

COMMISSION NOTICE

Interpretative Guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council

(2016/C 214/04)

1. INTRODUCTION

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ⁽¹⁾ (hereinafter 'the Regulation') entered into force on 17 February 2005. The Regulation sets a minimum level of quality standards for passenger protection, adding an important citizen's dimension to the liberalisation of the aviation market.

The Commission's White Paper on Transport, adopted on 28 March 2011 ⁽²⁾, mentioned among its initiatives the need to 'develop a uniform interpretation of EU law on passenger rights and a harmonised and effective enforcement, to ensure both a level playing field for the industry and a European standard of protection for the citizens'.

Further to this White Paper, the Commission has already adopted Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations ⁽³⁾.

With regard to air transport, the Commission Communication of 11 April 2011 ⁽⁴⁾ showed how the provisions of the Regulation were being interpreted in various ways, due to grey zones and gaps in the current text, and that the enforcement varied between Member States. Furthermore, it revealed that it is difficult for passengers to assert their individual rights.

On 29 March 2012, the European Parliament adopted a resolution ⁽⁵⁾ in response to the abovementioned Communication. The Parliament highlighted the measures that it considered essential for regaining passengers' trust, in particular proper application of the existing rules by Member States and air carriers, enforcement of sufficient and simple means of redress, and providing passengers with accurate information on their rights.

In order to clarify rights and ensure better application of the Regulation by air carriers and its enforcement by national enforcement bodies, the Commission has presented a proposal for an amendment of this Regulation ⁽⁶⁾. The proposed changes also take into account the financial impact on the aviation sector and therefore include some measures aimed at capping costs. The proposal is currently being examined by the EU legislature. With these interpretative guidelines, the Commission does not seek to replace or complement its proposal.

The Better Regulation package is one of the ten priority areas of the Juncker Commission and it aims to ensure that EU action is effective at every stage of the policy cycle — from planning to implementation, review and subsequent revision as is the case for the Regulation. Another objective of this Commission is to achieve a deeper and fairer Internal Market. On 11 June 2015 ⁽⁷⁾, the Commission stated that it would consider adopting interpretative guidelines in the short term to facilitate and improve the application of the Regulation and to promote best practices. This is one of the measures proposed in the Communication of 7 December 2015 on 'An aviation strategy for Europe' ⁽⁸⁾.

⁽¹⁾ OJ L 46, 17.2.2004, p. 1.

⁽²⁾ Roadmap to a Single European Transport Area — Towards a competitive and resource efficient transport system COM(2011) 144 final, see page 23: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0144:FIN:EN:PDF>

⁽³⁾ OJ C 220, 4.7.2015, p. 1.

⁽⁴⁾ Communication from the Commission to the European Parliament and the Council on the application of Regulation 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 (<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0174:FIN:EN:PDF>). COM(2011) 174 final.

⁽⁵⁾ European Parliament resolution on the functioning and application of established rights of people travelling by air, 2011/2150(INI), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-99>

⁽⁶⁾ Proposal for a Regulation of the European Parliament and of the Council amending 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 and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air (COM(2013) 130 final of 13.3.2013).

⁽⁷⁾ TTE COUNCIL (TRANSPORT), 11 June 2015, Luxembourg.

⁽⁸⁾ COM(2015) 598 final of 7.12.2015 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — an aviation strategy for Europe'.

Case-law has had a decisive impact on the interpretation of the Regulation. On many occasions, the Court of Justice of the European Union (‘the Court’) has been requested by national courts to clarify certain provisions, including key aspects of the Regulation. Its interpretative judgments reflect the current state of EU law, which has to be enforced by national authorities. An evaluation conducted in 2010 ⁽⁹⁾ and an impact assessment in 2012 ⁽¹⁰⁾ both highlighted the abundance of rulings adopted by the Court. It is thus clear that steps need to be taken to ensure a common understanding and proper enforcement of the Regulation across the EU.

