The COVID-19 pandemic has created transport chaos in Europe and airlines have been among the most affected. Many flights have been and continue to be cancelled, and in other cases passengers are cancelling their reservations because of imposed travel bans or because they are unwilling to take unjustified risks. Therefore an analysis is necessary of the passenger rights in case of cancelled flights in emergency situations.

The legal framework which covers the rights of air transport passengers departing from or landing on the territory of a Member State of the European Union is set down in Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (the Regulation).

The Regulation provides rules in cases of flight cancellation, delay, denied boarding and upgrading or downgrading passengers. More specifically, its provisions apply to passengers whose flight:

- is carried out within EU borders, regardless of the airline;
- departs from the EU for a country outside the EU, regardless of the airline;
- arrives in the EU from a country outside the EU, if it is carried out by an EU airline.

Below are some of the most current passenger issues and the protection passengers can enjoy.

1. Cancellation

Under the Regulation, cancellation means the non-operation of a flight which was previously planned and on which at least one place was reserved. If an air carrier cancels a flight, regardless of the reason, it must offer the affected passengers choice between the following remedies: reimbursement of the cost of the tickets, re-routing at the earliest opportunity, or re-routing at a later date at the passenger’s convenience. Once the passengers have made their choice, they may not take advantage of the alternatives they were offered.

In connection with Brexit, currently the rules of the Regulation also apply to flights to and from the United Kingdom, because the Agreement on the withdrawal from the European

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Union, which entered into force on 1 February 2020, contains a transition period until 31 December 2020, during which time the existing rules on trade, travel and business continue to be implemented.

Reimbursement of the cost of the tickets

When the passenger chooses this option, the air carrier must reimburse the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan. The reimbursement must be made within seven days and is paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

If the air carrier does not offer choice to the passenger and unilaterally decides to reimburse the cost, the passenger also has the right to be reimbursed for the difference in price between the original ticket and the new ticket for carriage under comparable transport conditions. Moreover, if the air carrier offers a voucher, the passenger may nevertheless request reimbursement of expenses.

There are some specific rules in place for the situation where a passenger has purchased a round trip ticket, but only the outbound flight has been cancelled. The first thing to do in such instances is to determine whether the tickets are in the same registration (regardless if the air carriers are different). If the tickets were bought together, the passengers may be offered choice between the following alternatives – to have the price of both flights reimbursed or to be re-routed to another outbound flight. If the tickets were bought separately, however, reimbursement may be sought only for the price of the ticket for the outbound flight.

In case of cancelled connecting flights, besides reimbursement of the expenses, passengers may also be offered, where appropriate, a return flight to the first point of departure, at the earliest opportunity.

Re-routing

European law sets down two re-routing options, which must be offered to passengers whose

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flights have been cancelled – re-routing at the earliest opportunity and re-routing at a later date at the passenger's convenience. Re-routing should be done under comparable transport conditions.

In view of the difficult situation which flights throughout Europe are facing, choosing the option "re-routing at the earliest opportunity" may create additional problems, as at the moment airlines are unable to say conclusively when travel restriction will be lifted and which the next flight to the relevant destination is. In any event, air carriers must inform passengers for the degree of uncertainty and the possible delays, if re-routing is preferred to reimbursement. If the air carrier informs the passenger in a timely manner and by its own initiative of a flight which is available for re-routing, its obligation will be considered fulfilled.

In case passengers prefer their flight to be re-routed at the earliest opportunity, airlines must also offer them care, free of charge, while they are waiting for the re-routed flight. The right to care includes providing meals and refreshments, and if it becomes necessary – hotel accommodation and transport to the place of accommodation. If the air carrier was obliged to offer such, but it did not and the passenger made their own arrangements, the passenger has the right to receive reimbursement of their expenses, as long as they were necessary, reasonable and appropriate. Passengers whose flight was cancelled are not subject to the right of care, if they choose reimbursement or re-routing at a later date at the passenger's convenience. The obligation to offer care remains when the cancellation occurs in extraordinary circumstances.

If the air carrier does not offer re-routing under the conditions of the Regulation, it must cover the costs for re-routing and reimburse the expenses made by the passenger.

Right to compensation

Regardless of the options listed above, passengers whose flights have been cancelled generally also have the right to receive fixed monetary compensation in an amount of up to EUR 600, under the conditions set down in the Regulation. However, the air carrier is not obliged to pay compensation, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

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In this regard, the Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19 (the Guidelines), which were published by the European Commission on 18 March 2020, should be taken into account. In the Guidelines the Commission shares the view that "*… where public authorities take measures intended to contain the Covid-19 pandemic, such measures are by their nature and origin not inherent in the normal exercise of the activity of carriers and are outside their actual control*" and that, therefore, where such measures have caused cancelation of flights, compensation would not be due.

The Commission gives several specific examples of cases where flight cancelation would be considered to have been caused by the measures taken:

- where public authorities either outright prohibit certain flights or ban the movement of persons in a manner that excludes, *de facto*, the flight in question to be operated;
- where the corresponding movement of persons is not entirely prohibited, but limited to persons benefitting from derogations (for example nationals or residents of the state concerned);
- where the airline decides to cancel a flight and shows that this decision was justified on grounds of protecting the health of the crew.

Since the above examples are not exhaustive and the situation continues to be very dynamic, airlines are refusing to provide compensation citing extraordinary circumstances. Compensation is also not due if the passengers are informed of the cancellation at least two weeks before the scheduled time of departure.

2. Cancelling a flight reservation

Situations where the flight itself has not been cancelled, but the passenger is unable or unwilling to travel, are not covered by the rules of the Regulation and passengers do not enjoy the protection outlined above. In such cases the relations are settled on the basis of the general terms and conditions of each air carrier.

Some airlines are currently taking special measures for travel cancellations due to the pandemic, so passengers should keep themselves informed of the options offered by their

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carrier. Among the most popular solutions are flight vouchers for the price of the ticket that the passenger is cancelling, which can be used at a later date, as well as the option of re-booking at a later date without additional fees.

3. Denied boarding

The Regulation generally covers cases of denied boarding of individual passengers, whereby the passenger has the right to compensation, the right to choose between reimbursement of tickets, re-routing or re-booking for a later date and right to care. However, these rules do not apply in situations where access has been denied due to health, safety or security reasons. In such cases, the terms and conditions of the airline must be considered.

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