



New ENAC circular on penalty procedure under Regulation 261/2004/EC

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Introduction

On 13 May 2021 the Italian Civil Aviation Authority (ENAC) released Circular APT-23B, the main purpose of which is to review and summarise the penalty procedure for infringements under Regulation 261/2004/EC on passengers' rights in cases of:

- denied boarding;
- cancellation; or
- long flight delays.

Legislative background

As is well known in the aviation sector, article 16 of Regulation 261/2004/EC requires each member state to designate a responsible body for the enforcement of the relevant provisions, to whom:

each passenger may complain . . . about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.

Under Legislative Decree 69/2006, the responsible body in Italy is the ENAC.

Penalty procedure

The first step of the penalty procedure is an investigation process led by the ENAC Airport Department, which – ex officio or after a complaint – will investigate the events. The pilot is notified of the infringement immediately. Alternatively, notification of the infringement may be made to the air carrier's registered office within:

- 90 days of the verification of the infringement (where the notification is made within Italian territory); or
- 360 days of the verification of the infringement (where the notification is made outside of national borders).

The notification may be made through a certified email or by post.

Within 60 days from the notification to the pilot or the air carrier's registered office, the air carrier can pay a reduced amount, based on the specific infringement. If the air carrier does not pay the reduced fee within 60 days, the designated inspector will complete an infringement report and send it to the ENAC.

The air carrier can reply to the complaint within 30 days of the infringement notification.

After a final assessment, the competent ENAC Airport Department may issue an order of injunction for the amount assessed or a reasoned order of dismissal to the air carrier's registered office under the Civil Procedure Code. In any case, the passengers who filed the complaint will be informed.

Under article 22 of Law 689/1981, air carriers may challenge orders of injunction before the court where the infringement took place within 30 days from the notification thereof (or within 60 days if the registered office is abroad). ENAC Circular APT-23B also sets out the criteria to determine administrative fines, which include:

- the severity of the infringement;
- the actions carried out by the carrier to avoid or mitigate the infringement's consequences;
- the economic condition of the carrier; and
- the percentage of passengers involved in the infringement out of those on board the flight.

Comment

ENAC Circular APT-23B provides useful guidelines in connection with the penalty procedures under Regulation 261/2004/EC. Its annexes also include several forms that the ENAC has prepared to facilitate the submission of claims.

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