

REGULATION 261/2004
OF THE EUROPEAN PARLIAMENT
AND
OF THE COUNCIL
OF 11 FEBRUARY 2004

*ESTABLISHING COMMON RULES ON COMPENSATION
AND ASSISTANCE TO PASSENGERS IN THE EVENT OF
DENIED BOARDING AND OF CANCELLATION OR
LONG DELAY OF FLIGHTS*

Information Document

of Directorate-General for Energy and Transport

Answers to Questions on the application of Regulation 261/2004

**This document does not constitute any kind of formal commitment
on the part of the European Commission.**

17 February 2008

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For the avoidance of doubt, IATA, AEA, ELFAA, ERA and IACA wish to state that this document does not necessarily reflect their views and that their participation at the meetings where this document was developed was undertaken without prejudice to the subsequent rights of their member airlines in the context of court proceedings. It is their view that each incident should be assessed on a case by case basis.¹

Introduction

There is a presumption in the answers given below, that evaluation of an incident by a National Enforcement Body (NEB) will be undertaken on a case by case basis adopting in its assessment a test of whether the action of a passenger, or an airline, may be considered reasonable in the circumstances.

References to the "Regulation" mean Regulation (EC)261/2004 unless otherwise stated.

I. SUBJECT OF THE REGULATION AND DEFINITIONS

Article 1: Subject

1. This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:

- (a) they are denied boarding against their will;
- (b) their flight is cancelled;
- (c) their flight is delayed.

2. Application of this Regulation to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

3. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 2 Definitions

For the purposes of this Regulation:

- (a) "air carrier" means an air transport undertaking with a valid operating licence;
- (b) "operating air carrier" means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;
- (c) "Community carrier" means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers(5);
- (d) "tour operator" means, with the exception of an air carrier, an organiser within the meaning of Article 2, point 2, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours(6);
- (e) "package" means those services defined in Article 2, point 1, of Directive 90/314/EEC;
- (f) "ticket" means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or its authorised agent;

¹ IATA (International Air Transport Association), AEA (Association of European Airlines), ELFAA (European Low Fares Airline Association), ERA (European Regions Airline Association), IACA (International Air Carrier Association)

(g) "reservation" means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator;

(h) "final destination" means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight; alternative connecting flights available shall not be taken into account if the original planned arrival time is respected;

(i) "person with reduced mobility" means any person whose mobility is reduced when using transport because of any physical disability (sensory or locomotory, permanent or temporary), intellectual impairment, age or any other cause of disability, and whose situation needs special attention and adaptation to the person's needs of the services made available to all passengers;

(j) "denied boarding" means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;

(k) "volunteer" means a person who has presented himself for boarding under the conditions laid down in Article 3(2) and responds positively to the air carrier's call for passengers prepared to surrender their reservation in exchange for benefits;

(l) "cancellation" means the non-operation of a flight which was previously planned and on which at least one place was reserved.

Question 1: What criteria determine that a flight can actually be considered as cancelled?^{2 3}

A flight may generally be considered as cancelled when the flight number changes for the same route for which the passenger has a contract on a specific day and time schedule.

A flight may experience such a long delay that it departs the day after it was scheduled and may therefore be given an annotated flight number (e.g. XX 1234a instead of XX 1234) to distinguish it from the flight of the same number on that subsequent day.

[However, in this case, it could still be considered as a delayed flight and not a cancellation provided the delayed flight departs before the next flight on that subsequent day, where there is a scheduled flight that day. In their assessment of a particular case, NEB may determine a maximum delay value which could take into account frequency of flights and distance from destination]⁴.

II. SCOPE OF THE REGULATION

Article 3: Scope

1. This Regulation shall apply:

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

(b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.

2. Paragraph 1 shall apply on the condition that passengers:

(a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,

- as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,

or, if no time is indicated,

² Under Article 1(1)(c) and Article 2(l).

³ ECJ Cases C-402/07 and C-432/07 ongoing – awaiting final judgements

⁴ Airlines are of the opinion that Article 6. 1. c. (ii) ('when the reasonably expected time of departure is at least the day after the time of departure ...') clearly indicates that the Regulation implicitly contemplates the notion that a delay may last longer than 24 hours.

