on flights from third countries operated by non-*Union* carriers in the context of international air transport agreements.

Or. en

Justification

It is the rapporteur's view that the Commission's reporting should include more detailed information with a view to evaluating the impact, implementation and enforcement of the Regulation.

Amendment 92

Proposal for a regulation

Article 2 – point 1

Regulation (EC) 2027/97

Article 3 – paragraph 2

Text proposed by the Commission

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

Amendment

2. At all airports, the airport managing body shall set up a service to provide passengers with a complaint form which allows ***them*** to immediately submit a complaint about damaged or delayed baggage ***upon arrival***. 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 *passengers* to submit

the deadlines *given* by the Montreal Convention.

a complaint via other means within the deadlines *prescribed* by the Montreal Convention. ***A Union wide harmonised claim form is set out in Annex 2a to this Regulation.***

Or. en

Justification

In order to speed up the procedure in case of lost, delayed or damaged baggage, a special baggage claim service at airports allows for the centralisation of passenger requests upon arrival. A harmonised EU-wide complaint form would help to facilitate the procedure and shall be annexed to this Regulation.

Amendment 93

Proposal for a regulation

Article 2 – point 4

Regulation (EC) 2027/97

Article 6 a – paragraph 1

Text proposed by the Commission

1. Whenever carrying checked wheelchairs or other mobility equipment or assistive devices, the air carrier and its agents shall offer each person with reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006 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.

Amendment

1. Whenever carrying checked wheelchairs or other mobility equipment or assistive devices, the air carrier and its agents shall offer each person with ***a disability or*** reduced mobility as defined in Article 2(a) of Regulation (EC) No 1107/2006 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. ***A model form for such declaration of interest is set out in Annex 2b to this Regulation.***

Or. en

Justification

In order to facilitate the declaration procedure, a model form would be helpful. It would give both passengers and air carriers guidance for providing relevant information and the necessary documentation in case of the destruction, loss or damage of mobility equipment.

Amendment 94

Proposal for a regulation

Article 2 – point 4

Regulation (EC) 2027/97

Article 6 b – paragraph 2

Text proposed by the Commission

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.

Amendment

2. For the purpose of monitoring the protection of passengers with reduced mobility and disabled passengers in *the event* of damage to their mobility equipment **or assistive devices**, 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 (EC) No 261/2004.

Or. en

Justification

As in other parts of this Regulation, assistive devices shall be considered equivalent to mobility equipment.

Amendment 95

Proposal for a regulation

Article 2 – point 4

Regulation (EC) 2027/97

Article 6 d – paragraph 1

Text proposed by the Commission

1. ***Whilst*** air carriers ***have full commercial freedom to establish the conditions under which they permit baggage to be carried,*** ***they*** shall clearly indicate, ***at*** booking and at the check-in desks (including at self-service check-in machines), the maximum baggage allowance passengers are permitted to carry within the cabin and hold of the aircraft on each of the flights included within a passenger's reservation,

Amendment

1. Air carriers shall clearly indicate, ***prior to final*** booking, ***in all distribution channels including computerised reservation systems,*** and at the check-in desks (including at self-service check-in machines), the maximum baggage allowance passengers are permitted to carry within the cabin and hold of the aircraft on each of the flights included within a passenger's reservation, including

including any restrictions on the number of items that *would* be applied within a given maximum baggage allowance. **Where** additional charges **are applied** for the carriage of baggage **air carriers shall clearly indicate details of those charges at booking and on request at the airport.**

any restrictions on the number of items that *will* be applied within a given maximum baggage allowance **and details of** additional charges **applicable** for the carriage of baggage. **Regardless of the distribution channel, items attracting additional charges must be capable of being purchased together with the core travel service.**

Or. en

Justification

Providing information about charges for baggage and other ancillaries at the start of a booking process is essential in order to permit the comparison of fares and guarantee price transparency for consumers. The proposed amendment is compatible with Regulation (EC) No 1008/2008. For the sake of transparency, and in order to ensure a level playing field, the obligation to inform should apply to all actors in the distribution of airline products, i.e. the airlines, travel agencies, and computerised reservation systems through which the vast majority of intermediaries book air tickets.

