

INFORMATION ALERT

7th October 2026

The reform of Regulation (EC) No 261/2004 and the codification of the regime governing extraordinary circumstances

The recent reform of Regulation (EC) 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 (hereinafter, “**Regulation (EC) No 261/2004**”), and of Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, introduces a number of amendments intended to enhance legal certainty and harmonise the application of air passenger rights throughout the European Union.

Among the most important amendments introduced by the reform is the express and detailed regulation of the concept of “**extraordinary circumstances**” as a ground exempting air carriers from paying compensation to passengers affected by the cancellation of a flight or by a delay of three hours or more on arrival at their destination.

Until now, Article 5(3) of Regulation (EC) No 261/2004 provided that an operating air carrier was not obliged to pay compensation if it could prove that the cancellation or delay of a flight was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. However, the Regulation never defined what was meant by an “extraordinary circumstance”.

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For more than 20 years, the task of defining the boundaries of this concept has fallen primarily to the case-law of the Court of Justice of the European Union (CJEU), which has determined on a case-by-case basis which events could exempt an air carrier from paying compensation and which could not because they were regarded as risks inherent in the conduct of its business. From its judgment of 22 December 2008 in *Wallentin-Hermann v Alitalia* (Case C-549/07), the CJEU held that only events which (1) are not inherent in the normal exercise of the activity of the air carrier concerned and (2) are beyond its actual control may be regarded as extraordinary circumstances.

Based on that definition, the CJEU developed extensive case-law concerning adverse weather conditions, restrictions imposed by air traffic control (ATC) services, airspace closures, security risks, political instability, bird strikes, aircraft manufacturing defects and various forms of strike action. This judicial development gave substance to a rule that had initially been very concise, but at the same time created a high degree of dependence on individual factual circumstances and numerous differences of interpretation in administrative and judicial practice.

To date, the European Commission had reflected the CJEU's case-law in the so-called "Interpretative Guidelines" on Regulation (EC) No 261/2004, published in 2016 and 2024, which remain non-binding legal instruments for courts and other legal practitioners.

The reform is specifically intended to address this situation by incorporating into the legislative text itself the definition and the range of extraordinary circumstances which, until now, derived primarily from judicial interpretation.



The purpose of the reform is precisely to reduce differences of interpretation between national bodies and to provide a greater degree of predictability and legal certainty for both passengers and air carriers.

The result is a more structured and predictable legal framework, although it may also be more demanding for air carriers in terms of substantiation and the burden of proof.

1. NEW LEGAL FRAMEWORK FOR EXTRAORDINARY CIRCUMSTANCES

The main innovations introduced by the reform are, first, the legal definition and codification of extraordinary circumstances by means of a non-exhaustive statutory list of reference events, to be updated every five years; and, second, the express regulation of the evidential requirements that air carriers must satisfy in order to rely on such circumstances and be exempted from the obligation to pay compensation. It is also worth noting, although of lesser importance, that extraordinary circumstances now have an additional legal consequence: the obligation to provide assistance to passengers in the form of “hotel accommodation” is limited to a maximum of three nights.

As regards the express inclusion of a legal definition of extraordinary circumstances, new Article 2, point (r), of Regulation (EC) No 261/2004 defines them as *“events 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”*.

In addition, new Article 6c completes the definition by referring to the new Annex to Regulation (EC) No 261/2004, which contains a non-exhaustive list of events



considered to constitute extraordinary circumstances for the purposes of the Regulation.

For a better understanding of the practical scope of the reform on this point, three types of situation expressly addressed by the Union legislature may be distinguished: (1) grounds already recognised by the CJEU before the adoption of the Regulation, in some cases with clarification or further detail; (2) “new” grounds, in so far as they had not yet been recognised in CJEU decisions; and (3) grounds on which the CJEU has ruled but from which the Regulation departs. The analysis based on this classification is set out in the Annex to this Information Alert.

It should be emphasised that this non-exhaustive list of extraordinary circumstances is the first express legislative reference on the matter and is intended to strengthen legal certainty in an area hitherto shaped mainly by the case law of the CJEU.