- not later than 45 minutes before the published departure time; or

(b) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.

3. This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an air carrier or tour operator.

4. This Regulation shall only apply to passengers transported by motorised fixed wing aircraft.

5. This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.

6. This Regulation shall not affect the rights of passengers under Directive 90/314/EEC. This Regulation shall not apply in cases where a package tour is cancelled for reasons other than cancellation of the flight.

Question 2: Are overseas countries and territories to which the provisions of part IV of the EC Treaty apply and which are mentioned in Annex II thereto⁵ supposed to be treated as third countries for the application of the Regulation?

Yes. Article 80 of the EC Treaty, and consequently any regulations based on that provision, do not apply to the countries and territories mentioned in Annex II of the EC Treaty. Instead, those countries and territories are subject to the special association arrangements laid down in accordance with Part IV of the EC Treaty.

On the other hand, under Article 299(2) of the EC Treaty, the provisions of the Treaty do apply to overseas departments, namely Guadeloupe, French Guyana, Martinique, Reunion Island, the Azores, Madeira and the Canary Islands.

Question 3: Do passengers flying to the EU from a third country who have already received compensation and/or assistance at the point of departure lose their rights under the provision of the Regulation?⁶

The Regulation does not apply to non-EU air carriers' flights into the EU.

The Regulation applies to operating air carriers licensed in a Member State of the EU (Community carrier) flying from outside the EU into the EU and to passengers (including non-EU citizens) using such flights.

However, these passengers are not entitled to the provisions of the Regulation where benefits or compensation and assistance are given on the basis of local regulations in non-EU countries.⁷ The legislation of the third country always needs to be respected.

If such local legislation does not exist in a third (non-EU) country, the Regulation will apply in full.

⁵ Namely Greenland, New Caledonia and Dependencies, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, Mayotte, Saint Pierre and Miquelon, Aruba, Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten), Anguilla, Cayman Islands, Falkland Islands, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, Saint Helena and Dependencies, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands, Bermuda.

⁶ Under Article 3(1)(a) and (b). See also Article 3(5).

⁷ Airlines are of the opinion that Article 3(1)(b) does not require that benefits received in a third country be based on local legislation or regulation.

Question 4: Does the Regulation apply to an incident at a connecting point on the territory of a third country, for a journey which started on the territory of the EU and whose next ticketed point is a third country?

No, such incident takes place on the territory of a third country for a flight not to a point of destination in the EU. The Regulation does not apply.

Question 5: Does the Regulation apply to all types of flights on all air carriers?⁸

No. the Regulation does not apply to passengers travelling by helicopter or on a chartered private aircraft.

III. DENIED BOARDING

Article 4: Denied boarding

1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.
2. If an insufficient number of volunteers come forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.
3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.

Question 6: Can passengers who have been refused boarding because of inadequate or missing documents relating to their identity be granted compensation?^{9 10}

No. A case of denied boarding under the terms of the Regulation would not exist where an airline has reasonable grounds to refuse boarding to passengers, such as for reasons of health, safety or security, or due to inadequate travel documentation¹¹. The Regulation would not apply in such cases.

However, passengers are occasionally denied boarding due to errors by ground staff in checking their travel documents. Whilst such incidents will undoubtedly be an honest mistake, a passenger with valid documentation would be denied boarding and therefore be entitled to the provisions of the Regulation.

Question 7: On connecting flights, passengers often present themselves with already confirmed seat numbers received at first check-in. Where such passengers arrive later than scheduled for their connection, airline companies sometimes give those seats to stand-by passengers on a waiting list. Can such a situation be considered as a denied boarding incident?¹²

The Regulation applies to passengers that have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves

⁸ Articles 3.3, 3.4 and 2(a-c)

⁹ See also Articles 3.2 and 3.3.

¹⁰ Airlines are of the opinion that the Regulation does not apply if the airline has reasonable grounds to refuse boarding (even in case of errors by ground staff). The wording "reasonable grounds" allows a margin for personal judgment on the part of ground staff and thus for an honest mistake.

¹¹ Provided by Article 2(j).

¹² See also Articles 3(2)(a) and 3(3).

on time for check-in. When passengers have been through-checked, they have an obligation to arrive at the gate on time for boarding. This applies to both departing and connecting passengers.