With these interpretative guidelines the Commission aims to explain more clearly a number of provisions contained in the Regulation, in particular in the light of the Court’s case-law ⁽¹¹⁾, so that the current rules can be more effectively and consistently enforced. These guidelines are intended to tackle the issues most frequently raised by national enforcement bodies, passengers and their associations, the European Parliament and industry representatives. They replace previous information such as frequently asked questions and related answers, etc. published on the Commission’s website.

They do not seek to cover all provisions in an exhaustive manner, nor do they create any new legal provisions. It should also be noted that interpretative guidelines are without prejudice to the interpretation of Union law provided by the Court ⁽¹²⁾.

These guidelines also relate to Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents ⁽¹³⁾ as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council ⁽¹⁴⁾, and to the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) ⁽¹⁵⁾. Regulation (EC) No 889/2002 serves a twofold purpose: firstly, aligning EU legislation on air carriers’ liability in respect of passengers and their baggage with the provisions of the Montreal Convention, to which the EU is one of the contracting parties, and secondly, extending the application of the Convention’s rules to air services provided within the territory of a Member State.

These interpretative guidelines should help to ensure better application and enforcement of the Regulation.

2. SCOPE OF THE REGULATION

2.1. Territorial scope

2.1.1. Geographical scope

Article 3(1) of the Regulation limits its scope to passengers departing from an airport located in the territory of a Member State to which the Treaty applies and to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies if the operating air carrier is an EU carrier.

According to Article 355 of the Treaty on the Functioning of the European Union (TFEU), EU law does not apply to the countries and territories listed in Annex II to the TFEU ⁽¹⁶⁾. Instead, those countries and territories are subject to the special association arrangements laid down in accordance with Part Four of the TFEU. Moreover, it does not apply to the Faeroe Islands, the Isle of Man and the Channel Islands according to the act of accession of Denmark and the United Kingdom. Therefore, these territories are to be considered as third countries within the meaning of the Regulation ⁽¹⁷⁾.

On the other hand, under Article 355 of the TFEU, the provisions of the Treaties do apply to French overseas departments, namely Guadeloupe, French Guiana, Martinique, Réunion Island, Mayotte as well as Saint-Martin, the Azores, Madeira and the Canary Islands. Therefore, these territories are part of a Member State to which the Treaty applies within the meaning of the Regulation.

⁽⁹⁾ Evaluation of Regulation (EC) No 261/2004 Final report Main report, By Steer Davies Gleave (February 2010).

⁽¹⁰⁾ Commission Staff Working Document Impact Assessment accompanying the Proposal for a regulation of the European Parliament and of the Council amending 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 delays of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, Brussels, SWD(2013) 62 final of 13.3.2013 and Proposal for a Regulation amending Regulation (EC) No 261/2004 (COM(2013) 130 Final).

⁽¹¹⁾ Clear references to the relevant Court cases are systematically mentioned in the text; where there is no such reference, it corresponds to the Commission’s interpretation of the Regulation.

⁽¹²⁾ See Article 19(1) of the Treaty on European Union.

⁽¹³⁾ OJ L 285, 17.10.1997, p. 1.

⁽¹⁴⁾ OJ L 140, 30.5.2002, p. 2.

⁽¹⁵⁾ OJ L 194, 18.7.2001, p. 39.

⁽¹⁶⁾ See Annex II to the Treaty on the Functioning of the European Union (TFEU) (http://ec.europa.eu/archives/lisbon_treaty/index_en.htm)

⁽¹⁷⁾ The Regulation is applicable to Iceland and Norway in accordance with the EEA Agreement and to Switzerland in accordance with the Agreement between the European Community and the Swiss Confederation on Air Transport (1999).

