

**COMMON POSITION (EC) No 27/2003****adopted by the Council on 18 March 2003**

**with a view to adopting Regulation (EC) No .../2003 of the European Parliament and of the Council of ... establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91**

(2003/C 125 E/04)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL  
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the Opinion of the European Economic and Social Committee <sup>(2)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

- (1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.
- (3) While Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport <sup>(4)</sup> created basic protection for passengers, the number of passengers denied boarding against their will remains too high, as does that affected by cancellations without prior warning and that affected by long delays.
- (4) The Community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.

(5) Since the distinction between scheduled and non-scheduled air services is weakening, such protection should apply to passengers not only on scheduled but also on non-scheduled flights, including those forming part of package tours.

(6) The protection accorded to passengers departing from 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.

(7) In order to ensure the effective application of this Regulation, the obligations that it creates should rest with the operating air carrier who performs or intends to perform a flight, whether with owned aircraft, under dry or wet lease, or on any other basis.

(8) This Regulation should not restrict the rights of the operating air carrier to seek compensation from any person, including third parties, in accordance with the law applicable.

(9) The number of passengers denied boarding against their will should be reduced by requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, instead of denying passengers boarding, and by fully compensating those finally denied boarding.

(10) Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.

<sup>(1)</sup> OJ C 103 E, 30.4.2002, p. 225.

<sup>(2)</sup> OJ C 241, 7.10.2002, p. 29.

<sup>(3)</sup> Opinion of the European Parliament of 24 October 2002 (not yet published in the Official Journal), Council Common Position of 18 March 2003 and Decision of the European Parliament of ... (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 36, 8.2.1991, p. 5.

(11) Volunteers should also be able to cancel their flights, with reimbursement of their tickets, or continue them under satisfactory conditions, since they face difficulties of travel similar to those experienced by passengers denied boarding against their will.

- (12) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced. This should be achieved by inducing carriers to inform passengers of cancellations before the scheduled time of departure and in addition to offer them reasonable re-routing, so that the passengers can make other arrangements. Air carriers should compensate passengers if they fail to do this and should also offer adequate care, except when the cancellation occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (13) Passengers whose flights are cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing under satisfactory conditions, and should be adequately cared for while awaiting a later flight, except when cancellation occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.
- (15) Delays due to air traffic management decisions should not normally be classified as extraordinary circumstances. However, extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.
- (16) In cases where a package tour is cancelled for reasons other than the flight being cancelled, this Regulation should not apply.
- (17) Similarly, passengers whose flights are delayed for a specified time should be able to cancel their flights with reimbursement of their tickets or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight, except when the delay occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (18) 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.
- (19) Operating air carriers should meet the special needs of persons with reduced mobility and any persons accompanying them.
- (20) Passengers should be fully informed of their rights in the event of denied boarding and of cancellation or long delay of flights, so that they can effectively exercise their rights.
- (21) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.
- (22) Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law.
- (23) The Commission should analyse the application of this Regulation and should assess in particular the opportunity of extending its scope to all passengers having a contract with a tour operator or with a Community carrier, when departing from a third country airport to an airport in a Member State.
- (24) Arrangements for greater co-operation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation.
- (25) Regulation (EEC) No 295/91 should accordingly be repealed,

HAVE ADOPTED THIS REGULATION:

#### *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 licencing of air carriers <sup>(1)</sup>;
- (d) 'tour operator' means, with the exception of an air carrier, an organiser or retailer within the meaning of Article 2, points 2 and 3, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours <sup>(2)</sup>;
- (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;
- (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;
- (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.

#### 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 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,

<sup>(1)</sup> OJ L 240, 24.8.1992, p. 1.

<sup>(2)</sup> OJ L 158, 23.6.1990, p. 59.

or, if no time is indicated,

— not later than thirty 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 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.

5. 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.

#### 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 comes 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.

#### 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, except where the carrier can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken; 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 whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.

#### Article 6

##### Delay

1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure

— for two hours or more in the case of flights of less than 3 500 kilometres, or

— for four hours or more in the case of flights of 3 500 kilometres or more,

passengers shall be offered by the operating air carrier the assistance specified in Article 8, as well as, unless it can prove that the delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, the assistance specified in Article 9.

2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.

#### 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 1 500 kilometres or less;
- (b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 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

- by two hours, in respect of flights of less than 3 500 kilometres, or
- by four hours, in respect of flights of 3 500 kilometres or more,

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.

#### 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.

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.

#### 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.

#### 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 50 % of the price of the ticket for all intra-Community flights, except flights to and from the French overseas departments, and other flights shorter than 3 500 km, and 75 % in the case of all other flights, including flights to and from the French overseas departments.

