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*The Protection of Air Passengers' Rights in the EU and
Beyond: the Case of Albania. Current Developments within the
EU Institutions Regarding Possible Reforms¹*

ABSTRACT²: Since the creation of the single market and the liberalisation of the aviation sector in the EU, passengers have benefited from lower fares, an expanded and enhanced flight network, and a wider choice of air carriers operating in a free-competition market. In this panorama, the correct application of Regulation (EC) 261/2004 regarding denied

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boarding, cancellation and delays is fundamental. The Regulation sets a minimum level of rights protection for passengers who are denied boarding against their will or whose flight is cancelled or delayed, allowing Member States to offer higher levels of protection.

This paper aims to analyse passenger rights and the related forms of protection provided by European Union legislation, with particular reference to Regulation no. 261/2004, which has contributed to uniform implementation and higher standards for the protection of passenger rights across the EU.

Despite its success, a revision of the regulation has been underway within EU institutions since 2013, when the European Commission launched a revised proposal. The proposal is currently in the legislative process between Parliament and the Council, with the latter taking a position in June 2025 on the amendments to be made. Thus, we aim to analyse this proposal in a *de lege ferenda* context, as well as analysing the problems arising in practice so far. This article aims to shed light on the positions taken by EU institutions and the ongoing negotiations that may lead to a new and improved Regulation (EC) No 261/2004. Starting from the premise that, after more than twenty years, reform is desirable, the current phase of legislative discussion and development therefore appears particularly timely and worthy of attention.

Furthermore, in this paper, we analyse the implementation of EU air passengers' rights protection as foreseen in Regulation (EC) No 261/2004 in foreign contexts, such as Albanian legislation, which is undergoing a process of harmonisation with EU *acquis*, and the influence of EU legislation within the Albanian legal system regarding consumer protection, in particular, passengers' rights. Passengers' rights are foreseen in the XI Chapter of the Albanian Air Code regarding "liability and

passengers' rights" in line with the Montreal Convention and Regulation (EC) No 261/2004.

KEYWORDS: Air passengers' rights; reform; adequate protection; EU law; Albania.

SUMMARY: 1. Introduction. – 2. The scope of application of Regulation (EC) No 261/2004 and the events of service disruption. – 2.1. Passengers' rights recognised by Regulation (EC) No 261/2004 and their enforcement in practice. – 3. The impact and implementation of Regulation (EC) No 261/2004 in foreign countries. The case of Albanian air transport legislation and improvements within the EU integration process and the European Common Aviation Area. – 4. The proposals for reform from 2013 until the recent challenges within the EU institutions. A breakthrough for the long-awaited substantive reform? – 5. Concluding remarks.

1. Introduction

The legislation on the protection of air passengers has developed as a centrepiece of the EU *acquis* once the single market for air transport was achieved³. The particular attention that the EU has paid from the

³ See M. COLANGELO, V. ZENO-ZENOVICH, *Introduction to European Union transport law*, III Edition, Rome, 2019; F. ROSSI DAL POZZO, *EU legal framework for safeguarding air passenger rights*, Cham, 2015; S. TRUXAL, *Three Decades of European Air Transport Liberalization: A Reflection*, in *Issues in Aviation Law and Policy*, 24, 1, 29-56; S. TRUXAL, *Air Carrier Liability and Air Passenger Rights: A Game of Tug of War*, in *Journal of International and Comparative Law*, vol. 4, no. 1, 2017, 103-122.

beginning to consumers, as direct beneficiaries of a competitive market⁴ has led to the proliferation of legislative acts, studies, and monitoring aimed at continuous improvement of the passenger experience. The result is a state-of-the-art regulatory framework in which common principles across different transport modalities are evident⁵: the EU is considered a pioneer in promoting and enhancing passengers' rights across the entire transport sector⁶, having created a rather comprehensive legislative framework in all modes of transport⁷.

The set of rules established is in line with international obligations undertaken by Member States and the European Union in the

⁴ Regarding consumer protection in general in EU and notion of passenger and consumer see M. COLANGELO, V. ZENO-ZENOVICH, op. cit., 142

⁵ See COM(2011) 898 final of 19.12.2011, *A European vision for passengers: Communication on passengers rights in all transport modes*. Ten rights are identified that derives from fundamental principles of non-discrimination, accurate and reliable information and sufficient assistance for passengers: (1) Right to non-discrimination in access to transport; (2) Right to mobility: accessibility and assistance at no additional cost for disabled passengers and passengers with reduced mobility (PRM); (3) Right to information before purchase and at the various stages of travel, notably in case of disruption; (4) Right to renounce travelling (reimbursement of the full cost of the ticket) when the trip is not carried out as planned; (5) Right to the fulfilment of the transport contract in case of disruption (rerouting and rebooking); (6) Right to get assistance in case of long delay at departure or at connecting points; (7) Right to compensation under certain circumstances; (8) Right to carrier liability towards passengers and their baggage; (9) Right to a quick and accessible system of complaint handling; (10) Right to full application and effective enforcement of EU law.

⁶ In 2001 the Commission started an ambitious agenda for introducing passenger protection in all the modes of transport in EU in order to give a common set of rules in all Member States for ensuring a unified common minimum protection of passengers and setting the same level playing field for the transport operators. See COM(2001) 370.

⁷ The framework on passengers' rights in transport is composed by: Air Transport Regulation 261/2004 OJ L46/1 of 17.2.2004; Regulation 1107/2006 OJ L204/1 of 26.7.2006; Regulation 1008/2008 OJ L293/3 of 31.10.2008; Regulation 889/2002 OJ L140/2 of 30.5.2002; Rail Transport Regulation 1371/2007 OJ L315/14 of 3.12.2007 the "Rail regulation"; Waterborne Transport Regulation 1177/2010 OJ L334/1 of 17.12.2010; Regulation 392/2009 OJ L131/24 of 28.5.2008; Road Transport (bus and coach) Regulation 181/2011 OJ L55/1 of 28.2.2011 (applicable from 1.3.2013).

international arena regarding the air sector, especially regarding passenger rights⁸. Under Regulations No 261/2004, establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and No 2027/97, on air carrier liability in the event of accidents, as amended, a mandatory regime is established that offers better protection than the one foreseen in international conventions. Also, the introduction of the National Enforcement Bodies was intended to provide a strong follow-up to the effective application of the Regulations. Although this framework represents an essential piece of legislation for the protection of passengers on paper, various problems have arisen regarding its full implementation in practice by air operators.

It is quite clear that, since the creation of the single market and the liberalisation of the aviation sector in the EU, passengers benefit from lower fares, an extended and enhanced network of flights, and a wider choice of air carriers operating in a free-competition market⁹. Thus, the EU has been very active in the air transport field, considering this as one of the most strategic playgrounds within the common market¹⁰: protecting the passenger's rights and maintaining a high standard of service are of

⁸ See Montreal Convention for the Unification of Certain Rules For International Carriage by Air of 28 May 1999, ICAO Doc. 8932 as adopted with Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents (text with EEA relevance), OJEC L140, 30 May 2002, 0002-0005.

⁹ On the EU transport market in general and aviation see L. ORTIZ BLANCO, B. VAN HOUTTE (eds.), *EU regulation and competition law in the transport sector*, II edition, Oxford, 2017.

¹⁰ As it was stated in doctrine “*not many industries face the same challenges with regard to combining social responsibility and business as the airport industry*” (R. ABEYRATNE, *Ground handling services at airports as a trade barrier*, in *Journal of World Trade*, 42(2), 2008, 262).

paramount relevance not only regarding death and injury but also the safeguard of their economic and non-economic interests¹¹.

In this panorama, regarding the proper application of Regulation (EC) 261/2004, over the past 20 years, the EU institutions have produced an impressive amount of soft law, interpretations, and commissioned studies to provide clear interpretative rules and criteria, almost after every CJEU ruling on the interpretation of Regulation. In 2013, the Commission proposed a revision of the Regulation due to several hermeneutical issues that arose in practice¹². This proposal was refined and revised over time also taking into account the impacts of the pandemic crisis, the new European green economy agenda, and the Russian-Ukrainian war. Thus, the improved, enhanced, and ambitious proposal of the European Commission concerns the revision of the Regulations on Passenger rights and also includes a proposal in the context of multimodal journeys.

The entry into force of Regulation (EC) 261/2004, repealing Regulation (EEC) 295/91¹³, was considered a milestone in the long process of

¹¹ See M. COLANGELO, V. ZENO-ZENOVICH, op. cit., 141 ff.

¹² See J. PRASSL, *Reforming Air Passenger Rights in the European Union*, in *Air and Space Law*, vol. 39, Issue 1, 2014, 59-81; P.P.C. HAANAPPEL, *Compensation for Denied Boarding, Flight Delays and Cancellations Revisited*, in *Zeitschrift für Luft- und Weltraumrecht*, vol. 62, no. 1, 2013, 38-54. Professor Haanappel observed at that time that “*changes and updates to Regulation 261/2004 seem to be required, but these are not so extensive as to require a new Regulation. A revision of the presently existing Regulation should suffice*” (P.P.C. HAANAPPEL, op. cit., 53). Among other proposals there is the need that “*the present line of case law on the inclusion of technical delays within the purview of the Regulation should be continued and codified into the Regulation*” and more importantly that “*the provisions on further compensation and the role of NEBs could be clarified and further specified*”, *Ibid.*, 54.

¹³ Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport in OJ L 36, 8.2.1991, 5. This Regulation, in protection passengers as consumers, addressed a specific problem risen at the time which was the overselling of tickets from airlines based on no show of passengers and cancellation of reservations. Being the check-in procedure, with no internet and based only on CRS, based on the principle first come first served there were many cases of denied boarding.

providing passenger protection within the single and free air transport market, as realised through the so called Third Package of 1992¹⁴ and reshaped in the following years with the entrance and consolidation of

In 2004, the playing field had significantly changed and as stated in the recitals of the Regulation (EC) 261/2004 the need for intervention of the Union was based on the data that there is a need of taking full account of the requirements of consumer protection, the 1991 act in establishing common rules for a denied boarding compensation system in scheduled air transport only offers a basic protection for passengers and the number of denied boarding and cancellations remains high being the protection ineffective. Also, in the recitals the Union legislator fully recognise that there is the need to raise and strengthen the protection offered to passengers regarding the delay, cancellation or denied boarding as well as that there is no need to maintain the distinction between scheduled and non-scheduled flights regarding passenger protection. Furthermore, the aim is to provide clearer rules on what is deemed as an extraordinary circumstance in providing air transport for the operators, taking into consideration the passengers with special needs or reduced mobility as well as ensuring in practice the fulfilment of the effective protection of the passengers rights through identifying national enforcement bodies in order to supervise the compliance of air operators and setting specific rules on sanctions whereas there are infringements of the rights foreseen in the Regulation.

¹⁴ See J. BALFOUR, *Air transport – A community success story?*, in *Common Market Law Review*, 31, 1994, 1025 ff.; U. SCHULTE-STRATHAUS, *Review of “Third package”*, in P.D. DAGTOGLOU, S. UNGER (eds.), *European air law and policy: recent developments*, The Hague, 2003, 93 ff.

