

Stockholm den 7 mars 2025

R-2025/0509

Till Justitiedepartementet

Sveriges advokatsamfund har genom remiss den 21 februari 2025 beretts tillfälle att yttra sig över EU:s ministerråds kompromissförslag rörande ändringar i flygpassagerarförordningen – Regulation (EC) No 261/2004 och Regulation (EC) No 2027/97 - övriga delar.

### **Inledning**

EU:s ministerråd har under det polska ordförandeskapet (1 januari–30 juni 2025) beslutat att återuppta förhandlingarna om flygpassagerares rättigheter. Ordförandeskapet har nu tagit fram ett första kompromissförslag som kommer att behandlas på rådsarbetsgruppsmöten. Förslaget är baserat på tidigare förslag (WK 2688/20) och de kommentarer som gjorts av delegationerna om det icke-dokument som utarbetats av ordförandeskapet (WK 9/25). Förslagets text är vidare uppdaterad mot bakgrund av de senaste årens rättspraxis och behovet av att kodifiera eller avvika från rättspraxis i vissa fall.

Advokatsamfundet har i tidigare remissyttrande lämnat synpunkter på de mer kontroversiella ändringsförslagen i förordningen om flygpassagerares rättigheter, till vilket det hänvisas.<sup>1</sup>

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<sup>1</sup> Se Advokatsamfundets remissyttrande den 28 februari 2025 över kompromissförslag rörande Regulation (EC) No 261/2004 och Regulation (EC) No 2027/97 (R-2025/0416).



Denna del II avser de mindre kontroversiella ändringsförslagen av förordningen, t.ex. regler om information, s.k. 'no-show policy', försening på marken, missade anslutningar, flygplatsers beredskapsplanering, klagomålshantering och tillsyn.

### **Synpunkter**

Advokatsamfundet har vid denna granskning enligt anvisning från Regeringskansliet endast tagit hänsyn till den text som avser artiklarna:

- Artikel 4.4 no show policy
- Artikel 6-2a tarmac delay
- Artikel 6a.3 klagomål rörande missade anslutningar
- Artikel 10 uppgradering & nedgradering
- Artikel 10a flygplatsers beredskapsplanering
- Artikel 14 information till passagerare
- Artikel 15a
- Artikel 16 tillsyn
- Artikel 16a klagomålshantering av nationella tillsynsmyndigheter eller andra myndigheter/organ

#### *Article 4.4 no show policy*

*Paragraphs 1, 2 and 3 shall also apply to return tickets where the passenger is denied boarding at the return journey on the grounds that he/she did not take the outward journey.*

Det har uppstått ett fenomen med "no-show"<sup>2</sup> på senare år där passagerare som har en reservation, inklusive en utgående och en returflygning, enligt flygbolagets allmänna villkor, inte tillåts gå ombord på returflyget eftersom de inte tog utflygningen ("no-show"). Detsamma kan gälla om passagerare som har en reservation inklusive på varandra följande flyg inte tillåts gå ombord på ett flyg eftersom de inte tog det föregående flyget. Flygbolagens allmänna villkor måste följa nationell lagstiftning som införlivar bestämmelserna i EU-lagstiftningen om konsumentskydd, såsom rådets direktiv 93/13/EEG av den 5 april 1993 om oskäliga villkor i konsumentavtal. EU-domstolen har ännu inte tagit ställning till huruvida detta utgör nekad ombordstigning i den mening som avses i artikel 2 j, men i och med denna föreslagna ändring så

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<sup>2</sup> En passagerare som bokar en biljett men varken använde den eller avbokade bokningen.



kommer detta förfarande delvis att omfattas av denied boarding, enligt Artikel 4, vilket är en förstärkning av konsumentskyddet.

*Article 6-2a, tarmac delay*

*1. In the event of tarmac delay, the operating air carrier shall inform passengers of the delay as soon as possible. Subject to safety constraints, where a tarmac delay occurs, the operating air carrier shall ensure adequate heating or cooling of the passenger cabin, free of charge access to toilet facilities and that adequate medical attention is available if needed. If the tarmac delay is longer than 30 minutes, the operating air carrier shall provide free of charge drinking water on board.*

*2. Where a tarmac delay reaches a maximum of three hours in an airport situated in a territory of a member State to which the Treaty applies, the aircraft shall proceed to the gate or another suitable disembarkation point where passengers shall be allowed to disembark. Beyond this deadline, a tarmac delay can only be prolonged if there are safety, immigration or security-related reasons why the aircraft cannot leave its position on the tarmac.*

Det polska ordförandeskapet föreslår regler om s.k. ”tarmac delay”, vilket sannolikt har sin förebild i amerikanska regler.<sup>3</sup> Detta är en förstärkning av konsumentskyddet, som Advokatsamfundet ställer sig bakom.