However, if a connecting passenger holds a boarding card and is able to present himself for boarding at the time indicated at the gate and is refused boarding, this needs to be considered as a case of denied boarding.

Question 8: What kind of benefits should be offered to volunteers who surrendered their reserved seats? ¹³

The Regulation does not stipulate the nature of these benefits, except that they must be agreed between the passenger concerned and the operating air carrier, and cannot replace the assistance mentioned in Article 8. Such assistance is additional to these benefits.

Volunteers should be provided with full information in writing (Article 14) before they are given a choice¹⁴.

IV. CANCELLATION

Article 5: Cancellation

1. In case of cancellation of a flight, the passengers concerned shall:

(a) be offered assistance by the operating air carrier in accordance with Article 8; and

(b) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c); and

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:

(i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

(ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

(iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

2. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

3. 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.

4. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.

Question 9: What amount of compensation is applicable if a connecting flight is cancelled? ¹⁵

The compensation depends on the distance of the cancelled flight, calculated from the point at which the cancellation occurred to the destination at which the cancellation will delay the

¹³ See Article 4(1).

¹⁴ Airlines are of the opinion that Article 14(2) does not apply to volunteers. Article 14(2) refers to an actual case of denied boarding whereas the call for volunteers occurs before this and takes place in situations where a carrier only reasonably *expects* to deny boarding, as per Article 4(1).

¹⁵ Article 5(1)(c).

passenger's arrival. The interruption of a flight at an intermediate point cannot be considered as a cancellation.

[Exception could arise if the two parts of a journey with an intermediate point can clearly be deemed a single "flight" (e.g. when passengers do not change aircraft). In such a case, the carrier should compensate for the total distance rather than for the distance between the intermediate point and the final destination¹⁶].

Question 10: When a return flight is cancelled before departure of the outbound flight, what is to be reimbursed to a passenger who decides not to travel?

If the passenger decides not to travel, he/she can claim reimbursement of the whole ticket.

Question 11: What assessment criteria are used for accepting extraordinary circumstances?¹⁸

Article 5(3) must be interpreted in the light of Recitals 14 and 15 of the Regulation. The Montreal Convention, which uses a similar concept, can also provide some guidance for assessment.

The consequences to aircraft operations of weather conditions and technical deficiencies must be taken into account, since safety and security are overriding objectives that must be guaranteed. The burden of proof concerning a cancellation and whether it is caused by extraordinary circumstances rests with the operating air carrier.

Question 12: What procedure should a National Enforcement Body follow in order to decide whether extraordinary circumstances occurred or not?¹⁹

According to Article 5(3), air carriers carry the burden of proof. If information provided by airlines is of a coherent and detailed character, NEB are left with a margin of flexibility and are free to apply a system of random checks. Such acceptance of proof respects the principle of proportionality. If however, information is only provided in a generalised manner not allowing NEB to draw sound judgements, incidents have to be followed up by requesting for example, as matter of proof, logbooks, incident reports, maintenance manuals etc. Air carriers will notify contact-points to NEB for internal communication.

Question 13: How should an NEB assess a justification by airlines stating that meteorological conditions are 'incompatible with the operation of the flight'?

Weather conditions are by their nature unpredictable and it is not therefore possible to create an exhaustive list of the circumstances that may lead to weather related disruption. In evaluating an incident, an NEB has to bear in mind that the safety of flight operations has to be the overarching priority and should therefore consider each incident on its own merits. A NEB should adopt the test of whether the actions of an airline were "reasonable" in the circumstances based on the information available to the airline at the time of the disruption.

¹⁶ See also the Judgement of Hamburg's Amtgericht of 28 February 2006, which decided that an incident in Paris for a Lisbon-Paris-Hamburg journey opened the right to compensation on the whole journey, because one single boarding card had been emitted.

¹⁸ Article 5.3

¹⁹ Article 5.3

Question 14: Can a strike be considered as an extraordinary circumstance?

Yes, under certain conditions. Recital 14 of the Regulation states that strikes can constitute extraordinary circumstances. A case-by-case assessment will remain crucial taking into account all relevant jurisprudence and legislation in force in the country of the incident.

