



Relate

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The journal of developments in social services, policy and legislation in Ireland

Rights of EU consumers when travelling abroad

This issue of Relate looks at some of the main EU consumer rights that people have when they are travelling abroad. It focuses on air passenger rights and on the protections for package travel and linked travel arrangements that came into effect on 1 July 2018.

Air passenger rights

Consumers have significant rights under EU consumer legislation when travelling by air. Regulation (EC) No 261/2004 established common rules on compensation and assistance to passengers, which air carriers are obliged to comply with in the event of flight delay, cancellation or denied boarding.

The Regulation applies to:

- All passengers departing from an airport located within the territory of an EU member state, Iceland, Norway or Switzerland
- All passengers arriving into the territory of an EU member state, Iceland, Norway or Switzerland from a third country, using a carrier licensed in the EU or in the European Economic Area (EEA)

Right to information

You have the right to be informed of the circumstances of your journey in a timely manner before, during and after travel, and about your entitlements in case of

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disruption. Depending on the situation, you may be entitled to:

- Receive assistance
- Choose whether to continue the trip or seek a refund
- Claim compensation

The Regulation specifies that the air carrier must display a notice at the check-in desks which is clearly visible to passengers. It must state: 'If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance.' This notice must be displayed at kiosks at the airport and online as well as at the check-in desks.

If an airline stops you from boarding, cancels a flight or delays it for at least two hours, it must give you a written notice setting out the rules for compensation and assistance.

Flight cancellation

If your flight has been cancelled, you should first be given a choice between:

- Rerouting to your final destination, or
- Receiving a refund for the part or parts of the journey that have been cancelled or not completed due to cancellation

If you choose rerouting instead of a refund, the air carrier should offer you an alternative flight to your final destination at the earliest opportunity or at a later date of your choice, subject to the availability of seats. If the carrier offers a rerouted flight to an alternative airport in the region, then it must bear the cost of transferring you from that alternative airport either to the airport in your original booking or to another close-by destination that has been agreed with you.

While waiting for the earliest available rerouted flight to your final destination, you should also be offered appropriate care and assistance free of charge (see page 3). If you choose a refund or a rerouted flight at a later date that is more convenient to you, then this is where the air carrier's duty of care to you ends.

Making your own arrangements

If the rerouting offered is not suitable and as a result you make your own arrangements and book a flight with a different air carrier, you may not be entitled to seek reimbursement of these alternative travel expenses.

The Regulation provides for instances where the air carrier has failed to offer the choice between reimbursement and rerouting and instead unilaterally decides to reimburse the cost of the flight ticket only. If you then book an alternative flight, you are entitled to a further reimbursement of the price difference between your original flight ticket and the new ticket (under comparable transport conditions).

However, the Regulation also stipulates that if the air carrier can prove it had contacted you to offer the options of reimbursement and rerouting, but you nonetheless made your own arrangements, then the air carrier may conclude it is not responsible for any additional costs you incurred as a result.

Therefore, it is always advisable to liaise with the air carrier representative or customer service agent to explore all options. Make your own arrangements only after consulting the air carrier and confirming that it will reimburse your additional costs.

Connecting flights

If you book connecting flights separately and one of your flights is cancelled with the result that you miss a connection, you may not be able to claim consequential expenses. Bookings made separately are regarded as separate contracts and, under the terms of the Regulation, you can only seek a refund for the cancelled flight.

Right to compensation

When a flight is cancelled, you may be entitled to compensation. The entitlement and the amount vary depending on when you are informed of the cancellation, the arrangements for an alternative flight, the distance of the flight cancelled, and the reason for the cancellation.

However, no compensation is payable if the air carrier can prove that the flight disruption was caused by extraordinary circumstances (see page 4).