2.1.2. Concept of a 'flight' in accordance with Article 3(1)(a)

The Court has found that a journey involving outward and return flights cannot be regarded as a single flight. The concept of 'flight' within the meaning of the Regulation must be interpreted as consisting essentially in an air transport operation, being as it were a 'unit' of such transport, performed by an air carrier which fixes its itinerary⁽¹⁸⁾. Consequently, Article 3(1)(a) of the Regulation does not apply to the case of an outbound and return journey in which passengers who have originally departed from an airport located in the territory of a Member State travel back to that airport on a flight operated by a non-EU carrier and departing from an airport located in a non-member country. The fact that the outward and return flights are the subject of a single booking has no effect on the interpretation of that provision⁽¹⁹⁾.

2.1.3. Scope of the Regulation in relation to compensation and/or assistance received in a non-EU country and the effects on the recipients' rights under the Regulation

Article 3(1)(b) of the Regulation stipulates that it applies to passengers departing from an airport located outside of the EU (i.e. in a third country) and travelling to the EU when the flight is operated by an air carrier licensed in a Member State of the EU (EU carrier), unless they received benefits or compensation and were given assistance in that third country.

The question may arise as to whether passengers flying to the EU from a third country airport are entitled to rights under the Regulation where the following entitlements were already given under a third country's passenger rights legislation:

- (1) Benefits (for instance a travel voucher) or compensation (the amount of which may differ from that stipulated in the Regulation), and
- (2) Care (such as meals, drinks, hotel accommodation and communication facilities).

In this context, the word 'and' is important. For example, where passengers have only been provided with one of these two entitlements (for instance benefits and compensation under (1)), they can still claim the other one (in this case care under (2)).

Where both these entitlements were given at the point of departure either on the basis of local legislation or on a voluntary basis, passengers cannot claim any further rights under the Regulation. However, the Court⁽²⁰⁾ has found that it cannot be accepted that a passenger may be deprived of the protection granted by the Regulation solely on the ground that he may benefit from *some* compensation in the third country. In this regard, it should be evidenced by the operating air carrier that the compensation granted in the third country corresponds to the purpose of the compensation guaranteed by the Regulation or that the conditions to which the compensation and assistance are subject and the various means of implementing them are equivalent to those provided for by the Regulation.

2.2. Material scope

2.2.1. Non-application of the Regulation to passengers travelling by helicopter

According to Article 3(4), the Regulation applies only to fixed wing aircrafts operated by a licensed air carrier and hence, it does not apply to helicopter services.

2.2.2. Non-application of the Regulation to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public

According to Article 3(3), the Regulation is not applicable to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. Special fares offered by air carriers to their staff fall under this provision. By contrast, the Regulation is applicable, according to Article 3(3), to passengers who travel on tickets issued as awards for a frequent flyer programme or other commercial programme.

2.2.3. Application to operating air carriers

In accordance with Article 3(5), the operating air carrier is always responsible for the obligations under the Regulation and not, for example, another air carrier which may have sold the ticket. The notion of operating air carrier is presented in recital 7.

2.2.4. Events to which the Regulation applies

The Regulation protects passengers against denied boarding, cancellation, delay, upgrading and downgrading. These events as well as the rights granted to passengers when they materialise are described in the sections below.

⁽¹⁸⁾ Case C-173/07, Emirates Airlines, ECLI:EU:C:2008:400, paragraph 40.

⁽¹⁹⁾ Case C-173/07, Emirates Airlines, ECLI:EU:C:2008:400, paragraph 53.

⁽²⁰⁾ Case C-257/14, van der Lans, ECLI:EU:C:2015:618, paragraph 28.

2.2.5. Non-application of the Regulation to multimodal journeys

Multimodal journeys involving more than one mode of transport under a single transport contract are not covered as such by the Regulation. More information in this respect is provided in Section 6.