*Article 6a-3, Missed connecting flight and claims*

**2. Claims for compensation under this Article shall be submitted by the passenger within 6 months from the date on which the flight was performed or was to be performed according to the reservation. Within 30 days of the submission of the claim, the operating air carrier shall either pay the compensation or provide the passenger with a justification for not paying the compensation, including, where relevant, an explanation on extraordinary circumstances. In case the operating air carrier does not pay that compensation or does not provide any justification, the passenger may submit a complaint in accordance with Article 16a.** The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders, credit/debit card refund or bank cheques

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<sup>3</sup> <https://www.transportation.gov/individuals/aviation-consumer-protection/tarmac-delays>.



*within 30 days after the submission of the request for compensation. Following appropriate information to the passenger regarding his rights under this Regulation, with the confirmed agreement of the passenger compensation may also be paid in travel vouchers and/or other services.*

Man har i den föreslagna texten lagt in en sex månaders frist varinom passageraren ska framställa sitt krav, varpå flygbolaget ska betala inom 30 dagar eller förklara varför ersättning inte ska utgå. Advokatsamfundet har svårt att förstå avsikten med sexmånadersfristen. Vad händer om passageraren framställer krav senare? Handlar detta om preskription? Och hur förhåller sig i sådant fall sexmånadersfristen till den föreslagna tre månaders fristen i artikel 15 a eller den föreslagna artikel 16 a p 4, som hänvisar till nationella regler om bland annat preskription? Ett krav i Sverige måste i normalfallet reklameras inom två månader enligt NJA 2018 s. 127, så denna artikel fungerar inte under svenska förhållanden. Denna regel behöver enligt Advokatsamfundet förtydligas.

*Article 10, Upgrading and downgrading*

*1. If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it shall not request any supplementary payment.*

*2. If an operating air carrier places a passenger in a class of transport lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse:*

*(a) 30% of the flight price for all flights of 1500 kilometres or less, or*

*(b) 50% of the flight price for all flights between 1500 and 3500 kilometres, or*

*(c) 75% of the flight price for all flights of 3500 kilometres or more.*

*3. Where the price of the concerned flight is not indicated on a multi-flight ticket, the reimbursement mentioned in paragraph 2 shall be calculated in proportion of the flight to the total distance covered by the ticket.*

*4. The flight price excludes taxes and charges indicated on the ticket, as long as neither the requirement to pay those taxes and charges nor their amount depends on the class for which that ticket has been purchased.*



Förslaget innehåller några mindre förtydliganden.

*Article 10a Airport contingency plans*

*1. At Union airports whose annual traffic has been over five million passengers for at least three consecutive years, the airport managing body shall ensure that the operations of the airport and of airport users, in particular the air carriers and the suppliers of ground handling services, are coordinated through a proper contingency plan in view of possible situations of multiple cancellations and/or delays of flights leading to a considerable number of passengers stranded at the airport. The contingency plan shall be set up to ensure that adequate information is given to stranded passengers and shall contain arrangements in order to minimise their waiting time and discomfort.*

*1a. Airport contingency plans shall take into account the particular and individual needs of passengers with disabilities and reduced mobility.*

*2. The contingency plan shall be set up with the participation of the Airport Users Committee referred to in Council Directive 96/67/EC on access to the ground handling market at Union airports. The contingency plan shall also contain the contact data of the person(s) designated by each air carrier in order to represent it on the spot in relation with the authorities, airport managing body and passengers in the case of multiple cancellations and/or delays of flights. The air carrier shall ensure that the designated person(s) has the necessary means to assist passengers in accordance with the obligations arising from this Regulation in case of cancellation, delay, or denied boarding.*

*3. The airport authority or the airport managing body shall communicate the contingency plan and any amendments to it to the National Enforcement Body designated pursuant to Article 16 or any other authority designated for this purpose.*

*4. A Member State may decide that an airport not covered by paragraph 1, located on its territory, is to fulfil the obligations laid down in paragraphs 1 to 3.*

*5. At airports below the threshold set in paragraph 1 or not covered by paragraph 4, the airport managing body shall make all reasonable efforts to coordinate airport users and to make arrangements with airport users to inform stranded passengers in such situations.*



*6. At all Union airports, the Airport managing body together with the air carriers operating at the airport shall put in place arrangements to ensure that adequate refreshments can be made available regardless of the time of day, flight, terminal.*

Det föreslås här regler om samordning på flygplatsen genom en lämplig beredskapsplan med tanke på möjliga situationer med flera inställda och/eller förseningar av flyg som leder till att ett stort antal passagerare strandar på flygplatsen. Detta torde i praktiken redan finnas.

