

***REGULATIONS**
FOR THE OUT-OF-COURT RESOLUTION OF CONSUMER DISPUTES
BY THE PASSENGERS' RIGHTS OMBUDSMAN
AT THE PRESIDENT OF THE CIVIL AVIATION AUTHORITY

of 14 October 2020

§ 1

Definitions and abbreviations

1. **The Act – Aviation Law** – the Act of 3 July 2002 Aviation Law (Journal of Laws of 2019, items 1580 and 1495, and of 2020, item 284 and 1378);
2. **The Act on the ADR** – the Act of 23 September 2016 on the out-of-court resolution of consumer disputes (Journal of Laws of 2016, item 1823);
3. **Regulation 261/2004/EC** – 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 (OJ EC L 46 of 17.02.2004, p. 1, as amended);
4. **Regulation 2111/2005/EC** – Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (OJ EC L 344 of 27.12.2005, p. 15, as amended);
5. **Consumer** – a consumer within the meaning of the provisions of the Act of 23 April 1964 – Civil Code (Journal of Laws of 2019, items 1145 and 1495, and of 2020, item 875);
6. **Passenger** – a person entitled to submit an application to the Passengers' Rights Ombudsman at the President of the Civil Aviation Authority, who is traveling, planning travel or has travelled by air on the basis of a confirmed reservation within the meaning of Article 2 (g) of Regulation 261/2004 / EC, independently of whether the flight was for private purposes or related the economic or professional activity;
7. **The Applicant** - a person, who submitted the application on his own behalf or other passengers on the basis power of attorney
8. **Air carrier** – an entity authorised to operate on the basis of a license – in the case of a Polish air carrier, or on the basis of an act of a competent authority of a foreign state – in the case of a foreign air carrier;
9. **Community carrier** – an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers;
10. **A third country** - a country other than a Member State of the European Union, the Swiss Confederation or a Member State of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area, as defined in Article 2 point 22 of the Aviation Law;

11. **ADR procedure** – a procedure regarding the out-of-court resolution of passenger disputes carried out by the Passengers’ Rights Ombudsman at the President of the Civil Aviation Authority (Alternative Dispute Resolution);
12. **Passengers’ Rights Ombudsman at the President of the Civil Aviation Authority** – an entity authorised to carry out the procedure regarding the out-of-court resolution of consumer disputes between a passenger and an air carrier, a tour operator or an air ticket seller;
13. **Person carrying out the ADR procedure on behalf of the Ombudsman** – member of the Ombudsman’s Team authorised by the Passengers’ Rights Ombudsman to carry out the ADR procedure;
14. **The Ombudsman’s Team** – the division in the Civil Aviation Authority, to carry out proceeding od ADR applications.

§ 2

Subject matter

1. These regulations (hereinafter referred to as the “Regulations”) specify the rules for conduct for the out-of-court resolution of passenger disputes (the ADR procedure), carried out by the Passengers’ Rights Ombudsman at the President of the Civil Aviation Authority (hereinafter referred to as the “Ombudsman”).
2. The ADR procedure is a procedure aiming to amicably settle consumer disputes referred to in Article 205a of the Act – Aviation Law, i.e. civil law disputes between the Passenger and an air carrier, a tour operator or an air ticket seller (hereinafter referred to as the “Parties”).
3. The dispute may also be between entrepreneurs, to the extent to which the passenger is taking a flight in relation to their business or professional activity.
4. The Ombudsman carries out the ADR procedure with a view to reconcile the positions of the parties to the procedure in order to resolve the dispute.
5. As part of the resolution of consumer disputes, the Ombudsman applies the following regulations:
 - a) the Act on the ADR;
 - b) the Act – Aviation Law;
 - c) Regulation 261/2004/EC;
 - d) Regulation 2111/2005/EC.
6. The provisions of the Act of 14 June 1960 Code of Administrative Procedure do not apply to the ADR procedure before the Ombudsman (Journal of Laws of 2020, item 256 and 695 and 1298).

