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AIRSPEED READ

*The future of flight disruption:
proposed reforms to passenger rights*

Over 20 years ago, Regulation (EC) No 261/2004¹ ("EU261") taxied onto the runway on 17 February 2005, promising to make air travel less of a gamble for passengers. Since then, EU261 has had a turbulent time. After being reshaped by the European Court of Justice ("CJEU") it is now impossible to understand the rights of air passengers in the event of a delay, cancellation or denied boarding by reading EU261 in isolation. While the interpretative guidelines on EU261, which were first adopted in 2016 and further updated in 2024, are useful in clarifying the scope of EU261, and detail the evolution of passenger rights and obligations since 2005, they are cumbersome and impractical to read alongside EU261.

In 2013, the European Commission published a proposal to update and reform EU261 to align it with the changes brought about through case law. This proposal went to the European Parliament for a first reading, however, until recently, it has largely sat dormant as the EU Transport Council were either pre-occupied with navigating through and recovering from Covid-19 or were unable to reach a final agreement.

After 12 years, and countless calls from airlines and passengers for a clearer, and modern regime for air passenger rights, on 5 June 2025, the

European Council finally agreed a proposal on the revision of EU261, led by the Polish Presidency (the "**Proposal**").

This is a "historical milestone" in strengthening air passenger rights.

The Proposal is packed with over 30 new passenger rights, covering everything from rerouting; assistance; compensation; right to information; and the much needed clarification of the meaning of 'extraordinary circumstances'.

Key proposed changes include:

A. Denied boarding

The Proposal takes aim at airlines' no show policies and intends to include a new provision in Article 4 of EU261 that provides the right to compensation, and reimbursement or rerouting in the event a passenger is denied boarding on the basis that it was a *no show* on the previous flight. This change, if agreed, will jeopardise carriers' no show policies, and enable passengers to take advantage of discounts applied to return flights, where the intention is to only travel one way, and exposes carriers to empty seats on those flights.

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 passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing

Regulation (EEC) No 295/913, and Regulation (EC) No 2027/97 of the Council of 9 October 1997 on air carrier liability of the carriage of passengers and their baggage by air



B. Right to compensation in the event of a delay or cancellation

Under the Proposal, compensation is getting a makeover. Delayed passengers can now expect the following compensation, depending on the impacted journey:

- (i) EUR300 for short-haul journeys of 3,500 kilometres or less, and on all intra-EU journeys; and
- (ii) EUR500 for long haul journeys over 3,500 kilometres.

Where the disruption relates to delay on arrival, the right to compensation for journeys at (i) above only applies where the delay is four hours or more. In the case of journeys at (ii) the delay at arrival needs to be six hours.

For cancellations, passengers will have the automatic right to compensation where the passenger chooses either a reimbursement or a rerouting at a later date at the passenger's convenience, or where the passenger accepts a rerouting at the earliest opportunity and the rerouted flight arrives with a delay of three hours or more. It is immaterial how much notice of cancellation is given to the passenger prior to the scheduled departure time, as carriers cannot rely on advance notice to avoid paying compensation.

The distance of the flights is still measured by reference to the great circle route method, as currently provided for in EU261. For carriers operating short haul flights (especially for journeys that are 1,500 kilometres or less), this will be an unwelcome change, as the amount of compensation payable has increased by EUR50. Further, there is no opportunity to seek to reduce the compensation amount by 50%, as there currently is in Article 7(2) of EU261. For carriers operating long haul flights, the proposed changes are positive, as not only is the compensation amount reduced by EUR100, the length of delay for when compensation would be payable for delayed flights has increased by three hours.

It is worth noting that passengers would need to make a request for compensation within six months from the actual date of departure, and the operating carrier is required to pay within 14 days from the request, unless it is relying on the extraordinary circumstances defence. This

six-month period should not be regarded as a limitation period, as the passenger can still submit a claim for compensation, including through the court, within the limitation periods set by national law of the relevant Member State (as is currently the case under EU261). Further, in respect of cancellations, the carrier is expected to provide a pre-filled form to the passenger when cancelling the flight, to enable the passenger to request compensation.

The Proposal fails to update the methods by which compensation can be paid, maintaining the outdated requirement to make payment in cash, unless agreed with the passenger in a signed document, for payment via other digital means.



TIME	DESTINATION	FLIGHT	GATE	REMARKS
12:39	LONDON	BA 903	31	CANCELLED
12:57	SYDNEY	QF5723	27	CANCELLED
13:08	TORONTO	AC5984	22	CANCELLED
13:21	TOKYO	JL 608	41	DELAYED
13:37	HONG KONG	CX5471	29	CANCELLED
13:48	MADRID	IB3941	30	DELAYED
14:19	BERLIN	LH5021	28	CANCELLED
14:35	NEW YORK	AA 997	11	CANCELLED
14:54	PARIS	AF5870	23	DELAYED
15:10	ROME	AZ5324	43	CANCELLED

C. Right to rerouting

The key change here is that if a passenger who has opted to be rerouted at the earliest opportunity is not offered an option within three hours, the passenger may arrange its own transport. The operating air carrier is to reimburse the passenger, provided the cost of the alternative flight or transport does not exceed 400% of the full cost of the ticket.