Question 15: Can denied boarding caused by a shift to a smaller aircraft be considered as an extraordinary circumstance?

No, since the Regulation does not provide for extraordinary circumstance in the case of denied boarding.

V. DELAY

Article 6: Delay

1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:
 - (a) for two hours or more in the case of flights of 1500 kilometres or less; or
 - (b) for three hours or more in the case of all intra-Community flights of more than 1500 kilometres and of all other flights between 1500 and 3500 kilometres; or
 - (c) for four hours or more in the case of all flights not falling under (a) or (b), passengers shall be offered by the operating air carrier:
 - (i) the assistance specified in Article 9(1)(a) and 9(2); and
 - (ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and
 - (iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).
2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.

Question 16: When is an airline deemed reasonably to expect that a flight will be delayed beyond its scheduled time of departure, and therefore be deemed to take the necessary action? ²⁰

The key phrase here is “reasonably expects”. The operating airline must start to arrange assistance as soon as it receives information that leads it to reasonably expect that the actual flight will be delayed for at least two, three or four hours (depending on the length of the flight).

Question 17: What are the rights of the passenger if she/he chooses not to continue his/her journey because of a delay of at least five hours? ²¹

If the passenger chooses not to continue his/her travel, he/she will ask the airline to cancel his/her reservation. He or she would then be entitled to a refund, within 7 days, of the cost of the parts of the journey not made.

²⁰ Article 6(1).

²¹ Article 6(1)(c)(iii).

The obligation of an air carrier stops when the reservation is cancelled resulting in the passenger no longer being entitled to assistance

If the delay occurs at a connecting point, and if the flight no longer serves any purpose, then the passenger is also entitled to a free flight back to the first point of departure.

If the delay occurs before the start of the outbound or return leg, then there is no first point of departure to return to and therefore no entitlement to a return flight.

For example on a London-Amsterdam-Sydney return flight:

Outbound:

- If the delay occurs in London – refund only, no additional flight appropriate.
- If the delay occurs in Amsterdam – refund plus flight back to London.

Return:

- If the delay occurs in Sydney – refund for the parts of the return journey not made, no additional flight appropriate
- If the delay occurs in Amsterdam – a refund for the part of the return journey not made.

When the flight is part of a 'package holiday', the passenger is only entitled to reimbursement of flight element of that package in the framework of this Regulation.

Question 18: Where, in the case of an interline ticket, a delay occurred on the last leg, who should be responsible for potential reimbursement?

If the passenger chooses not to continue his/her journey because of a delay of at least five hours, he/she would then be entitled to a refund, within 7 days, for the part or parts of the journey not made from the airline whose flight was delayed.

Similarly, in the case of an interline ticket where a delay in departure occurred on the preceding leg, that preceding airline should be responsible for potential reimbursement.

In either case when the flight is part of a 'package holiday', the passenger is only entitled to reimbursement of flight element of that package.

Question 19: Do airlines have compensation obligations in the case of long delays?

No. However, if a flight is expected to be delayed by more than two, three or four hours, as applicable, the passengers concerned are entitled to receive information on their rights and proper assistance (meals, refreshments, communication facilities and, if appropriate, hotel accommodation).

However, without prejudice to compensation possibilities on the basis of national civil law, no financial compensation is to be paid for delays under the Regulation.

With regard to a possible refund of tickets (which is different from compensation), the Regulation provides for this kind of reimbursement where stranded passengers do not wish to continue their journey at a delay for more than five hours and are entitled, under the Regulation, to cancel their flight on their own initiative and to claim a refund on tickets not used. When expecting such a long delay, the airline has to propose this option to the passengers concerned.

VI. COMPENSATION

Article 7: Right to compensation

1. Where reference is made to this Article, passengers shall receive compensation amounting to:

- (a) EUR 250 for all flights of 1500 kilometres or less;
- (b) EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres;
- (c) EUR 600 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

- (a) by two hours, in respect of all flights of 1500 kilometres or less; or
- (b) by three hours, in respect of all intra-Community flights of more than 1500 kilometres and for all other flights between 1500 and 3500 kilometres; or
- (c) by four hours, in respect of all flights not falling under (a) or (b),

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50 %.

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.

