

The new ART Regulation

IBAR WORKSHOP
June 2024

Content

- 1. Quick overview of ConciliaWeb Procedure**
- 2. The New ART Regulation**
- 3. Critical Aspects and Potential Conflicts**

Section 1

Overview of ConciliaWeb Procedure

Mandatory Mediation

Since April 2023, the ConciliaWeb mediation procedure has become mandatory for passengers seeking legal action, specifically for cases involving monetary compensation under Regulation No. 261/2004/EC.

Scope of application of mandatory mediation

The mandatory attempt of conciliation is limited to cases subject to application of Regulation No. 261/2004/EC.

Section 2

The New ART Regulation

Background of the proposed Regulation

ART states that numerous issues have emerged

- 13 out of 55 airlines do not guarantee the ability to submit a complaint in Italian or English,
- Not all carriers guarantee the possibility of submitting complaints through a web form,
- The channels for submitting complaints via web or email often do not function,
- Only 23 out of 55 airlines provide clear and complete information regarding complaint procedures in their general contract conditions,
- Only four out of 55 airlines have a dedicated section on their website for handling complaints,
- Most airlines do not indicate a timeframe within which they will respond to complaints,
- Response times to complaints are often stated as being more than 30 days,
- Most airlines do not provide information on the remedies available to users following a complaint, etc.

Background of the proposed Regulation

Additional significant issues highlighted by ART include the fact that:

- In most cases, passengers use ConciliaWeb directly without first filing a complaint directly with the airline, despite this being a prerequisite for accessing the platform,

Complaints often reach ConciliaWeb through claim agencies or lawyers.

ART believes that these issues stem from inadequate information provided to passengers.

However, to address these issues, rather than utilizing existing information channels, such as the Passenger Rights Charter published by ENAC, ART intends to impose a series of obligations on carriers that, in our view, will result in a cumbersome and costly procedure, including in terms of human resources.

Obligations on Carriers

Information Provision

ART's Regulation imposes detailed obligations on carriers to provide information to passengers through various channels, including websites, check-in desks, and onboard announcements.

Complaint Handling

Carriers must respond to complaints within specific timeframes and face penalties for non-compliance with response times.

Response Times

Carriers are mandated to respond to complaints within specific timeframes, with penalties for non-compliance.

Collecting and analysis of complaint data

Obligations on Carriers

Information Obligations

Carriers are required to provide comprehensive information to passengers regarding complaint procedures, response times, and available remedies through various channels.

The information must include:

- the channels through which complaints can be submitted and the languages that can be used (Italian and English);
- the possibility of using a printable form and where to find it;
- the possibility of submitting a complaint without the form, indicating the minimum requirements (name and surname, travel references (booking code or ticket), indication of the issue). In such cases, if the carrier receives an incomplete complaint, they are obligated to request additional information within 15 days;
- the 30-day period to respond to the complaint and the consequences of failing to respond within that period (right to compensation);
- the remedies available in case of no response (ConciliaWeb and judicial authorities).

The information must be made available by the carrier:

- On their website;
- In the general conditions of carriage in a dedicated section;
- For flights arriving at or departing from an Italian airports:
 - At the check-in desk or boarding gate;
 - Onboard the aircraft via audio or video announcements regarding the channels through which complaints can be submitted, the languages that can be used (Italian and English), and the possibility of using a printable form and where to find it.

Contact channels must include at least:

- A "complaints" link on the website in an easily identifiable area;
- An email address, both standard and certified (PEC), with the PEC enabled to receive standard emails;
- A registered email address (PEC);
- A printable complaint form.

The aforementioned complaint methods must ensure receipt through the issuance of a specific receipt.

Obligations on Carriers

Complaint Handling

Carriers must respond to complaints within specific timeframes and face penalties for non-compliance with response times.

Air carriers must respond to complaints within 30 days of receipt, indicating whether the complaint has been accepted or rejected, whether the passenger is entitled to compensation or indemnification and how to obtain it, what measures the carrier has taken to resolve the issue, and what remedies the passenger can pursue if they find the response unsatisfactory, including the possibility of mandatory conciliation and subsequently taking legal action.

If the carrier rejects the complaint for reasons related to jurisdiction, they must inform both the passenger and the parties deemed responsible.

If the carrier fails to respond within the 30-day period, they must pay the passenger compensation equal to 10% of the ticket price if the response is provided between the 31st and 60th day after receiving the complaint, and 20% if the response is provided after the 60th day. The carrier must inform the passenger of their right to compensation.

Obligations on Carriers



Collecting and analysing complaint data

Data Analysis

The Regulation also mandates carriers to conduct an annual analysis of complaints received, categorizing them and highlighting major issues.

