

## Air Passenger Rights

Billions of passengers travel by air but many of these passengers do not know that there are rights to protect their interest while in transit. Africclaim can explain your rights and help you to claim compensation that you are entitled to.

### **So what are these air passenger rights?**

Air passenger rights involve specific laws that support air travellers and advocate for protection and compensation when people face flight disruptions.

Although these laws aim to serve the same purpose, they vary from country to country. In the USA there are some regulations related to situations such as overbooked flights and tarmac delays. However, passengers often find more protection under the regulations in the countries they travel to. Europe's **EC 261** laws, in particular, are comprehensive and entitle passengers to compensation in a range of situations.

The problem is that many air passengers are not aware that the law is on their side or even that passenger rights exist. In fact, about **85%** of air passengers do not know their rights.

### **How can you enforce your air passenger rights?**

At Africclaim, we are committed to serving the travel community and air passengers at large with crucial, up-to-date information regarding travellers' rights. It is our mission to make sure you get paid when your flight gets delayed.

We also seek to simplify specific legal statutes that are on your side, so that you know what the laws do and how you can effectively approach a wide variety of flight disruptions beyond your control.

We help people that experience **flight delays, flight cancellations, denied boarding, baggage problems, and missed connections.**

## **Air Passenger Rights and Regulations: All you need to know!**

We mentioned earlier on that air passenger laws vary from country to country. Although this is true, there are some key features of regional or international laws that serve as powerful tools to air passengers. These include, but are not limited to, EU legislation EC 261, various US laws, Nigeria's NCAR Part 19, and the Montreal Convention.

Certain regulations have a wider reach or prove more advantageous than others. However, it's best to remember that disrupted flight circumstances can differ significantly, and it's helpful to know which strengths you can rely on for your journey.

## EUROPE: EC 261

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The **EC 261/2004** regulation was enacted on *February 11, 2004*, and it came into force on the *February 17, 2005*. The regulation seeks to compensate passengers in event of denied boarding, long flight delays of over three hours or more and cancellations. The compensation to be paid is **between €250 and €600**. Airlines must also provide refreshments and accommodation where it is appropriate.

In comparison to other flight compensation regulations, the EC 261 is the most comprehensive and has the most detailed compensation plan – making it our personal favourite! Unlike most of the flight delay compensation regulations, the regulations not only protects the European passengers but also passengers from third countries – Non-EU Countries.

The regulation holds the airlines accountable for flight delays, cancellation and denied boarding as long as the circumstances are not beyond the control of the airlines. What constitute extraordinary circumstances includes bad weather, airport closure, civil disturbances or union disruptions, air incidents leading to airport closure and natural disasters.

### Where does the EC 261/2004 apply?

The regulation is applicable to:

- A** Flights departing from an EU member state to another EU member state on a flight operated by an airline based in the EU provided the passenger has a confirmed reserved ticket on that flight and has arrived in time for check in as indicated in the ticket communication from the airline.
- A** It is applicable to flights departing from an EU member state to a third country on a flight operated by a non-EU member airline (e.g. a South African Airways flight from London to Johannesburg).
- A** It is applicable to flights departing from an airport in a third country to an EU member state on a flight operated by an airline based in the EU member state (e.g. a Virgin Atlantic flight from Lagos to London).

- ▲ The regulation is not applicable to helicopter flights, any flight not operated by a fix winged aircraft or to flights from Gibraltar Airport.

*Although Norway and Switzerland are not members of the EU, the regulation is also applicable to them pursuant to the bilateral air service agreements.*

**The compensation to be paid to passengers depends on the distance of the flight.** In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

- ▲ For flights of less than 1,500 km the compensation amount is **€250**.
- ▲ For intra community flights between 1500km to 3500km, the compensation amount is **€400**.
- ▲ For other flights that are over 3500km, the compensation amount is **€600**.

Under Article 8 and 9 of the regulations, the passenger is entitled to two free phone calls, emails or faxes and free food and drinks.

