



AUGUSTAABOGADOS

INFORMATION ALERT

13th October 2026

Policy Regulation II: Cabin Baggage

Among the most significant innovations introduced by the reform of Regulation (EC) No 261/2004 is the express regulation of air carriers' commercial policies on the carriage of cabin or unchecked baggage, an area which, until now, lacked specific, harmonised rules at European level.

In recent years, commercial policies have progressively been implemented across the sector under which the carriage of larger cabin baggage, such as trolley cases, is subject to payment of a surcharge or optional fee. The controversy, now resolved by the reform, concerned the extent to which such commercial policies were lawful and, consequently, whether carriers are obliged to include carriage of cabin baggage free of charge in the ticket price.

1. CURRENT REGULATORY FRAMEWORK FOR CABIN BAGGAGE

Prior to the reform, airlines' freedom to determine their commercial policy on cabin baggage was based principally on the principle of freedom of pricing in the European Union generally and, in particular, on the freedom to set air fares enshrined in Articles 22 and 23 of *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* (hereinafter, "**Regulation (EC) No 1008/2008**").

Barcelona

Vía Augusta, 252, 4.^a
08017 Barcelona
T +34 933 621 620 ◻ F +34 932 009 843

Madrid

Antonio Maura, 18, 2.^a
28014 Madrid
T +34 911 592 323 ◻ F +34 911 592 322

Brussels (with EUROPE)

Avenue de Cortenbergh, 52
1000 Brussels (Belgium)
T +32 2 808 69 41



It has also been debated whether commercial freedom in this area should be limited by national rules which, in some countries, have been interpreted as requiring airlines to carry cabin baggage free of charge (in Spain, Article 97 of *Law 48/1960 of 21 July on Air Navigation*).

This was compounded by differing interpretations of the case-law arising from the *Judgment of the CJEU of 18 September 2014, Vueling Airlines, Case C-487/12*. That judgment confirmed airlines' freedom to charge price supplements for the carriage of any item of checked baggage while, incidentally, referring to the carriage of cabin baggage and stating that it could not be subject to a price supplement provided that it met *reasonable requirements* in terms of its weight and dimensions.

The absence of specific European rules therefore encouraged divergent interpretations of the CJEU's case-law in this area, resulting in mutually contradictory judicial decisions and manifestly disproportionate enforcement measures. This explains why the EU legislature ultimately chose to address the issue expressly as part of the reform of Regulation (EC) No 261/2004.

2. NEW ARTICLE 11a: "PERSONAL ITEM" AND "HAND BAGGAGE"

Against this background, new Article 11 bis establishes an express regulatory framework governing freedom to set fares in relation to cabin baggage and the transparency and price-display requirements imposed on air carriers in that regard.

As regards the possibility of charging price supplements for the carriage of cabin baggage, the key point is that the reform distinguishes between a "personal item" and "hand baggage" in the strict sense.



Thus, while a “personal item” is a smaller item that the passenger can keep with them at all times—such as a handbag or small backpack—and must be included in the price of every ticket without its carriage being subject to higher fares or supplements, “hand baggage” means larger baggage capable of being carried in the cabin during the flight, such as trolley cases normally stowed in the overhead compartments. In the latter case, airlines may decide whether to apply higher fares or price supplements than those applicable when travelling without such baggage.

The relevant point is therefore that the reform confirms that the option of travelling with a trolley case in the cabin need not form a necessary part of the service or the essential elements of passenger air transport. Its inclusion or exclusion may thus constitute a legitimate commercial choice within the framework of freedom of pricing recognised by Article 22 of Regulation (EC) No 1008/2008.

By contrast, the reform defines a “personal item”, whose carriage in the cabin forms part of the service or essential elements to which every passenger is entitled, as an item of unchecked baggage that complies with safety and security requirements and has maximum dimensions of 40 × 30 × 15 cm or fits under the seat in front of the passenger (Article 2(a)(ix)).

Accordingly, “hand baggage”, in respect of which carriers may present “commercially differentiated offers”, is defined as an item of unchecked baggage which is not a personal item and which complies with safety and security requirements (Article 2(a)(x)). In other words, “hand baggage” is now legally understood to mean any item of baggage that may be carried in the aircraft cabin and exceeds 40 × 30 × 15 cm. In practice, this refers in particular to trolley cases that can be stowed only in overhead compartments and not under the seat in front.

