

# Flight Delay Compensation Regulation

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The **Flight Delay Compensation Regulation** (EC) No 261/2004 ([http://eur-lex.europa.eu/resource.html?uri=cellar:439cd3a7-fd3c-4da7-8bf4-b0f60600c1d6.0004.02/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:439cd3a7-fd3c-4da7-8bf4-b0f60600c1d6.0004.02/DOC_1&format=PDF)) is a regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding, flight cancellations, or long delays of flights. It repealed Regulation (EEC) No 295/91, and went into effect on 17 February 2005. It sets out the entitlements of air passengers when a flight that they intend to travel on is delayed or cancelled, or when they are denied boarding to such a flight due to overbooking, or when the airline is unable to accommodate them in the class they had booked.

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## Regulation (EC) No 261/2004

	<b>European Union regulation</b>
<b>Title</b>	Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights
<b>Made by</b>	European Parliament and Council of the European Union
<b>Made under</b>	Art. 79(2) TEC
<b>Journal reference</b>	L46, pp. 1–7 ( <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:046:0001:0007:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:046:0001:0007:EN:PDF</a> )
	<b>History</b>
<b>Date made</b>	11 February 2004
<b>Came into force</b>	17 February 2005
	<b>Preparative texts</b>
<b>Reports</b>	
	<b>Other legislation</b>
<b>Replaces</b>	Regulation (EEC) No 295/91
<b>Amended by</b>	—

## Applicability

The regulation applies to any passenger:

- departing from an airport located in the territory of a Member State to which the Treaty applies;

The protection accorded to passengers departing from or to an airport located in a Member State should be extended to those leaving an airport located in a third country for one situated in a Member State, when a Community carrier operates the flight and where a community carrier is defined as any carrier licensed to operate within that community.

- departing from an EU member state, or
- travelling to an EU member state on an airline based in an EU member state

if that person has:

- a confirmed reservation on the flight, and
- arrived in time for check-in as indicated on the ticket or communication from the airline, or, if no time is so indicated, no less than 45 minutes prior to the scheduled departure time of the flight

or

- have been transferred from the flight for which he/she held a reservation to some other flight

unless

- the passenger is travelling on a free or discounted ticket not available to the general public, other than a ticket obtained from a frequent flyer programme.

It does not apply to helicopter flights, to any flight not operated by a fixed-wing aircraft, nor to flights from Gibraltar Airport.<sup>[1]</sup> While Switzerland is not a Member State of the EU, the regulation does apply to it under bilateral agreements.<sup>[2]</sup>

## Denied boarding

Before denying passengers boarding involuntarily, the airline is required to first seek volunteers to give up their reservation in return for whatever benefit is negotiated between the airline and the volunteers. Irrespective of such negotiation, such volunteers are also entitled to reimbursement or rerouting as described below.

If insufficient volunteers are obtained, the airline may then proceed to involuntarily deny passengers the right to board their flight. All passengers so denied must be offered all three types of compensation and assistance described below.

## Cancellation

If a flight is cancelled, passengers are automatically entitled to their choice of (a.) re-routing to the same destination at the earliest opportunity (under comparable conditions); (b.) later rerouting, at the passenger's convenience, to the same destination under comparable conditions (subject to seat availability); or (c.) a refund of the ticket as well as a return flight to the point of first departure, when relevant. Any ticket refund is the price paid for the flight(s) not used, plus the cost of flights already flown in cases where the cancellation has made those flights of no purpose. Where applicable, passengers are also entitled to refreshments, communication and accommodation as described below. Where re-routing is to another airport serving the same destination, the airline must pay for onward transport to the original airport or to a close-by destination agreed with the passenger. These choices, and the entitlement to refreshments, etc., apply to all cancellations, regardless of whether the circumstances are extraordinary or not.

It is unclear whether "the earliest opportunity" requires airlines to endorse a ticket onto another carrier.

The airline is also required to pay cash compensation as described below, unless one of the following conditions applies:

- the airline notifies the passengers at least two weeks prior to departure
- the airline notifies the passengers between one and two weeks prior to departure, and re-routes passengers so that they can:
  - depart no more than two hours earlier than scheduled, and
  - arrive no more than four hours later than scheduled
- the airline notifies the passengers less than one week prior to departure, and re-routes passengers so that they can:
  - depart no more than one hour earlier than scheduled, and
  - arrive no more than two hours later than scheduled
- the cancellation was caused by extraordinary circumstances that could not have been avoided by any reasonable measure.

The airline must also provide an explanation to passengers of alternative transport.

## Delays

If an airline expects a flight to be delayed, passengers are entitled to refreshments and communication if the expected delay is more than:

- two hours, in the case of a type 1 flight
- three hours, in the case of a type 2 flight
- four hours, in the case of a type 3 flight

(see notes for flight types).