Amendment 96

Proposal for a regulation

Article 2 – point 4

Regulation (EC) 2027/97

Article 6 d – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In Article 6d the following paragraph is inserted:

‘1a. Passengers shall be permitted to carry in the cabin, free of charge, essential personal items or belongings including airport shopping, in addition to the prescribed maximum cabin baggage allowance.’

Or. en

Justification

The practice adopted by certain carriers whereby passengers are allowed to carry a single piece of hand luggage on board and are then charged for any additional item such as their airport shopping, has led to confusion among passengers and to deteriorated economic

activity at airport retail outlets. The ban on the so-called one bag rule is in line with the European Parliament's position as expressed in various resolutions and plenary debates.

Amendment 97

Proposal for a regulation

Article 2 – point 4

Regulation (EC) No 261/2004

Article 6 e – paragraph 1

Text proposed by the Commission

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.

Amendment

1. A *Union* 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. ***When accepted for carriage within the aircraft cabin,*** a musical instrument shall form part of a passenger's hand-luggage allowance. ***The air carrier may determine that additional charges are to apply for hand luggage*** to be carried in addition to that allowance.

Or. en

Amendment 98

Proposal for a regulation

Article 2 – point 4

Regulation (EC) No 261/2004

Article 6 e – paragraph 2

Text proposed by the Commission

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

Amendment

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.***

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 *shall* make reasonable efforts to seat the passenger and the musical instrument concerned together.

Or. en

Justification

In order to improve the structure of the article, the deleted text has been split and integrated into Article 6e, paragraph 2a (new) and 2b (new).

Amendment 99

Proposal for a regulation

Article 2 – point 4

Regulation (EC) No 261/2004

Article 6 e – paragraph 2 a (new)

Text proposed by the Commission

Amendment

In Article 6e the following paragraph is inserted:

‘2a. Where space is 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. Air carriers shall provide special tags to be clearly displayed on musical instruments to ensure that they are handled with the necessary care. Only instruments properly packaged in a rigid and/or hard-shell container specifically

designed for such items shall be allowed to be carried as aircraft cargo.'

Or. en

Amendment 100

Proposal for a regulation

Article 2 – point 4

Regulation (EC) No 261/2004

Article 6 e – paragraph 2 b (new)

Text proposed by the Commission

Amendment

In Article 6e the following paragraph is inserted:

'2b. An air carrier shall clearly indicate at booking and in its terms and conditions the basis on which musical instruments will be transported, including the applicable charges and the facilities for the carriage of musical instruments that are available on the aircraft concerned. Where a second seat needs to be booked, passengers shall be offered the possibility of booking that second seat online.'

Or. en

Justification

The information regarding the possibilities and conditions for the carriage of musical instruments should be clearly indicated and communicated to passengers along with other relevant information, in particular prior to concluding the booking process.

Amendment 101

Proposal for a regulation

Annex 1

Regulation (EC) No 261/2004

Annex 1 – paragraph 1 – point ii

Text proposed by the Commission

Amendment

ii. technical problems ***which are not***

ii. technical problems ***affecting the aircraft***

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;

which are caused by natural disasters, acts of sabotage or terrorism or meteorological conditions, or a hidden manufacturing defect revealed by the manufacturer or a competent authority *or a defect arising during the flight for reasons other than those referred to in point (i) of paragraph 2 where the defect in question impinges on flight safety and prevents the normal continuation of the flight;*

Or. en

Justification

In accordance with the judgment in the case of Wallentin/Herrmann, technical defects are quite clearly not deemed to constitute exceptional circumstances. Exceptions should be technical problems occasioned by circumstances which cannot be controlled. The causes referred to in the amendment which always also impair air safety and render normal continuation of the flight impossible fall into this category.

Amendment 102

Proposal for a regulation

Annex 1

Regulation (EC) No 261/2004

Annex 1 – paragraph 1 – point iii

Text proposed by the Commission

iii. **security risks**, acts of sabotage or terrorism rendering *impossible* the safe operation of the flight;

Amendment

iii. acts of sabotage or terrorism rendering the safe operation of the flight *impossible*;

Or. en

Justification

The term 'security risks' is too general and should therefore be deleted.