2.2.6. Scope of the Regulation in relation to the Package Travel Directive

Article 3(6) and recital 16 of the Regulation stipulate that it also applies to flights within a package tour, except where a package tour is cancelled for reasons other than cancellation of the flight. It is also stated that the rights granted under the Regulation do not affect the rights granted to passengers under the Package Travel Directive ⁽²¹⁾. Travellers thus have, in principle, rights in relation to both the package organiser under the Package Travel Directive and the operating air carrier under the Regulation. Article 14(5) of Directive (EU) 2015/2302 on package travel and linked travel arrangements, which will become fully applicable on 1 July 2018, also provides that any right to compensation or price reduction under that Directive does not affect the rights of travellers under the Regulation, but specifies that compensation or price reduction granted under passenger rights regulations and under that Directive shall be deducted from each other in order to avoid overcompensation.

However, neither the Regulation nor the Directive deals with the question of whether the package organiser or the operating air carrier ultimately has to bear the cost of their overlapping obligations ⁽²²⁾. Resolving such a matter will thus depend on the contractual provisions between organisers and carriers and the applicable national law. Any arrangements made in this regard (including practical arrangements to avoid overcompensation) must not impact negatively on the passenger's ability to address his claim to either the package organiser or the air carrier and to obtain the appropriate entitlements.

3. EVENTS GIVING RIGHTS UNDER THE REGULATION

3.1. Denied boarding

3.1.1. Concept of 'denied boarding'

In accordance with Article 2(j) of the Regulation, 'denied boarding' does not cover a situation where there are reasonable grounds for refusing to carry passengers on a flight even though they presented themselves on time for the flight, such as for reasons of health, safety or security, or inadequate travel documentation. However, the concept of 'denied boarding' relates not only to cases of overbooking but also to those where boarding is denied on other grounds, such as operational reasons ⁽²³⁾.

With regard to travel by disabled persons or persons with reduced mobility reference is made to Article 4 of Regulation (EC) No 1107/2006 of the European Parliament and of the Council ⁽²⁴⁾ and the relevant guidelines ⁽²⁵⁾ which precisely address such cases in 'Answer to question 4'.

If the passenger is refused carriage on the return flight due to the fact that the operating air carrier has cancelled the outbound flight and rerouted the passenger on another flight, this would constitute denied boarding and give rise to additional compensation from the operating air carrier.

When a passenger who holds a reservation including an outbound and a return flight is not allowed to board on the return flight because he or she did not take the outbound flight (so-called 'no-show'), this does not constitute denied boarding within the meaning of Article 2(j). The same is true when a passenger who holds a reservation including consecutive flights is not allowed to board a flight because he did not take the previous flight(s). These two situations are usually based on the terms and conditions linked to the ticket purchased. Such a practice might however be prohibited by national law. When the original flight of a passenger who holds a confirmed reservation is delayed and the passenger is re-routed on another flight, this does not constitute denied boarding within the meaning of Article 2(j).

⁽²¹⁾ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59). That Directive is repealed with effect from 1 July 2018, when the Member States have to apply the national measures transposing Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1). The reference to Directive 90/314/EEC in Article 3(6) of the Regulation is to be read as a reference also to Directive (EU) 2015/2302 according to Article 29 of the latter Directive.

⁽²²⁾ However, see as regard 'right of redress' Article 13 of the Regulation and Article 22 of Directive (EU) 2015/2302.

⁽²³⁾ Case C-22/11, Finnair, ECLI:EU:C:2012:604, paragraph 26.

⁽²⁴⁾ Regulation (EC) No 1107/2006 of 5 July 2006 of the European Parliament and of the Council concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1).

⁽²⁵⁾ Commission Staff Working Document, Interpretative Guidelines on the application of Regulation (EC) No 1107/2006 of 5 July 2006 of the European Parliament and of the Council concerning the rights of disabled persons and persons with reduced mobility when travelling by air, Brussels 11.6.2012, SWD(2012) 171 final.

