



REFORM OF REGULATION (EC) No 261/2004: MORE RIGHTS FOR PASSENGERS, GREATER OPERATIONAL OBLIGATIONS FOR AIRLINES

In July 2026, the European Union completed the legislative phase of one of the most eagerly awaited reforms in air transport law: the revision of Regulation (EC) No 261/2004¹, the benchmark instrument on compensation and assistance to passengers in the event of denied boarding, cancellation and delay.

After more than thirteen years of negotiations, the European Parliament and the Council have finally reached agreement on a reform marked by profound differences over some of the most sensitive aspects of the passenger protection regime.

The final outcome essentially preserves the basic structure of the existing regime, incorporates much of the case-law developed by the Court of Justice of the European Union over the past two decades and strengthens the mechanisms for the effective exercise of passengers' rights. This also translates into new operational, documentary and evidentiary requirements for airlines, which will have to review their handling of disruptions across the board.

In this newsletter we examine the main changes introduced by the reform and their impact on airline operations, paying particular attention to the interpretive questions that will foreseeably shape its practical application and to the adaptation measures that it would be prudent to anticipate.

THIRTEEN YEARS OF NEGOTIATION AND ONE YEAR TO ADAPT

It should be noted at the outset that the adoption of the reform brings to an end an unusually protracted legislative procedure. Since the Commission's proposal in 2013, the European Parliament and the Council had held sharply divergent positions on some of the central elements of the system.

It was precisely this inability to reach agreement after the second reading that made it necessary to resort to the Conciliation Committee, provided for in Article 294 of the Treaty on the Functioning of the

European Union, so that the two institutions could negotiate a joint text². The outcome of the reform therefore reflects a compromise between the two institutions, seeking to preserve the level of protection consolidated by the case-law while also attempting —albeit unsuccessfully— to address the economic and operational impact that this regime places on airlines and, in particular, its possible effects on connectivity. Its application, however, will not be immediate: the Regulation will enter into force twenty days after its publication in the Official Journal of the European Union and will apply twelve months later, so that, depending on the actual date of publication, it will foreseeably begin to apply during the second half of 2027³. That transitional period will set the time available to airlines to adapt their systems, processes, contracts and protocols.

CONTINUITY IN THE COMPENSATION REGIME AND NEW OPERATIONAL UNCERTAINTIES

Despite the breadth of the changes, the text retains the essential elements of the existing compensation regime: both the amounts of compensation⁴ and the three-hour threshold that triggers the right to receive it, expressly incorporating the doctrine established by the CJEU⁵.

The main innovation therefore lies not in the economic dimension of the system, but in the way airlines will have to manage, justify and evidence each disruption. Hence the particular significance of the new rules on extraordinary circumstances, a concept shaped until now essentially by the case-law and which is now defined in the Regulation itself, accompanied by a non-exhaustive list of situations⁶.

Their inclusion does not, however, turn any of those events into an automatic ground for exemption, since the airline will have to establish their occurrence, their direct causal link with the disruption and the impossibility of avoiding it even having taken all reasonable measures. It must do so, moreover, by providing the passenger with a clear and sufficiently reasoned explanation of what occurred on the affected flight.

¹ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights.

² The European Parliament approved the joint text on 7 July 2026 and the Council did likewise on 13 July 2026, thereby finalising the substantive content of the reform.

³ Joint text approved by the Conciliation Committee provided for in Article 294(10) TFEU, within procedure 2013/0072(COD), document PE-CONS 39/26. As at the closing date of this newsletter, the legal-linguistic revision, the signature and the publication in the Official Journal of the European Union remain pending.

⁴ The compensation amounts are maintained at €250 for flights of up to 1,500 km, €400 for flights between 1,500 and 3,500 km and €600 for longer flights, as is the three-hour arrival-delay threshold established by the case-law of the CJEU. Compensation may be reduced by 50% on certain flights over 3,500 km where the delay does not exceed four hours, and in certain cancellation scenarios where the alternative transport allows departure to be brought forward relative to the originally scheduled time.

⁵ Judgment of the CJEU of 19 November 2009, *Sturgeon and Others*, Joined Cases C-402/07 and C-432/07, which recognised the right of passengers on delayed flights to compensation on terms equivalent to those provided for cancellations.

⁶ The list includes, among other situations, certain natural or environmental disasters, weather conditions incompatible with the safety of the flight, armed conflict, serious threats to health, disruptive passengers, hidden manufacturing or design defects and incidents linked to airports, air navigation services or essential suppliers.

The reform thus brings greater conceptual precision, but it does not remove the need to assess each case individually. The controversy will shift, to a large extent, towards the sufficiency of the evidence, the strength of the causal link and the scope of the measures that could reasonably have been required of the carrier in the specific circumstances.