Additionally, if the flight is expected to depart on the day after the original scheduled departure time, passengers are entitled to accommodation.

If a flight is delayed by five hours, passengers are additionally entitled to abandon their journey and receive a refund for all unused tickets, a refund on tickets used already if the flight no longer serves any purpose in relation to their original travel plan, and, if relevant, a flight back to their original point of departure at the earliest opportunity.

Finally, court cases (see below) have established that a passenger experiencing a loss of time equivalent to three hours or more at the final destination is entitled to compensation as though his flight had been cancelled.

Your flight delay is based on the scheduled arrival time. This is defined as when the doors are opened on the plane and not when it lands - as some airlines may claim. Bureau of Transport Statistics: On Time Performance ([http://www.transtats.bts.gov/TableInfo.asp?Table\\_ID=236](http://www.transtats.bts.gov/TableInfo.asp?Table_ID=236))

## Compensation and assistance

There are three broad categories of compensation and assistance that may be required in the case of cancellations or denied boarding.

## Cash compensation

Cash compensation is a payment of:

1. €250/400/600 for flights type 1/2/3 (see notes).

Where rerouting is offered and results in the passenger arriving within two/three/four hours of the scheduled arrival time for a type 1/2/3 flight, the compensation payable is halved.

This payment is strictly a compensation for the customer's inconvenience and does not replace or form a part of either of the following two compensation categories.

The Airline is not obliged to provide cash compensation in the case of extraordinary circumstances which could not have been foreseen even if the airline took all reasonable precautions, according to Article 5, Paragraph 3.

## Rerouting or refunding

Rerouting or refunding is, at the passenger's choice, one of the following three compensations:

1. Repayment of the cost of unused flight tickets, and for used tickets where the flight(s) taken no longer serve(s) any purpose in relation to the passenger's original travel plan, and where applicable, a flight back to the original point of departure at the earliest opportunity
2. Rerouting under similar conditions to the intended final destination at the earliest opportunity
3. Rerouting under similar conditions to the intended final destination at the passenger's leisure, subject to the availability of seats.

If a passenger's destination is an airport at a city with multiple airports and rerouting results in the passenger being taken to another of those airports, the airline must also pay for transport for the passenger to the original intended airport or an agreed nearby destination.

## Refreshments, communication and accommodation

When passengers become entitled to these assistances, they must be offered, free of charge,

- Meals and refreshments in proportion to the waiting time
- Two telephone calls, fax or telex messages, or emails
- Hotel accommodation and transport between the airport and the hotel, if a stay of one or more nights, or a stay additional to that intended by the passenger becomes necessary

In the case of a delay, the airline may withdraw or abrogate these entitlements if offering them would delay the flight further.

## Upgrades and downgrades

If a passenger is placed in a higher class than that for which a ticket was purchased, the airline may not request any additional payment.

If a passenger is placed in a lower class than that for which a ticket was purchased, the airline must refund 30/50/75% of the cost of the ticket for type 1/2/3 flights (see notes). For the purpose of this condition, flights to the French overseas departments are not considered to be within the European Union. It is unclear whether the refund relates to the price of the entire ticket, or the segment on which the passenger was downgraded.

## Method of refund

Refunds and compensations payable under this regulation may be paid in cash, by electronic bank transfer, bank draft, or cheque. With the signed agreement of a passenger, they may also be paid in travel vouchers or other services.

## Obligation to notify passengers

Airlines are obliged to display a notice at their check-in counters stating:

*"If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance."*

Additionally, when an airline cancels a flight, denies a person boarding, or incurs a delay exceeding two hours to a flight, it is obliged to provide each passenger affected with a written notice setting out their rights under the regulation, and the contact details of the national body tasked with enforcing the regulation.

## Notes

Flight types are as follows:

1. A flight of less than 1500 km in distance
2. A flight within the EU of greater than 1500 km in distance, or any other flight of greater than 1500 km but less than 3500 km in distance
3. A flight not within EU of greater than 3500 km in distance

with the great circle method being used to determine distance.

## Court cases regarding Regulation 261/2004

In the case *Wallentin-Hermann v Alitalia—Linee Aeree Italiane SpA* (Case C-549/07) of 22 December 2008,<sup>[3]</sup> the European Court of Justice in Luxembourg ruled on the interpretation of Article 5 of the regulation relating to cancellations, specifically paragraph 3 which states:

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 which could not have been avoided even if all reasonable measures had been taken.

