

ACI EUROPE POSITION 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.

**AIRPORTS COUNCIL
INTERNATIONAL**

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EXECUTIVE SUMMARY

The main problem in the area of air passenger rights arises from the current lack of enforcement of the existing rules and the different interpretations of the legislation by air carriers. ACI EUROPE welcomes measures aiming at clarifying grey areas and at ensuring consistent implementation of the Regulation.

The presence of an air carrier's point of contact at the airport empowered to assist and compensate passengers is an absolute pre-requisite for effective implementation of the legislation.

The role and responsibilities of each entity (air carriers, ground handlers, airport managing bodies) should be clear to avoid confusion for the passenger. Failing to do so would hamper the passengers' ability to effectively enjoy the rights afforded under Regulations 261/2004 and 2027/97.

Unreasonable restrictions on cabin baggage allowance by some airlines undermine the passenger experience and damage wider economic activity. ACI EUROPE calls for a legislative solution that protects passengers against excessive restrictions and allows them to carry on-board a reasonable amount of hand luggage, including airport purchases; this is in line with several European Parliament reports.

INTRODUCTION THE LIMITS OF THE CURRENT FRAMEWORK

European air transport has a long-held tradition of defending passenger rights. Indeed, based on the experience acquired in the past, those rights have been gradually recognised and adapted to other modes of transport. European airports are committed to the continuous improvement of the quality of the services offered to passengers and to the effective enforcement of their rights.

Regulation 261/2004 provides the common basic framework for information, assistance, reimbursement, rerouting and/or compensation under certain conditions in the event of denied boarding, cancellation or long delays of flights. **Regulation 2027/97** transposes the Montreal Convention into European law.

These two regulations and the international convention¹ do not impose any legal obligation on European airports, based on the principle that a passenger's primary relationship is with the air carrier, with whom they have entered into a transportation contract. The uneven and sometimes poor enforcement of these regulations² however, results in operational and financial consequences for airports, while leaving passengers unprotected. Indeed, air carriers have different interpretations of the legislation and in particular of the scope of Regulation 261/2004.

The closure of European airspace due to the threat of volcanic ash in April 2010, the extreme weather conditions in December 2011 - amongst other events - highlighted the limitations of Regulation 261/2004. In some cases, air carriers did not fulfil their obligations and failed to offer passengers the rights to which they were entitled. Consequently, European airports were left with the burden of assisting stranded passengers. This led to a reinforcement of their preparedness and resilience procedures. This was done through Contingency Crisis Management plans that included special chapters for information and assistance (food and beverages, communications, showers, beds, clothing, medical care, special care for children and occasionally transport by alternative modes)³. Active participation of air carriers, ground handling providers, suppliers operating at the airport and national authorities (Civil Protection or equivalent) in such plans would reinforce the effective protection of passengers' rights.

Similar situations of unprotected passengers take place in Europe on a regular basis, in cases of denied boarding, cancellation of flights or long delays not associated with extraordinary circumstances. European airports routinely provide support beyond their legal obligations to stranded passengers: e.g. people travelling without a visa (dozens of people per day at major hubs) or travelling on separate tickets and missing a flight segment.

THE EUROPEAN COMMISSION'S PROPOSAL

1. Improvements compared to existing regulation

ACI EUROPE welcomes the positive elements proposed by the European Commission, in particular:

- o Maintaining air carriers' primary responsibility *vis-à-vis* passengers and ensuring air carriers' right of redress while allowing voluntary agreements between the various entities (air carriers, ground handlers, airports) that override regulatory compensation provisions;

- o The clarification of grey areas (e.g. the notion of extraordinary circumstances) and the improvement of the legislation in a number of areas (e.g. the right to correct misspelled names, or the obligation for air carriers to provide re-routing with other carriers or other transport modes if not possible with their own services within 12 hours);
- o The simplification of complaint handling;
- o Enhancing the role of the National Enforcement Bodies.