When a passenger travelling with a pet is not in a position to proceed because he or she does not hold the relevant pet documentation, that cannot constitute denied boarding either. However, where passengers are denied boarding due to a mistake made by ground staff when checking their travel documents (including visas), that constitutes denial of boarding within the meaning of Article 2(j). That is however not the case when in accordance with Article 2(j), the air carrier and its crew refuse a passenger to board due to security concerns based on reasonable grounds. Air carriers should make full use of IATA's Timatic database and consult the public authorities (embassies and Ministries of Foreign Affairs) of the countries concerned to verify travel documents and (entry) visa requirements for countries of destination to prevent that passengers are incorrectly denied boarding. Member States should make sure that they provide comprehensive and up-to-date information to IATA/Timatic regarding travel documentation, notably in relation to visa requirements or exemption from this requirement.

3.1.2. *Rights associated with denied boarding*

Denial of boarding against the passenger's will gives a right to 'compensation' as defined in Article 7 of the Regulation, a right to choose between reimbursement, re-routing or rebooking at a later stage as provided in Article 8, and a right to 'care' according to Article 9.

3.2. **Cancellation**

3.2.1. *Definition of cancellation*

Article 2(l) of the Regulation defines 'cancellation' as the non-operation of a flight which was previously planned and on which at least one place was reserved.

Cancellation occurs in principle where the planning of the original flight is abandoned and passengers of that flight join passengers on a flight which was also planned, but independently of the original flight. Article 2(l) does not require an express decision of cancellation by the carrier ⁽²⁶⁾.

By contrast, the Court ⁽²⁷⁾ considers that it cannot, as a rule, be concluded that there is a flight delay or cancellation on the basis of a 'delay' or a 'cancellation' being shown on the airport departures board or announced by the air carrier's staff. Similarly, the fact that passengers recover their luggage or obtain new boarding cards is not, as a rule, a deciding factor to ascertain that a flight has been cancelled. Those circumstances are not connected with the objective characteristics of the flight as such and may arise from different factors. The Court highlighted concrete cases whereby the announcement of a flight as being 'delayed' or 'cancelled' can 'be attributable to inaccurate classifications or to factors obtaining in the airport concerned or, yet again, they may be unavoidable given the waiting time and the fact that it is necessary for the passengers concerned to spend the night in a hotel'.

3.2.2. *Distinction between cancellation and delay*

Without prejudice to paragraph 3.3.1 below and in order to avoid that air carriers present a flight as continuously 'delayed' instead of 'cancelled' it was considered useful to highlight the distinction to be made between a 'cancellation' and a 'delay'. In practice, although a flight may generally tend to be considered as cancelled when its flight number changes, this might not always be a determinant criterion. Indeed, a flight may experience such a long delay that it departs the day after it was scheduled and may therefore be given an annotated flight number (e.g. XX 1234a instead of XX 1234) to distinguish it from the flight of the same number on that subsequent day. However, in this case, it could still be considered as a delayed flight and not a cancellation. This should be assessed on a case-by-case basis.

3.2.3. *Case of an aircraft which returns to its point of departure*

The concept of 'cancellation' as stipulated in Article 2(l) of the Regulation also covers the case of an aircraft taking off but, for whatever reason, being subsequently forced to return to the airport of departure where the passengers of the said aircraft are transferred onto other flights. Indeed, the fact that take-off occurred but that the aeroplane then returned to the airport of departure without having reached the destination appearing in its itinerary means that the flight, as initially scheduled, cannot be considered as having been operated ⁽²⁸⁾.

3.2.4. *Diverted flight*

A diverted flight by which a passenger finally arrives at an airport which does not correspond to the airport indicated as the final destination in accordance with the passenger's original travel plan is to be treated in the same way as a cancellation unless:

- The passenger is proposed re-routing under comparable transport conditions at the earliest opportunity by the air carrier to the airport of original final destination or to any destination agreed with the passenger and in that case, may finally be considered as delayed,

⁽²⁶⁾ Case C-83/10, Sousa Rodríguez e.a., ECLI:EU:C:2011:652 paragraph 29.

