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## Introduction

On 17 March 2022, a new Spanish alternative dispute resolution (ADR) proceeding for claims under EC Regulation 261/2004 was approved through Ministerial Order TMA/201/2022. The regulation was passed to comply with the mandate of Act 7/2017, which implemented EU Directive 2013/11/EU on ADR for consumer disputes.

The new ADR proceeding marks a new era in the settlement of air passenger disputes in Spain. It remains to be seen whether it will improve the speed of the resolution process. It will reduce the workload of the courts of justice – or, at least, this is the expectation of the legislature.

This article sets out the key aspects of the new provisions.

## Competent ADR authority

The new proceeding shall be heard before the Spanish State Aviation Agency (AESA), which shall be the designated Spanish national enforcement body.

## Scope of new ADR proceeding

The new ADR proceeding will cover claims under EC Regulation 261/2004 (including cancellations, significant delays, boarding denials and schedule changes). However, it will be limited to flights departing from Spain and flights departing from outside the European Union and arriving in Spain, unless such flights are operated by an EU carrier and the non-EU country grants compensation and assistance rights. In addition to EC Regulation 261/2004 claims, the new ADR proceeding will apply to claims based on EC Regulation 1107/2006, which concerns the rights of disabled persons and persons with reduced mobility.

Claims under the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air for personal injuries and baggage disruptions are excluded from the new ADR proceeding. Such claims must still be referred to the ordinary courts of justice in the event of disagreement.

Damages claims based on breaches of the contract of carriage that are beyond the scope of the obligations laid down in EC Regulation 261/2004 are also excluded from the new proceeding. For instance, claims for certain types of damages (eg, compensation for moral damages, loss of profit and pre-paid expenses) should not be heard by the AESA but must be submitted to the courts of justice.

## Implications of new proceeding for passengers

The new proceeding is voluntary for passengers. In other words, passengers can choose to bring their claims through the new proceeding before the AESA or launch normal court proceedings before the commercial courts. Nevertheless, passengers are not bound by the AESA's decisions and may still resort to the courts if they disagree with the decision made through the new proceeding.

## Implications of new proceeding for airlines

The new proceeding is, however, mandatory for airlines. Airlines must raise their defence through the new proceeding if it is launched by a passenger. Although airlines can appeal the AESA's decision before the courts, the decision made by the AESA is enforceable while the appeal takes place. Thus, where the AESA rules in favour of the passenger, airlines will have to pay the compensation ordered by the AESA before an appeal decision is given.

## Steps to be taken before launching ADR proceedings

Certain steps must be taken before the formal proceeding can begin:

- Passengers must file a formal complaint with the airline before they are allowed to address the AESA. The legislature wishes to reduce litigation by giving the parties involved the opportunity to reach an agreement first. It must be noted, though, that this prior complaint to the airline is not required if the passenger elects to launch proceedings via the ordinary courts.
- Airlines must confirm receipt of the complaint and reply to the passenger within one month. If the airline rejects the claim (totally or partially), it must inform the passenger about their right to file a claim with the AESA.
- Passengers must file their claims with the AESA within one year of their initial formal complaint to the airline. If they fail to do so, the AESA will refuse to open the proceeding. However, the passenger may still bring complaint before a court of justice.

## Procedural aspects of ADR mechanism

The ministerial order envisages that the ADR proceedings will take place primarily by electronic means. However, the proceedings will include stages including formal allegations, proposals of evidence and practice of evidence, in very similar terms to those applied by the courts of justice. The ministerial order provides that the proceeding should take no more than 90 days, although an additional 90-day extension is contemplated in complex cases.

The ministerial order establishes that airlines must pay the amounts awarded to passengers when their claim is totally or partially upheld. Such payment must be made within 30 days from the AESA's decision, even if the airline challenges the decision in court. To strengthen the position of the passenger, the new legal provisions expressly state that the decision of the AESA is immediately enforceable through the court; furthermore, airlines that do not process the payment on time may be fined between €4,500 and €70,000 under the Air Safety Act 2003.

## Transparency requirements

The 261 ADR Regulation includes certain information and transparency requirements that airlines must meet:

- in respect of the existence and availability of the new proceeding;
- during the ADR proceedings; and
- for the implementation of the 261 ADR proceedings.

## Entry into force

The official effective date of the new ministerial order was, in principle, 18 March 2022. However, the AESA has not yet been approved as a qualified ADR authority. Therefore, the new proceeding will only be effective for disruptions suffered after such approval is obtained.

According to Act 7/2017, the AESA's qualification as an ADR authority requires a specific decision by the Spanish Transportation Ministry and a subsequent notification to the European Commission. This implies that the real effects of the new ministerial order might still take some time.

All airlines presently operating in Spain were given until the end of March to provide the AESA with the information needed to facilitate the electronic communications that the new proceedings envisage.

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