Flight delay

If your flight is delayed, the Regulation provides for certain entitlements depending on the length of the delay:

- When the flight is delayed for two hours or more (and depending on the distance of the flight) passengers must be offered care and assistance free of charge
- When the flight is delayed for more than five hours, passengers may opt for reimbursement of the full cost of the ticket for the part (or parts) of the journey not made

If you choose reimbursement, then you are not entitled to any further care and assistance. However, if the delay means that the purpose of the journey is no longer attainable, for example, you missed a connecting flight, then you have the right to a return flight to the original point of departure at no extra cost, as well as care and assistance while waiting for this return flight.

Compensation for delay

The Regulation does not set out specific rules in relation to compensation in the case of flight delay. A ruling by the Court of Justice of the European Union found that, based on the principle of equal treatment, passengers whose flights reach their final destination three hours or more after the arrival time originally scheduled are entitled to the same compensation as passengers whose flight is cancelled. However, if the air carrier can prove that the delay was caused by extraordinary circumstances (see page 4), then no compensation is payable.

Denied boarding

The Regulation states that when an air carrier reasonably expects to deny boarding on a flight, such as when a flight is overbooked, it must first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the air carrier. In addition to this, the volunteers are also entitled to choose between taking alternative flights or a refund of the ticket.

If too few volunteers come forward to give up their reservations, then the air carrier may deny boarding to passengers against their will. This can happen even if these passengers have arrived on time with a confirmed reservation, the required documents and enough time to complete check-in, security and boarding procedures.

If you are denied boarding against your will, you have the same entitlements as those whose flights have been cancelled. However, an air carrier cannot be exempted from paying you compensation on the basis of extraordinary circumstances.

These entitlements do not apply where the airline has reasonable grounds to refuse boarding. These grounds would include health, safety or security concerns, inadequate travel documents, or if you arrive too late for check-in or boarding procedures.

Care and assistance

Article 9 of Regulation (EC) 261/2004 states that, where

applicable, the following care and assistance should be provided free of charge:

- Meals and refreshments in proportion to the waiting time
- Hotel accommodation in cases where a stay of one or more nights becomes necessary, or where you have to stay for longer than you intended
- Transport between the airport and place of accommodation, if necessary
- Communication facilities (two telephone calls, fax messages or emails)

Air carriers are obliged to actively offer care and assistance. However, if they do not and, as a result, you incur additional expenses such as meals, refreshments or hotel accommodation, then you are entitled to claim reimbursement of receipted expenses. You must, however, ensure that these additional expenses are reasonable and appropriate to the circumstances, and you must keep receipts in order to make a claim for reimbursement.

Compensation

If you are denied boarding or face cancellation or a delay of three hours or more, you are not entitled to compensation in the following circumstances:

- You are informed about the denial, cancellation or delay at least two weeks before the scheduled time of departure
- You are informed between 14 days and seven days before the scheduled time of departure and are offered rerouting, as long as the rerouting would not involve departing more than two hours before the original time of departure and would allow you to reach your final destination within four hours after the original scheduled time of arrival
- You are informed less than seven days before the scheduled time of departure and are offered rerouting, as long as the rerouting would not involve departing more than one hour before the original time of departure and would allow you to arrive at the final destination within two hours after the original scheduled time of arrival

When you are entitled to compensation, the distance of the flight determines the amount. The compensation is:

- €250 per passenger for all flights of 1,500km or less
- €400 per passenger for all flights within the EU/EEA of more than 1,500km, and for all other flights between 1,500km and 3,500km
- €600 per passenger for all other flights of over 3,500km

Extraordinary circumstances

No compensation is payable if an air carrier can prove that a cancellation or long delay of three hours or more was caused by extraordinary circumstances, which could not have been avoided even if all reasonable measures had been taken.

Examples of extraordinary circumstances can include bad weather, political unrest, security threat, unexpected shortcomings in flight safety, air traffic control restrictions, or strikes that affect the operation of the flight.

While the Regulation may list examples of extraordinary circumstances, this does not necessarily mean that the air carrier is automatically exempted from the obligation to pay compensation should such circumstances arise. Therefore, the reason for the disruption should be assessed on a case-by-case basis.