§ 3

The scope of application of the Regulations

1. Within the framework of the ADR procedure, the Ombudsman handles the resolution of civil law disputes regarding compensation claims arising from the provisions of Regulation 261/2004/EC or Regulation 2111/2005/EC.
2. The ADR procedures regarding compensation claims under the provisions of Regulation 261/2004/EC apply to flights from airports located in the territory of the Republic of Poland and flights from third countries to these airports serviced by Community air carriers.
3. The ADR procedure is carried out by the Ombudsman with the help of the Ombudsman's Team.
4. The ADR procedure is carried out by the Ombudsman in accordance with the following rules:
 - 1) **voluntariness** – which means that the initiation of the ADR procedure and its continuation at any stage depends on the will of the Parties;
 - 2) **confidentiality** – which means that both the Ombudsman and persons working with the Ombudsman, as well as the Parties and other persons involved in the ADR procedure, are obliged to keep confidential the facts, proposals or positions presented during the ADR procedure;
 - 3) **acceptability** – which means that at every stage of the ADR procedure the parties fully accept and comply with the content of the regulations and accept the person of the Ombudsman or the person working with the Ombudsman as the person carrying out the ADR procedure. If these conditions are not met, the Ombudsman may terminate the ADR procedure;
 - 4) **impartiality** – which means that the Ombudsman does not represent any of the parties, treating them equally in the course of the ADR procedure;
 - 5) **neutrality** – which means that the Ombudsman has no interest in concluding the ADR procedure in a manner preferred by one of the parties.

§ 4

Submission of an application

1. The ADR procedure referred to in Article 205a of the Act – Aviation Law is carried out at the passenger's request.
2. An application submitted to the Ombudsman regarding a civil law dispute between a passenger and an air carrier, a tour operator or an air ticket seller includes at least:
 - 1) a designation of the parties to the dispute;
 - 2) an indication of the type of procedure*;
 - 3) a clear specification of the demand;
 - 4) a signature.

3. In addition, the following information and documents must accompany the application:
 - 1) a description of the circumstances justifying the demand;
 - 2) documents confirming information included in the application, including a copy of the documentation from the completed complaint procedure or a document confirming that 30 days have passed since a complaint was filed with an air carrier, a tour operator or an air ticket seller;
 - 3) a copy of the reservation confirmation for a given flight (i.e. a confirmation of the fact that the passenger has a ticket or other proof that the reservation has been accepted and registered by the air carrier or tour operator);
 - 4) an indication of the place of residence or registered office and postal address of the parties to the dispute;
 - 5) the date of birth of the passenger;
 - 6) an indication of whether the flight was directly related to the passenger's business or professional activity;
 - 7) information on whether the Ombudsman has been requested to consider the dispute in question in accordance with Article 205a of the Act – Aviation Law;
 - 8) a statement confirming that a case regarding the same claim between the same parties is not pending or has not already been considered by another competent entity or a court;
 - 9) information whether the applicant agrees to the correspondence in the ADR procedure being sent via electronic mail;
 - 10) current telephone numbers of the parties and their e-mail addresses, if the consent referred to in point 9 is given;
 - 11) a declaration of having read and accepted the Regulations and complying with their provisions during the course of the ADR procedure.
4. The application may concern several passengers, if the complaint is related to the same flight, they have a common interest in resolving the dispute and apply together for the ADR procedure. Passengers may authorise one passenger to conduct the correspondence on their behalf (the Applicant)
5. In the case of a request to initiate the procedure referred to in paragraph 2 being made, data indicated in paragraph 2(1) and paragraph 3 (1-8) should be given for each passenger.
6. The application may be submitted not earlier than after the complaint procedure against an air carrier, a tour operator or an air ticket seller has been exhausted and not later than within one year from the day on which the flight subject to the application was operated or was to be operated. The complaint procedure is deemed to have been exhausted when an air carrier, a tour operator or an air ticket seller has processed the complaint or the deadline for complaint processing has passed.
7. The application may be submitted to the Ombudsman:
 - 1) in paper form at the address of the Civil Aviation Authority;
 - 2) in electronic form via:
 - a) the electronic platform of the public administration services (ePUAP),

b) the contact form dedicated to submitting applications for the initiation of the ADR procedure, included on the Ombudsman's website and in the Public Information Bulletin of the Civil Aviation Authority.

8. The Applicant, who submitted the application in the way indicated in item 7.2.b and indicated in the application the e-mail address for correspondence, receives immediately the confirmation of the application to this e-mail address.
9. Information exchange in the course of the ADR procedure takes place by means of electronic communication, in particular by means of electronic mail.
10. If a party does not consent to conducting the case in electronic form, the exchange of information between this party and the Ombudsman takes place in paper form.