The Court agreed with Wallentin-Hermann that any technical issues during aircraft maintenance don't constitute "extraordinary circumstances" that would allow airlines to avoid paying passengers compensation for canceled flights. This case therefore closed the loophole which had allowed the airlines to abuse passengers by frivolous interpretation of "technical or extraordinary circumstances"; it further defined the phrase and limited its exploitation. The definition of "technical and/or extraordinary circumstances" by the Court now stands firm and solid: any carrier must prove that the alleged mechanical problem leading to the cancellation was "beyond its actual control", the court affirmed in a statement. In its judgment, the Fourth Chamber of the Court of Justice held:

Extraordinary circumstances" was not defined in the 2004 Regulation, but the phrase was to be interpreted narrowly since article 5(3) constituted a derogation from the principle, indicated in recitals 1 and 2 of the preamble, of protection of consumers, in as much as cancellation of flights caused serious inconvenience to passengers.

However, what actually lies within the concept of defining what is inside or outside of the "actual control of the air carrier" is not clear and is subject to litigation in many EU-states.

Furthermore, in the joined cases of *Sturgeon v Condor*, and *Bock v Air France* (C-402/07 and C-432/07),<sup>[4]</sup> the Fourth Chamber of the European Court of Justice held on 19 November 2009 that despite no express provision in the Regulation to compensate passengers for delay, passengers are now entitled to the compensation as set out in Article 7 for any delay in excess of three hours providing the air carrier cannot raise a defence of "extraordinary circumstances".

"Articles 5, 6 and 7 of Regulation EC 261/2004 must be interpreted as meaning that passengers whose flights are delayed may be treated, for the purposes of the application of the right to compensation, as passengers whose flights are cancelled and they may thus rely on the right to compensation laid down in Article 7 of the regulation where they suffer, on account of a flight delay, a loss of time equal to or in excess of three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier."<sup>[5]</sup>

The fourth Chamber also ruled that under the definition of "extraordinary circumstances", technical faults within an aircraft should not be included and therefore an air carrier cannot rely on a technical fault within an aircraft as a defence from a valid claim under the Regulation, "unless that problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control".<sup>[6]</sup> Various passenger rights groups reported the case and encouraged passengers to bring claims against airlines in the event of a delay of over three hours.<sup>[7]</sup>

The Sturgeon ruling was reconfirmed in a ruling of the European Court of Justice on 23 October 2012 in *Nelson v Deutsche Lufthansa AG* and *R (TUI Travel, British Airways, easyjet and IATA) v Civil Aviation Authority*.<sup>[8]</sup>

In the case of *Denise McDonagh v Ryanair Ltd* (C-12/11), the Third Chamber of the European Court of Justice ruled that natural disasters such as the eruption of the Icelandic volcano Eyjafjallajökull and the subsequent cloud of volcanic ash in 2010, which shut down most European air traffic, do constitute "extraordinary circumstances" that release air carriers from the obligation to pay compensation, but that there is no such category as "super-extraordinary circumstances" that would release them from the obligation to provide care. According to the court's ruling, air carriers continued to have an obligation of care towards passengers under Art. 5 and 8 of the regulation during the week-long shutdown of European airspace, and this obligation does not have a temporal or monetary limit.<sup>[9]</sup>

In the case of *Jet2 vs. Huzar*, the English Court of Appeal ruled on 11 June 2014 that "ordinary technical problems that cause flight disruption, such as component failure and general wear and tear, should not be considered "extraordinary circumstances"". <sup>[10]</sup> Therefore, general technical faults found during routine maintenance checks before departure will generally not be considered "extraordinary circumstances". Jet2 subsequently confirmed it planned on seeking permission to appeal to the Supreme Court.<sup>[11]</sup>

On 4 September 2014, in the case of *Germanwings GmbH v. Ronny Henning* (C-452/13),<sup>[12]</sup> the Ninth Chamber of the European Court of Justice ruled that

the concept of ‘arrival time’, which is used to determine the length of the delay to which passengers on a flight have been subject, refers to the time at which at least one of the doors of the aircraft is opened, the assumption being that, at that moment, the passengers are permitted to leave the aircraft.

Germanwings initially refused to pay the passenger compensation, arguing the delay was 2 hours and 58 minutes when the plane touched the ground.<sup>[13]</sup>

In September 2015, the Court of Justice of the European Union judged, regarding Case C-257/14.<sup>[14]</sup>

Even in the event of a flight cancellation on account of unforeseen technical problems, air carriers are required to compensate passengers.

However, certain technical problems resulting, in particular, from hidden manufacturing defects affecting the safety of flights or acts of sabotage or terrorism may exempt air carriers from their obligation to pay compensation.