The duty rests with the air carrier to prove whether or when it informed the passengers of the flight disruption and to explain why it happened.

Important court rulings

- **Technical problems with the aircraft**
A European Court of Justice ruling (Case C-549/07 Wallentin-Hermann) found that technical problems can only be considered extraordinary circumstances if they are not inherent in the normal activity of the air carrier concerned and are beyond its control. This means that a technical problem which comes to light during aircraft maintenance or is caused by failure to maintain an aircraft is considered to be part of an air carrier's normal activity.
- **Wildcat strikes**
In April 2018, the European Court of Justice issued a judgment on wildcat strikes (Helga Krüsemann and Others v TUfly GmbH). It stated that merely because the Regulation mentions that a strike may occur, this does not mean a strike necessarily and automatically exempts an air carrier from its obligation to pay compensation.

How to make a complaint

You must first lodge a formal complaint or claim in writing by following the air carrier's complaint procedure. You should also provide a copy of any relevant documentation to back up your claim. This can include email correspondence with air carrier representatives, receipts for incurred expenses, photos, and booking or flight information.

Redress options for Regulation (EC) 261/2004

If you fail to receive a response, or the response is unsatisfactory, then you can report the matter to the relevant national enforcement body (NEB):

- The Commission for Aviation Regulation (CAR) is the relevant NEB if the flight affected departed from Ireland or arrived into Ireland from a third country on an EU/EEA licensed airline
- For departures outside of Ireland, you must contact the NEB based in the country of departure

If you are normally resident in Ireland and do not receive a reply or are not satisfied with the reply to your complaint, the European Consumer Centre (ECC) Ireland can be contacted for further advice.

Delayed, lost and damaged baggage

If your checked baggage is delayed, lost or damaged, you can claim compensation in accordance with the Montreal Convention. Under the Montreal Convention, the liability limits are expressed in Special Drawing Rights (SDR), which are a mix of currency values established by the International Monetary Fund (IMF). The value of an SDR is calculated daily by the IMF, and its value in euro is shown on the IMF's website imf.org.

The Convention limits the air carrier's liability to 1,131 SDRs per passenger. However, you can benefit from a higher liability limit by making a special declaration before checking in your luggage and by paying a supplementary fee. The Convention does not provide guidelines on how to calculate the amount of compensation to be awarded in each individual case. Air carriers often differ in their approach to offering compensation and may have their own assessment system in place.

What to do if there is a problem with your baggage

When you collect your baggage, you should check for damage and report it immediately. If you fail to report any damage before leaving the airport, it will be harder to prove that it occurred while the baggage was in the care of the air carrier.

If your bag arrives damaged or fails to arrive on time, you should take the following action:

- Go to the baggage claims desk and complete a Property Irregularity Report (PIR) providing details of your bag. Keep a copy for yourself.

- Keep your boarding card and the baggage tags
- Enquire about the air carrier's daily allowance policy, if applicable
- Request the contact details of the baggage department and ask if there is an online tracer system available to check the status of your bag
- Keep receipts of all necessary expenses resulting from the delay of your bag, as you will need these receipts later to prove the extent of your loss

Unless the airline admits the loss of the checked baggage at an earlier stage, it is considered lost if it has not arrived 21 days from the date it was supposed to arrive.

There are time limits for making a claim for damaged, delayed or lost baggage. You must make your claim in writing. The airline will require you to have certain documents such as your boarding card, luggage labels, proof you reported the problem (your PIR) and any receipts. These are the time limits:

- For damaged baggage, you have only seven days to submit your complaint from the date you received the baggage
- For delayed baggage, you must make your complaint within 21 days of the baggage arriving
- For lost baggage, you should submit your complaint to the airline as soon as possible after your baggage has been missing for 21 days and is deemed lost

Valuable items in your baggage

Most air carriers decline responsibility for valuable items such as jewellery and electrical goods carried as checked baggage. Always read the terms and conditions of carriage and take precautions, for example, by carrying valuable items in your hand luggage or by taking out insurance that provides adequate cover on specific items.