This will be especially relevant where the disruption originates in events beyond the airline's control. Air traffic control restrictions, airport closures or certain acts of suppliers may constitute extraordinary circumstances and, where applicable, exclude the payment of compensation. They do not, however, release the carrier from its obligations of information, assistance and alternative transport towards the passenger, so that it will remain the immediate point of contact even where the origin of the disruption lies outside its sphere of control⁷.

As regards refunds and complaints, the reform lays down more precise time limits, makes the issuing of vouchers subject to the passenger's express and informed consent and strengthens the duty to inform about the possible right to compensation⁸. The aim is to facilitate the direct exercise of rights and to bring order to procedures that until now had been applied unevenly. Nevertheless, the difficulties associated with bookings made through online travel agencies or other intermediaries persist: the airline may not have the passenger's real contact details, may be unaware of the amount actually paid or may encounter obstacles in determining the recipient and the amount of the refund. The reform thus intensifies the obligations of information and payment but does not resolve the fragmentation of data, payments and responsibilities between the party selling the ticket and the party operating the flight, which will continue to require rigorous coordination between airlines and intermediaries.

The result is therefore an incomplete solution, in which the airline's liability towards the passenger is reinforced while the contractual and operational fragmentation that hampers compliance with those very obligations remains practically intact. Far from closing a recurrent source of disputes, the text once again shifts their resolution to bilateral coordination between airlines and intermediaries and, foreseeably, to the interpretation of the authorities and the courts.

The right to alternative transport is also strengthened, requiring the airline to offer a solution under comparable conditions and as soon as possible, taking into account its own flights, those of other carriers, alternative airports and, where more efficient, other modes of transport. In addition, if the airline does not offer a suitable alternative within the prescribed period, the passenger may arrange the journey independently and claim the necessary and reasonable costs, within the limit established by the Regulation⁹. The application of this regime will depend, however, on concepts that still require clarification, such as "comparable conditions", the basis for calculating the financial cap or the obligations associated with the use of alternative airports.

Nor does the protection extend to connections arranged through separate tickets, even where they have been marketed as a single itinerary. Disputes will therefore continue to arise where the disruption to the first flight prevents the passenger from taking the next one in the absence of a single booking protected by the Regulation.

The new framework is completed by more detailed rules on passenger assistance and by specific guarantees—including the right to disembark



after certain tarmac delays, protection against certain commercial practices and additional measures in favour of families and passengers with specific needs¹⁰— whose actual scope will depend on how they are implemented in practice.

HAND BAGGAGE AND FARE TRANSPARENCY

The hand baggage issue has been one of the most closely watched aspects of the reform, at times presented as recognition of a free cabin bag. The scope of the new regime is, however, more limited¹¹.

The text guarantees, at no additional cost, the carriage in the cabin of a personal item of up to 40 × 30 × 15 centimetres or which can be placed under the seat in front. As regards a second piece, classified as hand baggage, it provides that it must be capable of being carried in the cabin where there is sufficient capacity and requires the fares that include it to be displayed by default before the booking process begins.

No general and unconditional right to carry a cabin bag free of charge is therefore recognised. Airlines may continue to offer differentiated fares to those who choose to travel without that second piece, under the freedom of pricing recognised by Regulation (EC) No 1008/2008¹². What changes is the way in which that difference must be presented to the passenger¹³.

Practical application will also depend on the notion of sufficient capacity. The legislature's intention appears clear, since airlines are not required to accept a minimum number of pieces free of charge in the overhead compartments, and the possibility of charging for hand baggage other than the personal item is therefore preserved. The wording, however, does not determine how that right is to be exercised

⁷ Without prejudice to the foregoing, the carrier may subsequently seek recourse against the third party responsible, although the practical effectiveness of that action may be limited where there is no direct contractual relationship or where it is difficult to attribute responsibility to each individual operator.

⁸ By way of illustration, these obligations take shape, among others, in the refund of the ticket price within seven calendar days of the passenger choosing this option; the requirement of express consent for the issuing of vouchers, whose maximum initial validity will be twelve months and whose unused balance must be refunded automatically upon expiry; and the obligation to inform the passenger electronically of the possible right to compensation within 96 hours of the end of the journey. The claim must be submitted within nine months and resolved within thirty days, while general complaints must be acknowledged within seven business days and receive a reasoned reply within one month or, in duly justified cases, within two months.

⁹ The passenger's choice to continue the journey must be documented on a durable medium. If a comparable alternative is not offered within three hours, the passenger may arrange it independently and claim the reasonable costs, subject to the cap of 400% of the total price paid.

¹⁰ Among other measures, the following are recognised: the right to disembark after two hours of tarmac delay—unless prevented by operational or safety reasons—; protection of the return leg where the outbound leg has not been used; the free correction of certain spelling errors in the name; the free provision of a printed boarding pass after check-in; and additional guarantees for minors, such as the free allocation of a seat adjacent to the accompanying adult of a child under fourteen; for persons with reduced mobility; and for passengers travelling with assistance dogs.