## **Relevant sections of EC261/2004**

**Article 4** deals with denied boarding. If the flight is overbooked and the airline expects to deny people boarding, the airline must call for volunteers to give up their seats and render assistance to the volunteer. If there are insufficient numbers of volunteers, the airline may deny passengers boarding against their will and in such situations where a passenger is denied boarding, the passenger is entitled to compensation of up to €600.

**Article 5** deals with flight cancellation. A passenger is entitled to compensation if the flight is being cancelled and the carrier fails to notify the passenger of the cancellation within two weeks and seven days or less than seven days before the date of departure.

**Article 6** deals with delayed flights. Passengers are entitled to compensation of up to €600 if their flights have been delayed for more than three hours. Passengers whose flight was delayed for two hours or less are NOT entitled to compensation.

**Article 7** deals with flight compensation and sets out the amount to be paid as compensation depending on the distance of the flight.

However, a passenger will be entitled to compensation if the flight was delayed or cancelled due to **extraordinary circumstances** beyond the control of the airline. Technical fault does not fall under the definition of extra ordinary circumstances as held by the Court of Justice of the EU. Therefore, a passenger is entitled to compensation if his or flight is being delayed or cancelled even if the delay or cancellation is due to a technical fault. Extraordinary circumstances include:

- ▲ Unavoidable security risks
- ▲ Political instability
- ▲ Adverse weather conditions
- ▲ Bird strikes
- ▲ Industrial actions
- ▲ Airport/airspace closure.

However in respect of bad weather, there are exceptions, for instance if an airline fails to provide for sufficient de-icer on the departure date and on that same day, several flights took off during the weather conditions, the airline will be held liable for the delay or cancellation.

## **Which flights are covered under EC 261?**

When it comes to EU Airline Compensation, it's beneficial to know which flights are covered by EC 261. Most routes within Europe are covered. This includes not only EU airspace, but also Iceland, Norway, Switzerland and the so-called "outermost regions" (French Guiana and Martinique, Mayotte, Guadeloupe and La Réunion, Saint-Martin, Madeira and the Azores, and the Canary Islands).

Many international flights are covered, as well. If your flight departs from an airport in the EU, it's covered. If your flight departs from elsewhere but your destination is in the EU, coverage depends on the airline – if it's a European carrier, you're covered.

INTINERY	EU AIR CARRIER	NON EU CARRIER
From inside the EU to the EU	Covered	Covered
From Inside the EU to outside the EU	Covered	Covered
From outside the EU to inside the EU	Covered	Not covered
From outside the EU to Outside the EU	Not covered	Not covered

In some cases, disrupted flights outside the EU may be eligible under EC 261 if they connect to a covered flight that is with the same carrier and part of the same flight reservation (under one booking reference number). The easiest way to know if you are covered is to use the [Africclaim eligibility checker](#).

### What is not covered by the EC 261: Extraordinary Circumstances!

EC 261 says that airlines do not have to pay compensation if the disruption was caused by 'extraordinary circumstances' which are events outside of their control. For example, you will not be eligible for compensation if your delay was a result of one of the following:

- ▲ Strikes initiated by airport employees or air traffic control
- ▲ Bad weather
- ▲ Political/ civil unrest
- ▲ Security risks

However, airlines must still show that they have taken reasonable measures to prevent the delay. For example, bad weather may be considered an extraordinary circumstance. However, if other airlines were prepared for it and prevented delays, whilst yours didn't, you should still be entitled to compensation.

In the years since EC 261 was introduced numerous court cases have been contested over what counts as an 'extraordinary circumstance'. Our legal team keep up to date with these latest developments.

## Your rights under EC 261/2004

In addition to EU airline compensation which is monetary, EC 261 includes other rights relating to your treatment. Here are some of the highlights:

### Obligation to inform passengers of their rights

Your first basic right is to be informed about the content of EC 261. Every airline has to display information on passengers' rights at their check-in counters in every airport where they operate. If our breakdown of the legalese is still not enough, you can read the actual text of EC 261, as well.

