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INFORMATION ALERT

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Policy regulation I: seating policies, boarding passes, name corrections and vouchers

After more than thirteen years of negotiations, institutional debate and successive proposals, the reform of Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights (hereinafter, 'Regulation (EC) 261/2004'), and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air (hereinafter, 'Regulation (EC) 2027/97'), has finally been adopted. Its text introduces significant changes intended to strengthen legal certainty in the field of air transport.

The original purpose of Regulation (EC) 261/2004 was to establish common rules on compensation and assistance for passengers affected by flight cancellations, long delays and denied boarding.

However, the amended text introduces new rules that directly affect other everyday aspects of the air travel product and which are addressed in this Information Alert: the allocation of certain seats, the issue and use of boarding passes, the correction of passengers' names entered in bookings, and the use of vouchers as an alternative to reimbursement or compensation.

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The regulatory reform also governs the controversial supplements applied by many airlines in recent years for the carriage of cabin baggage, confirming their validity while making them subject to certain transparency rules concerning the publication of air fares. Owing to its particular complexity and significance, however, that issue will be addressed in a separate Information Alert.

1. CURRENT REGULATORY FRAMEWORK

Before the reform, there was no specific European Union regulation governing seat-selection policies, the issue of boarding passes or the terms on which air carriers must permit the correction of passengers' names entered incorrectly when a booking is made. The new rules therefore regulate these matters for the first time; until now they had been managed almost exclusively through air carriers' general terms and commercial practices. This forms part of a framework that strengthens passenger protection while also seeking greater legal certainty and a fair balance with the interests of air carriers.

Unlike the foregoing matters, the issue of vouchers or travel credits was already contemplated, albeit in general terms, by the previous rules, which treated them as a possible form of consideration in place of monetary payment of compensation claimed by passengers and required 'the signed agreement of the passenger' (see Article 7(3) of the original text of Regulation (EC) 261/2004, now encompassed by the 'other means' referred to in Article 7(7) following the reform).



2. THE REGULATORY REFORM: PRINCIPAL CHANGES IN THE FOUR AREAS EXAMINED

2.1. Seat-selection policies

New Article 11(4) requires the air carrier to offer, free of charge, a seat next to a person whom an accompanying person accompanies under the same air transport contract where that person is a person with disabilities, a person with reduced mobility or a pregnant woman who has notified her special needs; a person requiring specific medical assistance on the basis of medical authorisation; or a child. The text itself defines 'child' (new Article 2(a ter)) as any person below the age of 14 on the date of departure of the flight or of the first connecting flight. Where adjacent seats are unavailable, the airline's duty is one to use reasonable endeavours — it 'shall endeavour to assist' assist the accompanying person in obtaining them — rather than an obligation to achieve a particular result.

Accordingly, these new rules, which benefit passengers with special needs, children and their accompanying persons, constitute a limited restriction on air carriers' commercial seat-selection policies, which are based on freedom to set air fares and optional price supplements. Without calling into question either the possibility of charging supplements for the selection of certain seats, as is now customary, or the alternative offered to passengers of random seat allocation free of charge, those categories of passenger and their accompanying persons must have the opportunity to travel in adjacent seats at no additional cost.

2.2. Boarding passes

New Article 11b ('Boarding passes') provides that a passenger may not be denied boarding on the grounds that they used their own printed version of a digitally issued boarding pass, on the condition that it is printed in a clear and machine-readable way,



nor may an additional charge be charged for doing so. Where the airline provides digital boarding passes, passengers must be able to obtain them at check-in without any further request, user account or specific application.

The new Article also prevents air carriers from charging a passenger an additional charge for providing a printed version of the boarding pass where the passenger has already checked in.

However, because the prohibition on charging for a 'printed version' of the boarding pass applies after the passenger has checked in, the reform appears to leave airlines free to charge a fee or supplement for the overall provision of an airport check-in service to passengers who have not checked in online, where their conditions of carriage so provide.

2.3. Name corrections

New Article 12a recognises the passenger's right to have the air carrier correct, free of charge and at least once, spelling errors in their name, or update that name following an administrative change, provided that the request is submitted at least 48 hours before the scheduled time of departure of the flight. Such correction or update shall not constitute grounds for denied boarding under Article 4.

The reform does not define the expression 'administrative change' capable of giving rise to a free 'update' of the passenger's name. On a literal interpretation, it includes official changes to a passenger's forename and/or surname occurring after the booking was made (for example, following marriage, divorce or adoption). It will, however, probably fall to the courts to define the concepts of 'correction of spelling errors' and 'update following an administrative change' in new Article 12a and to determine whether the right to a free name correction extends to other common situations in which passengers request the correction of personal details that is



neither merely orthographical nor due to a subsequent change in identity: for example, adding a second forename or surname, or replacing a diminutive or familiar name, so as to remedy any discrepancy between the name used for the booking and that appearing in the passenger's official travel document.

The request may be made by the passenger — in respect of their own name or that of any other traveller included in the same air transport contract — or by the intermediary that handled the booking.

In any event, the new provision expressly clarifies that the correction or update may not be used to transfer the ticket to a third party. According to Recital (14) of the reform, these rules are introduced to prevent passengers from having to pay 'punitive' fees for correcting spelling errors, while ensuring that they cannot be abused as a means of transferring the ticket to another passenger.

In addition, new Article 14 requires passengers to be informed of the deadline and procedure for exercising this right of correction or update when tickets for a flight are offered and before purchase.