This distinction is reinforced by recital 42 of the reform, which identifies as personal items those objects that are essential during the journey, such as passports and other



travel documents, essential medicines, personal devices and reading material, as well as food and drink appropriate to the duration of the flight. Those essential objects are identified as an indispensable element of passenger transport and their carriage in the cabin, as part of the “personal item”, must therefore be included in every fare.

On the basis of that distinction, Article 11a(1) establishes a different regime for each category: while carriers must permit passengers to carry a personal item into the cabin free of charge, it deals separately with the carriage of one piece of hand baggage, subject to the capacity of the aircraft cabin. In that case, carriers and their intermediaries must display by default, before any booking process begins, fares including allowance for a piece of hand baggage. However, the same provision stipulates that this does not prevent carriers or intermediaries from presenting “commercially differentiated offers” to passengers who voluntarily choose to travel without such baggage.

The regime established by Article 11a of the reform must be interpreted in accordance with recitals 42, 43 and 45, which affirm the principle of freedom of pricing and, as explained above, identify only the “personal item”, rather than the carriage of “hand baggage” in the cabin, as an indispensable element of passenger transport. Recital 43, for its part, confirms that the obligation to display by default the air fare including hand baggage is intended to ensure transparency, so that passengers can compare market air fares more easily, without prejudice to the possibility for air carriers to offer *air fares that do not include a piece of hand baggage*.

Likewise, consistently with the regime established by new Article 11a of Regulation (EC) No 261/2004, the reform of Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents has introduced a new Article 6b concerning airlines’ duties to provide information on certain aspects of the contract of carriage at the time of booking. Among other matters, airlines must make available on request information on “*the maximum baggage allowance, in terms of dimensions and*



weight, that passengers are authorised to carry with them in the cabin and in the hold of the aircraft, corresponding to the fare for the class of transport for each of the flights included within a passenger's reservation", as well as "any possible additional charge applicable to checked and unchecked baggage (...)." This therefore confirms that the EU legislature expressly contemplates the possibility that the carriage of baggage may be subject to additional charges or supplements.

Article 11a(2) of Regulation (EC) No 261/2004 also addresses situations in which the personal item or piece of hand baggage cannot be carried in the cabin for safety or capacity reasons, or because the aircraft type changes after the booking was made, allowing the carrier to require that the unchecked baggage be carried in the hold at no further cost to the passenger.

3. IMPLICATIONS FOR AIRLINES

The entry into force of the reform will have significant operational and commercial implications for airlines, which will need to review their fare policies and adapt their booking, information and boarding processes.

In any event, airlines now have the legal certainty provided by the statutory confirmation that they may charge different prices to passengers who choose to travel with a case in the cabin and to those who choose to carry, at most, a personal item.

The main implications include:

- The need to review fare architecture, ticket-booking processes, commercial policies and policies governing the carriage of cabin baggage, together with a clear need to update the general conditions of carriage, while preserving



the possibility of structuring commercially differentiated offers for passengers who choose to travel without hand baggage.

- Ensuring that the air fare displayed by default to consumers and users before the ticket-booking process begins includes the carriage of hand baggage by default.
- Adapting sales channels to ensure that the information provided to consumers is clear, transparent and comprehensible, which will require a review of booking-system settings and of how the various fare options are displayed and compared from the start of the booking process.
- Adjusting boarding and gate-control procedures as regards verification of dimensions, available cabin capacity and hand baggage that may be carried in the cabin, distinguished from items that are legally considered a personal item.

4. PRACTICAL CONSIDERATIONS

From a legal perspective, the reform clearly strengthens legal certainty for cabin-baggage (unchecked-baggage) policies, limiting the scope for expansive interpretations of what must necessarily be carried at no additional cost. It confirms that the strict entitlement to free carriage is confined to the “personal item”, while larger hand baggage, such as a trolley case, is not an essential and indispensable part of the service forming the subject matter of the contract of carriage and may therefore be subject to specific commercial conditions. In particular, although the fare displayed by default at the start of the booking process includes one piece of hand baggage, carrying it may result in a higher final cost for the passenger than for a passenger who chooses to travel without such baggage.



From the airlines' perspective, this preserves commercial freedom to structure differentiated fares and recognises the legitimacy of unbundled fare models, a legitimacy that had been called into question before the reform.

The legal focus therefore clearly shifts towards transparency of information and the proper presentation of fares and included services, while giving airlines a more robust regulatory basis from which to respond to any claims or administrative action concerning cabin-baggage supplements.

Maria Ashby Domènech and Elena Coll
Senior Lawyers | Augusta Abogados

m.ashby@augustaabogados.com

e.coll@augustaabogados.com