### Right to reimbursement or re-routing

In addition to compensation for your loss of time, **if your delay exceeds five hours**, you are entitled to a full or partial refund of your original ticket and a return flight to your point of departure, if needed.

### Right to care

When a flight disruption occurs and you're stuck waiting for the airline to get you back on track toward your destination, you're entitled to a number of essentials, depending on your flight details.

The carrier must provide you with:

- ▲ Meals and refreshments during the delay
- ▲ Access to communications, including two telephone calls, telex or fax messages, and emails
- ▲ If overnight accommodations are necessary, they must provide you with a hotel room and transportation to and from the airport

The following chart explains when passengers become eligible for these rights:

FLIGHT DETAILS	LENGTH OF DELAY
All flights 1,500KM or less	2 hours or more
Internal EU flights over 1,500KM	3 hours or more
Non Internal EU Flights between 1500Km to 3500KM	3 hours or more
Non Internal Flights over 3500KM	4 hours or more

## Upgrading and downgrading

If you are offered an alternative flight and placed in a higher class than the one you booked, the air carrier cannot charge you any additional payment. On the other hand, if the class of the alternative flight is lower, you can get a reimbursement between 30% and 75% of the price you originally paid.

## Further compensation

Your right to compensation under EC 261 does not affect your right to request further compensation. This rule does not apply in cases where passengers have voluntarily surrendered their reservations. Of course, the amount you are entitled to under EC 261 may be deducted from whatever additional compensation you receive.

## Is there a time limit to file a claim?

Your right to compensation under EC 261 does eventually expire, but the time limit varies from one country to the next. You should note that the country you claim in is not decided by your nationality, but is determined by where the headquarters of the airline is, or what court has jurisdiction in cases concerning the airline.

COUNTRY	LIMITATION PERIOD
Austria	3 years
Belgium	1 year
Bulgaria	5 years
Croatia	3 years
Cyprus	6 years
Czech Republic	3 years
Denmark	3 years
Estonia	3 years
Finland	3 years
France	5 years
Germany*	3 years
Greece	5 years
Hungary	5 years
Iceland	2 years
Ireland	6 years
Italy	26 months

Latvia	10 years
Lithuania	10 years
Luxembourg	10 years
Malta	No limit
Netherlands	2 years
Norway	3 years
Poland	1 year
Portugal	3 years
Romania	3 years
Slovakia	2 years
Slovenia	2 years
Spain	5 years
Sweden	2 months
Switzerland	2 years
United Kingdom	6 years

## United States: US Air Passenger Rights

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Sadly, US laws regarding passenger rights when your flight is delayed or cancelled are not as extensive as European or international laws. However, US laws are more beneficial to individuals who are denied boarding, passengers experiencing tarmac delays or travellers who experience luggage problems.

### Denied boarding

Airlines in the US are more likely to overbook their flights than airlines in Europe. Consequently, there are strong laws in place governing your right to be compensated. If you are denied boarding due to overbooking in the US you could be entitled to up to **\$1,350** compensation.

### Tarmac delays

While US laws do not address delayed flights in general, there are laws concerning what happens if your flight is delayed on the tarmac.

### Luggage issues on US domestic flights

Passengers on US flights have a number of rights when it comes to banged-up, delayed, and lost bags.

### How do I know if my flight is covered by US Regulations?

The US tarmac delay regulations apply to any flight departing from or flying to a US airport, while boarding denial regulations apply to flights with US carriers originating in the United States.

The US laws regarding luggage problems deal with domestic flights with US carriers between US cities. International flights originating in the United States are covered by the Montreal Convention, in most cases.

## International Rights: The Montreal Convention

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The Montreal Convention is a multilateral treaty which has been adopted by over 130 countries around the world. It aims to establish airline liability in the case of flight delay and for damage or loss of baggage.

While it is designed as a universal treaty to govern airline liability around the world, it is not so comprehensive on flight disruption as Europe's EC 261 regulation. However, it does offer rights to claim for damages for baggage and offers passengers rights on international flights between the large number of nations that uphold the regulation.