Redress options for baggage complaints under the Montreal Convention

Currently, there is no designated body in Ireland for the Montreal Convention. Therefore, if the air carrier fails to respond or resolve your baggage complaint satisfactorily, you may consider contacting the Competition and Consumer Protection Commission (CCPC) in cases where the air carrier is registered in Ireland, or the European Consumer Centre (ECC) Ireland for complaints against air carriers based elsewhere in the EU/EEA.

Directive (EU) 2015/2302 on Package Travel and Linked Travel Arrangements

The new Directive (EU) 2015/2302 on Package Travel and Linked Travel Arrangements came into effect in the EU on 1 July 2018. It extends the protections previously provided by the 1990 EU Package Travel Directive, which was implemented in Ireland via the Package Holidays and Travel Trade Act 1995. To date, Directive (EU) 2015/2302 has not been transposed into Irish legislation.

The new Directive covers traditional pre-arranged travel packages and also customised or dynamic packages (where the customer selects the components of the holiday but buys it as a single package). It also provides limited protection for linked travel arrangements (LTAs) – where you buy two or more components of the same holiday under separate contracts.

Package holiday rights for consumers

The 1990 EU Package Travel Directive offered clarity for the first time as to what constitutes a package holiday. It stated that a package holiday must be pre-arranged and sold at an inclusive price by a travel agent or directly by a tour operator, cover at least 24 hours (or an overnight stay) and comprise at least two of the following components:

- Transport
- Accommodation
- Other tourist services that are not directly linked to transport or accommodation, but which make up a significant part of the cost and package, for example, a guided tour

It also provides protections covering:

- Information – the organiser has to provide written information about the package and what protections are in place before the contract is concluded
- Changes to the package holiday – for example, if an essential term is altered significantly, consumers must be given a choice between a replacement package of equivalent or superior quality, or a lower-grade package with a refund of the difference in the price, or a full refund
- Price alterations – this is only allowed in a few specific circumstances, for example, currency fluctuation, variations in the cost of fuel, changes in government tax or duty. No price changes are allowed within 20 days of the departure date.

Expansion of package holiday rights

Directive (EC) 2015/2302 repeals and replaces its predecessor, the 1990 EU Package Travel Directive, and offers more clarity on the various travel services that can combine to form a travel package. It expands the scope of EU travel package legislation to include new forms of travel bookings, and provides additional and reinforced rights for EU consumers.

Travel packages

The new Directive now covers two types of travel packages made through a travel organiser: pre-arranged packages and customised or dynamic packages. A travel organiser is defined as a trader, such as a tour operator or an online or offline travel agency, that enables the purchase of the package or manages the booking process and is responsible for the proper performance of the package as a whole (unless otherwise stated in national law).

Pre-arranged travel packages

Pre-arranged travel packages (ready-made holidays) are covered under the new Directive if they comprise at least two of the following:

- Transport
- Accommodation
- Other tourist services – for example, tours, excursions, guides or tickets for concerts or theme parks
- Car rental (see below)

Car rental

To avoid confusion, the new Directive provides further clarity on car rental by explicitly stating that it is a 'travel service'. Therefore, if car rental is part of the travel package, then it carries the same protections as other elements of the package.

When car rental is NOT part of a package or the issue is not covered by Directive (EU) 2015/2302, consumers are protected by other instruments with more general scope, such as Unfair Commercial Practices Directive 2005/29/EC and Directive 93/13/EC on Unfair Terms in Consumer Contracts. There is no industry-specific legislation in the car rental sector.

Customised or dynamic packages

Customised or dynamic packages are travel packages where the consumer selects the components of the holiday;

therefore, the holiday is not pre-arranged. The booking can be made either offline or online, but it must be made through a single point of sale (for example, the website or app of one travel organiser whose services combine the relevant travel services and the booking process), and all the components must relate to the same trip or holiday.