#### 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.

#### 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).

#### 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.

#### 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.

#### 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.

#### 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.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

#### Article 17

##### **Report**

The Commission shall report to the European Parliament and the Council by 1 January 2006 on the operation and the results of this Regulation, in particular regarding:

- the incidence of denied boarding and of cancellation of flights,
- the possible extension of the scope of this Regulation to passengers having a contract with a Community carrier or holding a flight reservation which forms part of a 'package tour' to which Directive 90/314/EEC applies and who depart from a third-country airport to an airport in a Member State, on flights not operated by Community air carriers,
- the possible revision of the amounts of compensation referred to in Article 7(1).

The report shall be accompanied where necessary by legislative proposals.

#### Article 18

##### **Repeal**

Regulation (EEC) No 295/91 shall be repealed.

#### Article 19

##### **Entry into force**

This Regulation shall enter into force on ... (\*).

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(\*) Three months after its publication in the *Official Journal of the European Union*.

## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

In the framework of the codecision procedure (Article 251 EC-Treaty), the Council reached on 5 December 2002 a political agreement on the draft Regulation on establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights. The Council took its decision by qualified majority: the United Kingdom voted against and Portugal abstained.

In taking its position, the Council took account of the opinion of the European Parliament in its first reading on 24 October 2002, as well as of the opinion of the Economic and Social Committee.

The Regulation replaces Council Regulation No 295/91. It sets higher amounts of compensation in the event of denied boarding, and also addresses the situation of cancellation of flights and the situation of long delays.

### II. ANALYSIS OF THE COMMON POSITION

#### 1. General

The Council made a number of modifications to the proposals of the Commission, both regarding form and substance. As far as the formal modifications are concerned, the Council endeavoured to make the texts simpler and easier to understand. The Council rearranged the text considerably in order notably to enhance their logical disposition.

The main substantive modifications can be described as follows:

- The Council agreed to simplify the text by laying all obligations to compensate and assist passengers on the operating air carrier, which is normally the best placed to meet such obligations because of its presence at airports. However, the operating air carrier has a right of redress in accordance with the law applicable; in particular, the Regulation should in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or any other person with whom the operating air carrier has a contract.
- In line with the amendment by Parliament and in view of the Montreal Convention, the Council felt that it would be appropriate to provide a list of circumstances which may exempt the operating air carrier from its obligations under this Regulation. However, for reasons of legal clarity the Council decided not to list such circumstances under 'force majeure', but decided to use the concept of 'extraordinary circumstances'.
- With regard to cancellation, the Council decided to refine the text by providing that the right to compensation depends not only on the moment in time at which the passenger is informed of the cancellation, but also on the adequacy of the re-routing that is offered to the passenger concerned.
- As regards the levels of compensation, the Council agreed, in line with the amendment by Parliament, to adopt a system of three distance sections. The levels itself are almost equal to those recommended by Parliament, namely EUR 250, EUR 400 and EUR 600.
- Taking account of the amendment by Parliament, the Council has strengthened the rights of passengers in the event of long delays of flights, by providing that passengers not only have the right to reimbursement or re-routing, but also, in principle, the right to care. By the way, the Council agreed that this latter right should in general also encompass the right to transport, free of charge, between the airport and the place of accommodation (hotel or other).
- With regard to situations of upgrading and downgrading, the Council decided to turn the provision into a separate Article, since in the situations concerned there is no denial of boarding. Moreover, in order to simplify handling at airports, the Council agreed that it would be appropriate to apply fixed percentages in order to calculate amounts of reimbursement.

- Finally, the Council decided to give more importance to the provisions regarding passengers with reduced mobility or special needs. It therefore incorporated the relevant amendment by Parliament, and gave a horizontal character to the relevant provisions.

## **2. Amendments by Parliament**

The Council endeavoured to incorporate the amendments by Parliament to the greatest extent possible. However, in some cases it was not able to do so, because the relevant texts had been substantially modified or had even been deleted. This being so, the Council was able to accept, to the letter or in substance, (part of) amendments nos 8, 9, 10, 11, 12, 22, 23, 25, 26, 27, 29, 31, 32, 33, 34, 36, 38 and 42.

## **III. CONCLUSION**

The Council is of the opinion that the text of its common position on the draft Regulation on denied boarding compensation is appropriate and balanced. The Council observes that a great number of amendments by Parliament has been incorporated in the text of its common position, and considers in general that the common position ensures by and large that the aim sought by the amendments of Parliament is achieved.

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