*Artikel 14, Obligations to inform passengers*

*1. The operating air carrier shall include on its website an information notice specifying rights under this Regulation, including complaint handling process.*

*2. When offering tickets for an air transport contract and prior to the purchase, air carriers and intermediaries shall inform the passenger on the following:*

*(a) the type of ticket or tickets being offered, in particular whether the ticket or the tickets are covered by a single air transport contract or separate air transport contracts;*

*(b) the general conditions applicable to the ticket; and*

*(c) the rights and obligations of the passenger, the operating air carrier and the intermediary under this Regulation, including information on the reimbursement process;*

*(d) the deadline and the procedure by which passenger can request the correction of a spelling mistake as specified in Article 4(4), without any additional charge;*

*(e) the terms and conditions, including the amount of any additional fee, that may apply on a particular flight on the grounds that the passenger does take a previous flight of the same ticket. Those terms and conditions shall remain fully in compliance with Directive 93/13/EEC on unfair terms in consumer contracts.*

*In order to comply with the information requirement set out in point (c) of the first subparagraph, the air carrier and the intermediary may use a summary of the provisions of this Regulation prepared by the Commission in all official languages of the Union and made available to the public.*



*An intermediary or an air carrier which sells tickets that are covered by separate air transport contracts shall inform the passenger prior to the purchase, that the tickets are covered by separate transport contracts with no rights under Articles 7, 8 and 9 to reimbursement, re-routing or assistance in the case of a missed connection. Such information shall be provided in a clear and accessible manner on a durable medium when selling the ticket.*

*The intermediary or the air carrier which sells the tickets shall inform the passenger of the identification of the operating air carriers and their contact details. Such information shall be communicated prior to the purchase or as soon as it becomes available.*

*The intermediary or the air carrier which sells the tickets shall also inform passengers in a clear and accessible manner of the contact details of the body or bodies designated by Member States pursuant to Article 16 and Article 16a and, where relevant, their respective responsibilities.*

*Air carriers and intermediaries shall provide the information pursuant to this paragraph in the language of the booking and a language that is internationally used on a durable medium.'*

In Article 14 paragraph 7 is added:

*'7. The airport managing body and the operating air carrier shall ensure that at the check-in desks (including at self-service check-in machines) and at the boarding gate, the following text is displayed in a clearly legible form and 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 information notice stating your rights, particularly with regard to reimbursement or re-routing, assistance and possible compensation». That text shall be displayed at least in the language(s) of the place of the airport and in a language that is internationally used.'*

Flygbolagens informationsskyldighet föreslås kraftigt utökas, vilket stärker passagerarnas ställning, vilket Advokatsamfundet är positivt till.



*Artikel 15a, complaint-handling mechanism*

*1. Each air carrier and each intermediary shall set up a complaint-handling mechanism for the rights and obligations covered by this Regulation in their respective fields of responsibility. They shall make their contact details and working language, or languages, widely known to passengers, including in accessible format. Details of the complaint-handling procedure shall be accessible to the public, including to persons with reduced mobility. That information shall be available in the official language or languages of the Member States in which the air carrier and the intermediary are operating.*

*2. When passengers submit a complaint using the mechanism referred to in paragraph 1, such a complaint shall be submitted within three months of the occurrence that it concerns. Within one month of receiving the complaint, the air carrier shall either provide a reasoned reply or, in duly justified cases, inform the passenger that he or she will receive a final reply within a period of less than three months from the date of receipt of the complaint. The answer shall also contain the relevant contact details of bodies designated under Articles 16 or 16a, including postal address, phone number, website and e-mail address.*

*3. The submission of complaints by passengers using the mechanism referred to in paragraph 1 shall be without prejudice to their right to submit disputes for out-of-Court resolution in accordance with Article 16a, or to seek redress through court proceedings, subject to periods of limitation in accordance with national law.*

Det föreslås att flygbolagens och intermediaries mekanismer för intern hantering av klagomål ska formaliseras. Passageraren ska inom 3 månader framställa sitt krav till flygbolaget eller intermediarien. Dessa ska sedan inom en månad meddela ett ställningstagande eller att svar kommer inom 3 månader.

Advokatsamfundet vill här lyfta frågan om vad som händer om passageraren inkommer med klagomål efter tre månader? Som Advokatsamfundet tolkar regeln har flygbolaget/intermediarien då ingen skyldighet att internt hantera klagomålet. Om man väljer att inte hantera klagomålet så borde passageraren informeras om detta, vilket borde framgå av texten. Advokatsamfundet anser därför att ett tillägg görs i denna del i bestämmelsen.