2. Article 2 Definitions

The European Commission's proposal assumes that airport managing bodies will be legally empowered to coordinate and control the activities of the different stakeholders operating on the airport (Art. 2 r). This will result in new tasks and obligations imposed on airport managing bodies (see paragraph 3 below).

ACI EUROPE position:

Within an operational context, the definition and the role and responsibility of the airport managing body needs to be clarified to avoid confusion for passengers. While airport managing bodies can make best efforts to coordinate the various entities - such as air carriers and ground handlers - coordinating and/or controlling their activities is neither desirable nor legally possible. Only national authorities could intervene to effectively "control" the activities of the different stakeholders operating at the airport.

3. Article 5 Cancellation

With reference to special provisions for airports, the European Commission proposes (Article 5.5) that for cases of multiple cancellations and or delays of flights leading to a considerable number of stranded passengers, airport managing bodies shall ensure that their operations and those of airport users are coordinated through a contingency plan providing adequate information and assistance to stranded passengers.

ACI EUROPE position:

Many European airports already have contingency plans in place with a view to manage crisis situations and provide information and assistance to stranded passengers. However, ACI EUROPE believes that the event triggering the implementation of contingency plans could be clarified. Furthermore, airport managing bodies have no legal means to coordinate the activities of the stakeholders operating on the airport. The provision of article 5.5 applying to airports below 3 million passengers is more in line with the reality of what airports can effectively do i.e. "the airport managing body shall make all reasonable efforts to coordinate airport users and to assist and inform stranded passengers in such situations". In any case, passengers should not be misled as to who is effectively responsible for the provision of assistance.

Together with airport managing bodies, air carriers, ground handlers and air navigation service providers, contingency plans should, also, foresee the participation of national, regional and/or local authorities or organisations. Contingency plans would define the circumstances or the level of contingency requiring such participation.

4. Article 6a Missed connecting flight

A major change proposed by the European Commission refers to the extension of the right to assistance, re-routing and compensation to passengers on connecting flights (including those operated by third country air carriers) in article 6.a.

ACI EUROPE position:

The provision of the proposal aiming at extending and enhancing the rights of passengers on connecting flights should be re-assessed taking into account its potential unintended consequences on the connectivity of European regions. While connecting passengers should also be covered under the Regulation, the current wording of article 6a may introduce a disproportionate burden on European regional carriers that could force them to discontinue interlining agreements with other carriers. This would be detrimental to passengers and to regional airports' ability to offer seamless travel from the regions. It would also generate additional and unneeded congestion at EU hubs as passengers travelling from regional airports would be forced to collect their bags at the transfer point, check-in and go through security again. In addition, as they would fly a point-to-point service, in case of delays on the first flight segment, passengers would no longer be re-routed by the carriers under the interlining agreement. The end result could be the loss of an existing right for passengers.

5. Article 9 Right to care

Another major change is the limitation of air carriers' obligation to provide accommodation to passengers in cases of delays and cancellations due to extraordinary circumstances to €100 per night and to a maximum of three nights (article 9.b).

ACI EUROPE position:

While it appears reasonable to limit the financial burden imposed on air carriers in cases of extraordinary circumstances, other important factors should be taken into consideration, such as: distance to destination, frequency of flights and availability of other modes of transport. Regarding the maximum amount of the cost of accommodation, the difference in price amongst Member States and the availability of rooms near the airport should also be factored in and there could be a role to play for national enforcement bodies in this area.

6. Article 14 Obligation to inform passengers

The European Commission proposes that airport managing bodies provide information to passengers via notices at check-in desks, self-service machines and boarding gates and that general information on passenger rights be clearly displayed within the passenger areas of the airport. Article 14 of the proposal also requires airports to ensure that passengers present at the airport are informed about the cancellation of their flight.

