

ERA's position on the revision of Regulation 261/2004



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ERA welcomes ongoing discussions within the European Parliament and Council on a potential revision of Regulation 261/2004.

The 2013 proposal is now over a decade old, yet airlines continue to operate under a regulation that has been in place for more than 20 years, but which has been changed beyond recognition with each new court ruling. The revision of Regulation 261/2004 remains a priority, to provide legal clarity not only for airlines but also for passengers who should not have to go to court. The Commission's 2013 proposal was a step in the right direction, and we look forward to the regulation being amended to strike a much-needed balance.

The primary objective of air transport is to ensure connectivity, allowing passengers to reach their final destinations efficiently and safely and airlines are committed to operating flights – not delaying or cancelling them. Rather than emphasising compensation alone, ERA believes that Regulation 261/2004 should encourage airlines to sustain operations, particularly on insular routes where passengers have no alternative transportation options. In such cases, cancellations leave passengers stranded, underscoring the need for a regulatory framework that prioritises connectivity over punitive measures.

Thresholds

ERA supports the compensation thresholds of 5, 9 and 12 hours as proposed in the Commission's 2013 proposal. The current 3-hour compensation threshold must be revised, as it unintentionally encourages cancellations to reduce costs. Again, the primary focus should not be on compensation but on ensuring the completion of the journey. Airlines should be incentivised to actually operate delayed flights, rather than face financial penalties that make it more attractive to outright cancel a flight as a damage limitation exercise. This is a paradox as the primary objective of the regulation should always be to ensure that passengers reach their final destination, rather than imposing penalties that ultimately undermine connectivity. This was never the original intent of Regulation 261/2004. Connectivity is crucial, especially for secondary destinations, insular and peripheral regions typically served by regional carriers, where few or no alternative transport options exist.

Extending the time thresholds triggering compensation is essential, not only to reflect the operational realities of airlines managing multiple daily rotations but also to account for the maintenance constraints faced by regional airlines. Many of these airlines operate in remote or insular areas where maintenance facilities are limited, and not all line stations are equipped to perform necessary repairs. As a result, unavoidable delays can occur, making a more flexible threshold crucial to ensuring continued connectivity without penalising airlines for factors beyond their control.

Safety concerns

Aviation is a safety-critical business. The primary right of every passenger is to travel safely to their chosen destination and no regulation should penalise airlines when the decision not to operate, divert or delay a flight as planned is motivated by safety or security concerns.

However, the rigid 3-hour threshold imposed by Regulation 261/2004 has in some cases placed undue pressure on safety protocols, which should always remain the top priority. This compensation threshold does not provide sufficient time to address delays, especially when they are caused by technical or operational issues. Delays and cancellations, while disruptive, are an inherent feature of air travel. Despite this, airlines make every effort to ensure flights operate on time.



The most effective way to address the unintended safety risks posed by Regulation 261/2004 is to amend the regulation to allow aviation professionals to delay flights when necessary for safety reasons, without incurring financial penalties.

Levels of compensation

As a general principle, ERA believes that compensation should be a secondary concern; the primary focus must be on preserving connectivity and ensuring that passengers reach their intended destinations. By prioritising operational continuity over financial penalties, consumers will benefit from a system that prioritises travel completion over financial rewards.

ERA strongly opposes any increase of the current levels of compensation. Air fares today are significantly lower due to increased competition and efficiency within the sector. We strongly believe that increasing compensation would create an even greater rendering the system disproportionately punitive for airlines, particularly smaller regional carriers operating on very thin margins.

The statutory levels of compensation are also disproportionate on Public Service Obligation (PSO) flights, which have caps on airfares that are generally well below €250. This discrepancy places an undue financial burden on airlines, particularly smaller carriers, without reflecting the realities of today's pricing structures.

ERA does not support the introduction of a mechanism to automatically update compensation amounts in line with inflation. Once again, compensation should be a last resort right and not a source of income, as the main objective is to transport passengers and not to receive or pay compensation. For regional airlines operating PSO flights, inflation-based compensation would again be discriminatory and add an extra burden on these carriers as PSO contract conditions are strict and fixed for a period of time (not subject to modifications).

Cap on compensation for PSO flights

Local communities and governments across Europe have expressed serious concerns regarding connectivity, often advocating for or directly requesting PSO support to maintain essential connectivity. These critical connections are vital for vulnerable passengers (e.g. Passengers with Reduced Mobility – PRMs) and residents, ensuring access to economic, social and healthcare services. PSO routes are essential also for ensuring the economic vitality of these areas.