In any event, since the list is “non-exhaustive”, air carriers may rely on other events. In such cases, the courts or national bodies responsible for enforcing Regulation (EC) No 261/2004 must assess, on a case-by-case basis, whether those events satisfy the conditions for classification as extraordinary circumstances [see recital (5) of the reform].

The non-exhaustive list of extraordinary circumstances will be updated periodically, every five years, by the European Commission in the light of events affecting the punctual and effective operation of flights during the years preceding each report. Nevertheless, the inclusion of a particular event in that list does not remove the air carrier’s obligation to prove that the event caused the disruption suffered by the flight concerned and that the disruption could not have been avoided even if all reasonable



measures had been taken. New Article 6c also provides that the causal link between the circumstance and the disruption must be “direct”, which must likewise be proved by the air carrier.

Lastly, the reform introduces a new transparency obligation towards affected passengers where the carrier relies on extraordinary circumstances. In such cases, the carrier must provide a clear and reasoned explanation of the circumstances that caused the disruption, using plain and intelligible language and providing information specific to the flight concerned. Although this obligation is essentially informational and does not replace the evidence to be submitted to national bodies or courts, it strengthens air carriers’ transparency duties and will require a review of communications sent to passengers in the event of cancellation or long delay.

2. IMPLICATIONS FOR AIR CARRIERS

In our view, the true significance of the reform lies less in the definition of extraordinary circumstances than in the express regulation of the requirements that must be met for such circumstances to exempt air carriers from liability.

As indicated above, the new text makes unequivocally clear that the mere existence of an extraordinary circumstance is not sufficient to release the air carrier from its obligation to compensate the passenger. To benefit from the exemption, the carrier must also prove a direct causal link between the circumstance relied on and the flight disruption, such that the extraordinary circumstance caused the disruption, and must prove that the disruption could not have been avoided even if all reasonable measures had been taken.



Although these requirements had already been imposed by the case-law of the CJEU, their express incorporation into the Regulation is particularly significant for air carriers. Going forward, the legal debate is likely to focus less exclusively on whether a particular event may be classified as extraordinary and increasingly on the sufficiency of the evidence produced by the carrier and proof of the causal link between the event relied on and the specific disruption, with a detailed examination of the operation concerned in the case under review (or the sequence of operations performed by the same aircraft). Thus, an industry strike, an airport restriction, the closure of airspace or a severe weather event may continue to justify application of the exemption, but only where the carrier is able to demonstrate adequately how the event affected the specific operation and why there were no reasonable alternatives capable of avoiding or reducing the consequences of the disruption.

From an operational perspective, this reinforces the importance for airlines of maintaining internal procedures for preserving evidence and ensuring the traceability of decisions taken during a disruption, so that they can substantiate the measures adopted in response to the unexpected event and the resulting exemption from liability.

The new obligation to inform passengers will also require a review of customer-service procedures and the communication templates used during cancellations or long delays, strengthening coordination between operational, regulatory and customer-service teams. Carriers operating in Spain will also soon have to comply with the requirements laid down in the new Customer Service Act, which will be fully in force from 28 December.



3. CONCLUSIONS

The principal innovation introduced by the reform is not merely that certain disruptions are now expressly listed as extraordinary circumstances, but that the Regulation codifies how air carriers must establish that those circumstances occurred. From the perspective of air carriers, the legal debate will gradually shift away from classifying the event towards proving causation and the reasonable measures taken to avoid or mitigate its consequences. In other words, the principal risk for carriers will no longer be proving that a strike, an ATC restriction or an adverse weather event occurred, but providing documentary and verifiable evidence that the event caused the specific disruption and that the carrier took all reasonable measures to avoid it, while also giving passengers clear and sufficient information. In this context, the ability to generate, retain and produce robust operational evidence, and to communicate the circumstances of the disruption appropriately, will become decisive in the handling of claims and proceedings arising under Regulation (EC) No 261/2004.