### **What Rights are Covered by the Montreal Convention?**

The 2003 Montreal Convention sets out passenger rights for several types of flight disruption: delays, flight cancellations, or boarding denials.

If you miss a pre-paid reservation, have to pay for an extra night at a hotel, or rack up any other unforeseen expenses due to air travel problems, you can get reimbursed. It's usually necessary to provide documentation of the incident and proof of added expenses, so make sure to hold onto your receipts.

There are obviously a few caveats to consider, and passengers should note that only damages resulting from the disruption are covered.

The Montreal Convention uses the word "damages" to talk about what passengers are entitled to, but that is interpreted differently depending on where you are. In many jurisdictions like the United States, those "damages" are limited to monetary losses and don't include psychiatric distress (unless they are a result of a physical injury). In other parts of the world, like the EU, a looser interpretation of the regulation allows passengers to claim for emotional damages. These distinctions are beyond the scope of this document though, and if you need more info, you might be better off seeking professional counsel.

The Montreal Convention also provides protection in the event of luggage issues, whether that's damaged bags, delayed bags or lost luggage.

Be aware there are strict time limits on these laws, so you must file claims as soon as possible. Damaged baggage claims must be submitted within 7 days, delayed

baggage within 21 days. Bags lost for longer 21 days are considered lost, and you will have 2 years to file a claim.

### **Which flights are covered by the Montreal Convention?**

The Montreal Convention applies to international flights between nations that uphold the regulation. It was signed and is recognized by more than 130 countries (and counting) around the world, including the US and the EU. Most major airline markets are members with a few notable exceptions (e.g. Sri Lanka and Vietnam).

The Convention also applies if your departure and destination are both within a single member nation, but only when there is a planned stopover in a different country. For example, imagine that you're flying between cities in a member nation such as China with a stopover in India. Your flight would be covered. But if you had a direct flight instead, with no stopover, it would not be an "international" flight and would not be covered.

## In Nigeria: NCAR Part 19

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Part 19 of the NCAA Consumer Protection Regulations, passengers on Domestic flights are guaranteed certain levels of compensation if they are denied boarding, their flight is delayed, or their flight is cancelled.

You can claim from 25% of the ticket price as compensation based on the length of your flight delay, and the circumstances around the delay.

### When can I claim?

- A If your flight is departing and landing within the domestic territory of Nigeria
- A If you have a confirmed reservation on the flight that is delayed
- A You must have presented yourself for check in at the stipulated time, and if no time stipulated, then not later than 1 hour prior to flight departure time

### How can I claim compensation from a Nigerian airline?

#### Step 1

Get all relevant documents together: To make a solid claim, you need to have your ticket or booking number, date of the flight, name of the airline, and if possible the reason the reason given by the airline for the flight delay or cancellation. You will forward this with a claim letter detailing your experience with the airline (flight delayed or cancelled), and any inconvenience it caused to you.

#### Step 2

Contact the airline: Different airlines have different procedures for claiming. Some accept complaints via email, while some require a written claims letter. Check what method your airline wants you to use.

Easy as A,B,C right? Well, it doesn't always work out in a straightforward manner and more likely than not your claim will get rejected. Don't panic just yet, here's what you should do if your claim is rejected.

If your claim for compensation is rejected by the airline, you may either choose to accept the rejection, or make a further complaint to Consumer Protection Directorate of the **Nigerian Civil Aviation Authority (NCAA)**.

When complaining to the NCAA, you will need to include; the details of your initial complaint letter, the rejection letter received from the airline, and a cover letter to the NCAA asking them to review the rejection by the airline.

If the Consumer Protection Directorate of the NCAA rejects your review, you may refer the matter to the Federal Competition and Consumer Protection Council (FCCPC). Provide them with all the information on the complaint so far, and ask them to review the decisions and compel the airline to award you compensation.

Finally, if the FCCPC fails to uphold your complaint, you may engage a lawyer through us and decide to take the matter to court.