Amendment 103

Proposal for a regulation

Annex 1

Regulation (EC) No 261/2004

Annex 1 – paragraph 1 – point v

Text proposed by the Commission

v. air traffic management restrictions or closure of airspace or an airport;

Amendment

v. ***unforeseen*** air traffic management restrictions or ***the unforeseen*** closure of airspace or an airport;

Or. en

Justification

Only an unforeseeable restriction or limitation should be defined as exceptional. Restrictions which are announced or known in sufficiently good time do not fall into this category, as air carriers can take measures accordingly.

Amendment 104

Proposal for a regulation

Annex 1

Regulation (EC) No 261/2004

Annex 1 – paragraph 1 – point vii

Text proposed by the Commission

vii. labour disputes at the operating air carrier or at essential service providers such as airports and Air Navigation Service Providers.

Amendment

vii. labour disputes at the operating air carrier or at essential service providers such as airports and Air Navigation Service Providers, ***but only where such disputes concern non-compliance with the notice period requirements provided for by national law and collective agreements.***

Or. en

Justification

The air carrier can take action to avoid problems caused by measures which have been announced as part of a labour dispute. These should not be regarded as exceptional circumstances.

Amendment 105

Proposal for a regulation

Annex 1

Regulation (EC) No 261/2004

Annex 1 – paragraph 2 – point i

Text proposed by the Commission

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

Amendment

i. technical problems ***due to events which, in view of their nature or origin, are inherent in the normal exercise of the activity of the air carrier concerned and which are in reality within its control;*** and

Or. de

Justification

According to the judgment in the case of Wallentin/Herrmann, technical defects are not exceptional circumstances. They are part of normal airline operations, and it must be possible to take measures to deal with them.

Amendment 106

Proposal for a regulation

Annex 1

Regulation (EC) No 261/2004

Annex 1 – paragraph 2 – point ii

Text proposed by the Commission

ii. unavailability of flight crew or cabin crew (unless caused by labour disputes).

Amendment

ii. unavailability of flight crew or cabin crew (unless caused by labour disputes ***as referred to in point (vii) of paragraph 1).***

Or. en

Justification

This amendment is linked to the amendment regarding the specification of labour disputes included under paragraph 1(vii).

EXPLANATORY STATEMENT

Introduction:

The aviation industry has undergone significant changes in recent years, which are associated with an increase in the number of passengers and flights in the liberalised European market. However, this generally positive development has been accompanied, in a way, by the application of unfair practices and a reduction in the quality of services, with negative consequences for travellers. In addition, since the entry into force of the Regulation in 2004, problems can be observed with respect to varied interpretations resulting from grey zones and gaps in the existing Regulation, non-uniform enforcement across Member States, and the difficulty experienced by passengers in enforcing their rights when air carriers are in breach of the legislation. Parliament has already expressed its opinions on several of these points in the context of its resolutions adopted in 2012¹.

The following elements of the Commission's proposal could be highlighted as a step forward in the enforcement of air passenger rights: the role of the national enforcement bodies has been better defined and extended to baggage claims; a complaint procedure has been introduced with clear time limits and the identification of the precise role of a new body to be established for the handling of complaints; new provisions have been introduced which relate to cases of denied boarding, missed connecting flights and long delays; a non-exhaustive list of extraordinary circumstances has been created in order to clarify cases in which air carriers are exempted from paying compensation; the obligation of air carriers to inform passengers adequately and timely has been reinforced; and new provisions have been introduced regarding the carriage of mobility equipment and musical instruments.

Main concerns:

The incomplete and inconsistent implementation of the existing Regulation by both the carriers and the national authorities causes confusion both for passengers and the industry. In addition, passengers lack information about their rights and are dissatisfied with the circumstances and costs associated with the enforcement of those rights.

Legal uncertainty has led to a series of European Court of Justice judgements, which have created extensive case law on the rights of passengers over the years. This is, however, difficult to oversee. The figures show that only a small proportion of those passengers who would in theory be entitled to benefits and compensation ever demand or receive their entitlements in reality.

