

European Commission: Interpretative Guidelines on on EU passenger rights regulations in the context of the developing situation with Covid-19

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On 18th of March 2020, the European Commission (EC) issued Interpretative Guidelines¹ aiming at clarifying how certain provisions of the EU passenger rights legislation² apply in the context of the Covid-19 outbreak.

With particular regard to Regulation (EC) No 261/2004 (Regulation 261), the Commission Guidelines specify what are the passengers' rights, and related air carriers' obligations, in case of cancellations and delays because of the circumstances of the COVID-19 outbreak.

Firstly, the Guidelines clarify that Regulation 261 do not address situations where passengers cannot travel or want to cancel a trip on their own initiative. In such cases the possibility to have the ticket reimbursed depends on the type of ticket (i.e. reimbursable, possibility to rebook) as specified in the carrier's terms and conditions. Whilst, in the case of a flight cancellation by the airlines or a delay, the remedies provided for in Regulation 261 apply.

Therefore, in case of cancellation passengers have the right to choose between the reimbursement or re-routing and they must also be offered care by the operating air carrier, free of charge. As regards re-routing, the Guidelines specify that a re-routing might be difficult to be ensured at the earliest opportunity³ under the circumstances of the COVID-19 outbreak that may imply delay given the uncertainty affecting air traffic.

Of particular interest is what the Guidelines establish regarding the right to compensation when public authorities take measures to contain the Covid-19 pandemic. In this regard, the Commission affirms that such measures cannot be considered inherent in the normal exercise of the activity of carriers and they have to be seen as outside their actual control. Hence, the measures taken to contain the Covid-19 should be regarded as "extraordinary circumstances" precluding the right of passengers to claim compensation as established by Article 5 (3) of Regulation 261.

¹ Commission Notice - Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19, 18.3.2020 C(2020) 1830 final.

² The guidelines cover the following passenger rights legislation: a) 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 295/91; b) Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations; c) Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004.

³ See Regulation 261, Article 8, para.1., point b).

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The Guidelines list some circumstances that should be considered as extraordinary since they could not have been avoided even if all reasonable measures had been taken. Nevertheless, the Commission specifies that the mentioned circumstances are not exhaustive in that other specific circumstances in relation to Covid-19 may also fall under the ambit of Article 5(3) and it also adds that the Guidelines are without prejudice to the interpretation of the Court of Justice.

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