A customised or dynamic package must include either:

- A single contract for all services, or
- Separate contracts with different travel service providers, where:
 - All the contracts are purchased from a single point of sale (for example, the website or app of one travel organiser)
 - All services are selected before the customer agrees to pay
 - There is an inclusive or total price

Example:

Maria booked a flight to France directly on the website of an airline. When booking, she was offered accommodation at a hotel. She chose to book both the flight and the hotel. At the end of the booking process, the airline's website charged a total price for all travel services, thereby creating a customised or dynamic package travel booking. However, when she arrived, the hotel was being renovated and there were no rooms available. Under the Directive, Maria now has protections under package travel legislation and can claim redress against the airline, as the airline is considered an organiser of a package.

Linked travel arrangements

According to the new Directive, a linked travel arrangement (LTA) is when at least two different types of travel services are purchased for the same trip or holiday, resulting in the conclusion of separate contracts with the individual travel service providers rather than one complete package.

You make a linked travel arrangement if you:

- Book and complete the purchase of one travel service on one website, and
- Are then invited, through a targeted link, to 'click through' and book a second service on another website, and
- Conclude the second contract on the second website within 24 hours of the first booking

When the second booking is made:

- You must be told you are not booking a package and therefore can claim insolvency protection only
- The second trader must inform the first trader that a contract has been concluded

An LTA booking is not considered a package at all, therefore the Directive offers only limited protections. Your LTA booking gives you insolvency protection in case the trader supplying the first travel service goes bankrupt, and may also offer repatriation where appropriate.

The Directive distinguishes links to websites which have related content but 'which do not have the objective of concluding a contract' from links which keep you 'simply informed' about further travel services 'in a general way'. For example, where a hotel includes a list of all operators offering transport services to its location on its website independently of any booking or if 'cookies' or metadata are used to place advertisements on websites.

The facilitation of such links by the first trader to other travel services (provided by other traders) must be targeted (targeted facilitation) and related to the booking of travel services in order to be considered a linked travel arrangement. General information or mere advertising would not fall into this category. The means by which a traveller receives these targeted links includes (but is not limited to) email and social media. The question of whether a booking is a linked travel arrangement (LTA) or not should be assessed on a case-by-case basis.

Example of an LTA

A traveller books a flight to Berlin directly with an airline. Shortly after receiving an email confirmation of the flight, she receives an email containing a targeted offer of a hotel and car rental in Berlin. She uses the link to make the hotel and car rental bookings and does this within 24 hours after receiving the flight confirmation.

Example of a booking that is not an LTA

A traveller is searching for a flight to Spain when suddenly a pop-up appears showing hotels at the destination. He clicks through using the link and makes the hotel booking on the second website. However, he did not begin or conclude a booking with the first trader for the flight. This is unlikely to count as an LTA as it did not involve targeted facilitation from the flight website.

Additional protection for holidaymakers

Since 1 July 2018, the new Directive provides for more and reinforced rights for holidaymakers. These are in addition to the rights available to consumers under the Package Holiday and Travel Trade Act 1995 described earlier (see page 5). The main rights under Directive (EC) 2015/2302 include:

- **Supply of pre-contractual information** – all necessary information should be supplied to you before purchase. It should include: the main characteristics of the travel services, including the trading name, geographical address, telephone and email (where applicable) of the travel organiser; the total price; how payment is to be made; passport and visa requirements; and details of your right to cancel.

The Directive requires traders to state clearly and prominently whether they are offering a package or a linked travel arrangement (for example, if there is the possibility of an LTA arising via a 'click-through' booking) and to provide information on the relevant level of protection. The travel organiser should provide this information even when the contract between you and the second trader is not concluded or, if it is concluded, no later than 24 hours after the first reservation has been confirmed.