The crucial factor is that the operating air carriers do not automatically recognise the rights of the passengers concerned. Therefore, the passengers must individually claim their rights with large international companies. Customers feel more insecure in such a situation, not least in view of the complexity of the process. Many passengers are reluctant to go to court because of the high cost and efforts involved, a sentiment which is exploited by some airlines in order to avoid providing customer protection.

¹ Texts adopted, P7_TA-PROV(2012)0371, P7_TA-PROV(2012)0099.

Hence the rapporteur's proposals are generally in favour of strengthening passenger rights.

Right to compensation in case of long delays:

The revised Regulation should be explicit with regard to the right to assistance and compensation for passengers experiencing long delays. Thresholds above which delays give rise to assistance or compensation should be set in line with the judgement of the European Court of Justice (cases C-407/07 and C-432/07 - Sturgeon) which grants passengers, in case of long delays of more than three hours, the same rights as passengers whose flights are cancelled. The rapporteur welcomes the fact that the Commission has taken the Sturgeon judgement into account in its proposal.

The rapporteur shares the Commission's view that the thresholds should be the same for all journeys within the EU, but should depend on the journey distance for travel to and from third countries, in order to take account of the operational difficulties encountered by air carriers when dealing with delays at remote airports.

In light of the ECJ decision, however, the rapporteur does not share the Commission's view that all thresholds should be increased in order to lower the financial impact on the air carrier and to minimise the risk that they lead to more flight cancellations (Recital 11). Moreover, the proposed thresholds are considered to be much too long, especially for internal EU flights where the flight duration usually does not exceed three hours. For this reason, the rapporteur has amended Article 6 by replacing the thresholds of five, nine and twelve hours by three and five hours respectively.

With the aim to facilitate further the application of the current system and to create greater clarity for passengers and airlines, the rapporteur proposes, in addition, to streamline the trigger points and compensation amounts under Articles 6, 6a and 7 by introducing the following limits: EUR 300 for flights within the Union (independent of the flight distance); EUR 300 for all other flights up to a distance of 3 500 km; EUR 600 Euro for all other flights of more than 3 500 km.

Voluntary agreements between air carriers and passengers about compensation should only be enforceable if related to modalities but not to the compensation itself (Article 7(5)).

Rights with regard to connecting flights:

Cases where a passenger misses a connecting flight due to a change of schedule or delay are of particular concern. Therefore, a new Article 6a has rightly been introduced by the Commission under which passengers concerned should be offered assistance, care and rerouting by the preceding air carrier responsible for the delay at the transfer point which leads to passengers missing their connecting flight.

Passengers who miss a connecting flight should also be able to claim compensation on a similar basis to those whose flights are delayed or cancelled. However, the rapporteur takes the view that in light of the large number of carriers operating regional flights of shorter distances within the EU, the financial burden should be reduced for those carriers. With this in

mind, the rapporteur has added a minimum threshold of 90 minutes of delay to the preceding flight at the transfer point, which shall entitle the passenger to compensation (Recital 13a (new), Article 6a (2)) provided that the delay at the final destination of the journey is more than three or five hours respectively. This twofold condition is added for reasons of proportionality and is justified if the preceding air carrier causes only a short delay which in the end results in missing a connecting flight and in a much longer delay at the final destination.

Denied boarding:

Denied boarding can happen because of overbooking, but also due to other operational reasons, as confirmed by the Court. A special case of denied boarding is the so-called no-show policy of air carriers. In practice, air carriers deny boarding to passengers for their return flight if they did not use the outward flight of their ticket. This policy is against the customer's interest and should be clearly forbidden. The rapporteur proposes, therefore, that the Commission's proposal be strengthened (Recital 7, Article 4(4)).

The Regulation should also clarify that 'denied boarding' covers cases in which the scheduled time of departure has been moved forward with the consequence that a passenger misses the flight, unless the passenger was informed at least 24 hours in advance (Recital 5, Article 2(j), Article 4 (5a (new))). If a significant change in schedule is incurred, the passenger should have the right to reimbursement or rerouting (Article 6(1) (iii)).