D. Right to assistance

The scope and level of assistance that air carriers must provide passengers affected by disrupted flights is more explicitly set out and defined. Specifically, they must now offer:

- (i) refreshments every two hours and a meal after three hours, and then every five hours up to three meals a day (the frequency and timing of meals and refreshments is not currently stipulated);
- (ii) two telephone calls, text messages and internet access; and



(iii) hotel accommodation and transport there and back to the airport.

Where the disruption is caused by an extraordinary circumstance, the air carrier can limit the provision of accommodation to a maximum of three days.

E. Right to information

Air carriers must immediately notify passengers of a delay or cancellation, and specify the reason, including in writing if requested, and provide regular updates in real-time and in an accessible format, which can include mobile 'push' notifications.

They must simultaneously inform passengers of their rights under EU261, namely compensation, assistance, the choice to be rerouted and the complaints process.

F. Defence of extraordinary circumstances

The Proposal looks to clarify the position on extraordinary circumstances. CJEU case law has diminished the only defence to compensation available under EU261, narrowing the scope of what events are regarded as "extraordinary circumstances" and tipping the balance in favour of passengers. The Proposal unfortunately does not seek to restore a fair balance between carriers and passengers, and instead limits the scope to the flight concerned or at least one of the three preceding flights in the rotation sequence planned to be operated by the same aircraft, provided there is a direct causal link between the occurrence of that circumstance and delay at departure of the subsequent flight.

The Proposal updates the non-exhaustive list of extraordinary circumstances, and requires the Commission to check and update the list every three years. The proposed list interestingly includes areas which the courts have previously refused to recognise as an extraordinary circumstance such as unexpected illness or death of a crew member² (if outside the air carrier's home bases or due

to a pandemic). It is also good to see that ATC restrictions have remained on the list, especially as pleas mount against ATCs in Europe to improve due to increasing delays³.

First impressions

The initial reaction to the Proposal has been mixed. During the public Council session on 5 June 2025 discussing the Proposal, countries including Slovenia, Germany, Spain, and Portugal emphasised the need to balance passenger protection and reasonable financial and operational impact to air carriers more effectively. The Slovenian representative claimed that the three hour delay has been shaped and explained by case law⁴, and provides a clearer incentive to airlines to minimise delays⁵.

On the contrary, Airlines for Europe, the trade body for airlines such as Ryanair, EasyJet and Lufthansa, advocated for *longer* delay times, and referenced the 2013 proposal, which suggested five and nine hour delays for short and long haul flights respectively.

The Proposal will go before the European Parliament for a second reading. It is clear that there is some way to go before amendments to EU261 are brought into force, but it is promising that progress is being made to regain a fairer balance between airlines and passenger rights and obligations.



WHAT DOES THIS MEAN IN THE UK?

EU261 was retained in its entirety following Brexit as the Air Passenger Rights and Air Travel

² *Lipton v BA CityFlyer Ltd* [2024] UKSC 24 found that a pilot falling ill with the result that a flight was cancelled did not fall within the defence of an extraordinary circumstance.

³ Ryanair have recently launched an ATC 'League of Delays' exposing Europe's worst ATCs for delays, and highlighting the record increase in restrictions imposed in 2024: [RYANAIR LAUNCHES ATC "LEAGUE OF DELAYS" EXPOSING EUROPE'S WORST ATCS FOR DELAYS DUE TO](#)

[MISMANAGEMENT AND STAFF SHORTAGES – Ryanair's Corporate Website.](#)

⁴ Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:C:2009:716; Case C-11/11, *Folkerts*, ECLI:EU:C:2013:106; Case C-559/16, *Bossen*, ECLI:EU:C:2017:644.

⁵ EU Transport, Telecommunications and Energy Council, Public session (morning). A recording of the session can be found here: [Public session \(morning\)](#)



Organisers' Licensing (Amendment) (EU Exit) Regulations 2019 ("**UK261**"), and is now assimilated law in the UK. UK261 applies to claims against UK airlines and non-UK airlines departing from the UK (and some circumstances, arriving into the UK). Whilst the UK does not need to follow any changes imposed by the European Parliament in respect of EU261, it will be interesting to see if the proposed changes will finally motivate the UK to review and amend the outdated legislation.

The Department for Transport ("**DfT**") did launch a consultation in January 2022 on Aviation Consumer Policy Reform and based on its responses dated 27 June 2023, it seemed that the UK government was looking to amend the compensation regime for delays under UK261 by linking the compensation amount to the price of the ticket. Following the consultation, the Aviation (Consumers) (Amendment) Regulations 2023 came into force on 14 December 2023, but disappointingly, the regulations did not seize the opportunity to update UK261, but merely codified certain CJEU case law, and amongst others, provided an express right to compensation in the event of a delay in arrival of three hours or more.

If the UK does not follow suit, then passengers and claims agencies may take advantage of the differing rights and obligations in the event of a delay and/or cancellation, and opt to commence their action in the UK (as opposed to in an EU Member State), as the compensation regime may be more favourable to the passenger.

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