

Passenger protection in case of denied boarding, and of delay or cancellation of flights Regulation (EC) No 261/2004

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SCOPE OF APPLICATION

- Long delay / cancellation/ denied boarding
- Applies only to the actual carrier
- Requirements:
 - 1) All outbound flights from the EU
 - 2) Inbound flights of EU carriers to the EU from third States to the EU
 - 3) Confirmed reservation
 - 4) In-time presentation for check-in
- At the time indicated on the ticket
 - 45' before departure, if no time indicated



Examples of application

- ✓ Lufthansa flight from Frankfurt to Bangkok
- ✓ Lufthansa flight from Bangkok to Frankfurt - operated by Lufthansa
- ✓ THAI flight from Frankfurt to Bangkok

- x THAI flight from Bangkok to Frankfurt
- x Lufthansa flight from Bangkok to Frankfurt - operated by THAI



DENIED BOARDING

= a refusal to carry passengers on a flight, although they have presented themselves as they ought to.

EXCEPTION: reasonable reasons, such as reasons of health, safety or security, or inadequate travel documentation

- 1) Call for volunteers against agreed benefits
- 2) If no/not enough volunteers, then
 - a. Compensation as per Art. 7
 - b. Reimbursement or re-routing as per Art. 8
 - c. Right to care as per Art. 9.



CANCELLATION OF FLIGHT

= the non-operation of a flight which was previously planned and on which at least one place was reserved

Passenger rights

- a. Compensation as per Art. 7*
- b. Reimbursement or re-routing as per Art. 8
- c. Right to care as per Art. 9.



No compensation for cancellation

- 1) In-time notification of passengers
 - a) Carrier has notified passengers at least 2 weeks before departure
 - b) Carrier has notified passengers less than 2 weeks and has offered them re-routing under conditions similar to the initial flight (regarding departure and arrival times, as defined in the Regulation)
- 2) Cancellation due to “extraordinary circumstances, which could not have been avoided even if all reasonable measures had been taken”



Examples of “extraordinary circumstances”

- political instability,
- adverse weather
- security risks,
- labour or ATC strikes
- bird strikes
- (aircraft safety problems) - only in extreme cases

CAUTION: “extraordinary circumstances under EU 261 ≠
“all reasonable measures” under MC99



LONG DELAY

Delay = Delay of departure

- 1) For flights up to 1.500km -> more than 2h
- 2) For flights between 1.500km and 3.500 or
intra-EU flights exceeding 1.500 km -> more than 3h
- 3) For all other flights -> more than 4h



Passenger rights in case of long delay

- 1) Reimbursement and as per Art. 8, if delay exceeds 5h
- 2) Right to care as per Art. 9
- 3) Compensation as per Art. 7, if delay to the final destination exceeds 3h,
Sturgeon judgments of the Court of Justice of the EU
(C-402 & 432/07, C-581/10 & 620/10)



RIGHT TO COMPENSATION

- 250 € for all flights up to 1.500 km·
- 400 € for inter-EU flights exceeding 1.500km +
for all other flights between 1.500 και 3.500 km·
- 600 € for the rest of the flight

If alternative flight is offered, which is similar to the original flight (reg. departure and arrival time, as defined in the Regulation), then 50% reduced compensation.

Distance is calculated with reference to the final destination as indicated on the ticket.



Compatibility with MC99?

- Art. 29 MC99: Exclusive basis of claims
- Court of Justice of the EU (C-344/04 *IATA, ELPAA*):
 - MC99 regulates individual damages regarding delay in arrival.
 - EU261 regulates damages identical to all passengers regarding delay in departure.
 - Complementarity of the two pieces of legislation.



RIGHT TO REIMBURSEMENT OR RE-ROUTING

Passengers are offered the choice between

- a) Reimbursement, within 7 days of the full cost of the ticket for the parts of the journey not made and for the parts already made if they serve no purpose for the passenger + Return flight to first point of departure at the earliest opportunity, OR
- b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; OR
- c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.



RIGHT TO CARE

Passengers should be offered free of charge:

- (a) meals and refreshments in a reasonable relation to the waiting time;
- (b) hotel accommodation, where a stay of one or more nights becomes necessary, or where a stay additional to that intended by the passenger becomes necessary;
- (c) transport between the airport and place of accommodation (hotel or other).
- (d) free of charge two telephone calls, telex or fax messages, or e-mails.

➤ For how long should care be provided?

CJEU C-12/11 *McDonagh* (volcano eruption): For as long as the disruption goes on.



UPGRADING AND DOWNGRADING

- If upgrading in relation to the ticket booked, no extra cost for passenger
- If downgrading, then reimbursement within 7 days, then reimbursement
 - (a) 30 % of the price of the ticket for all flights of 1500 kilometres or less, or
 - (b) 50 % of the price of the ticket for all intra-EU flights of more than 1500 km, and for all other flights between 1500 and 3500 km, or
 - (c) 75 % of the price of the ticket for all other flights.



DUTY OF CARRIERS TO INFORM

- Notice at the check-in counter that if the flight is disrupted, passengers should inquire for their rights in writing.
- Written notice to each passenger for his/her rights in case of flight disruption + contact data of the competent national enforcement body.
- No exclusion clauses in the contract allowed.



DUTIES OF EU MEMBER STATES

- Designation of national enforcement bodies (NEBs)
- Sanctions for infringements.



EU261: PRACTICAL EXPERIENCE (I)

- Significant relief for passengers.
- Airline cost lower than expected.
- Many disputed provisions - Compatibility problems with MC99
- Extreme passenger-friendly interpretation by CJEU and national courts.



EU261: PRACTICAL EXPERIENCE (II)

- Often practical problems in implementation, especially in regional airports.
- Channeling of liability for many disruptions to airlines.
- Use of EU261 also in labour disputes.
- Airlines highly unsatisfied and reluctant to fully comply.
- Review of the Regulation ongoing, but frozen, due to political disagreement among EU MS.



EASA
European Aviation Safety Agency



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Thank you for your attention!

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