In addition, if a departure has been postponed to a later time, the case should give rise to similar rights as those that are allowed for in the case of a delayed flight (Recital 12).

The rapporteur takes the view that passengers to whom boarding is denied against their will should not suffer any limitation in relation to assistance and that Article 9 shall apply without any delay. For this reason, the rapporteur is opposed to the Commission's proposal to apply Article 9 only after a waiting period of two hours in case the passenger chooses rerouting after being denied boarding (Article 4(3), Article 4(4)).

Protection in case of multiple flight disruptions:

Insolvency

The Spanair and Malev Airline cases show how important it is that passenger rights are protected when it comes to airlines ceasing activity due to their economic situation. Such cases of flight cancellation are generally covered by Regulation (EC) No 261/2004 with a refund or alternative transport being offered to the passenger concerned. However, practice shows that in cases of insolvency, some uncertainty exists in relation to payments, which also indirectly concerns package tour operators. An improvement of the EU legislation is therefore necessary.

Contrary to the Commission, which has not addressed the key issue of the protection of passengers, the rapporteur takes the view that the revision of the Regulation should include relevant provisions. In order to ensure effectively the passenger's right to reimbursement or a return flight, air carriers should be obliged to provide sufficient evidence of security for the

reimbursement or repatriation of passengers (Recital 9a new, Article 5(5c (new))). The requirement allows air carriers to take several measures (which could include a fund or insurance) in order to protect passengers in such cases.

Contingency plans

A major new element introduced by the Commission relates to the obligation for airport managing bodies and airport users to set up contingency plans to minimise the impact of multiple flight disruptions in order to organise in a coordinated manner the care or re-routing of passengers. If an air carrier suddenly ceases operation, such plans are of particular necessity in order to help stranded passengers. The Rapporteur considers that the threshold of three million passengers per year for airports is too high and should be lowered to 1.5 million. The involvement of national, regional and local authorities in the development of such contingency plans is deemed to be important (Recital 10, Article 5(5)). The need for coordinated action by all parties concerned, more detailed indication of what contingency plans should include as regards information and assistance to passengers, and a particular obligation for air carriers to put in place procedures in case of flight disruptions are highlighted by relevant amendments (Recital 10a new, Article 5(5), Article 5(5a (new))).

Extraordinary circumstances:

Air carriers can be exempted from compensation payment if they can prove that problems are due to certain extraordinary circumstances. However, there is much uncertainty about the interpretation of this term. Relevant judgements of the European Court of Justice should help to formulate the EU provisions in a more trustful way. The list which is annexed to this Regulation is intended to serve as an aid. Here, special attention is dedicated to the concept of ‘technical problems’. In fact, airlines often justify delays or cancellations on the grounds of ‘technical problems’, leaving the passenger without any possibility of understanding the circumstances.

The revised Regulation should give clearer guidance to the kind of extraordinary circumstances under which the air carrier does not have to pay compensation. The rapporteur has made substantial amendments to the non-exhaustive list annexed to the Commission’s proposal. The most far-reaching amendment relates to the inclusion or exclusion of technical problems under extraordinary circumstances. The rapporteur agrees with the Court’s decision in the Wallentin-Herrmann case that – as a general rule – technical defects do not represent exceptional circumstances. Technical problems should exceptionally be considered as extraordinary circumstances if they are caused by circumstances that are not manageable by the operating air carrier, that affect flight safety and that make the normal continuation of the flight impossible.

Moreover, an amendment should clarify that even though a flight disruption might be caused by extraordinary circumstances, it must be proven that the air carrier had correctly taken all measures in order to avoid the cancellation. Only if both conditions are met should the air carrier be exempt from the payment of compensation (Article 5(3)).

Right to accommodation:

In principle, the right to accommodation is not contested in case of cancellation, missed connecting flights or long delays, if the relevant conditions are met. The rapporteur agrees with the Commission that in case of extraordinary circumstances of a long duration, the currently existing unlimited liability of the air carrier to provide accommodation should be limited. However, contrary to the Commission, the Rapporteur proposes to limit only the costs of the accommodation and not the duration itself. He takes the view that passengers who suffer the most under extraordinary circumstances of a long duration should not be treated less favourably than passengers who suffer less under such circumstances. Exceptionally, for passengers who organise their accommodation themselves, the costs and duration of care might be limited by the air carrier (Recital 16, Article 9(4)). With these combined proposals, the rapporteur takes account of both the interests of the passengers and the interests of the companies involved.