§ 5

Initiation of the procedure

1. The date of the initiation of the ADR procedure is the date of delivery of the application including at least the data and information specified in § 4(2) to the Ombudsman.
2. If it is necessary to supplement the data indicated in § 4 (3), the Ombudsman requests the applicant to supplement it within 14 days from the receipt of the letter, failing which the application will not be considered.
3. The Ombudsman immediately sends to the parties to the dispute a confirmation that the application meeting the requirements specified in § 4 (2) and (3) has been submitted.
4. In the confirmation of the application submission, the Ombudsman informs the parties about:
 - a) the claim of the applicant;
 - b) the right to withdraw from the procedure at any stage;
 - c) the possibility of active participation in the entire procedure: presentation of positions, documents, evidence;
 - d) the possibility of gaining access to positions, documents and evidence provided by the other party and opinions issued by experts, as well as the possibility of expressing an opinion on them;
 - e) the right to use the help of third parties, including persons providing professional legal assistance, at any stage of the procedure.
5. In the case when the applicant withdraws the application submitted to the Ombudsman before sending the confirmation referred to in paragraph 3, the Ombudsman confirms the applicant's closure of the case.
6. The Ombudsman transmits the application to the other party, setting a 21-day deadline for responding to the application.
7. If within the period specified in paragraph 6:
 - a) the other party does not respond to the application, or

- b) declares that the other party does not agree to participate in the ADR procedure,
- c) the applicant withdraws the application during the ADR procedure,
- d) it became impossible to carry out the ADR procedure for other reasons,

the Ombudsman terminates the ADR procedure and immediately notifies the Parties of this.

8. The procedure is concluded with the preparation of a report on the course of the ADR procedure by the Ombudsman, which is immediately delivered to the parties.
9. The report includes at least:
 - 1) the date of preparation of the report;
 - 2) parties designation;
 - 3) the concise specification of the applicant's claim and the value of the subject of the dispute;
 - 4) the result of the ADR procedure;
 - 5) the signature of the Ombudsman or person carrying out the ADR procedure on behalf of the Ombudsman.

§ 6

Duration of the procedure

1. The application should be considered, the ADR procedure carried out and the results of the ADR procedure made available to the parties no later than within 90 days from the date of delivery of the complete application to the Ombudsman.
2. In the case of a particularly complicated dispute, the deadline referred to in paragraph 1 may be extended. The Ombudsman notifies the parties of each extension of the deadline, indicating the expected new date of completion of the ADR procedure.
3. The deadline referred to in paragraph 1 may also be extended at the joint request of the parties to the ADR procedure.
4. In justified cases, the notification referred to in point 2 may be published on the website <https://pasazerlotniczy.ulc.gov.pl>.

§ 7

Refusal to consider a dispute

1. The Ombudsman refuses to consider a civil law dispute between the applicant and an air carrier, a tour operator or an air ticket seller, if:

- a) the subject of the application is outside the categories of disputes falling under the Ombudsman's competence indicate in § 3 (1),
 - b) the passenger did not exhaust the complaint procedure in the dispute with the other party;
 - c) the complaint was submitted to the Ombudsman again in the same case;
 - d) a case for the same claim between the same parties is pending or has already been considered by an entity authorised to handle the out-of-court resolution of consumer disputes, another competent entity or a court;
 - e) the application has been submitted by an unauthorized entity, i.e. an entity other than specified in § 4 (1) or an applicant authorized by the passenger to act on his behalf
 - f) the complaint aims to cause a nuisance to the other party.
2. The Ombudsman may also refuse to consider a civil law dispute between the applicant and the other party if the resolution of the dispute would seriously disrupt the operation of the Ombudsman.
 3. The application is not considered, which means a refusal to resolve the dispute within the meaning of Article 34 of the Act on the ADR, when:
 - a) the passenger's application concerns flights other than flights from airports located in the territory of the Republic of Poland and flights from third countries to these airports serviced by Community air carriers;
 - b) one year has passed since the date on which the flight subject to the application was operated or was to be operated.
 4. The application is not considered, when the applicant does not complete the application with necessary information or documents listed in § 4 (2) or (3) within the indicated deadline
 5. The Ombudsman notifies the applicant of the application not being considered. In addition, in the case referred to in paragraph 3(a), the Ombudsman informs the applicant about the body or entity competent to consider the complaint.
 6. In the event of refusal to consider the dispute, the Ombudsman in one letter:
 - confirms the submission of the application;
 - informs about the reason for refusing to consider the dispute;

within no more than 21 days from the date of delivery of the complete application to the Ombudsman.