Question 20: What technique is used to measure distances by the great circle route method?²²

The following website might be of interest: <http://www.airportcitycodes.com/calcfom.aspx>.

Airport codes should be used, rather than city codes for those cities that have more than one airport e.g. for London Gatwick use LGW rather than LON.

VII. REIMBURSEMENT OR RE-ROUTING

Article 8: Right to reimbursement or re-routing

1. Where reference is made to this Article, passengers shall be offered the choice between:

- (a) - reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity;
- (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.

2. Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC.

3. When, in the case where a town, city or region is served by several airports, an operating air carrier offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.

²² Article 7(3).

Question 21: Does the flight, in cases of re-routing, have to be performed by the original operating carrier?²³

No. This flight does not necessarily need to be operated by the airline the passenger booked with.

Question 22: Is re-routing to be made exclusively by air transport?²⁴

No. Re-routing alternatives can be proposed by other means of transport, such as train, taxi or bus, if, the distance to be covered is appropriate for such transport modes.

Question 23: What about the obligation of assistance when the passenger chooses to travel at a later date?²⁵

If a passenger chooses to travel at a later date, rather than at the earliest opportunity, the airline's obligation to provide further assistance ceases at that point. The obligation of an air carrier stops when the reservation is cancelled resulting in the passenger no longer being entitled to assistance

Question 24: What happens in practical terms when an operating air carrier offers a passenger a flight to an alternative airport to the one for which the booking was made?²⁶

In such a case, the operating air carrier has to bear the costs of transferring the passenger from the alternative airport to either the one for which the booking was made, or to another close-by destination agreed with the passenger.

VIII. CARE

Article 9: Right to care

1. Where reference is made to this Article, passengers shall be offered free of charge:

(a) meals and refreshments in a reasonable relation to the waiting time;

(b) hotel accommodation in cases

- 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).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.

3. In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.

²³ Article 8(1) (b) and (c).

²⁴ Article 8(1) (b) and (c).

²⁵ Article 8(1) (b) and (c).

²⁶ Article 8(3).

Question 25: What is the responsibility of the operating carrier if no lodging facilities exist around the airport? Would the airline be obliged to transport passengers to the closest hotels?²⁷

When Article 9 applies, carriers are obliged to provide the assistance stipulated. However, as the case may be, NEB should consider the practicalities faced by airlines - for example the distance to the closest available hotels combined with the time the following day of the delayed or replacement flight. The replacement flight might be early the next morning and available hotels so far away that it would not be practical to transport passengers to and from the airport.

Question 26: What is the responsibility of an airline if no catering facilities exist in or around the airport?

When Article 9 applies, carriers are obliged to provide the assistance stipulated. If no catering facilities exist in or around the airport, the airline would have to organise a minimum service. However, NEB should consider the practicalities faced by airlines given the circumstances at the particular airport.

In this respect, NEB should take into account the “reasonableness” test for Article 9, which is Recital 18 of the Regulation: “Care for passengers awaiting an alternative or a delayed flight may be limited or declined if the provision of the care would itself cause further delay”.

IX. UPGRADING AND DOWNGRADING

Article 10: Upgrading and downgrading

1. If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplementary payment.
2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse
 - (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-Community flights of more than 1500 kilometres, except flights between the European territory of the Member States and the French overseas departments, and for all other flights between 1500 and 3500 kilometres, or
 - (c) 75 % of the price of the ticket for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French overseas departments.

Question 27: Where an air journey contains several legs, which part is to be reimbursed in case of downgrading?²⁸

If an air carrier or tour operator places a passenger in a class lower than that for which reservations were confirmed, it shall reimburse 30%, 50% or 75%, as applicable, of the published fare in the class reserved, for that flight sector.²⁹

²⁷ Article 9(1)(b).

²⁸ Article 10(2).

²⁹ NEB are of the opinion that reimbursement will be made in relation to the ticket, not just the flight sector, which the passenger was travelling on when the downgrade occurred.

X. PERSONS WITH REDUCED MOBILITY OR SPECIAL NEEDS

Article 11: Persons with reduced mobility or special needs

1. Operating air carriers shall give priority to carrying persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied children.
2. In cases of denied boarding, cancellation and delays of any length, persons with reduced mobility and any persons accompanying them, as well as unaccompanied children, shall have the right to care in accordance with Article 9 as soon as possible.