See also A. GJETA, *La disciplina della gestione aeroportuale e dei servizi aeroportuali nel diritto dei trasporti europeo e nazionale*, Bologna, 2015. The community efforts culminated with the Third Package of 1992, composed of only Regulations, a strong signal of the implementation of the single market in the air transport sector. It was realised with market opening and regulatory unification, in the first place, with the stabilization of the requirements for the release and maintenance of air vehicle licenses (Reg. 2407/92), with the modification of the modes of access to all intra-community routes (Reg. 2408/92) and all tariffs (Reg. 2409/92) and finally, with the revision of the competition rules and the essence of air transport companies (Reg. 2410 and 2411 of 1992). The European legislative data regarding air transport in general was consolidated through Regulation 1008/2008, which in its XVIII recital noted the importance of community intervention in the specific matter of transport “since the objective of the present regulation, that is to say a more homogeneous application of Community law in the field of the internal aviation market, cannot be achieved to a sufficient extent by the Member States because of the international nature of air transport and can therefore be better achieved at Community level, the Community may intervene, on the basis of the principle of subsidiarity sanctioned by article 5 of the treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective”. A. GJETA, op. cit., 21-22.

low-cost airlines. Therefore, a renewed need for passenger protection has arisen.

Also, in the EU legislator's intention, it was seen as the final response and the settlement of EU passenger protection standards in the aftermath of the entry into force of the Montreal Convention, of which the EU had adopted two years earlier, providing a high standard of protection¹⁵. Yet, many concerns and interpretative doubts have arisen in practice so far, leading to extensive case law and, in 2016 and 2024, to Commission interpretative guidelines.

The above reflections are sufficient to highlight the need to examine the passenger rights protection sector and in particular Regulation (EC) 261/2004 in a *de lege ferenda* perspective, especially after the position taken by the EU Council, which has delivered its proposal for revision of the Regulation¹⁶. Intervening on a piece of legislation that has led to more than 80 CJEU rulings over 20 years of its application, the Council worked to reach a political agreement, with a balanced proposal that might be shared by the stakeholders in the process, opting for amendments that will make

¹⁵ See in doctrine T. ZHANG, *The Montreal Convention vs. EU Regulation 261/2004: A Clash Over Exclusivity and Passenger Rights*, in *Modern Law Research*, 2025, vol. 6, Issue 4, 21-35. The Author underlines the conflict the goal of uniformity aimed by Montreal Convention and the higher protection of passengers offered by Regulation (EC) No 261/2004. Thus, according to the Author "The international aviation liability regime is thus at a crossroads, forced to balance the industry's need for legal predictability with modern society's demand for stronger consumer rights. The most viable path forward, especially for major aviation nations like China, is a dual strategy: strictly applying the Convention where it governs, cautiously supplementing its gaps with clear domestic rules, and concurrently investing in specialized Alternative Dispute Resolution (ADR) mechanisms. This approach respects international law while pragmatically adapting to the evolving expectations of air passengers worldwide". (T. ZHANG, op. cit., 35). See also I. DEVIATNIKOVAITE, *The Montreal Convention of 1999 and Regulation No 261/2004 in the EUCJ and National Case Law*, in *Baltic Journal of Law and Politics*, vol. 11, no. 1, 2018, 21-47.

¹⁶ See the position of the Council as of 5 June 2025. Interinstitutional file 2013/0072 (COD) of 6 June 2025.

it easier for passengers to understand and apply their rights, introduce new rights and reduce administrative burden for them.

Also, having regard to the EU Parliament's recent position on the topic, it is essential to delve deeper into the way forward for the development of air passenger rights in the EU market. Furthermore, events beyond the air transport market, such as the fuel crisis, etc., have fostered a debate on passenger protection and the balance with air operators' needs, without undermining the achievements so far.

2. The scope of application of Regulation (EC) No 261/2004 and the events of service disruption

The Regulation sets a minimum level of rights of protection for passengers who suffer from denied boarding against their will or whose flight is cancelled or delayed, allowing Member States to offer higher levels of protection¹⁷. This set of rules is deemed mandatory and of automatic application, without the possibility of waiver or derogation by the airlines through a restrictive clause in the contract of carriage (Art. 15.1). This kind of derogating clauses, or the lack of information provided to passengers regarding their rights, shall be deemed a non-fulfilment of the airline's obligation, entitling the passenger to seek a remedy before the National Enforcement Bodies for additional compensation as set out in the Regulation (art. 15.2). Moreover, in the performance of the contract of carriage, the passengers have the right to further compensation for the

¹⁷ For a first comment see K. ARNOLD, *Application of regulation (EC) No 261/2004 on denied boarding, cancellation and long delay of flights*, in *Air and Space Law*, vol. 32, Issue 2, 2007, 93-107.

proven damages, after deducting the compensation received under the Regulation (Art. 12)¹⁸.

As regards the scope of application, it includes “(a) *passengers departing from an airport located in the territory of a Member State to which the Treaty applies; (b) [...] 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*” (Art. 3). In principle, it is therefore a “territorial” scope of application, in relation to which CJEU case law has intervened several times with regard to the concept of “flight”¹⁹, but to this a “material” scope of application is added,

¹⁸ Excluding whereas the passenger has voluntarily accepted the denied boarding according to the correct procedure enacted from the airline according to Art. 4.1 of the Regulation (EC) 261/2004. Clearly the Regulation does not certify the full liability of the airline, the latter having the right to redress against other subjects, as clarified by Art. 13, according to which “*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. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws*”.

¹⁹ Regarding the concept of flight the CJEU has addressed several interpretative rulings when non recognising as “a flight” a journey as a whole with the outbound and inbound flight but only to a single performed flight and Regulation (EC) No 261/2004 does not apply to the case of an outbound and return journey in which passengers who originally departed from an airport located in the territory of a Member State, travel back to this airport on a flight operated by a non-EU air carrier and departing from an airport located in a non-EU country. The fact that the outbound and return flights are the subject of a single booking has no effect on the interpretation of this provision (see Case C-173/07, *Emirates Airlines*, ECLI:EU:C:2008:400, paragraph 40 and 53). Different is the case where the flight departed within territorial scope application of the Regulation and foresees several other flights, despite being outside EU, as part of a single booking in order to reach a final destination (see Case C-537/17, *Wegener*, ECLI:EU:C:2018:361, paragraph 18; Case C-191/19, *Air Nostrum*, ECLI:EU:C:2020:339, paragraph 26; Case C-451/20, *Airhelp*, ECLI:EU:C:2022:123, paragraph 25; Case C-436/21, *flightright*, ECLI:EU:C:2022:762, paragraph 20). See in Doctrine M. CHATZIPANAGIOTIS, *The Notion*

where a series of exclusions are indicated, such as passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public, or conditions, such as having presented oneself at check-in²⁰.

of 'Flight' under Regulation (EC) No. 261/2004 in *Air and Space Law*, 2012, vol. 37, Issue 3, 245-257.

Furthermore, are considered flights within the scope of the Regulation and a claim can be brought toward EU carrier even if the event has occurred outside the EU and there was a change of the aircraft, as well as flight performed in code-sharing and the delay happened outside EU in a flight performed by non-EU operator (Case C-502/18, *České aerolinie*, ECLI:EU:C:2019:604, paragraphs 20 to 26 and paragraph 33), also as if there is not any legal relationship between airlines through code-sharing (Case C-436/21, *flightright*, ECLI:EU:C:2022:762, paragraph 28 and 31).

Several rulings further clarify if a flight is to be intended within the scope of application of the Regulation. See Case C-367/20, *KLM Royal Dutch Airlines*, ECLI:EU:C:2020:909, Case C-561/20, *United Airlines*, ECLI:EU:C:2022:266.

On the other hand, it falls out of the scope of the Regulation the case of an EU carrier performing a flight that both departure and arrival point are outside EU despite the airport of exchange flights is located in the EU (Case C-451/20, *Airhelp*, ECLI:EU:C:2022:123, paragraph 41).

²⁰ This does not apply to the case of cancellation announced in advance of the check in due time. The presence at the airport is required, with a valid confirmation of reservation, despite the check in procedures are made online before (Case C-474/22, *Laudamotion GmbH*, ECLI:EU:C:2024:73, paragraph 21 and 34; see also, regarding the prove of transportation, Case C-756/18, *easyJet Airline*, ECLI:EU:C:2019:902, paragraphs 28, 29, 30 and 33).

The events of service disruption include denied boarding (art. 4)²¹, cancellation (Art. 5)²², delay (Art. 6)²³, and downgrading of services offered to the passenger (Art. 10).

²¹ It is a broad understanding that includes overbooking as well as operational reasons other than health, safety, security, or travel documentation (Case C-22/11, *Finnair*, ECLI:EU:C:2012:604, paragraph 26), yet, excluding the cases of “no-show” policy of the airlines (Case C-290/16, *Air Berlin v VZBV*, ECLI:EU:C:2017:523, paragraphs 46 to 49).

²² Defined as the non-operation of a flight which was previously planned and on which at least one place was reserved: the passengers in such case are entitled to the rights of reimbursement, rerouting and care, as well as compensation. There is cancellation where the passengers are obliged to join another independently planned flight (Case C-83/10, *Sousa Rodríguez and Others*, ECLI:EU:C:2011:652, paragraph 29). See also Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:2009:716, paragraphs 37 and 38. Also changing the departure time is to be considered as cancellation, if it is not treated as a long delay, assessed in a case by case basis being not sufficient only the modification of the flight number. Thus, it was not deemed as cancelled a flight if the operating air carrier postpones the time of departure of the flight by less than 3 hours, without making any other changes to this flight (Joined Cases C-146/20, C-188/20, C-196/20 and C-270/20, *Azraqair and Others*, ECLI:EU:C:2021:1038, paragraph 87). On contrary, was regarded cancelled a flight where the operating air carrier brings the departure time of the flight forward by more than 1 hour (Case C-263/20, *Airhelp*, ECLI:EU:C:2021:1039, paragraph 35; Case C-395/20, *Corendon Airlines*, ECLI:EU:C:2021:1041, paragraph 23). Regarding a diverted flight, see Case C-253/21, *TUI fly GmbH*, ECLI:EU:C:2021:840, paragraph 27. It is treated as a delay in case where the landing airport serves the same town, city or region (Case C-826/19, *Austrian Airlines*, ECLI:EU:C:2021:318, paragraph 44) and in order to establish the effective delay time, the time at which the passenger actually reaches, at the end of the transfer, either the airport for which the booking was made or, as the case may be, another close-by destination agreed with the operating air carrier it is taken as a reference (Case C-826/19, *Austrian Airlines*, ECLI:EU:C:2021:318, paragraph 49).

The returning to its point of origin is treated as an unoperated flight (Case C-83/10, *Sousa Rodríguez and Others*, ECLI:EU:C:2011:652, paragraph 28).

²³ The delay entitles the passenger to the right to care, reimbursement and a return flight. Yet, the CJEU has introduced the concept of “long delay at arrival” when ruling that delay at arrival of at least 3 hours gives the same rights in terms of compensation as a cancellation, understanding the time of arrival as the moment when at least one of the doors of the aircraft is opened: see Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:C:2009:716, paragraph 69; Joined Cases C-581/10 and C-629/10, *Nelson and Others*, ECLI:EU:C:2012:657, paragraph 40, and Case C-413/11, *Germanwings*, ECLI:EU:C:2013:246, paragraph 19 and 27. The scheduled time of arrival is to be considered as the fixed time in the flight schedule and held as a proof by the passenger (Case C-654/19, *FP Passenger Service*, ECLI:EU:C:2020:770, paragraph 25).

2.1. Passengers' rights recognised by Regulation (EC) No 261/2004 and their enforcement in practice

Once a disruptive event has occurred during the performance of a contract of air transport, the passengers are entitled to several rights foreseen in the Regulation, which aim to make the disruptive experience less harsh, in order to continue the performance of the contract as close as possible to reaching its end, which means arriving in the designed final destination in good condition. On the other hand, beyond the fulfilment of the contract by the airline, the aim is to provide effective and compulsory compensation to the passenger, which is the weak part of the contract of carriage, as an automatic satisfaction for their misfortune.