- **Cap of 8% on price increase** – prices may increase only if the contract expressly allows for this. If the price increases by more than 8%, you have the right to cancel without paying a charge.
- **Changes to the contract** – where organisers make unilateral changes to the contract, you have the right to cancel if the changes significantly alter any of the main characteristics of the travel service. For example, if the quality or the value of the travel services diminishes, or if changes in departure or arrival times cause considerable inconvenience or additional costs.
- **Right to transfer** – you may transfer your contract to another traveller as long as you give the travel organiser reasonable written notice (at least seven days) before the start of the package, and pay the organiser's incurred costs.
- **Increased accountability** – the organiser must try to resolve an issue if something goes wrong with the package. Traders will be made explicitly liable for booking errors in relation to packages and linked travel arrangements.
- **Right to assistance if in difficulty** – the organiser is obliged to give appropriate assistance without undue delay. This includes, where appropriate, information regarding healthcare, local authorities and consular assistance, as well as practical help such as assistance with long-distance communications and alternative travel arrangements.
- **Right to rectification of issues** – you have the right to have issues rectified while on holiday. Where a significant proportion of the contract cannot be provided, you

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Head Office t 0761 07 9000
Ground Floor f 01 605 9099
George's Quay House e info@ciboard.ie
43 Townsend Street w citizensinformationboard.ie
Dublin 2
D02 VK65

should be offered suitable alternative arrangements. If the organiser does not provide remedies within a reasonable period, you should seek reimbursement of any necessary expenses you have incurred. You should also be entitled, where appropriate, to a price reduction or termination of the contract, and may be entitled to compensation for inconvenience.

- **Financial guarantees in the event of package organisers or suppliers of linked travel arrangements going out of business** – traders selling packages must take out insolvency protection. This guarantee covers refunds and repatriation in cases where organisers go bankrupt. It also applies to linked travel arrangements.
- **Stronger cancellation rights** – you may cancel your booking at any time before travelling, although it is advisable to give reasonable notice. However, you may incur justifiable cancellation fees.
- **Free cancellation in instances of unavoidable and extraordinary circumstances** – you have the right to cancel the contract before the start of the package without paying any termination fee in the event of unavoidable and extraordinary circumstances such as natural disaster, war, terrorism, disease, or serious conditions at the destination. Your personal circumstances should be considered when deciding if unavoidable and extraordinary circumstances have occurred. The organiser is also responsible for covering the costs for repatriation and any possible extra costs.

Package Travel Directive exemptions

Circumstances where holidaymakers are not covered by the new Package Travel Directive include:

- Packages or LTAs lasting less than 24 hours, unless overnight accommodation is included
- Packages or LTAs organised on a not-for-profit basis, offered only occasionally and offered only to a limited group of travellers
- Packages or LTAs purchased via general agreement for the arrangement of business travel

Making a complaint

While the new Directive does not explicitly outline complaint and redress options, the advice from consumer organisations is to consult the organiser's complaints procedure. If something goes wrong while you are on your holiday, you should first report the problem immediately to the local representative or package organiser, giving that person the opportunity to rectify the situation at no extra cost.

If the problem is not resolved, gather as much evidence as possible to support your case, for example, by taking photographs. You should submit your complaint in writing to the organiser within 28 days of your return home. If the organiser fails to respond within a reasonable time, you should send another letter of complaint.

If the trader does not respond or if the response is unsatisfactory, then you have the following options:

- Seek advice from the Competition and Consumer Protection Commission for complaints about traders based in Ireland.
- Seek advice from ECC Ireland for complaints about traders based elsewhere in the EU/EEA. In some cases, ECC Ireland may liaise on your behalf to seek an amicable solution with the trader via the centre based in the country of the trader.
- If the organiser refuses to offer any compensation, you may pursue the matter through the Small Claims Court (for traders based in Ireland and claims of up to €2,000), or the European Small Claims procedure (for traders based elsewhere in the EU/EEA and claims of up to €5,000), or through arbitration.

The information in *Relate* is intended as a general guide only and is not a legal interpretation