As highlighted in the ERA's study on the Practice of Public Service Obligations in Europe of 2024, PSO routes play a pivotal role in fostering local economies, promoting tourism and job creation. Without the stability provided by PSO contracts, many of these regions would face isolation, further exacerbating socioeconomic disparities.

In this respect, EU policymakers should bear in mind that in regions where air service is a lifeline, any regulatory changes that increase financial or operational pressures on regional airlines risk undermining the stability of these essential routes, potentially leaving local communities isolated and creating a disadvantage in terms of access to equal opportunities compared to EU citizens living in capital cities and/or on the continent.

When it comes to the implementation of Regulation 261/2004, regional airlines operating PSO routes face unique challenges that make the application of compensation rules disproportionately burdensome. PSO contracts are highly regulated with strict conditions on frequency/ capacity/ schedules and maximum airfares, often set for 5-year periods with little flexibility. As such, the fare structure for PSO flights does not consider the potential costs of compensation under EU261, which can far exceed the regulated fare. For instance, compensation for cancellation on short routes of less than 1,500km can amount to €250, a sum that significantly exceeds the maximum permissible fare for most PSO flights.



Given that PSO routes are vital for the social and economic development of peripheral regions, the imposition of disproportionate compensation risks undermining connectivity with the ultimate potential to reduce the number of airlines willing to operate these crucial services. Therefore, it is essential that Regulation 261/2004 either exempts PSO routes from compensation requirements or, at a minimum, limits the compensation payable to the fare actually paid by passengers on such flights. This would ensure that PSO routes remain sustainable and continue to serve their important role in regional connectivity without imposing undue financial strain on regional airlines.

Extraordinary circumstances

ERA strongly supports the establishment of a binding non-exhaustive list of extraordinary circumstances to provide clarity and legal certainty for both passengers and airlines. The absence of such a list has led to excessive litigation and subsequent reinterpretation by the European Court of Justice, making Regulation 261/2004 the most contested piece of legislation at EU level over the past 20 years.

The current situation has evolved de facto towards a strict liability regime in which airlines are held financially responsible for disruptions, even when these are totally beyond their control. This lack of legal clarity benefits neither passengers nor airlines, as it results in lengthy disputes and inconsistent rulings across Member States.

While the list must be binding, it should also remain non-exhaustive. The aviation industry operates in an ever-evolving landscape where unforeseen disruptions (such as pandemics, cybersecurity threats and geopolitical conflicts) could arise. In addition, such a list must be established in consultation with the industry and updated on a regular basis. It should form an integral part of the air passenger rights regulation.

Missed connections

The current framework unfairly penalises regional airlines operating feeder flights by holding them liable for missed connections on long-haul journeys. While these airlines provide an essential role in ensuring connectivity to hubs, they do not generate revenue from the full itinerary yet bear the full burden of compensation under the 'journey model'.

This is the case for many small and regional carriers which have interline and codeshare agreements with other, mostly larger carriers, that can provide additional connectivity to long-distance destinations that would otherwise be out of reach for peripheral and insular regions, largely served by regional carriers. These carriers would not survive if they had to pay compensation for late arrival at the final destination because of a missed connection which happens because of a delay of the short feeder flight.

Furthermore, it seems that discussions at Council level intend to make an EU carrier responsible for a delay on flights operated by a non-EU carrier that would lead to a missed connection on the second flight operated by an EU carrier. This would be unduly burdensome on the EU carrier which would have had no control on the operations of the first flight. It will also lead to a situation where non-EU carriers will henceforth refuse to shoulder responsibility for the flights they operate. Eventually, it will lead to a distinct reduction of interline and codeshare agreements with less connectivity.

Therefore, the best way forward would be to favour the 'flight-leg model' which limits compensation to the leg operated by the airline. In the meantime, the operator of the delayed leg will be responsible for rerouting and assistance to the passenger (food, accommodation, transport and communication) until the passenger can continue the journey.

Limit to assistance (cap on accommodation)

ERA supports the introduction of a cap on accommodation and other benefits that air carriers must provide to passengers in case of disruption.



The amount per passenger must be clearly defined. A time limit would avoid situations (such as the volcanic ash crisis) where airlines had to pay for days on end until solutions were found for an act of nature beyond their control. An airline should never be insurer of last resort and it should be up to all stakeholders involved (authorities, airlines, airports, hotels, insurance companies and passengers) to accept a shared responsibility to resolve the situation.

The right to care must adhere to the principles of what is necessary, reasonable and proportionate as outlined in the Interpretative Guidelines. For instance, in situations where an airline is unable to directly provide accommodation, passengers may need to arrange their own solutions. However, this should not imply unlimited reimbursement as costs must remain within reasonable and proportionate limits. The same principle applies to meals and beverages: expenses should be essential and appropriate, excluding luxury food or alcohol. Similarly, transport costs should be limited to travel within the airport's catchment area, rather than extending to distant locations.