To that end, it is important to highlight the CJEU's lecture when introducing the concept of "long delay" in the *Sturgeon* case. The Court's interpretation equalised the remedies in case of long delay to those of the flight cancellation on the ground that the passengers suffer an equal misfortune, despite Article 7 clearly stating that "where reference is made to this Article, passengers shall receive compensation".

First of all, the right to compensation foreseen in Article 7 of the Regulation requires the air carrier to offer to the passengers a fixed

pecuniary compensation²⁴ in cases of denied boarding²⁵, cancellation²⁶, long delay²⁷, re-routing²⁸ or reimbursement for downgrading. This compensation does not prejudice the right of the passenger to seek further compensation for the pretended damage, but the compensation received

²⁴ The air carrier should inform the passengers of this precise right and the name of the air carrier and address to which the claim should be referred (Joined Cases C-146/20, C-188/20, C-196/20 and C-270/20, *Azurair and Others*, ECLI:EU:C:2021:1038, paragraph 108)

²⁵ Despite there might be extraordinary circumstances (Case C-22/11, *Finnair*, ECLI:EU:C:2012:604, paragraph 40) or despite the denied boarding in a connected flight is made on the ground that the first flight was in delay (Case C-321/11, *Rodríguez Cachafeiro and Martínez-Reboredo Varela-Villamor*, ECLI:EU:C:2012:609, paragraph 36). Also, is entitled to compensation in a case of denied boarding the passenger which boarding was denied in advance and has not shown at check in (Case C-238/22 – *1 LATAM Airlines Group*, ECLI:EU:C:2023:815 paragraph 39 and 49)

²⁶ Cancellation triggers compensation if the airline does not effectively inform the passengers at least two weeks in advance despite the reservation was made through intermediary (Case C-302/16, *Krijgsman*, ECLI:EU:C:2017:359, paragraph 31; Case C-263/20, *Airhelp*, ECLI:EU:C:2021:1039, paragraph 56). See also Case C-307/21, *Ryanair DAC*, ECLI:EU:C:2022:729, paragraph 30.

²⁷ Reaching the arrival airport in a 3 hours delay is to be considered as a cancellation like in Article 5.1, point (c) iii of the Regulation and, therefore, these passengers are entitled to compensation being interpreted that the intention of the EU legislator is to compensate for a loss of time of at least 3 hours, and the airline can only invoke the causation of the delay from extraordinary circumstances (Joined Cases C-402/07 and C-432/07, *Sturgeon and Others*, ECLI:EU:C:2009:716, paragraph 54 and 69). The passengers are entitled to compensation in connected flights in the same manner when reaching their last flight final destination with a delay of 3 hours (Case C-11/11, *Folkerts*, ECLI:EU:C:2013:106, paragraph 47). Also, passengers are entitled to compensation even if they arrive at an airport other than their destination and all the transfer cost intra-airports are to be bearded by the airline, as well as the calculation of the delay is the actual time of arriving at the designed airport in the flight schedule (Case C-826/19, *Austrian Airlines*, ECLI:EU:C:2021:318, paragraph 49, 66, 73)

²⁸ There is no compensation if the re-routing is made in accordance to article 5.1 point c) of the Regulation and they are able depart within an hour earlier than their scheduled departure and to reach the final destination no more than 2 hours of their scheduled time of arrival. If these time limits are not met and the passenger has arrived in the final destination between 2 hours and 3 hours of delay from its original scheduled time (Case C-130/18, *flightright GmbH*, ECLI:EU:C:2018:496, paragraph 23).

under Regulation (EC) No 261/2004 must be deducted from the amount accorded²⁹.

Compensation is a right of each passenger if the journey has been affected by the above-mentioned events, and the airline should therefore automatically liquidate it. The airlines can be exempted if they provide cumulative evidence that the cancellation or long delay is due to an extraordinary circumstance causing the disruptive event and that it could not have been avoided even if all reasonable measures were taken³⁰. So far, the exercise of passengers' rights has not been peaceful, resulting in copious case law and uncertainty in claiming those rights, especially regarding the nature of cancellations due to "exceptional circumstances"³¹. This vast body of case law has developed around the notion of "extraordinary circumstances," which the Court divides into "internal"³² and "external"³³. This exception to the automatic compensation, foreseen as a core provision of Regulation (EC) No 261/2004, has been

²⁹ A passenger may seek compensation, included non-material damage through national legislation or Montreal Convention based on the contract of carriage (Case C-354/18, *Rusu*, ECLI:EU:C:2019:637, paragraph 47)

³⁰ The air operator should give proof that had adopted all the necessary measures within reasonability (Case C-74/19, *Transportes Aéreos Portugueses*, EU:C:2020:460, paragraph 36)

³¹ R. PAZOS, *The Extraordinary Circumstances Defence in Regulation (EC) 261/2004*, in *Air and Space Law*, vol. 46, Issue 6, 2021, 739-762.

³² Are considered as internal events of operating an aircraft: technical defects of aircraft, issues to mobile boarding stairs, unexpected absence of crew, strikes by airline staff. It must be noted that internal events is a residual category for the airline.

³³ Are considered as external events of operating an aircraft events that are not in control of the air operator (Case C-28/20, *Airhelp Ltd*, ECLI:EU:C:2021:226, paragraph 41) such as: bird strikes, collisions in airports, damages to aircraft by a foreign object, petrol on the runway, fuelling system, passengers behaviour, medical emergencies, volcano eruption, airport congestion in regard to weather conditions, external strikes, airport shortage of staff in handling procedures.

³⁴ See Case C-28/20, *Airhelp Ltd*, ECLI:EU:C:2021:226, paragraph 39

strictly interpreted by the CJEU in its case law, requiring a case-by-case assessment³⁵.

As stated above, the main aim of the regulation is to establish a set of rights that facilitate the performance of the carriage contract in good faith by both passengers and airlines, and to ensure their proper enforceability. The rights granted to the passenger, as a consumer and weaker party to the contract of carriage, ensure that their concerns are properly addressed in situations where a guarantee and information are required. Consequently, the right to information, as stated in Article 14, is of paramount importance. The obligation to inform the passenger by the airline is mandatory through ensuring *“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’”*. Furthermore, when a disruptive event occurs, the airline must provide each passenger with written notice of their rights to assistance and compensation during departure and, in light of the CJEU case law, even upon arrival, when there is a delay of 3 hours or more that equals the event of cancellation, as interpreted in the light of the Sturgeon case.

Also, the passenger has the right to reimbursement or rerouting in cases of denied boarding or cancellation, according to Article 8. Both reimbursement and rerouting must be effective in the passenger’s interests and must be offered by presenting different adequate and reasonable offers from the airline³⁶.

³⁵ See Case C-549/07, *Wallentin-Hermann*, ECLI:EU:C:2008:771, paragraph 17, 22, 23

³⁶ See Case C-354/18, *Rusu*, ECLI:EU:C:2019:637; Case C-601/17, *Harms*, ECLI:EU:C:2018:702; Joined cases C-145/15 and C-146/15, *Ruijsenaars e.a.*, ECLI:EU:C:2016:187

The Regulation provides a right to care for the passenger in the event of a delay, denied boarding, or cancellation, when the passenger has not opted for rerouting at a later date. This is delivered through meals and refreshments proportional to the waiting time, two free communication sessions, and hotel accommodation and transport from the hotel to the airport and vice versa, assessed on a case-by-case basis³⁷. An airline's obligation to care extends even in cases of flight cancellation due to extraordinary circumstances.

The above-mentioned rights constitute the backbone of the application of Regulation (EC) 261/2004 that need to be correctly enforced in all Member States by the designated National Enforcement Bodies. The NEBs must take measures to oversee the proper application of the Regulation and exercise their administrative powers to address situations arising from airlines' infringements. The CJEU ruled that there is no need for an action taken by the NEBs regarding each single case³⁸, but, in spite of the lack of provision in the Regulation, each Member State may adopt legislation that obliges the NEBs to take into consideration their intervention in addressing individual claims³⁹. Furthermore, as regards enforcement, there is no time limitation foreseen in the Regulation for bringing the claim in front of the national courts or other designated bodies and the time limitations are set by the national law⁴⁰.

³⁷ If the airline has not offered care passengers who have had to pay on their own can be reimbursed by the airline if the expenses were necessary, reasonable and appropriate (Case C-12/11, *McDonagh*, ECLI:EU:C:2013:43, paragraph 66).

³⁸ Joined Cases C-145/15 and C-146/15, *Ruijsenaars and Others*, ECLI:EU:C:2016:187, paragraphs 32, 36 and 38.

³⁹ Case C-597/20, *LOT*, ECLI:EU:C:2022:735, paragraph 26.

⁴⁰ See Case C-139/11, *Cuadrench Moré*, ECLI:EU:C:2012:741, paragraph 33.

Despite the interpretative problems that have arisen in practice⁴¹, the Regulation is to be considered a milestone for passengers' rights across all modes of transport, providing evidence of the challenges that may arise when dealing at the Union level with topics such as consumer rights. After 20 years in force, a reshaping of the legislative provisions is long overdue. The European Commission guidelines of 2016⁴² and those of 2024⁴³ have contributed to offering clarity of interpretation, but these do not suffice⁴⁴.

3. The impact and implementation of Regulation (EC) No 261/2004 in foreign countries. The case of Albanian air transport legislation and improvements within the EU integration process and the European Common Aviation Area

The process of European integration of South-East European countries into the European Union is one of the most persistent issues across the Western Balkan region. Despite differences that affect this process from country to country, air transport, due to its international nature, has, over several decades, become the leading sector in the process of legislative

⁴¹ See in doctrine S. CICERI, *Passenger rights in EU air transport law: Regulation (EC) 261/2004, the right to compensation, and the case law of the Court of Justice*, in *Journal of European Consumer and Market Law*, vol. 15, Issue 1, 2026, 44-49.

⁴² Commission Notice (2016/C 214/04)

⁴³ Commission Notice (C/2024/5687)

⁴⁴ See S. DRAKE, *Delays, cancellations and compensation: Why are air passengers still finding it difficult to enforce their EU rights under Regulation 261/2004?*, in *Maastricht journal of European and comparative law*, 2020, volume 27, Issue 2, 230-249; R. RITORTO, S. A. FISHER, *Exploring Airline Contracts of Carriage and European Union Flight Delay Compensation Regulation 261 (EU 261)-A Bumpy But Navigable Ride*, in *Journal of Air Law and Commerce*, vol. 85, no. 2, 2020, 271-308.

harmonisation and EU integration⁴⁵. It lay, especially, in the creation of a common aviation area between the EU and Eastern European neighbouring countries, based on a multilateral and comprehensive agreement⁴⁶, as well as the process of adopting the *acquis* as part of the integration process⁴⁷.

In the first consideration, the most relevant moment affecting legislative production in Albania was the signature of the Stabilisation and Association Agreement with the EU and the Member States, ratified by

⁴⁵ See in general regarding EU external air transport policy P.P.C. HAANAPPEL, *The external aviation relations of the European Economic Community and of ECC Member States into the twenty-first century*, in *Air Law*, vol. XIV (3), 1989, 122 ff.; A.L. MELANIA SIA, *La disciplina dei servizi aerei* in L. TULLIO, M. DEIANA (eds.), *Codice dei Trasporti*, Milan, 2013, 58 ff.; S. BRINKHOFF, *Introduction* in S. HOBE, N. VON RUCKTESCHELL, D. HEFFERNAN (eds.), *Cologne compendium on air law in Europe*, Cologne, 2013, 13 ff. See also COM(2012) 556 final, *The EU's External Aviation Policy – Addressing Future Challenges*, 14 where it is stated that “[i]t is now time for EU Member States, the Council and the European Parliament to consider carefully how best to devise the EU's future external aviation policy and to take the decisions that will be needed for a more ambitious policy to match the serious challenges facing the European aviation sector today and to unleash the full potential that aviation can contribute to the European economy”.