XI. FURTHER COMPENSATION

Article 12: Further compensation

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.
2. Without prejudice to relevant principles and rules of national law, including case-law, paragraph 1 shall not apply to passengers who have voluntarily surrendered a reservation under Article 4(1).

XII. RIGHT OF REDRESS

Article 13: Right of redress

In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.

Question 28: Who can be held liable for failure to honour the obligations provided for in the Regulation?

Since the passenger is transported by the operating carrier, this carrier is responsible for complying with the provisions of the Regulation. This is without prejudice to the right of the operating carrier to seek recovery of the expenses made for the provision of information, assistance and compensation from the third party responsible for the flight disruptions under the applicable provisions of national law on contractual or extra-contractual liability.

XIII. OBLIGATION TO INFORM PASSENGERS OF THEIR RIGHTS

Article 14: Obligation to inform passengers of their rights

1. The operating air carrier shall ensure that at check-in a clearly legible notice containing the following text is displayed in a manner clearly visible to passengers: "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".
2. An operating air carrier denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with this Regulation. It shall also provide each passenger affected by a delay of at least two hours with an equivalent notice. The contact details of the national designated body referred to in Article 16 shall also be given to the passenger in written form.
3. In respect of blind and visually impaired persons, the provisions of this Article shall be applied using appropriate alternative means.

Question 29: What is the extent of the information obligation provided for in the Regulation?³¹

Article 14 of the Regulation places a clear twofold obligation on carriers:

1. To ensure that an information notice is displayed at check in (Article 14.1). Whilst a generic information notice can be provided for carriers by either the airport authority or a common ground handler, the obligation to ensure that such a notice is displayed remains with the carriers;
2. If disruption occurs that would be covered by the terms of the Regulation, to ensure that a passenger is provided with an appropriate notice setting out their rights under the Regulation (Article 14.2).

Of course, flight disruptions may happen unexpectedly and each particular situation shall be assessed on a case-by-case basis.

XIV. EXCLUSION OF WAIVER

Article 15: Exclusion of waiver

1. Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.
2. If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.

Question 30: Can obligations vis-à-vis passengers pursuant to the Regulation be limited or waived, notably by a derogation or restrictive clause in the contract of carriage?³²

No. Irrespective of what a carrier's Conditions of Carriage may say in relation to the provision of assistance or compensation, Article 15 of the Regulation expressly states that a carrier cannot limit or waive their passenger obligations by the use of such conditions. Such conditions cannot therefore take precedence over the legal requirements of the Regulation.

XV. INFRINGEMENTS

Article 16: Infringements

1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.
2. Without prejudice to Article 12, each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.
3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.

³¹ Articles 14(1) and 14(2).

³² Article 15.1.

Question 31: What is the geographical scope of NEB' enforcement obligations?³³

Article 16.1 refers to the National Enforcement Body being responsible for enforcement and being empowered to take appropriate action (enforcement through a sanction regime) to ensure that passengers' rights are upheld.

The designated body deals with enforcement of passenger rights for all flights leaving an airport on their territory or coming in from third countries on EU carriers. It does not distinguish between different nationalities, place of residence or contracting.

Question 32: Are there exceptions to the above rule?

The rule is that the designated body deals with enforcement of passenger rights for all flights leaving an airport on their territory or coming in from third countries on EU carriers. It does not distinguish between different nationalities, place of residence or contracting.

For passengers' convenience, Article 16, paragraph 2, provides for a possibility for complainants to submit claims against airlines to another National Enforcement Body than the one where the incident took place (e.g. for language purposes, flights which took off/landed at/in a Third Country). But the authority which is competent for this complaint under the criteria of Article 16, paragraph 1 will still have to deal with investigation measures. There should therefore be good coordination between National Enforcement Bodies to prevent passengers from 'shopping around' for rights, and pass on files for action when needed. NEB should be aware that Regulation [EC]261/2004 is covered by the Consumer Cooperation Regulation which has entered into force in December 2006³⁴.

————— **END** —————

³³ Article 16.1.

³⁴ Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) - Official Journal L 364 , 09/12/2004 P. 0001 – 0011.