¹¹ On the earlier debate concerning charges for hand baggage, we refer to our newsletter of June 2025, available at the following link: [Cabin bag](#).

¹² Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, Article 22.

¹³ The fare including the second piece must be displayed by default, while the option of travelling without it may be offered as a differentiated alternative. This obligation will also apply to online agencies, comparison sites and metasearch engines.

where the available space is insufficient, as it does not establish how many pieces each aircraft must accept or what criteria will govern their distribution. These questions will have to be resolved by reference to the characteristics of the aircraft, safety requirements and each airline's operations, with the attendant risk of divergent interpretations among national authorities.

And where reasons of safety, lack of capacity or a change of aircraft prevent carriage in the cabin, the airline may transfer the personal item or the hand baggage to the hold at no additional cost. The distinction between the two categories, the presentation of fares and the justification of that decision will foreseeably be the main points of friction.

IMPACT OF THE REFORM AND CHALLENGES FOR AIRLINES

The reform incorporates into the text much of the case-law that, for more than twenty years, had supplemented a particularly brief Regulation. It defines essential concepts, orders the refund and complaint procedures, specifies the assistance obligations and broadens the alternative transport options, but it does not necessarily lead to a simpler system. Indeed, the result reflects an accumulation of partial solutions rather than a systematic review of the model and, although it closes some settled debates, it retains concepts whose application will continue to require case-by-case assessment, among them the sufficiency of the evidence, the "comparable conditions" of alternative transport, the 400% cap and the "sufficient capacity" for hand baggage.

Nor does the reform modulate the obligations according to the size, network or operational capacity of the carrier, so that its effects will inevitably be uneven. While a large operator may have reserve aircraft, additional crews or several daily frequencies to absorb a disruption, a regional airline may see a large part of its schedule compromised by the unavailability of a single aircraft. The new requirements will therefore fall more heavily on airlines with less capacity for substitution.

This issue also goes beyond purely commercial interests. In many European territories —island, peripheral or with few land-based alternatives— aviation constitutes essential infrastructure for connectivity. If the increase in regulatory costs affects the viability of lower-density routes, the formal reinforcement of rights could have indirect effects on effective access to air transport.

Against this background, the transitional period should be used to review, in a coordinated manner, systems, internal procedures, sales channels and relationships with third parties. It will not merely be a matter of adapting legal documents, but of ensuring that the new obligations can be carried out consistently at every point of contact with the passenger. This will require reviewing information and refund flows, the time limits and records of communications, the criteria applicable to transport alternatives, the presentation of fares and other conditions of sale, as well as the contracts and protocols with airports, air navigation service providers, ground handling companies, online agencies and package travel organisers. The transmission of data, access to operational information and the recourse mechanisms will have to be defined with particular precision.

The handling of each disruption will, moreover, have to be sufficiently documented, so that the airline can establish its cause, the measures taken, the communications sent, the alternatives offered and the services actually provided. It will therefore not be enough to take a correct decision; it will be necessary to be able to reconstruct and justify the course of action followed from the outset of the disruption.

This whole process will finally require coordinated training of the operations, airport, sales, passenger service and legal teams. Knowing the applicable obligation will not be enough; it will be necessary to understand how it must be carried out, what information must be provided and



what evidence must be retained. Consistency between systems, contracts and staff conduct will be decisive in preventing a set of rules conceived to bring order to procedures from generating new sources of complaints.

CONCLUSIONS

In short, the reform brings to an end more than thirteen years of proceedings and lends greater order to a framework that the case-law of the Court of Justice had had to reconstruct progressively. The result, however, falls well short of a truly structural review of the system. The legislature has opted for a compromise solution, based on partial adjustments, which codifies much of the existing doctrine but retains open-ended concepts, does not fully correct the lack of harmonisation in its application and leaves intact the tension between uniform obligations and very different operational realities.

The reform also shifts to airlines a considerable operational, documentary and evidentiary burden, without addressing with the same intensity the external factors that condition compliance with those obligations, nor reinforcing to an equivalent degree the liability of the other actors involved in the operation. There is thus a risk that rules conceived to provide greater legal certainty will instead generate new disputes over the interpretation of their limits and once again leave to the courts the task of clarifying matters that the text does not fully resolve.

Nor can the balance achieved be regarded as final, since the Regulation itself provides for a review, within five years, of both the list of extraordinary circumstances and the compensation thresholds and amounts. For airlines, anticipation —in systems, procedures, contracts, training and documentation— will therefore be essential in order to reduce exposure to complaints and to be able to demonstrate consistently the course of action taken in response to each disruption. The adaptation period will begin to run upon publication of the Regulation and, despite its apparent length, may prove insufficient given the scale of the changes required.

PionAirLaw

Silvia Frade Sosa
Diego Olmedo de Cáceres