See also H.A. WASSENBERGH, *Opening the skies – the EEC and third countries. ECC external civil aviation competence and the GATS*, in *Air Law*, vol. XV, (5/6), 1990, 307 ff.; A. OTT, *EU regulatory agencies in the EU external relations: trapped in a legal minefield between European and International law*, in *European Foreign Affairs Review*, vol. 13, 2008, 515 ff.; J. BALFOUR, *EC external aviation relations: the Community's increasing role, and the new EC/US agreement*, in *Common Market Law Review*, vol. 45, 2008, 443 ff.; P. BOMBAY, M. GERGELY, *The 2006 ECAA Agreement: Centerpiece of the European Community's aviation policy toward its neighbours*, in *Air & Space Law*, vol. XXXIII (3), June, 2008, 214-232.

⁴⁶ The economic effects of such agreement were remarked by the Commission when stressing the undisputed economic benefits for the parties on the basis of an independent study which had estimated that the economic benefit of the agreement signed with Western Balkans has exceeded 2.4 billion of euros between 2006-2011, accompanied with fares' decrease and consequent consumers surplus. COM(2012) 556 final, 16; BOZZ & COMPANY, *Development of the EU's Future External Aviation Policy*, Final report, 2012.

See *ex pluris* P. BOMBAY, M. GERGELY, *op. cit.*; A. GJETA, *EU external aviation policy and the Western Balkans: what a future for the European Common Aviation Area?*, in *The State, Society and Law: Regional operation*, Proceedings, vol. III, 2014, 1052 ff.

⁴⁷ See A. GJETA, *EU law, enlargement process and the burden of legal harmonization in Albania*, Elbasan, 2024.

Law no. 9590 dated 27.07.2006, which paved the way for the adoption of the *acquis* prior to accession to the EU. Article 70 of the Agreement “recognise the importance of the approximation of Albania’s existing legislation to that of the Community and of its effective implementation. Albania shall endeavour to ensure that its existing laws and future legislation shall be gradually made compatible with the Community *acquis*. Albania shall ensure that existing and future legislation shall be properly implemented and enforced”. Regarding the supply of transport services, Article 59 of this agreement sets out the obligations of each party to ensure free access to such services and to align the legislation⁴⁸. Therefore, the legislative framework that regulates transport in Albania is shaped in accordance with EU legislation, and the adoption of each individual act shall be seen in relation to the fulfilment of the tasks under the Stabilisation and Association Agreement with the EU and the adoption of the *acquis*. In different transport modes, the legislator has chosen to adopt Codes, such as the Air, Rail, or Maritime Code, to regulate the affected sectors organically and autonomously.

Progress across the whole air transport sector in Albania was important, with the adoption of an Air Code in 2008, considered a milestone in

⁴⁸ Article 59 clearly states that “with regard to supply of transport services between the Community and Albania, the following provisions shall apply: ... 4. With a view to ensuring a coordinated development and progressive liberalisation of transport between the Parties adapted to their reciprocal commercial needs, the conditions of mutual market access in air transport shall be dealt with by special Agreements to be negotiated between the Parties. 5. Prior to the conclusion of the Agreements referred to in paragraph 4, the Parties shall not take any measures or actions which are more restrictive or discriminatory as compared with the situation existing prior to the date of entry into force of this Agreement. 6. Albania shall adapt its legislation, including administrative, technical and other rules, to that of the Community existing at any time in the field of air, maritime and inland transport in so far as it serves liberalisation purposes and mutual access to markets of the Parties and facilitates the movement of passengers and of goods. 7. In step with the common progress in the achievement of the objectives of this Chapter, the Stabilisation and Association Council shall examine ways of creating the conditions necessary for improving freedom to provide air and inland transport services”.

addressing aviation issues in the country⁴⁹, as part of a reform that falls under the *acquis* adoption as well as under the obligations deriving from the ECAA agreement⁵⁰. At that time, months before being granted the status of a candidate country, the Commission's 2013 progress report on Albania addressed concerns about transport policy in general and air transport in particular⁵¹. Among others, the protection of passengers' rights under EU legislation is one of the central obligations foreseen, and it was to be transposed into national legislation immediately, as well as granting the correct enforcement⁵².

⁴⁹ The air sector in Albania was governed by the Air Code of the Republic of Albania, adopted with Law no. 10040 dated 22.12.2008, See for a first comment A. GJETA, *Il codice del diritto aereo Albanese. Prime considerazioni in merito a una codificazione ispirata al diritto uniforme e comunitario*, in *Rivista del Diritto della Navigazione*, no. 2, 2014, 749-785.

⁵⁰ As in the regard to the ECAA agreement the comprehensive assessment of the EU Commission in the 2012 Communication was the sequent: "Neighbouring countries have done a great deal to align their regulatory framework with EU legislation in key areas such as aviation safety, security, air traffic management, environment, passenger rights, economic regulation and social aspects. This is in the interest of the consumers and aviation industry both of the EU and the neighbouring countries. In the case of the Western Balkans, the early implementation of EU aviation rules under the ECAA Agreement will also contribute to their efforts in the context of the EU accession process" COM(2012) 556 final, 17.

⁵¹ See SWD(2013) 414 final. The Commission opinion was that "[l]ittle progress has been made in transport policy. Further efforts are needed to align legislation with the *acquis* and to strengthen administrative capacity in all modes of transport. ... Air safety oversight capacities have improved but still rely excessively on external experts. Overall, preparations in the area of transport are not very advanced", *ibid.*, 29.

⁵² The multilateral agreement consists of a "basic agreement" with 34 articles and a series of annexes and protocols. Annexe 1 enumerates the applicable EU *acquis*, and there are also various executive protocols that establish the transition phase and the *acquis* to be implemented (Article 1.3 ECAA agreement). The objective of the agreement is the adoption by the signatory countries of the EU *acquis* in the field of air transport, such as liberalisation of access to the air services market and prices; the legislation on ground handling services and the slot allocation; regulatory profiles of safety and security; the legislation regarding the management of air traffic and the creation of the Single European Sky and its functional air blocks. The aim is to create a common space which must be based "on free access to the market, on freedom of establishment, on equal conditions of competition and on common rules, also in the sectors of safety and

In 2020, the new Air Code was introduced, bringing a few substantive changes to the regulation of the air transport sector and thereby better aligning it with the EU *acquis*. Thus, according to the Government, the proposal adopts the mandatory regulation of Regulation EU 2018/1139⁵³ and is in line with the relevant *acquis*⁵⁴. The new Air Code was adopted by Law no. 96/2020, “Air Code of the Republic of Albania”, which repealed the Code of 2008 and further aligned it with the relevant EU *acquis*. Additionally, the new Code has made progress in adopting the acts needed under the ECAA agreement⁵⁵, which aims to include Albania and the Western Balkans as a whole in a Single European Space, as part of a

protection of air navigation, in the social and environmental sector” (art. 1.1 of the ECAA agreement). See A. GJETA, *Il codice del diritto aereo Albanese*, cit., 749-785.

⁵³ A precedent draft of Albanian Air Code was brought in Albanian Parliament in 2018 but it was withdrawn in order to make changes for adopting the new Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 in OJ L 212, 22.8.2018, 1–122.

⁵⁴ Furthermore, according to the *travaux préparatoire* in Parliament there is partial alignment with 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, OJ L 293, 31.10.2008, 3–20, as recast; Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system, OJ L 300, 14.11.2009, 34–50; Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC, OJ L 295, 12.11.2010, 35–50; Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002, OJ L 97, 9.4.2008, 72–84.

⁵⁵ Decision 2006/682/EC of the Council and of the Representatives of the Member States of the European Union meeting within the Council of 9 June 2006. Ratified by Albania with Law no. 9658 dated 18.12.2006.

multilateral agreement between the EU and border States, mainly Western Balkan States⁵⁶. It must be noted that the EU has been following the same pattern in signing the Transport Community Treaty, facilitating the adoption of the *acquis* in other modes of transport and TEN infrastructures.

Thus, through a long codification process that culminated in 2020⁵⁷ the air transport sector in Albania is mainly aligned with the EU *acquis*⁵⁸. Unlike other countries with a unitary code system in transport legislation, Albania has opted for a complete division of navigation disciplines, keeping distinct air, rail, inland transport, and maritime legislation, and drafting its legislation in compliance with the EU *acquis*.

Air passengers' rights are foreseen in the XI Chapter of the Albanian Air Code regarding "liability and passengers' rights" in line with the Montreal

⁵⁶ See on the topic A. GJETA, *EU external aviation policy and the Western Balkans: what a future for the European Common Aviation Area?*, in *Proceedings of Conference in Durrës*, 2014.

⁵⁷ The codification process always involves difficulties, starting from the assumption that it must culminate with an organic, complete, and, in principle, tendentially autonomous corpus within the legal system. Usually, Codes are complete and exhaustively regulate a certain area of law. Transport law, due to its nature as a legislative corpus destined to regulate a predominantly international economic activity such as navigation and transport, for the most part, is regulated by legislation drawn up precisely at the international level. Thus, national legislation is mainly affected by international law. Yet, Albania has a singular regulation in the transport area since three codes have been adopted, and only road transport is regulated by law. These legislative pieces are tendentially autonomous not only regarding general law but even other modes of transport, making the process of interpretation very fragmented and missing the opportunity to find a common and unitary lecture on the notion of transport in the Albanian legal system. See P.P.C. HAANAPPEL, *The law and policy of air space and outer space: A comparative approach*, The Hague, 2003, XIII.

The autonomy enjoyed by the Italian navigation code in respect to the common law is well known. For an analysis of the doctrinal debate, in Italy and abroad, see M. CASANOVA, M. BRIGNARDELLO, *Diritto dei trasporti, Infrastrutture e accesso al mercato*, vol. I, Milano, 2011, 5-12.

⁵⁸ As it is stated in the Decision of the Council of Ministers no. 122 date 1.3.2023 *Për miratimin e Planit Kombëtar për Integrimin Evropian 2023-2025* (On the approval of the national plan for the European integration), 454-455. See also A. Gjeta, *EU law*, cit.

Convention and Regulation (EC) No 261/2004. Hence, the Code exhaustively regulates, by reproducing Montreal Convention provisions on jurisdiction, liability for damages regarding death or bodily injury, contractual liability regarding damages, delays or baggage loss, obligatory insurance regarding liability toward passengers or baggage⁵⁹, as well as carriage performed by a non-contractual carrier. In addition, article 148 foresees the limitation of claims for damages regarding contractual liability that should be brought “*within three years, calculated from the date of arrival at destination, from the date on which the aircraft ought to have arrived, or from the date on which the carriage was interrupted*”, as well as article 138 foresees the same limitation of action for liability regarding death or bodily injury. Also, the Code is in line with the Montreal Convention regarding claims to baggage loss or damage, in which case the recipient “*shall complain to the carrier immediately upon discovery and no later than 7 days from receipt for checked baggage. In case of delay, a complaint shall be made no later than 21 days from the date baggage was delivered. Complaints shall be made in writing. Failure to file a complaint within the time limits releases the carrier from liability. Acceptance of baggage without reservation creates a presumption that the baggage was received undamaged*”⁶⁰. These limitations are foreseen within sub-chapters II “Liability for damages toward third parties” and sub-chapter III “Contractual liability”.

The actualisation of air passengers’ rights as foreseen in Regulation (EC) No 261/2004 is set out in a special sub-chapter IV, “Passenger

⁵⁹ Article 153 Albanian Air Code states that “1. Minimum insurance coverage for passenger liability shall be: a) for commercial operations: 250,000 SDR per passenger; b) for non-commercial operations by aircraft with a maximum take-off mass of 2,700 kg or less, a lower level may apply, provided that coverage is at least 100,000 SDR per passenger. 2. Minimum insurance coverage for baggage liability in commercial operations shall be 1,131 SDR per passenger”. The amount is in line with the provisions under EU legislation.