ACI EUROPE position:

Stranded passengers are sometimes left to their own devices without the possibility of talking to a representative of their contracting airline. In order to ensure that a passenger enjoys the rights he or she is entitled to under the Regulation, the presence of a local contact person in the terminal building and

empowered to take decisions and to compensate passengers on behalf of the air carrier (incl. for lost luggage) should be guaranteed, including in cases of insolvency and/or revocation of the operational license. This appears to be consistent with several European Parliament reports⁴. All air carriers should have robust plans in place to inform passengers in case of flight cancellations and to allow them to rebook via their website or by adequately manned and resourced telephone call centres. This would avoid unnecessary trips to the airport.

With regard to the provision of general information to passengers, ACI EUROPE notes these new obligations imposed on airports. However, in most cases airports already fulfil these tasks thus going beyond existing legal obligations. Posters about passenger rights have been displayed in all European airports in areas normally used for commercial purposes. With regard to the provision of information by the airport to passengers in case of flight cancellations, it should be noted that this can only be done on a best effort basis i.e. as long as the information is provided to the airport by the air carrier, the air navigation service provider or the national authorities, as the case may be.

7. Regulation 2027/97 Article 6d new

ACI EUROPE finally regrets that the European Commission did not reflect the repeated calls from the European Parliament to ban the so-called “one-bag-rule”⁵ in the proposal. Instead, the proposal establishes that air carriers have full commercial freedom to impose restrictive cabin baggage allowances (Regulation 2027/97 Article 6d new).

The lack of recognised passenger rights in relation to this issue has led to very restrictive practices by some carriers limiting passengers to carry a single piece of hand baggage on-board and charging them for any additional item, such as airport shopping.

These restrictions undermine the passenger experience causing considerable emotional distress and anxiety at boarding gates where passengers are forced to choose between paying penalties or forfeiting possessions. This has caused a number of incidents at airports leading to a deterioration of the quality of service for passengers. Furthermore, the passengers' freedom of choice when shopping is clearly reduced as their airport purchases, in addition to their one bag allowance are subject to a hefty fee.

These restrictions also threaten the economic model of European airports and their viability. Indeed, 42.5% of European airports were loss making in 2011 and this proportion increased to 65% for airports below 1 million passengers. In the same year, non-aeronautical revenues accounted for 41%, on average, of total airport revenues (up to 70%). Given the importance of commercial revenues for airports and the increasing role these revenues play in funding airport modernisation and development, a widespread implementation of the one bag rule by air carriers would inevitably lead to higher airport charges.

ACI EUROPE position:

Passengers should be allowed to carry in the cabin a reasonable number of essential personal items or belongings including airport shopping at no extra cost, in addition to the prescribed cabin baggage allowance. Regulatory

intervention in this area should be limited to preventing recent abuses by some air carriers while still allowing carriers to set their own limitations within a given framework.

CONCLUSION

The current Regulation on passenger rights suffers from a lack of consistent implementation and enforcement as air carriers have a great deal of latitude in their interpretation of what falls within or outside the scope of Regulation 261/2004. ACI EUROPE therefore supports the elements of the proposal leading to a more consistent and effective enforcement of passenger rights. In line with this approach, ACI EUROPE regrets that no provision is made in the proposal to oblige air carriers to have a local point of contact empowered to provide information, assistance, care and compensation to stranded passengers in the terminal building. This is a serious omission when it comes to a better enforcement of rights. The role and responsibilities of the different entities operating within the airport under the contingency plan should also be clear in order to avoid passenger confusion. While ACI EUROPE supports adequate protection for transfer passengers, this right must not put a disproportionate burden on regional air carriers or jeopardize interlining agreements. Interlining agreements are essential to ensure the connectivity of Europe's regional airports and their ability to offer seamless travel to their passengers. Finally, ACI EUROPE is concerned by the proliferation of very restrictive carry-on luggage policies (one-bag rule) that result in a reduction of the choice of retailers for passengers while also leading to confusion and distress at the boarding gate. Legislative intervention should be limited to tackling abusive carry-on baggage restrictions imposed by some airlines.