## Intermediaries

The general difficulties claiming from airlines directly has led to the rise of online intermediaries. All operate on a "no-win, no fee" contingency fee. All help file claims against airlines, including going to court if necessary.<sup>[15][16]</sup>

In response, airlines have repeatedly criticized such intermediaries for forcing more costs on the airline industry, which then passes extra costs on to passengers in the form of increased ticket prices. For example, in response to the added pressure caused by the increase in EU 261 claims in recent years, in 2011 Ryanair put in place a €2.00 surcharge per ticket to compensate for its additional costs.<sup>[17]</sup> In 2013 it then increased this levy to €2.50.<sup>[18]</sup>

## Future developments

The European Commission has proposed a number of revisions to the regulation:<sup>[19]</sup>

- Airlines will be obliged to inform passengers about flight delays within 30 minutes after the scheduled departure time
- The definition of "extraordinary circumstances" will be further clarified to include natural disasters or air traffic control strikes, and to exclude technical problems identified during routine maintenance
- With respect to compensation for long delays, which was never explicitly stated in the original regulation but added by the European Court of Justice, a threshold of five hours for type 1 and 2 flights, 9 hours for type 3 flights up to 6,000 km, and 12 hours for longer flights will be established.
- The right to refreshments and communication will become applicable after two hours irrespective of the length of flight.
- An explicit right to refreshments, communication, accommodation, and assistance will be added for circumstances where passengers experience a delay at their final destinations due to the late arrival of connecting flights.
- Airlines will be required to reroute passengers on another carrier if they cannot accommodate them themselves within 12 hours after the scheduled departure time.
- Airlines will be obliged to give passengers access to toilets, drinking water, air conditioning, and medical assistance after a tarmac delay of one hour or more and refreshments after two hours, and to permit passengers to disembark after a tarmac delay of five hours or more.
- Rescheduling of a flight within two weeks before its departure time will give rise to the same rights as a cancellation.
- Passengers will be entitled to corrections of misspelt names free of charge except within 48 hours of departure.
- Airlines will be prohibited from cancelling the return leg of a ticket for reason only that a passenger has failed to use the outbound leg.
- Airlines will be required to give passengers full compensation for mobility equipment lost or damaged during a flight, provided its value was declared at check-in. No charge may be applied for this.
- Forms must be provided at the airport to customers wishing to submit complaints, and these must be accepted as valid claims under the regulation.
- Airlines will be required to accept small musical instruments as cabin baggage and publish the conditions under which they will accept larger instruments.
- Airlines will be obliged to inform passengers of cabin and checked baggage limitations clearly at the time of booking and at airports.
- Airlines will not be required to pay for accommodation of passengers for more than three nights in the event of major disruptions out of their control causing delays or cancellations, except for passengers with reduced mobility, passengers accompanying them, unaccompanied minors, pregnant women, and passengers with specific medical needs. Other than for these types of passengers, delays and cancellations on flights less than 250 km and on aircraft with fewer than 80 seats will no longer give rise to a right to accommodation.
- Airlines and airports will be required to prepare contingency plans for dealing with passengers stranded in large-scale disruptions.

## See also

- Montreal Convention for the Unification of Certain Rules for International Carriage
- Rule 240, the equivalent in the United States

## References

- REGULATION (EC) No 261/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL o- Article 3 - 4. February 2010
- Article 7 of DECISION No 1/2015 OF THE JOINT EUROPEAN UNION/SWITZERLAND AIR TRANSPORT COMMITTEE SET UP UNDER THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION ON AIR TRANSPORT of 20 August 2015 ([http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2015.226.01.0012.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.226.01.0012.01.ENG))
- Judgment (<http://curia.europa.eu/en/actu/communiqués/cp08/aff/cp080100en.pdf>) in Case Wallentin-Hermann v Alitalia—Linee Aeree Italiane SpA (Case C-549/07), December 22, 2008.
- Sturgeon v Condor, and Bock v Air France (C-402/07 and C-432/07) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0402:EN:HTML>)
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- "Ryanair to increase EU261 compensation levy to €2.50 following EU Court Ruling". *Aviator.aero*. 2013-02-11. Retrieved 2014-07-07.
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## External links

- Regulation 261/2004 ([http://eur-lex.europa.eu/resource.html?uri=cellar:439cd3a7-fd3c-4da7-8bf4-b0f60600c1d6.0004.02/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:439cd3a7-fd3c-4da7-8bf4-b0f60600c1d6.0004.02/DOC_1&format=PDF)) pdf format.
- Full text of EC Regulation 261/2004 (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004R0261>) (in various languages of the EU)
- www.airpassengerrights.eu (<http://www.airpassengerrights.eu>), a multilingual consumer website explaining the rights of air passengers in the European Union.
- MONTREAL CONVENTION 1999 (<http://www.icao.int/icao/en/leb/mtl99.pdf>)
- Passengers v Airlines Regulation (EC) 261/2004 - Addleshaw Goddard ([http://www.addleshawgoddard.com/view.asp?content\\_id=2320&parent\\_id=2317](http://www.addleshawgoddard.com/view.asp?content_id=2320&parent_id=2317))
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- Guidance produced by National Enforcement Bodies on what European regulators consider 'extraordinary circumstances' means (published 22 July 2013) (<http://ec.europa.eu/transport/themes/passengers/air/doc/neb-extraordinary-circumstances-list.pdf>)

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