⁶⁰ Article 144.6 Albanian Air Code.

protection”, in articles 154 to 159. Article 154 aims to enhance the protection of passengers, without prejudice to their other rights under an air carriage contract, in accordance with the whole of Chapter XI of the Code. It clearly addresses to secondary legislation, Ordinance of the Ministry of Public Works and Transport no. 1 of 26.2.2013, “*in the event of denied boarding, cancellation or long delay of flights, passengers’ rights to compensation, re-routing, assistance and care shall be determined by secondary legislation adopted by the Minister in accordance with international obligations, in particular the multilateral agreement*”⁶¹ designing the Civil Aviation Authority for the enforcement of these rights. On the other hand, the administrative discretion of the Authority as NEB is very broad, where, according to Article 16.2 of the Ordinance, “*when deemed reasonable, the Civil Aviation Authority takes the necessary measures to ensure respect for passenger rights*” and, according to Article 16.4 of the Ordinance, “*the sanctions applied for infringement of the provisions of this regulation must be effective, proportionate and justifiable*”. Since the entry into force of passenger protection in Albania in 2008, through the correct transposition in 2013 with the Ordinance, there have been no other regulations or soft-law instruments issued by the Albanian Civil Aviation Authority regarding its role in protecting passengers’ rights and how it has effectively used its administrative discretion in evaluating the complaints. It would have been at least likeable to offer soft-law instruments for consumers-passengers in line with the Guidelines issued by the European Commission regarding the interpretation of Regulation (EC) No 261/2004.

Furthermore, it is clearly stated in article 154.4 that “*in the event of infringement of passenger rights, in addition to the fines provided by this Code*”⁶², the

⁶¹ Article 154.1 Albanian Air Code.

⁶² Infringements of the provision of the Albanian Air Code may lead to sanctions, where are not a criminal offence, may lead to administrative infringements and sanctions that

Authority shall adopt other measures determined by regulations approved by the Minister in accordance with international obligations and relevant consumer protection legislation". In the sanctions section, the legislator has clearly and specifically foreseen that failure to comply with sub-chapter VI regarding the actualisation of passengers' rights in cases of denied boarding, cancellation, and long delays may lead to sanctions up to the revocation of the operating licence⁶³.

In the second consideration, regarding implementation, we observed greater commitment from Albanian institutions only at a single moment following the opening of negotiations with the EU and during the screening process in 2021-2023, and in the later phase, during the opening of negotiations⁶⁴. It suffices to note that, regarding passengers' rights in air transport, there has been a significant improvement on the Albanian Civil Aviation Authority website in addressing passenger complaints, with a standardised complaint form introduced. These forms contain all the information regarding Regulation (EC) No 261/2004 as fully transposed by Ordinance of the Minister of Public Works and Transport no. 1 dated 26.2.2013⁶⁵. Also, Regulation 1107/2006 was transposed with Decision of the Minister of Transport and Infrastructure no. 329 dated 22.12.2014 "On the approval of the Regulation on the rights of invalids and persons

result in fines up to 2.000.000 lek (corresponding approximately to 20.000 euro) that may be accompanied by other sanctions such as suspension or revocation of the operation licence or certificates. See Article 160.I.

⁶³ Article 160.I point 36

⁶⁴ A. Gjeta, *EU law*, cit., 117 ss.

⁶⁵ Available at <https://www.aac.gov.al/informacion-per-te-drejtat-ge-gezoni-kur-udhetoni-me-transport-ajror/> (Last Access on 5.5.2026). Repealing Ordinance of the Minister of Transport and Infrastructure no. 17 dated 15.10.2008 *On compensation and assistance of passengers in case of board denied and cancellation or delay during flights*.

with reduced mobility when travelling by air”⁶⁶. The designated NEB in Albania is the ACAA under Article 16 of the Ordinance.

The Ordinance no. 1 of 26.2.2013 is a literal translation of Regulation (EC) No 261/2004, aligning the legislative act with relevant EU legislation. Yet, regarding implementation, there is still a lack of activity by the designated enforcement body, the ACAA, to address issues of interpretation and to correct the enforcement of passengers’ rights. Yet passengers were not fully aware of their rights, and only a few complaints were filed to the airlines or the ACAA. There was a lack of awareness among Albanian passengers themselves of their rights and of the possibility of exploiting the legislative provisions intended to protect them, as well as uncertainty about how to address complaints, even among consumer protection associations.

The legislative provisions, in foreseeing a specific action that the Albanian Civil Aviation Authority can undertake in issuing sanctions for non-compliance with passenger protection, have provided the legal instrument for its enforcement. Yet, the Authority lacks effective use and monitoring in practice, and sanctions are imposed only as a last resort or in cases of airline bankruptcy, usually after signalisation by other NEBs of EU Member States. Furthermore, in many cases, passengers remain unaware and continue to address their complaints to the Commission for the Protection of Consumers, which then transfers them to the ACAA. Since 2015, the latest has served as an ADR body for these complaints, according to Article 52/2.1(d) of Law no. 9902 dated 17.04.2008 “On the Consumer Protection”. Over the last few years, several individual

⁶⁶ See for a first comment E. SHABANI-MEZINI, *Passenger right in the civil aviation in the Republic of Albania*, in *Anglisticum Journal (IJLLIS)*, vol. 3, Issue 6, 2014, 95-100.

complaints have been addressed successfully by the ACAA in its capacity as an ADR body⁶⁷.

As stated above, we had to wait until recent years to see the AAC fully engaged as a national enforcement body, ensuring passengers' rights by taking measures against non-compliant airlines. Actually, after the amended provisions on the Law for Consumer Protection in 2015, most of the complaints are addressed administratively before the Civil Aviation authority if the airline does not respond to the passenger, with the latter being very well structured to delay the processing times of the complaints and reduce the amount of compensation for passengers. In our opinion, this is still insufficient. This may correctly address the phase of compensation after an event has occurred, but in order to fully ensure enforcement of the right to care, information, or re-routing, a better presence of the ACAA at the airport facilities and supervision on the airlines is still needed, especially after the exponential growth of the airport of Tirana⁶⁸.

In completing the actualisation of passengers' rights, Article 155 actualises Article 11 of Regulation (EC) 2111/2005, which sets out the obligation to inform passengers of the identity of the operating air carrier⁶⁹. Also, the Albanian Air Code includes the obligation of the air carrier to inform the

⁶⁷ See E. TELITI, *Sfidat e konsumatorit shqiptar në procesin e integritetit evropian*, Tirana, 2023.

⁶⁸ Tirana International Airport is Europe's fastest-growing major aviation market, experiencing unprecedented expansion. Following a record-breaking 2025 where it handled nearly 12 million passengers, traffic continues to surge. Between January and April 2026, the airport processed 3.3 million passengers, marking a 10.4% increase over the same period in 2025. See <https://www.tirana-airport.com/en/article/73/Market-Statistics> (last access 10.05.2026)

⁶⁹ Regulation (EC) No. 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC in OJ L 344, 27.12.2005, 15–22.

passengers of their rights⁷⁰ and it is clearly stated in Article 157 that the right of reimbursement or rerouting should be offered in accordance with the relevant secondary legislation, Ordinance no. 1/2013.

In the last consideration, the Albanian Air Code offers comprehensive and extended protection in line with the relevant EU legislation regarding passenger protection. Moreover, the dynamic reference to a secondary act, such as the Ordinance for the transposition of Regulation (EC) No 261/2004, is a good solution, since Albania is not yet part of the EU. This ensures that any future changes or improvements to the Regulation within the EU can be adopted without major legislative efforts in Albanian legislation. On the other hand, the institutions lack effective enforcement of passengers' rights as foreseen in the Ordinance. Ensuring the rights of passengers might be continuously and effectively enforced by institutions, not only in periods when reporting to the European Commission within the negotiation process. Unfortunately, there are no court data on cases addressing passengers' rights under the Albanian Air Code or the Ordinance that transposes Regulation (EC) No 261/2004.

4. The proposals for reform from 2013 until the recent challenges within the EU institutions. A breakthrough for the long-awaited substantive reform?

⁷⁰ Article 156 Albanian Air Code states that “1. *The operating air carrier shall ensure that at check-in, a clearly visible notice is displayed informing passengers of their rights where boarding is denied, a flight is cancelled or delayed, in particular rights relating to compensation and assistance.* 2. *The operating air carrier shall provide each passenger affected by denied boarding or cancellation with written notice setting out the rules concerning compensation and assistance, as determined by secondary legislation adopted by the Minister*”. This article introduces within the Code the right of information foreseen in article 14 of the Regulation (EC) No 261/2004.

The importance of Regulation (EC) No 261/2004 in granting clearer and enforceable passenger rights is evident, despite the problems of interpretation analysed above, which the Court of Justice of the European Union has addressed on a case-by-case basis, and the Commission has issued interpretative guidelines regarding their enforcement. The Regulation, indirectly, has enhanced the right of mobility⁷¹ within the Union, granting a minimum of protection of passengers in addition to

⁷¹ Intended not only as laid down in article 45 of EU Charter of Fundamental Rights (Charter of Fundamental Rights of the European Union, 2000/C 364/01 in Official Journal of the European Communities, C 364/1, 18.12.2000) regarding the right to move and reside freely within territory of Member States but also as a correlated lecture of article 36 of the Chart which recognizes and respects access to services of general economic interest (SGEI), such as public transport, energy, and communication, to promote social and territorial cohesion. In doctrine regarding article 36 and a right of mobility see O. PORCHIA, *Alcune considerazioni sull'art. 36 della Carta dei diritti fondamentali dell'Unione Europea: l'accesso ai servizi di interesse economico generale*, in *Il Diritto dell'Unione Europea*, no. 4, 2002, 641. See also M. MARESCA, *L'accesso ai servizi di interesse generale, de-regolazione e ri-regolazione del mercato e ruolo degli Users' Rights*, in *Diritto dell'Unione Europea*, no. 3, 2005, 441; F. MUNARI, *La disciplina dei cd. servizi essenziali tra diritto comunitario, prerogative degli Stati Membri e interesse generale*, in *Diritto dell'Unione Europea*, no. 1, 2002, 39.

Also, regarding fundamental rights there is a need to draft legislation in conformity with article 38, 8, 21, 26 and 47 of the Charter. Ensuring an enhanced and uniform set of rules for passenger rights in all transport modalities and a harmonised and effective application therefore. See EU Citizenship Report of the Commission in 2010, COM(2010) 603 final; Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system COM(2011) 144 final, 23. Regarding the importance of taking in consideration the prohibition of any form of discrimination, the integration of persons with disabilities, the ensuring of a high level of consumer protection, and the right to an effective remedy and to a fair trial see also the proposal of the Commission for amending Regulations which grant passengers rights in different modes of transport. COM(2023) 753 final, 11-12.

Regulation 1107/2006⁷² and to Regulation 2027/97, as amended⁷³, through a solidified approach of granting automatic clear rights to the passengers, in contrast to the interest of the air operators involved in a globally liberalised and competitive market⁷⁴.

As regards the enforcement and assessment of correct application, bearing in mind the above considerations, there was, from the entry into force, constant monitoring by the EU institutions to ensure correct and uniform application throughout the Union. As sanctioned in the Regulation, under article 17, there was a clear obligation for the Commission to report on the results of the Regulation's application in January 2007, particularly regarding statistics on denied boarding and flight cancellations. This was important to address the aims stated in recitals 9 and 12 of the Regulation, such as the possibility of including flights that are part of a "package tour" within the scope of the Regulation, and, most importantly, the possibility of reviewing the amounts of compensation. To that end, the Commission had an obligation to draft a proposal to modify the Regulation if necessary.