The Regulation requires carriers to conduct an analysis, including statistical analysis, of the complaints received on an annual basis. This includes categorizing complaints based on the reasons, average response times, outcomes, highlighting major issues, and the number of compensations paid for delayed responses.

The above outlines a rather laborious mechanism imposed on flights departing from or arriving in Italy, which, in our opinion, is subject to criticism from various perspectives.

Section 3

Critical Aspects and Potential Conflicts

CRITICAL ASPECTS

Lack of Alignment with Current EU Legislation

Overlap with EU Reform Proposals

Potential Conflict of Powers Between ART and ENAC

Hidden Penalty in ART Regulation Compensation

Disproportionate Measures Imposing Unjustified Costs on Carriers

Failure to Address Intermediary Complaint Handling Issues

Need for Prior Passenger Complaint Before Mediation

Lack of Alignment with Current EU Legislation



The obligations imposed by the ART Regulation do not align with existing EU legislation in the air transport sector.

Regulation No. 261/2004/EC does not require airlines to establish a complaint handling system.

Regulation No. 1107/2006/EC (protecting disabled persons and persons with reduced mobility in air transport) generally states that affected individuals can bring the issue to the airline's attention if they believe the regulation has been violated but does not establish penalties for non-compliance.

These EU regulations only mandate informing passengers about their rights, limited to information on the right to monetary compensation in specific scenarios, and do not extend to the numerous additional information requirements ART seeks to impose on carriers.



Overlap with EU Reform Proposals

The proposed reform of Regulation No. 261/04/EC, not yet finalized, introduces a complaints procedure that only partially aligns with ART's proposal.

The reform draft includes a new article on "*Passenger Complaints*," requiring airlines to provide information on complaint handling procedures and contact details.

Passengers must submit complaints directly to the airline within three months of the flight, with the airline obligated to respond within two months. Only after these two months can passengers approach the mediation body established by member states.



Overlap with EU Reform Proposals

Another EU regulation reform project, which is under discussion with critical input from airlines, aims to comprehensively reform Regulations No. 261/04/EC, No. 1107/2006/EC, No. 1177/2010/EU (Rights of passengers traveling by sea and inland waterways), No. 181/2011/EU (Rights of passengers in bus and coach transport), and No. 782/2021/EU (Rights and obligations of passengers in rail transport).

This reform seeks to standardize information provided by transport service providers and complaint procedures. It includes adopting a common complaint form, informing passengers about complaint submission methods, allowing all EU official languages, carriers' quality monitoring systems, and national monitoring systems through inspections, audits, and evaluations to impose corrective actions on carriers.



Need for Alignment

Alignment with EU Legislation

The Regulation's lack of alignment with existing EU legislation and potential conflicts with ongoing EU reform projects highlight the need for alignment and suspension of the Regulation.



enac

Potential Conflict of Powers Between ART and ENAC

Supervisory Powers

ENAC is the body responsible for overseeing the correct application of Regulation No. 261/04/EC regarding passenger rights.

The Regulation's imposition of supervisory powers overlaps with those attributed to ENAC, raising concerns about potential conflicts of powers.

Disproportionate Measures Imposing Unjustified Costs on Carriers



The ART Regulation's measures are disproportionate, imposing unjustified cost burdens on carriers. For example, the monitoring activity required by the ART Regulation is performed by national bodies through data collection, audits, inspections, etc., in the EU reform project.

Failure to Address Intermediary Complaint Handling Issues



Despite confirming that 80% of complaints are submitted through intermediaries, such as lawyers or claim companies, the ART Regulation does not address this malpractice, leading to unjustified costs for airlines already burdened by compensation often exceeding the ticket price.

ART should have intervened to curb rising costs associated with legal fees demanded by lawyers and claim agencies hired by passengers to interact with carriers, additional costs hindering swift compensation payment resolutions.

Intermediaries often fail to inform passengers about carrier responses, especially when the carrier offers the full requested amount initially, rejected by the intermediary due to unpaid legal fees.

The only solution is to prohibit fees, charges, and expenses for delegates in first-instance complaints, considering the ConciliaWeb procedure is free.

Need for Prior Passenger Complaint Before Mediation

The requirement for a prior passenger complaint directly to the airline as a condition for mediation access should extend to other private mediation bodies. Other mediation bodies offering paid conciliation services create a market, encouraging the use of their services through claim agencies and serial lawyers assisting passengers.

We've encountered cases where mediation bodies automatically grant lawyers and claim agencies legal fee payments without considering carrier defenses, even when the carrier has not received a compensation request or already offered compensation before mediation.

Therefore, it is necessary to extend the requirement for a prior complaint or compensation request to all mediation bodies.

Additionally, a prohibition is needed against other conciliation procedures used solely to justify legal fee claims, such as assisted negotiation.