⁽²⁷⁾ Joined cases C-402/07 and C-432/07, Sturgeon e.a., ECLI:EU:C:2009:716, paragraphs 37 and 38.

⁽²⁸⁾ Case C-83/10, Sousa Rodríguez e.a. ECLI:EU:C:2011:652, paragraph 28.

- The airport of arrival and the airport of the original final destination serve the same town, city or region, in which case, it may finally be treated as a delay. In such case, by analogy, Article 8(3) applies.

3.2.5. *Burden of proof in the event of cancellation*

Article 5(4) of the Regulation imposes on air carriers the burden of proof as regards whether and when the passengers have been individually informed about the cancellation of their flight.

3.2.6. *Rights associated with cancellation*

Cancellation of a flight gives a right to reimbursement, re-routing or return as defined in Article 8 of the Regulation, a right to 'care' as defined in Article 9 and, under Article 5(1)(c), a right to 'compensation' as defined in Article 7. The underlying principle of Article 5(1)(c) is that compensation is to be paid if the passenger has not been informed of the cancellation sufficiently in advance.

However, compensation does not have to be paid if the carrier can prove, in accordance with Article 5(3), that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken ⁽²⁹⁾.

3.3. **Delay**

3.3.1. *Delay at departure*

Under Article 6(1) of the Regulation, where the departure of a flight is delayed, passengers affected by this delay have the right to 'care' according to Article 9, and to reimbursement and a return flight according to Article 8(1)(a). The underlying principle of Article 6(1) is that the rights depend on the duration of the delay and the distance of the flight. In this regard, it should be noted that right to re-routing as laid down under Article 8(1)(b) is not covered under Article 6(1) as it can be considered that the air carrier is trying in a first place to address the cause of the delay in order to minimise the inconvenience to the passengers.

3.3.2. *'Long delay' at arrival*

The Court has ruled that a delay at arrival of at least three hours gives the same rights in terms of compensation as a cancellation ⁽³⁰⁾ (for more details see Section 4.4.5 on compensation).

3.3.3. *Measuring the delay at arrival and concept of time of arrival*

The Court has concluded that the concept of 'time of arrival', which is used to determine the length of the delay to which passengers on a flight have been subject if arrival is delayed, corresponds to the time at which at least one of the doors of the aircraft is opened, the assumption being that, at that moment, the passengers are permitted to leave the aircraft ⁽³¹⁾. The Commission considers that the operating air carrier should register the time of arrival on the basis of, for instance, a signed declaration by the flight crew or handling agent. The time of arrival should be provided free of charge upon request to the national enforcement body and the passengers where the operating air carrier seeks to rely on the arrival time as evidence of compliance with the Regulation.

3.4. **Upgrading and downgrading**

3.4.1. *Definition of upgrading and downgrading*

Upgrading and downgrading are respectively defined in Article 10(1) and (2) of the Regulation.

3.4.2. *Rights associated with upgrading and downgrading*

In the case of upgrading, an air carrier cannot request any supplementary payment. In the case of downgrading, compensation in the form of reimbursement of a percentage of the price of the ticket is provided for under Article 10(2)(a) to (c) of the Regulation.

The definition of downgrading (or upgrading) applies to the class of carriage for which the ticket was purchased and not to any advantages offered through a frequent flyer programme or other commercial programme provided by an air carrier or tour operator.

⁽²⁹⁾ As regards extraordinary circumstances, see Section 5.

⁽³⁰⁾ Joined cases C-402/07 and C-432/07, *Sturgeon* e.a. ECLI:EU:C:2009:716, paragraph 69. See also joined Cases C-581/10 and C-629/10, *Nelson* e.a. ECLI:EU:C:2012:657, paragraph 40, and Case C-413/11, *Germanwings*, ECLI:EU:C:2013:246, paragraph 19.

⁽³¹⁾ Case C-452/13, *Germanwings*, ECLI:EU:C:2014:2141, paragraph 27.