⁷² Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (Text with EEA relevance OJ L 204, 26.7.2006, 1–9. See also COM (2000) 284 in which mobility is considered as a general right, but above all regarding the persons with reduced capacity of mobility in order to have the possibility to participate in social, economic, cultural and political activities.

⁷³ Regulation (EC) No 2027/97 of the Council of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ L 285, 17.10.1997, p.1) as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 (OJ L 140, 30.5.2002, 2)

⁷⁴ Regarding the right of mobility granted through the services of general economic interest which aim to reduce social disadvantages through active public policies within an common market and free competition within see S. RODOTÀ, *La Carta come atto politico e document giuridico*, in A. MANZELLA, P. MELOGRANI, E. PACIOTTI, S. RODOTÀ, *Riscrivere i diritti in Europa*, Bologna, 2001, 57; L. BERTONAZZI, R. VILLATA, *Servizi di interesse economico generale* in M.P. CHITI, G. GRECO (eds.), *Trattato di diritto amministrativo europeo, parte speciale*, t. IV, 2ed, Milan, 2007, 1791 ff.; H. STEVENS, *Transport policy in the European Union*, Oxford, 2003.

It is clear that, over more than 20 years of the Regulation's application, the Commission has consistently fulfilled its reporting duties by continuously monitoring the implementation, issuing guidelines, and proposing legislative amendments. Firstly, in 2007, the Commission, recognising the novelty of the provisions of the Regulation, issued a Communication identifying problems in application and, therefore, proposing some remedies for improvement⁷⁵. Since 2007, the Commission has identified as the main reasons for the application of the Regulation its imprecise text in certain areas and the ineffective enforcement in some Member States⁷⁶. In 2011, four years after the first evaluation report, the Commission assessed the application of Regulation (EC) No 261/2004, particularly to ensure improvements in the interpretation of the legislative provisions and to consider possible amendments, taking into consideration the applicable data since 2007⁷⁷. Consequently, the Commission, building on its first

⁷⁵ COM(2007) 168 final the Commission to the European Parliament and the Council pursuant to Article 17 of Regulation (EC) No 261/2004 on the operation and the results of this Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights. In this first assessment of the application the Commission recognises the difficulty of assessing if there was a direct benefit of the new provisions regarding in changing the overall level of denied boarding, delays/cancellations, or in changing the classification of cancellations to delays.

The Commission assesses that "After more than two years of application of the Regulation, progress has been made but substantial improvement is necessary if more consistent application of the rules by airlines and more consistent enforcement of the rules by the Member States are to be achieved. In contrast with the past, stranded passengers now have specific rights, but too often they are in a weak position compared to the airlines" (9) foreseeing as remedies the collaboration between National Enforcement Bodies (NEB) and enhancing their role, clarifying interpretations through guidelines regarding delay, cancellation, exceptional circumstances (COM(2007) 168 final, 9-11).

⁷⁶ *Ibid.*, 11.

⁷⁷ COM(2011) 174 final, 3-5. The Commission recognises that some developments regarding the passenger protection are of paramount importance in considering new measures and proposals regarding the application of Regulation (EC) No 261/2004. Thus, considering a fast growth of air transport market, the passengers rights being fully

assessment in 2007, analysed the problems in the application of the Regulation and assessed the measures proposed in 2007. In 2011, the Commission received more accurate findings from various sources, such as the EU Parliament⁷⁸. Also, the Commission recognised that criticism of the Regulation's application comes from both the aviation industry and passengers. The aviation industry emphasised the Regulation's complexity, the lack of a limitation of liability to provide care in the event of extraordinary circumstance beyond the carrier's control, the difficulties in ensuring the costs incurred in applying the Regulation are covered by the responsible third party, the lack of a better outlining of extraordinary circumstances both beyond and within the carriers' control, and the lack of uniform interpretation and enforcement. On the other hand, the passenger organisations criticised the incorrect application of the Regulation regarding the interpretation of the amount of compensation and consistence of the rights of passengers, the lack of handling of complaints quickly and efficiently from NEBs, not binding decisions of the NEBs within national law which are not always followed by carriers or recognised by national judges, and that there was a lack of monitoring,

recognised in other modalities of transport shaping a broader pattern of passenger protection in general, the enhancement of passengers rights in other realities internationally, the Regulation application itself has been challenged in courts and there are important ruling of the CJEU (like IATA ruling (C-344/04 of 10.01.2006), Wallentin-Herrman (C-549/07 of 22.12.2008) and Sturgeon (Joined cases C-402/07 and C-432/07 of 19.11.2009)), the volcano crisis of 2010 and the management of the right to care foreseen in the Regulation only relying on the aviation industry, there is the need to consider measures in order to improve the application of the Regulation. See also in doctrine G. N. OKEKE, B. S. KOKPAN, *Evaluation of the EU Regulation 261/2004 on Rights of Air Passengers in the Event of Delayed and Cancelled Flights*, in *International Review of Law and Jurisprudence*, vol. 3, Issue 2, 2021, 209-218.

⁷⁸ European Parliament resolution on the functioning and application of established rights of people travelling by air, 2011/2150(INI), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-99>

measuring and publication of information on the performance of operators, relating to the application of the Regulation and to consumer satisfaction level⁷⁹.

In order to address issues that had arisen, like a deficiency of uniform interpretation, a lack of information provided to passengers and above all, the absence of uniform enforcement in all the Union⁸⁰, the Commission identifies three areas where intervention is needed: effective harmonisation of enforcement across Member States, facilitation of their enjoyment in practice, and raising awareness about these rights. It also proposed 12 actions to be taken in the short and medium term to address the above-analysed problems, among which were the collaboration with Member States in order to address obstacles in national legislation, improve the coordination of the NEBs and their network, creating a consultative group with the stakeholders in passengers rights, work with relevant Member States to identify and overcome shortcomings in their current national complaint handling bodies and procedures to lead towards a more efficient, quick and consistent complaint handling, promote a more uniform and quick handling of complaints, raise passengers awareness, encourage airlines to report regularly to the NEB, and to make an impact assessment of these measures in order to propose further measures.

⁷⁹ COM(2011) 174 final, 5.

⁸⁰ At that time this was the most serious problem to address as the national differences in the approach to enforcement risk of distorting competition in air transport. The most important threat regarding unified enforcement by NEBs were: differences in national laws and procedures, lack of clear mandate of NEB network as article 16 of the Regulation clearly foresee enforcement at national level, lack of carriers' provision of information on their procedures to comply with the Regulation, lack of coordination and integrated data from national level, lack of accessible and user-friendly complaint procedure, formats and reasonable deadlines. See STEER DAVIES GLEAVE, *Evaluation of Regulation 261/2004*, Final Report, 2010.

Based on the above considerations and assessment, and in light of the Parliament's position, the Commission proposed amendments to Regulation (EC) No 261/2004 in 2013, as the time was considered suitable to renew the legislative provisions. It was due to several circumstances, such as CJEU rulings and continuous assessment of the Regulation, that led the Commission to propose a new version of the text of 2004, having regard also to the position of the stakeholders like passenger and consumer representatives, airlines, tour operators, airports and national authorities, through a long consultation process and a detailed impact assessment⁸¹. This proposal, in the view of the Commission, *"would most effectively and efficiently enhance passengers' rights while taking into account the financial impact on the air transport sector"*, *"including a uniform 5-hour threshold for delay compensation for all intra-EU journeys" and, introducing "a longer threshold for delay compensation for extra-EU journeys of more than 3500 km, given the specific problems encountered by long-haul journeys to deal with the causes of delays far from the air carrier's home base (9 hours for extra-EU journeys between 3500 and 6000 km and 12 hours for extra-EU journeys of 6000 km and more)"*⁸².

First of all, as regards strengthening passengers' rights and their enforcement, the proposal clarifies some concepts, such as the definition of "extraordinary circumstances"⁸³ according to the CJEU ruling in C-

⁸¹ COM(2013) 130 final, 4-6.

⁸² *Ibid.*, 5.

⁸³ *Ibid.*, 16. According to Article 1.1 (e) of the proposal "extraordinary circumstances" means *"circumstances which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control"* proposing for introduction also a non-exhaustive list of events that are to be considered as extraordinary, such as natural disasters rendering impossible the safe operation of the flight, technical problems like the identification of a defect during the flight operation concerned and which prevents the normal continuation of the operation, a hidden manufacturing defect which impact on flight safety, serious security risks, life-threatening health risks or medical emergencies, air traffic management restrictions or closure of airspace or an airport, meteorological conditions incompatible with flight safety and labour disputes at the

549/07 (Wallentin-Herman), introducing the right of compensation in cases of long delays in line with the CJEU ruling in cases C-407/07 and C432/07 (Sturgeon) proposing the increase of the time threshold of delay in order to avoid cancellation of flights from the airlines, clarifying the right of rerouting, simplifying the entitlement of the right to care where there is a delay of 2 hours despite of the flight distances, introducing and clarifying the entitlement of right to care and compensation in regard to missed connecting flight, flight rescheduling, clarifying the tarmac delays and the right to be disembarked after 5 hours of delay, the partial ban of the no show policy of airlines and strengthening the right to information rewriting article 14 of the Regulation (EC) No 261/2004. In addition, with regard to better enforcement, there are proposals to strengthen the role of the NEBs in monitoring and reporting obligations to the European Commission, as well as the obligation to exchange information and to formalise coordination between NEBs.

Secondly, the proposal takes into consideration the needs of the airlines in order to reduce financial burden through the rise of the threshold of the right to compensation⁸⁴, the possibility of limiting the right to care regarding accommodation during extraordinary circumstances up to 3 nights and fixing an amount of 100 euros per night per passenger, as well

operating air carrier or at essential service providers such as airports and Air Navigation Service Providers. On the other hand are clearly excluded the technical problems inherent in the normal operation of aircrafts or unavailability of crew for the airline out of sphere of labour disputes.

⁸⁴ Article 1.5 of the Proposal foresees a unified threshold of 5 hours of delay for the intra EU flights in order to claim compensation and a distance-based delay in regard to extra EU flights (5 hours for extra-EU journeys of 3500 km or less, 9 hours for extra-EU journeys between 3500 and 6000 km, and 12 hours for extra-EU journeys of 6000 km and more). The distinction between EU flights and extra EU flights is made on the basis of problems that the airlines may face in airports that are not fully compliant with EU normative.

as setting a minimum threshold rule regarding where air operators are not obliged to provide accommodation to passengers of flights of less than 250 km on aircraft with a maximum capacity of 80 seats (except on connecting flights). However, these limitations and exclusions of the right to care are not applicable to persons with reduced mobility or those persons accompanying them, pregnant women, persons in need of specific medical assistance and unaccompanied children.

Thirdly, it is proposed to rewrite article 13 of the Regulation regarding the right of redress of the airline toward third parties responsible for the delays, where it states that “*no provision of this Regulation or of national law may be interpreted as restricting its right to seek compensation for the costs incurred under this Regulation from any third parties which contributed to the event triggering compensation or other obligations*”⁸⁵. It is important to underline that it excludes the possibility that the national laws’ interpretation may give rise to an objective responsibility upon airlines in restricting the right of redress, but once the rights of the passenger are met by the airlines, there is a full possibility for them to seek compensation from third parties who are liable for the event of cancellation or delay.

Lastly, the proposal aims to reform also Regulation 2027/97, as amended, regarding baggage as a core right of the passenger, through proposing transparent rules from the airlines regarding baggage allowances, claiming the mishandled baggage at the airport of arrival through a standardised form and, most importantly, monitoring its correct enforcement by the NEBs, as created according to Regulation (EC) No 261/2004.