Dessutom kan påpekas att ett krav i Sverige måste normalt reklameras inom två månader enligt NJA 2018 s. 127. Detta innebär att bestämmelsen inte skulle få någon praktisk betydelse för svenska förhållanden.

*Article 16, Enforcement*

*1. Each Member State shall designate a National Enforcement Body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.*

*2. The National Enforcement Body shall closely monitor compliance with the requirements of this Regulation and take the measures necessary to ensure that the rights of passengers are respected.*

*2a. Where a National Enforcement Body has been entrusted with the handling of individual complaints pursuant to Article 16a(1), the National Enforcement Body may also investigate and decide on enforcement actions based on information contained in individual complaints submitted by passengers.*

*3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive. In particular, such sanctions shall be sufficient to provide carriers with a financial incentive to comply consistently with the Regulation.*

*4. Every two years, at the latest at the end of June of the following calendar year, the National Enforcement Bodies shall publish a report on their activity, on the enforcement action and its outcome, including on sanctions applied. These reports shall be submitted to the Commission and also be made available on the websites of the National Enforcement Bodies.*

*5. Air carriers shall communicate the contact data of the person(s) or of a body designated to act on their behalf on a permanent basis, in the Member State where they operate, for matters covered by this Regulation, to the National Enforcement Bodies.'*



Det föreslås en ny artikel 16 vad gäller tillsyn via de utsedda National Enforcement Bodies (NEB), vilket för Sveriges del utgörs av Konsumentverket.<sup>4</sup> En del EU-länder bötfäller flygbolag som inte följer förordningen, exempelvis Spanien, där varje överträdelse enligt uppgift bötfälls med 70,000 euro per passagerare.

*Article 16a, Complaint handling by National Enforcement Bodies or other Bodies*

*1. Member States shall ensure that air passengers can submit disputes regarding complaints under this Regulation to a national body or bodies responsible for the out-of-court resolution of disputes. To that end, Member States may designate the National enforcement body or bodies entrusted with the enforcement of this Regulation under Article 16(1). Member States shall inform the Commission of the body or bodies that has been designated in accordance with this paragraph. Member States may decide to apply this paragraph to disputes between air carriers and consumers only.*

*2. Member States shall ensure that the out-of-court dispute resolution is available free of charge or at a nominal fee to passengers, and the designated body or bodies under paragraph 1 shall as a minimum:*

*- meet the requirements of article 7(1) subparagraphs (a), (h) and (j) and Article 7(2) of Directive 2013/11/EU;*

*- provide a substantiated reply to the passenger with the outcome of their dispute resolution procedure within the 90 day time limits set out in Article 8(e) of that Directive and in the case of highly complex disputes at the latest 6 months from the date on which the designated body has received the complete complaint file.*

*3. Where the body or bodies designated under paragraph 1 are different from those entrusted with the enforcement of this Regulation under Article 16(1), they shall cooperate and exchange information.*

*4. The passenger's participation to out-of-court dispute resolution procedures shall be without prejudice to his or her right to seek redress through court proceedings, subject to periods of limitation in accordance with national law.*

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<sup>4</sup> [https://transport.ec.europa.eu/document/download/d7b5dd33-4083-4faa-8132-b6dc8b3a1c07\\_en?filename=2004\\_261\\_national\\_enforcement\\_bodies.pdf](https://transport.ec.europa.eu/document/download/d7b5dd33-4083-4faa-8132-b6dc8b3a1c07_en?filename=2004_261_national_enforcement_bodies.pdf).



Förfarandet med Alternative Dispute Resolution (ADR), som redan finns inom EU, föreslås regleras i förordningen. I Sverige handhas detta av Allmänna reklamationsnämnden (ARN). Handläggningstiden är cirka 6 månader och ARN:s beslut är endast rådgivande. I Sverige kan således ett flygbolag trotsa ett beslut från ARN och endast riskera att kanske hamna på konsumenttidningen Råd och Rönns "svarta lista". I syfte att avlasta domstolarna från denna typ av massärenden, anser Advokatsamfundet att man borde överväga att göra ARN:s beslut exigibla med möjlighet till överklagande. Alternativt kunde vitesföreläggande ske av de flygbolag som inte rättar sig efter ARN:s beslut via svenska NEB:n; Konsumentverket. Detta sker som redan nämnts bland annat i Spanien.

#### *Förslagen i övrigt*

I övrigt tillstyrker Advokatsamfundet förslagen.

SVERIGES ADVOKATSAMFUND

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