The provision regarding limited care in case of extraordinary circumstances should, however, not relieve the air carrier of its obligation to provide accommodation (Article 9(4)).

Right to information:

Informing passengers and transparency are key elements in the context of the revision of the existing regulation. This concerns their right to be informed adequately, in case of flight disruption, of their rights in general, but also of the cause of the disruption, other possible modes of transport (Article 14(4)), and access to complaint procedures and complaint forms, etc. Since air carriers are the most reliable source responsible for providing this information (Recital 20, Article 5(2)), the rapporteur considers that information and assistance to passengers can be substantially improved by an adequate presence of air carriers at airports (Article 14 (1a new)).

Price transparency:

There is also a need for improvement in relation to ticket prices. Ticket prices are often not sufficiently transparent, which confuses passengers and makes the comparison of prices difficult. The legislator must ensure that the regulation is designed in such a manner that ensures that misuse can be largely excluded. The definition of a 'ticket price' should be as clear and as comprehensive as possible. Therefore, the Rapporteur proposes to add to the Commission's definition a number of basic services which should always be included in the ticket price, such as the issue of a boarding card, minimum luggage allowances and payment-related costs such as credit card fees (Article 2 (s)).

Complaint procedure:

Several amendments have been introduced to the new Article 16a on claims and complaint procedures, in order to align the text with the new Directive 2013/11/EU on Alternative Dispute Resolution (ADR)^[1] which obliges Member States to create national bodies to deal with out-of-court resolution. These will be the future handling bodies of passenger complaints. The refusal of airlines to participate in ADR systems and procedures constitutes a particular problem, and the regulation should therefore provide for the obligation of airlines to adhere to

^[1] OJ L 165, 18.6.2013, p.63.

an ADR system. The complaint procedure with the air carrier does not prejudice the passenger's right of access to the judicial system and to out-of-court resolution (Article 16a (2)).

Tarmac delays:

On tarmac delays, the Rapporteur proposes to define tarmac delay in relation to the end of boarding and not the start of boarding as the Commission proposes, because boarding depends on the size of the aircraft. Tarmac delay should be calculated in absolute terms and not in relation to each aircraft (Article 2 (w)). The Commission's proposal to set the tarmac delay to a minimum of five hours before passengers are allowed to disembark seems too long. The Rapporteur proposes to reduce the tarmac delay to two hours.

Baggage allowances:

One prominent example of the lack of adequate information relates to the practice of air carriers with respect to passengers' baggage allowances. Certain air carriers allow passengers to carry a single piece of hand luggage on board and charge for any additional item such as airport shopping. In order to avoid confusion among passengers and to enable passengers to compare prices, if additional charges are applicable transparent information on baggage allowances should be available prior to the booking process (Recital 28, Article 6d(1)).

Moreover, it is the rapporteur's view that passengers should be allowed to carry in the cabin essential personal items or belongings including airport shopping at no extra cost in addition to the prescribed maximum cabin baggage allowance (Article 6d (1a (new))). A less restrictive policy by air carriers would also counteract the decline in sales at retail outlets.

Several amendments are introduced with the aim of improving the handling of musical instruments. In principle, air carriers should permit a passenger to carry a musical instrument in the passenger cabin of an aircraft. A musical instrument should form part of the hand luggage allowance. A clear indication of applicable charges and conditions available for carriage on the aircraft should be respected by the air carrier.

Lost and damaged or delayed baggage:

In order to facilitate the submission of complaints concerning lost, damaged or delayed baggage, a special baggage claim service, which already exists at many airports, should in principle be set up at all airports. Such a service allows passengers the possibility to submit a complaint upon arrival and helps speed up procedures. In addition, a standardised Union-wide complaint form should be made available as an annex to the regulation. This annex would have the advantage of the form being translated into all official EU languages. (Recital 31, Article 3(2)).