⁸⁵ Art. 1.12 of the Proposal.

Through the 2013 proposal⁸⁶, the Commission aimed to finally settle the interpretative problems arising in practice, but the proposal elicited numerous comments and criticisms during its legislative iteration in Parliament⁸⁷ and Council, while remaining within the confines of EU legislative procedure. That led to the Commission's 2016 interpretative guidelines to address the confusion which had arisen in the NEBs' and national courts' application of the Regulation. Moreover, in 2024, the European Commission issued a more comprehensive interpretative guideline to address shortages in the interpretation of Regulation (EC) No 261/2004, following events such as the pandemic⁸⁸. So far, the 2013 proposal remains a priority on the interinstitutional agenda of the EU institutions and is still listed among the three EU institutions' common legislative priorities for 2023 and 2024, because there is awareness that the

⁸⁶ For a first comment in doctrine see K. ARNOLD, *EU Air Passenger Rights: assessment of the proposal of the European Commission for the amendment of Regulation (EC) 261/2004 and of Regulation (EC) 2027/97*, in *Air and Space Law*, 2013, Vol. 38, Issue 6, 403-438.

⁸⁷ The EU Parliament in ordinary procedure in first reading regarding the compensation and assistance to passengers regarding denied boarding, cancellation or flight delay has taken a position through the resolution of 5 February 2014 published in 2017 in the Official Journal (C93/336 of 24.3.2017 2017/c 09360). The Parliament suggested several measures have been introduced to support air passengers. The proposals include limiting grounds for denying compensation, assistance, and information. For example, airlines would pay for accommodation in case of delays and cancellations for five nights at €125/night per passenger, provide a contact point at each airport they serve, and create a guarantee fund or insurance for bankruptcy cases. Additionally, they proposed a comprehensive list of extraordinary circumstances, increasing the number of free baggage items allowed, defining 'disabled person or person with reduced mobility,' and ensuring passenger rights, contract details, and complaint procedures are accessible to all.

⁸⁸ See in doctrine C. GRIGORIEFF, C. EROKROITOU, *EU regulation No 261/2004 on air passenger rights: The impact of the COVID-19 on flight cancellation and the concept of extraordinary circumstances*, in *Air and Space Law*, vol. 45, Special issue, 2020, 123-141; S. J. FOX, L. MARTIN-DOMINGO, *Air Passengers' Rights Past, Present, and Future: In an Uncertain World (Regulation (EC) 261/2004: Evaluation and Case Study)*, in *Journal of Air Law and Commerce*, vol. 85, no. 2, 2020, 271-308.

Guidelines can help, but cannot solve the problems that have arisen so far⁸⁹.

In 2023, the Commission presented an updated proposal to amend Regulation (EC) No 261/2004 as part of a broader initiative to enforce passenger rights across all modes of transport in the Union⁹⁰ through fully enforcing passengers' rights⁹¹, addressing problems of full reimbursement, especially when the contract was concluded through an intermediary and protection of passengers in multimodal journeys⁹². The goal is to incentivise the use of collective transport to achieve the objectives set in the Green Deal and the European Climate Law⁹³. Thus, the proposal aims to address concerns about poor enforcement across Member States, the need to enhance the NEBS's monitoring powers, and the need to ensure an effective complaint mechanism through a standardised and simple modality. The proposal is in line with and complementary to the 2013 proposal, and there is clear similarity in how it addresses passenger rights

⁸⁹ SWD(2023) 386 final, 3. See in detail also a study of the Commission regarding passengers' right. STEER DAVIS GLEAVE, *Study on the current level of the protection of air passenger rights in the EU*, 2020. The study underlines several problems in the application of Regulation (EC) No 261/2004 like jurisprudence complexity giving a fragmented passenger experience, bottlenecks regarding right to care or reimbursements in case of large-scale events, missing clarity regarding "extraordinary circumstances", enforcement discrepancies between NEB in different Member States.

⁹⁰ COM(2023) 753 final *Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union*.

⁹¹ There is a lack of awareness of their right from the passengers and the difficulty of them in fully exploiting them as found by the EU Court of Auditors. See European Court of Auditors Special Report 30/2018 *EU passenger rights are comprehensive but passengers still need to fight for them* and Special Report 15/2021 *Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts*.

⁹² Addressed through COM(2023) 752 final of 29.11.2023 *Proposal for a Regulation of the European Parliament and of the Council on passenger rights in the context of multimodal journeys*.

⁹³ See COM(2023) 753 final, 10.

in other modes of transport, which should be considered a priority for the EU institutions in their interinstitutional discussions⁹⁴.

The context of this proposal, despite the above acknowledgement of events or legislative interventions regarding passengers' rights across all transport modes, is enriched by considering other EU legislation that was not in force in 2013. In particular, Directive 2015/2302 and its ongoing review are taken into account, and the Commission states that although there is overlap in addressing travel, these initiatives are complementary and concern two separate markets⁹⁵. The protection of passengers is addressed with similarities in both initiatives regarding the reimbursement of the ticket⁹⁶ or insolvency⁹⁷, as well as the enforcement of consumer protection⁹⁸. Also, the proposal is in line with the Commission Delegated Regulation 2017/1926 on Multimodal Travel Information Services, as well as with the proposed revised version of the latest, in order to boost the right of information of the passengers regarding their rights when travelling multimodally, fundamental in exploiting and being aware of their rights, such as the right to care or reroute.

⁹⁴ *Ibid.*, 3-4.

⁹⁵ *Ibid.*, 4.

⁹⁶ Foreseeing a reimbursement at most within 14 days whereas a ticket is purchased by an intermediary (Article 1.2 of the Proposal) similarly like the passengers who purchase a travel package that might be reimbursed within 7 days from the service provider. Yet, the provision of a reimbursement by the intermediary who sell an air ticket laid down in the proposal "shall not affect an obligations of operating air carriers under Directive (EU) 2015/2302" (the formulation of article 8a.6 of the amended Regulation (EC) No 261/2004).

⁹⁷ To be addressed through the revision of the Regulation 1008/2008 Air Service Regulation.

⁹⁸ Through the Alternative Dispute Resolution Directive (Directive 2013/11/EU) also as through the Consumer Protection Cooperation Regulation (Regulation 2017/2394) as a complementary regulation that strengthens the enforcement of the passenger's rights as consumers where the consumer and the service provider, even an intermediary, are in different Member States.

Moreover, this proposal is a result of several evaluations on the legislative provisions, stakeholders' consultation, evaluation studies, surveys and the findings of the European Court of Auditors, as well as a thorough impact assessment of the proposal⁹⁹. All the above considerations are represented within the proposal's recitals and support the present need for a comprehensive and definitive set of rules that will ensure uniform protection of passengers' rights across all modes of transport¹⁰⁰.

It is very important to underline that, in the Commission's view, the adoption of these changes is pivotal in ensuring not only a boost of air passengers' rights but also, as a comprehensive proposal regarding different modes of transport, after successfully approving the rail passenger rights recast Regulation¹⁰¹, simplification, consistency and harmonisation of the rules in order to reach a common ground enforcing passengers' rights¹⁰² for all transport modes. Despite all, criticism and scepticism have arisen within the doctrine regarding the Commission's lack of ability to intervene in other areas of the Regulation that need improvement¹⁰³.

⁹⁹ For a list of carried studies in the EU see COM(2023) 753 final, 7-11. Regarding the detailed impact assessment see SWD(2023) 386 final of 29.11.2023 .

¹⁰⁰ See Recital 4 of the Proposal.

¹⁰¹ Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations (recast) (OJ L 172, 17.5.2021). See for a comment D. AMBROŻUK-WESOŁOWSKA, *Will the Rail Regulation (EU) 2021/782 improve passengers' legal position?*, in *Teka Komisji Prawniczej PAN Oddział w Lublinie*, vol. XV, no. 2, 2022, 15–27.

¹⁰² See Recital 5 of the Proposal.

¹⁰³ See K. H. BRECKE, *Grounded promises: rethinking the European Passenger Rights Regulation. A practitioner's view on the shortcomings of the Regulation (EC) no. 261/2004 and the challenges shaping the future of air passenger rights*, in *Air and Space Law*, vol. 50, Special Issue, 2025, 503–514. See also D. DEFOSSEZ, *Proposed revisions of Regulation 261/2004: Endangering passengers' rights and going against the international trend?*, in *Journal of air transport management*, vol. 91, 2021, 102008.

In our opinion, this updated proposal is ambitious. In the Commission's view, it is fully in line with the Union's priorities to enhance passengers' rights across all modes of transport. The proposal relies primarily on enhancing passengers' information about their rights across several phases of transport, as well as on establishing a decisive role for the NEBs, who will ensure the swift and effective implementation of the Regulation. In a sector where many interests collide, it will be difficult to adopt a legislative act accepted by all stakeholders and the EU institutions themselves¹⁰⁴, despite the inter-institutional relationship between the three institutions still being an ongoing process and there is confidence that an understanding can be reached¹⁰⁵.

Lately, within EU institutions, discussions on the proposal have particularly highlighted the difficulty of striking an adequate balance between passengers' rights and carriers' obligations. The European Parliament adopted its position at first reading in 2014 and confirmed it in 2019, while the Council's first-reading deliberation was issued only in June 2025. The Council finally took a position on 5 June 2025. The Parliament took a decision on second reading in January 2026 to amend the Council's position¹⁰⁶, which was rejected by the Council. On a sensitive topic such as passengers' rights, which is also regulated by other pieces of legislation on consumers or package travel, it is unlikely that institutions, such as the Council, would not address their concerns politically.

¹⁰⁴ See the Commission position on the Council first reading (COM(2025) 630 final) and the Parliament in second reading (COM(2026) 129 final).

¹⁰⁵ As by the conclusions of COM(2025) 630 final where the Commission recognises that it *"can overall support the political agreement which is reflected in the Council's position at first reading. While it considers that the position of the Council – reached by a qualified majority – does not meet all of the essential aims of its proposal, the Commission considers it an overall acceptable basis for entering into negotiations with the European Parliament"*.

¹⁰⁶ Available at https://www.europarl.europa.eu/doceo/document/TA-10-2026-0009_EN.html

Following its first reading, the Council proposed clearer, improved rules to enhance passengers' rights. The Council was aware of the difficulty of interpretation of the new provisions and proposes the possibility for review proposals within a 3-year window from the Commission regarding the compensation amount, proposing to adjust the threshold for compensation after assessment, updating the list of extraordinary circumstances and assessment of feasibility to extend the scope of application to passengers arriving from third countries on flights operated by third-country air operators.

In sum, regarding Regulation (EC) No 261/2004, this amended legislative proposal aims to introduce new provisions like: reimbursement for tickets booked via an intermediary; enhanced passenger information on rights at the booking phase and during disruptions¹⁰⁷; raise service quality standards; a common form for reimbursement and compensation requests; monitoring through a risk-based approach regarding compliance; information sharing by the airlines with national enforcement bodies and detailed provisions on the possibility to address their claim through alternative dispute resolution mechanisms in front of the national enforcement bodies. Furthermore, it aims to reduce the number of distance thresholds to two (journeys above and below 3500 km)¹⁰⁸,

¹⁰⁷ Air carriers must provide clear and updated information in real-time regarding the flight situation as well as inform continuously the passengers on their rights. Also, they must deliver pre-filled form to the passenger when cancelling the flight in order to enable them to request compensation.