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ANNEX

I. Grounds already recognised by the CJEU as extraordinary circumstances

The following are situations in which the legislature has essentially codified the settled case-law of the CJEU, at most adding clarification or further detail.

Annex	Circumstance
1.a	Natural disasters which are incompatible with the safe operation of the flight
1.c	Weather conditions or damage to the aircraft caused by weather phenomena which are incompatible with the safe operation of the flight
1.d	Wars or insurrections incompatible with the safe operation of the flight
2.b	Health risks or medical emergencies [concerning passengers] discovered shortly before the departure of the flight or requiring the interruption or diversion of the flight
3.a	Damage caused by acts of sabotage or terrorism which is incompatible with the safe operation of the flight;
3.c	Hidden manufacturing or design defects notified by the manufacturer or a competent authority which are incompatible with the safe operation of the flight;
3.d	Air traffic management or airport capacity restrictions, or closure of airspace, including runway closure by the authorities, provided that the disruption results from a decision beyond the actual control of the operating air carrier
3.g	Strikes by providers of essential services, such as an airport managing body, air navigation service providers, or ground handling service providers not effectively chosen by air carriers within the meaning of Directive 96/67/EC, provided that such strikes are beyond the actual control of the operating air carrier or of the group of undertakings to which that air carrier belongs;
3.i	Damage to the aircraft, on the ground or in the air, caused by third parties for whom the air carrier is not responsible, by animals or by foreign objects, which is incompatible with the safe operation of the flight;

3.j	Runway contamination at an airport is incompatible with the safe operation of the flight, provided that the contamination does not originate from the air carrier
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II. Grounds on which the CJEU had not yet ruled specifically

In other cases, the reform classifies as extraordinary circumstances a number of situations in which the CJEU had not yet ruled:

Annex	Circumstance
1.b	Environmental disasters not caused by the operating air carriers which are incompatible with the safe operation of the flight;
1.e	Serious cross-border threats to health falling within the scope of Article 2(1) or (4) of Regulation (EU) 2022/2371 of the European Parliament and of the Council which are incompatible with the safe operation of the flight;
2.a	Incidents involving unruly passengers within the meaning of the 2014 Montreal Protocol which are incompatible with the safe operation of the flight, require the interruption or diversion of the flight, or delay its departure, unless the operating air carrier caused that behaviour;
3.b	Security risks or damage caused by other unlawful acts which are incompatible with the safe operation of the flight, provided that the situation is beyond the actual control of the operating air carrier;
3.e	Unscheduled partial or total closure of an airport, including a general failure of the airport system, an interruption of the electricity supply or a failure of electronic communications, or activation of the contingency plan by the airport managing body, which are incompatible with the scheduled and safe operation of the flight;
3.f	Widespread failure of the refuelling system, provided that the situation is not intrinsically linked to the operation of the aircraft and is beyond the actual control of the operating air carrier;
3.k	After departure, serious health risks or medical emergencies affecting a crew member which require the interruption or diversion of the flight;
3.l	Operational failures affecting providers of essential airport services, such as an airport managing body, air navigation service providers and ground



handling service providers not effectively chosen by air carriers within the meaning of Directive 96/67/EC, provided that the operating air carrier was unable to exercise actual control over those essential service providers.

III. Ground on which the reform departs from the CJEU's previous approach

The third group comprises the following situation, in which the reform departs to some extent from the approach taken by the CJEU.

Annex	Situation	Change from the CJEU's approach
3.h	Strikes at the operating air carrier provided that such strikes originate in demands which can be satisfied only by public authorities and are therefore beyond the actual control of the operating air carrier or of the group of undertakings to which that air carrier belongs;	In our view, this qualifies the CJEU's case-law on internal strikes. The CJEU (Cases <i>Krüsemann</i>, C-195/17 and joined cases, and <i>Airhelp v SAS</i>, C-28/20) had held that strikes by an air carrier's own staff arising within the framework of the undertaking's normal employment relations do not constitute extraordinary circumstances. By contrast, the reform expressly introduces a specific category of internal strike which may be extraordinary where its cause lies outside the carrier's sphere of control and depends on decisions by public authorities.