

Position on the revision of Regulation 261/2004

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The members of AIRE note with satisfaction the willingness of the European Commission to come back to the idea to the revision Regulation (EC) No 261/2004 on Passenger Rights. The airlines gathered in AIRE are ready to provide information, arguments and expertise that might be useful in the process of revision of this legislation act.

Current regulatory process

The proposal drafted by the Commission in 2013 regarding the revision of Regulation (EC) No 261/2004 was approved by the Parliament, but unfortunately not by the Council. Likewise, the outbreak of COVID-19 stalled the proposal presented by the Council of the European Union in February 2020 for a new regulation amending the current one. In March 2020 the Parliament called on the Commission to reconvene negotiations with the Council for updating the Regulation.

Special report of European Court of Auditors

End of June 2021 the European Court of Auditors published a special report, *“Air passenger rights during the COVID-19 pandemic”*, which stated that airlines did not respect passenger rights adequately despite Commission efforts.

The ECA made a good observation about missing update of Regulation 261/2004:

“This 2013 proposal (...) included solutions that could have helped to better enforce passenger rights in times of crisis, such as better complaint handling procedures, and strengthened enforcement, monitoring and sanctioning to safeguard passenger rights.”

AIRE position

AIRE is aware of the necessity of the revision of the existing Passenger Rights Regulation. The revised legislation should be more precise enabling its proper and homogeneous application. It should also take into account the existing jurisprudence of the European Court of Justice. Above all, it should balance the interests of passengers and the aviation industry.

Therefore, AIRE suggests that the revised version of the Regulation should:

- 1. Take into account the change of the delay threshold depending on the distance.** We support the Council's proposals from 2020 - 5 hours for flights up to 1,500 km, 9 hours for flights 1,500-3,500 km, 12 hours over 3,500 km; a similar approach can be found in Canadian regulations;
- 2. Install legal clarity.** The annex should contain clear definitions and a non-exhaustive list of extraordinary circumstances;
- 3. Include in the list of extraordinary circumstances the issue of illness of the captain or officers outside the airline's base;**

4. **Include a catalog of technical defects that will be considered as extraordinary circumstances.** We accept the content of the attachment to the changes to the Regulation proposed in 2020;
5. **Contain a reasonable and easily understandable structure of points in time that are important for calculating the delay time and granting compensation by using an universally available flight time data.** We recommend introducing the calculation of the delay time from the moment of taxiing to the stand and applying the brake - often the exact time of door opening cannot be checked in the aircraft's systems, the taxi end time is publicly available, including on FlightStats or FR24 systems;
6. **Recognize that airlines need to optimize the use of their fleet and that therefore compensation waivers should take into account the reactive (sequential) delays.** The irregularity of one flight often causes a domino effect, i.e. it affects subsequent flights operated by the same aircraft. Extraordinary circumstances should be applicable to the flight on which they occurred, and the next three rotations (6 flights) performed by the same aircraft - see the ruling of the European Court of Justice C-826/19 WZ against Austrian Airlines AG. In that sense, reactive/sequential delays are already mentioned in point 15 of the preamble of the Regulation. However, it would be beneficial to further clarify it in the sense that the existing preamble refers to *“overnight delay”* and *“cancellation of one or more flights by that aircraft”*.
7. **Limit the liability of the airline for the accommodation of passengers in the event of extraordinary circumstances** - to 3 days, up to EUR 100 per day;
8. **Ensure that the value of compensation should be proportional to the ticket price** and not exceed the ticket price;
9. **Regulate and restrict or prohibit the activities of mass claim companies intermediating in applying for compensation.** The right to compensation should be personal (exclusion of assignment). Claims whose contact details do not match those on the ticket shall not be considered valid.
10. **Take into account the court's obligation to deduct lump sum damages from other damages awarded under other legislation,** including the directive 2015/2302 on packages and linked travel arrangements;
11. **Include a definition of reasonable measures.** Absurd court decisions indicating the requirement to have spare crews, mechanics, aircraft and spare parts at each airport where the airline flies, or the need to make empty flights to the airport where the irregularity occurred. The air carrier should reasonably, at the stage of organizing the flight, take into account of the risk of minor delays. Nonetheless, secondary complications that give rise to an increased delay when those extraordinary circumstances come to an end - such as reallocation of air corridors, time slots, accessibility conditions at the destination airport (night curfew) and mandatory crew rest outside the air carrier's base - cannot be avoided by reasonable measures.

12. **Define the issue of a reasonable alternative flight cfr. art. 8 (1)(b)** in case of cancellation and denied boarding by establishing that a reasonable alternative flight is the provision by the carrier of a flight whose scheduled departure begins within 24 hours of the scheduled departure time of the original passenger's flight, for the nearest connection of the carrier or carriers with which the carrier has signed interline agreements;
13. **Clarify the concept of active information to passengers by the airline.** Using the contact details provided at the time of booking, waiving the concept of "active" information, it should be enough to prove that an email was sent or an attempt to contact by phone was made. The carrier should not be liable for the fact that the passenger does not answer the phone or does not read the e-mail he indicated in the contact details at the time of adding the data to the booking; the same should apply to a situation where a passenger makes a purchase from an agent and the only form of contact the carrier has is the agent's details. Notifying the agent should be sufficient in this situation;
14. **Set a uniform deadline for lodging a complaint by a passenger;** in a similar way as in the Montreal Convention - if the passenger does not submit a complaint within 30/60 days of the flight, they are not entitled to make a later claim at all; the carrier has a limited ability to store data that is necessary for the correct consideration of the complaint and without the documentation they are unable to use their rights of defense. Therefore, we recommend that a passenger claim under the Regulation shall be submitted to the air carrier within 2 months from the date on which the flight was performed or was scheduled to be performed. Thus, the time limit for submitting a complaint to the air carrier is absolute.
15. **Indicate that the person entitled to receive a refund for the ticket is not the passenger,** but the one who paid for the ticket.

AIRE made its position on that matter known upon several occasions, one of the latest being the "*Joint Airlines*" position paper on the review of Regulation 261/2004, which was published and co-signed with A4E, Airlines for America, AAC, ERA and IATA in February 2020. The amendment of the Regulation (EC) No 261/2004 is of utmost relevance not only to allow struggling airlines to recover, but also to install much needed legal clarity. That is why it should be a matter of priority in the legislative agenda of the European Union.