Additionally, we recommend that regarding the reimbursement of assistance expenses it should explicitly state that the presentation of receipts/invoices or similar documents that clearly reflect the date of service, the service provided and amount paid are mandatory.

Re-routing

ERA supports re-routing passengers at the earliest opportunity, on the same airline within 12 hours (excluding night-time curfews). Passengers will benefit from the option of continuing their journey via the original operating carrier, providing them, in co-operation with partner airlines, a new itinerary to reach the final destination. It is only when 12 hours has been reached that the possibility of re-routing via other airlines should be considered.

Re-routing on alternative transport modes (such as rail, coach or ferry) is not a viable solution. Airlines are not structured to function as online travel agencies and do not have the visibility over real-time schedules, availability, pricing or booking systems for other transport providers. Integrating such requirements would require extensive co-ordination between independent transport providers, many of whom operate under different regulatory frameworks, further complicating the process.

Claims' agencies

Abusive practices must be addressed through regulatory action. ERA believes that there is an urgent need for a regulation of claims agencies, as part of the ongoing revision of Regulation 261/2004. The current framework relies only on the European Commission's 2017 Information Notice on relevant EU consumer protection, marketing and data protection law applicable to claim agencies' activities in relation to Regulation 261/2004 on air passenger rights. This is non-binding and provides no effective remedy to airlines against fraudulent, abusive, frivolous and vexatious practices that are only intended to unnecessarily increase legal costs.

Compensation has become a highly profitable industry, with numerous claims agencies profiting from it while airlines continue to face financial strain. In this respect, the Information Notice should be translated into law, as numerous claims agencies have dismissed its applicability, enabling misleading practices, excessive fees and unnecessary litigation to persist. Such a situation has a direct impact on connectivity (particularly for remote and island regions) which undermines the very objective of Regulation 261/2004.

Limitation of actions

ERA believes that claims under Regulation 261/2004 should be time barred after 2 years to align with the Montreal Convention (MC99) and to achieve harmonisation with current EU passenger rights legislation. Unfortunately, the current system allows claims to be filed over an extended period (sometimes up to 6–8 years after the event). This creates unnecessary administrative burdens for airlines – with evidence no longer being readily available – complicating the claims process.



Automatic compensation/refund

ERA strongly opposes the introduction of automatic compensation and refund for passengers.

Automatic compensation fails to account for extraordinary circumstances, which require case-by-case assessment. Events such as severe weather conditions, ATC strikes or disruptions beyond the airline's control cannot and should not automatically trigger compensation as this will lead to unfair and unsustainable financial burdens on airlines. This situation will once again lead to additional legal and administrative proceedings at the expense of passengers and airlines.

In addition, the cost of developing and implementing such an automated IT system would be exorbitant for regional airlines which, unlike large carriers, will not be able to spread the cost over a vast route network, diverting already limited resources away from investing in operations and much-needed connectivity.

Automatic refund will deprive passengers of their right to re-routing, which is often the most effective way to ensure they reach their final destination as soon as possible. Instead of being proactively accommodated by the airline, passengers may be forced to arrange alternative solutions on their own (often at much higher last-minute fares) along with additional accommodation costs. This undermines the very purpose of Regulation 261/2004, which is to protect passengers and not leave them stranded.

The introduction of automatic refund is not compatible with the industry's well-established 'follow the money principle' if passengers have booked their ticket via intermediaries. This principle ensures that each party is responsible for reimbursing the money it has received. This means that airlines can only be held liable for reimbursing the funds that they have received and intermediation fees (i.e., the markups imposed unilaterally by intermediaries) shall not result in an added burden for airlines. Therefore, in the reimbursement chain, once the airline has reimbursed the airfare to the intermediary, the latter should in turn be held liable for reimbursing the full amount it has charged the customer – including any intermediation fees. The principle also protects against the risk of double payment. In addition, airlines (and in some cases passengers) are not aware of the costs associated with a single leg on an interline ticket.

No-show policy

ERA does not support regulatory intervention into airlines' 'no-show' policy i.e., the commercial practice of airlines to cancel passengers' tickets if passengers do not take a previous segment or do not take the flights in the order indicated on the ticket.

Airlines sell journeys rather than individual flight segments, with fares reflecting market conditions and competition across different routes. Allowing passengers to skip segments would undermine market segmentation, leading to higher fares, reduced connectivity for smaller communities and potential withdrawal of indirect route options. Additionally, sequential segment use helps airlines manage capacity effectively, reducing unnecessary overbooking and optimising seat availability.

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