¹ *Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention), Chapter III – Liability of the air carrier and extent of compensation for damage.*

² *Recognised by the European Parliament in the “Report on the functioning and application of established rights of people travelling by air” (Keith Taylor) and the “Report on passenger rights in all transport modes” (Georges Bach) and by the European Commission’s proposal (Article 16.2 and Explanatory memorandum, legal elements of the proposal 3.3.1.2).*

³ *During the volcanic ash crisis, thousands of people were stranded at airports. Amsterdam Schiphol Airport alone provided assistance for up to 2000 stranded passengers simultaneously. The overall cost of the crisis for European airports was estimated at € 10 million. The average cost of assisting passengers in times of crisis is roughly €50/day/passenger.*

⁴ *Report on the functioning and application of established rights of people travelling by air, Keith Taylor:*

“13. Stresses that air carriers should ensure the presence at each airport they operate from of contact personnel or a service which can provide such personnel, who can take immediate decisions in case of disruption, in particular with regard to assistance, reimbursement, rerouting, rebooking, and lost or delayed baggage, and with whom complaints can be lodged; urges the Commission to propose that it be made mandatory to provide a central information point, and specifically a website, and a low-cost telephone number and email address for the air carriers concerned, with a view to ensuring that consumers are properly informed”.

Report on passenger rights in all transport modes, Georges Bach:

“24....recommends that there should be properly trained personnel at hand who are able to take immediate decisions on rerouting or rebooking, assist in cases of lost, delayed or damaged luggage, and deal with claims for compensation or reimbursement”.

Report on the proposal for a regulation of the European Parliament and of the Council on groundhandling services at Union airports, Artur Zasada:



“Article 30a: Presence of a contact person representing each air carrier

Each air carrier shall have a contact person, or be legally represented at airports whose annual traffic volume is more than 2 million passengers. This contact person, who may be a groundhandling assistant, must have the authority to enter into financial, operational and legal commitments on behalf of the air carrier at the airport in question”.

⁵ *Report on passenger rights in all transport modes, Georges Bach:*

“38. Reiterates its call on the Commission to propose measures for the introduction of common standards for the carriage of hand luggage, so as to protect passenger against excessive restrictions and allow them to carry on board a reasonable amount of hand luggage, including purchases from airport shops”.

Report on the future of regional airports and air services in the EU, Philip Bradbourn:

“13. Expresses concern that certain practices of low-cost airlines, which often operate from regional airports, lead to poorer quality of service for passengers and a deterioration in working conditions; given the current aggressive business practice of some low-cost airlines operating from regional airports to take advantage of their dominant position, and given that commercial activities are a major source of income for regional airports, is concerned by ‘one-bag’ and other restrictions to the cabin baggage allowance imposed by certain airlines; takes the view that these practices represent a breach of competition law, and believes that these restrictions may constitute an abuse of a carrier’s position; calls, therefore, on the Member States to set common upper limits to be imposed on airlines with regard to such restrictions and considers that any checks relating to luggage weight restrictions and size should be made before arrival at the departure gate;

“14. Calls for airport retail purchases to be treated as ‘essential items’, as is currently the case for items such as coats; applauds Spain’s decision to outlaw practices mentioned in paragraph 13 within its territory¹, and calls on the Commission to look into introducing a similar measure for all air services originating from Europe”.

Report on the functioning and application of established rights of people travelling by air, Keith Taylor:

“26. Calls on the Commission to propose measures that would make it possible to harmonise commercial practice concerning hand luggage so as to protect passengers against excessive restrictions and to allow them to carry on board a reasonable amount of hand luggage, including purchases from airport shops.”

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ACI EUROPE is the European region of Airports Council International, the only worldwide professional association of airport operators. ACI EUROPE represents over 450 airports in 44 European countries. Member airports handle 90% of commercial air traffic in Europe, welcoming over 1.5 billion passengers each year.