¹⁰⁸ The provision in the Council version of article 7 states that “1. In case of disruption, the following compensation amounts shall apply under the conditions defined in Articles 4, 5, 6 or 6a and in this Article: (a) 300 EUR for journeys of 3500 kilometres or less and all intra-Union journeys; (b) 500 EUR for journeys above 3500 kilometres. By way of derogation from the previous subparagraph, for journeys between outermost regions and another territory of a Member State to which the Treaties apply, the compensation amounts shall be determined on the basis of the actual distance of the journeys” also adding a paragraph 1a according to which “1a. In case of a delay at arrival after rerouting following a cancellation under Article 5, a delay at arrival under Article 6 or a delay at arrival after a missed

introduces novelty regarding compensation (entitlement for compensation for passengers who are informed for cancellation less than 14 days before departure, a 6 month deadline for passengers to claim and a deadline of 14 days for the airline to provide compensation or a substantial reply), introduce an extended list of non-exhaustive extraordinary circumstances¹⁰⁹, obligation of air operators for

connecting flight under Article 6a, the right to compensation shall arise for delays at arrival of more than: (a) four hours for journeys of 3500 kilometres or less and all intra-Union journeys; (b) six hours for journeys above 3500 kilometres". In our opinion these provisions may lead to uncertainty regarding the considerations on the "outermost region" concept.

¹⁰⁹ Which is reconsidered by the Council as the Annex 1 of the Council proposal regarding what is to be considered as an extraordinary measure enumerates an extended and clarified list of events, having regard also to the copious case law of the CJEU elaborated until now. Thus, in the proposal, are to be considered as extraordinary three groups of cases.

Firstly, the circumstances that are not connected with the operation of the aircraft, such as "*i. natural and/or environmental disasters which are incompatible with the safe operation of the flight; ii. meteorological conditions and damage to the aircraft linked to meteorological events which are incompatible with the safe operation of the flight (such as: lightning strikes, hailstones, thunderstorms, severe turbulence, strong wind); iii. war or insurrection which are incompatible with the safe operation of the flight; iv. cross-border threats to health falling within the scope of Articles 2(1) or 2(4) of Regulation (EU) 2022/2371 which are incompatible with the safe operation of the flight; and v. collisions between the aircraft and a bird or another foreign object which are incompatible with the safe operation of the flight*".

Secondly, incidents related to a passenger, such as unruly passenger incidents, health risks or medical emergencies discovered at short notice before flight departure, or necessitating the interruption or deviation of the flight.

Thirdly, the behaviour of a third party outside of the sphere of control of the air carrier which endanger the safe operation of a flight, such as security risks, damages caused by acts of sabotage or terrorism, or unlawful acts, hidden manufacturing or design defect revealed, by the manufacturer or a competent authority, air traffic management or airport capacity restrictions, or closure of airspace, partial or full unscheduled closure of an airport (including a general airport system failure, a power outage and an electronic communications collapse, or the activation of the contingency plan by the airport managing body), strikes at essential service providers or at the operating air carrier where strikes are linked to demands outside the remit of the operating carrier, unexpected absence of a crew member essential to the operation of the flight, due to illness or death, when it occurs outside the operating air carrier's home bases or due to pandemic, damage to the aircraft caused by third parties outside the control of the air carrier on the ground, damage to an aircraft tyre caused by a foreign object, contaminated runway of an airport,

precontractual duty of information on rights, rerouting through valid alternatives on the air operator services within 3 hour after the confirmation from the passenger otherwise the passenger can make his own arrangements and the air operator should reimburse up to 400% of the full cost of the ticket within 14 days, detailing the assistance through the provision of detailed right to refreshment, food and accommodation (if these rights are not meet the passenger has the right to make his own arrangements and the airline should reimburse within 14 days)¹¹⁰, in case of extraordinary circumstances the air operator may limit the accommodation up to 3 night, but without a cap on hotel price, excluded PRM, clarifying the tarmac delay when passengers are entitled to assistance and right to be disembarked after 3 hours¹¹¹, prohibition of denying boarding to passengers with special needs and the possibility for them to be accompanied free of charge.

In the following months after the Council's proposal of amendments to Regulation (EC) No 261/2004, the airline industry has taken a position, firstly through a press release from IATA that criticised the amendments made by the European Parliament, accepting the Council proposals, which *"the European Council attempted to achieve a more balanced regulation – which has*

unexpected flight safety shortcomings on aircraft equipment not within acceptable levels of operation and health risks or medical emergencies (serious illness) of a crew member necessitating the interruption or deviation of the flight occurring after departure.

On the other hand, are expressively excluded technical problems that could have been avoided during preventive maintenance, operational decisions, late crew/check-in/boarding procedures or unavailability of flight crew or cabin crew as far as non-concerning strikes in essential service providers. As this list is non-exhaustive and other types of circumstances may arise there is a clear provision for delegating to the Commission the possibility to update this list of circumstances every three years.

¹¹⁰ The article 9 of the Regulation is rewritten under the title "right to assistance" foreseeing detailed and measurable actions to be taken like "refreshments every two hours of waiting time" or "meal after three hours and then every 5 hours of waiting time with a maximum of three meals per day", as well as internet access.

¹¹¹ Through the insertion of article 6-2a in the Proposal.

*always been the objective of reviewing EU261. The most notable reform was to move the thresholds for compensation from the present three hours to four hours for short haul and six hours for long haul. This would reduce the perverse incentive for airlines to cancel delayed flights, and be consistent with passengers' preference to arrive late rather than not at all*¹¹². Contextually, a joint position of the airline industry was released in October 2025, raising concerns about the European Parliament's position and amendments considering it as *"gold-plated EU261 reform plans, a wish-list the EU can't afford"*¹¹³ and presenting the increase of the delay threshold as the focal point of discussion to avoid cancellations, a clear, non-exhaustive list of extraordinary circumstances, pricing freedom by not raising the burden of "rights" like allowed baggage in cabin, and avoiding any cost increase to protect EU competitiveness. The airlines foresee that strengthened, enhanced passenger rights will lead to higher fares, as a consequence of a deterioration in the consumer position in aviation.

On the other hand, passenger organisations claim that the proposed changes from the Council, especially raising the delay threshold, could exclude around 60% of passengers who are eligible for compensation under the current Regulation, which is considered as a backsliding, not

¹¹² IATA, *EU261 Reform going in wrong direction and "works as reverse Robin Hood"*, Press release no. 49, 18.11.2025. According to IATA the Parliament is *"seeking not just to eliminate these threshold improvements, but add numerous additional measures, such as the ability to bring a cabin bag for free ... new provisions to EU261 work as a 'reverse Robin Hood', putting further costs on to the 99% of passengers who don't benefit from it. They are imposing things people haven't asked for, and don't want to pay for unless they choose to. Given the choice, passengers would prefer to pay for a less gold-plated compensation scheme in exchange for lower fares. MEPs are meddling in business and operational issues they don't understand. It's essential the Parliament's proposals are modified, and the Council position is upheld"*.

¹¹³ Joint industry position on revision of Regulation (EC) No 261/2004, October 2025

justified by any improvement, such as the deadline for airlines to respond to passengers within 14 days¹¹⁴.

These Council amendments may be adopted as a balanced proposal that stakeholders could accept. It is important to underline that the Council finally recognised the need to clarify a piece of legislation that has led to more than 80 CJEU rulings over 20 years of its application, reached a political agreement, and proposed amendments that will make it easier for passengers to understand and apply their rights, introduce new rights, and reduce the administrative burden when claiming those rights. Despite the legislative process still being in interinstitutional debate among the Commission, Council, and Parliament, it is of paramount importance that there is actually a serious effort to amend Regulation (EC) No 261/2004 with the contribution of all stakeholders. The Commission's proposals from 2013 and 2023 are under consideration for approval, paving the way for substantial reform of Regulation (EC) No 261/2004 to provide up-to-date legislation that may strengthens and clarifies passengers' rights while taking into account both the needs of the airline industry and consumer protection organisations.

5. Concluding remarks

Regulation (EC) No 261/2004 is central to safeguarding air passengers' rights in an international and liberalised sector like air travel. It marks a significant milestone and serves as a model for ensuring passenger

¹¹⁴ See H. GNUTZMANN, P. SPIEWANOWSKI, *Air passenger right at the crossroad: Economic impact of the proposed EC261 reform*, October 2025, available at: <https://apra-eu.com/wp-content/uploads/2025/11/Economic-Impact-of-the-Proposed-EC261-Reform.pdf> (last access 07.06.2026).

protection across various transport modes. EU institutions aim to unify passengers' rights across all modes of transport to promote consistent application, thereby encouraging multimodality and interchangeability. While passengers have different protection needs depending on the mode of transport, there is a shared foundation for establishing uniform core rights for passengers as consumers across all modes, though the specific procedures for exercising these rights may vary. *De iure condendo*, it is evident that the Regulation requires reform, especially as the EU has introduced substantial amendments to legislation governing passenger protection in other modes of transport, package travel, consumer rights protection, and ADR.

De iure condito, despite the Regulation (EC) No 261/2004 establishes minimum mandatory protection for passengers in the performance of the contract of carriage by air, it has been far from peaceful in its application, with more than 80 cases in which the CJEU has ruled over the years, adopting a broad interpretation of its scope of application, extraordinary circumstances, the provision of compensation in cases of long delays, and enforcement from NEBs. Since the *Sturgeon* case, it was clear that the EU legislator had to intervene. The Commission's proposal has been pending since 2013 and is long overdue for renewal of the legislative provisions, especially after events such as the Volcano crisis and the pandemic.

The Council's position in the first reading and the Parliament's amendments, *de lege ferenda*, are more than welcome and, in our opinion, indicate maturity and political consent to finally approve the long-awaited changes to the Regulation, as they affect more than just intra-EU flights. Despite criticism regarding the Council's position, including the introduction of the 3-hour delay rule, which makes it harder for passengers to be eligible, and the 6-month limitation for claiming, there are provisions

that clarify passengers' rights, such as the tarmac delay provision, a 14-day deadline for airlines' obligatory response, and a slight increase in compensation amounts. Furthermore, this proposal aims to balance stakeholders' interests. It is clear that while the Council's recent proposals aim to clarify rights, simplify procedures, and introduce enhanced protection (such as clearer compensation rules and deadlines for "substantive" reply from airlines), there is concern that raising time thresholds for compensation may reduce passengers' privileges. Stakeholder feedback shows that compromise is needed to ensure fairness and competitiveness.

The Regulation has been pivotal in establishing a minimum standard of protection for air passengers within the EU and serves as a model in international contexts. Its influence extends beyond the EU, encouraging harmonisation of enhanced passenger rights legislation in candidate and neighbouring countries, such as Albania. Thus, while the transposition of EU rules has provided a solid legal framework, enforcement issues, such as the activity of enforcement bodies and the handling of complaints, need further improvement. The Albanian case has yielded findings indicating that introducing a higher level of passenger protection is more than welcome, as it was among the first pieces of legislation to be transposed in line with Albania's obligation to adopt the EU *acquis*. Despite this, the uncertainty surrounding some provisions and the absence of clear enforcement mechanisms mean that passengers are confused and aren't fully aware of how to exercise these rights, and the NEB lacks adequate instruments to address shortcomings in the Regulation's application. Albania has opted for a literal transposition of the Regulation through its secondary legislation, despite the *acquis* adoption requires that, in applying the EU provisions, it must take into consideration the interpretations

given by the CJEU. Actually, there are no findings, backed by a court ruling, regarding the correct application of the transposed Regulation in Albania. Therefore, the reform of the Regulation (EC) No 261/2004 has long been awaited and welcomed.

In a *de lege ferenda* context, it will be interesting to see to what extent the balanced approach agreed by the EU institutions will lead to a substantive renewal of the Regulation's provisions, and whether that may suffice to clarify and improve the application and enforcement of Regulation (EC) 261/2004.