



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.



Thank you for your attention!

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