2.4. Vouchers

The issue of vouchers or travel credits is governed by new Article 8a, which provides for their use both as a means of paying financial compensation and for reimbursing the ticket price paid by the passenger where cancellation, long delay or denied boarding gives rise to any such entitlement. This is consistent with the original text of Regulation (EC) 261/2004 before the reform.

In all cases, the reform introduces transparency rules for offering vouchers, together with certain conditions that vouchers must satisfy in order to be valid. The European legislature has proceeded not only from the need to protect passengers, but also from



the objective of increasing flexibility for both parties, since in certain circumstances passengers may prefer reimbursement or compensation in that form [see Recital (15) of the reform].

The air carrier may therefore choose to offer vouchers, but, if it does so, it must comply, among others, with the following conditions:

- the passenger must never be obliged to accept the voucher instead of monetary payment; acceptance is valid only where explicit consent is given on a durable medium;
- all options must be displayed clearly, without any preselection or default setting favouring the voucher;
- the value of the voucher must be at least equal to the amount due;
- the voucher must be issued with a maximum validity period of twelve months from its acceptance, extendable once only, for an additional maximum period of twelve months by express agreement of both parties;
- the voucher must be redeemable, in whole or in part, for any service of the air carrier during its period of validity; and
- if the voucher is not redeemed, the air carrier must automatically reimburse its value within seven calendar days after the end of its validity period (or earlier by agreement or in the event of the passenger's death).

Separately, new Article 9(3) continues to permit vouchers to be used to meet obligations to provide care in kind (meals, refreshments and accommodation) during flight disruption, subject, in the case of accommodation, to the room having been pre-booked by the airline.



3. IMPLICATIONS FOR AIR CARRIERS

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

3.1. Seating policies

The principal practical implications of the new rules on seating policy include the following:

- Airlines should review their booking and check-in engines so that they automatically identify bookings under a single air transport contract that include children (up to 14 years of age), persons with disabilities or reduced mobility, pregnant women, persons requiring specific medical assistance, and accompanying persons.
- Exceptions providing for an adjacent seat free of charge for the accompanying person must be configured where the legal obligation applies.
- Air carriers should ensure the traceability of stored data concerning adjacent seats available within a single booking and the reasonable measures offered.

3.2. Boarding passes

As regards the new rules on boarding passes, airlines are likely to be required to take the following steps:

- Review online and mobile check-in flows to ensure that the boarding pass can be obtained without a user account or specific application.
- Verify that the self-printed version contains machine-readable codes or elements and that gate or ground-handling staff do not improperly reject valid boarding passes.



- Remove charges merely for printing or reprinting a boarding pass where the passenger has already checked in online, limiting any optional fees or charges to passengers who have not completed online check-in and to the provision of an overall airport check-in service.

3.3. Name corrections

The measures to be considered in relation to name corrections under the new rules include the following:

- Create a clear, accessible and documented procedure for requesting name corrections and updates up to 48 hours before scheduled departure.
- Permit intermediaries to act where they made the booking.
- Configure systems to prevent charges for the first correction or update.
- Maintain anti-fraud controls to prevent a correction from amounting to an actual transfer of the ticket.
- Ensure that users are informed, when tickets are offered and before purchase, of the time limit and procedure for a passenger to request a name correction (for example, through the general terms of the air transport contract or by other means).

3.4. Vouchers

As regards vouchers and travel credits, air carriers should focus on the following points:

- Redesign reimbursement and compensation screens to avoid preselection or designs that steer the passenger towards the voucher by default, which the reform treats as improper.
- Record explicit consent on a durable medium, together with the date, time, amount, conditions and version of the terms accepted.



- Ensure that the voucher is issued on a durable medium that clearly states its value, validity period and conditions of use.
- Review conditions of use so as to permit full or partial use for any service of the air carrier during the voucher's validity period.
- Avoid presenting the voucher as the 'only option' or as an option that is more prominent, simpler or procedurally less onerous than monetary reimbursement.

4. CONCLUSIONS

The new rules lay down certain requirements in order to achieve uniform regulation across the twenty-seven Member States of the European Union of aspects of the contract of carriage of passengers by air not previously regulated by Union law. They permit (and require) air carriers to design their commercial policies so as to ensure free selection of adjacent seats for certain categories of passenger and their accompanying persons, a single digital check-in flow in which no supplement may be charged merely for printing or reprinting a boarding pass, and a single name-correction procedure giving passengers one opportunity to correct or update a name free of charge.

However, the text leaves open questions of interpretation that are likely to be clarified through administrative practice or, ultimately, case-law: the precise scope of an 'administrative change' for the purposes of name corrections; the treatment of family bookings split across separate contracts of carriage, including through online travel agencies, which would in principle fall outside the free-adjacent-seat rule because they do not satisfy the 'same air transport contract' requirement; and the extent of the duty to 'seek' adjacent seats where none are available.



There is consequently a clear shift in legal focus towards transparency of information and the proper presentation of fares and included services, while providing air carriers with a firmer regulatory basis from which to respond to potential claims or administrative action.

Nevertheless, the express inclusion of these matters in the new regulatory framework may result in greater intervention by the competent supervisory and enforcement authorities, including the national bodies responsible for enforcing Regulation (EC) 261/2004 — AESA in Spain — since these policies would fall within that body's competence in relation to alternative dispute resolution (ADR) procedures.

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