7. The letter referred to in paragraph 6 also constitutes the report concluding the ADR procedure, referred to in Article 40(3) of the Act on the ADR.

§ 8

The Ombudsman's Team

1. Persons carrying out the ADR procedure on behalf of the Ombudsman have the necessary knowledge and skills in the field of the out-of-court or judicial resolution of consumer disputes, as well as general knowledge of the law.
2. In addition, persons who carry out ADR procedures on behalf of the Ombudsman:
 - a) are members of the civil service corps;
 - b) have a university degree;
 - c) have knowledge of passengers' rights in air transport;
 - d) have at least one year of professional experience related to the protection of passenger or consumer rights.
3. The Ombudsman authorises these persons to carry out the ADR procedure for a definite period of time not shorter than 3 years. Persons carrying out ADR procedures on behalf of the Ombudsman are independent and impartial in relation to the parties to the civil law dispute, i.e.:
 - a) do not accept instructions, directions and recommendations from the parties to the dispute or their representatives;
 - b) the remuneration of these persons is not dependent on the outcome of the procedure.
4. Persons who carry out the ADR procedure on behalf of the Ombudsman are removed from their functions before the end of the term in the case of:
 - a) gross violation of law in the performance of their duties;
 - b) conviction by final judgment for the intentional perpetration of a crime or fiscal crime;
 - c) an illness which permanently prevents them from performing their duties;
 - d) failure to comply with any of the requirements referred to in paragraph 1;
 - e) submitting a resignation.
5. The Ombudsman and the persons carrying out the ADR procedure on behalf of the Ombudsman are obliged to keep confidential any information obtained during the procedure.
6. In the event of any circumstances which may affect the independence or impartiality of the person carrying out the ADR procedure, including attempts to give guidelines by one of the parties to the civil law dispute, or create a conflict of interest with one of the parties to the civil law dispute, the consideration of which was assigned to them, the person carrying out the ADR procedure on behalf of the Ombudsman is required to immediately disclose the above-mentioned circumstances to the Ombudsman.
7. In the case of the disclosure of circumstances indicated in paragraph 6, the Ombudsman entrusts another person with carrying out the ADR procedure.

8. In the case of the disclosure of circumstances indicated in paragraph 6 and the inability to entrust another person with carrying out the ADR procedure, the Ombudsman notifies the applicant in writing about the occurrence of circumstances preventing independent or impartial conduct of the case and:
 - a) if there is another ADR entity competent to resolve the dispute, the Ombudsman proposes that the parties refer the case to that entity;
 - b) if it is not possible to entrust another ADR entity with the dispute, the Ombudsman discloses the circumstances referred to in paragraph 6 to the parties and informs them about the right to object, within the prescribed period, to the person whom these circumstances concern continuing to carry out the ADR procedure.
9. If the Ombudsman receives a response of the applicant, depending on its content, the Ombudsman transfers the case to another ADR entity competent to resolve the dispute or continues the procedure.
10. If the applicant does not submit an objection on time, the person carrying out the ADR procedure whom the circumstances referred to in paragraph 6 concern continues to do so.

§ 9

Other regulations

1. The ADR procedure is carried out by the Ombudsman free of charge.
2. The application for the initiation of the ADR procedure is submitted to the Ombudsman in Polish or in English.
3. The ADR procedure is carried out by the Ombudsman in Polish. An unofficial translation of the case documents into English is made for the party not speaking Polish.
4. The Regulations comes into force after being signed by the Ombudsman, on the day the Ombudsman obtains the entry into the register of entities authorised to conduct the procedure regarding the out-of-court resolution of consumer disputes kept by the President of the Office of Competition and Consumer Protection.
5. Participation in the procedure does not exclude the possibility of pursuing claims by judicial process.
6. These Regulations enter into force on October 14, 2020 and replaces the Regulations for out-of-court resolution of passenger disputes by the Passenger Rights Ombudsman at the President of the Civil Aviation Authority of April 8, 2019 (amended on July 31, 2019, amended on November 29, 2019, amended on June 4, 2020, amended on July 7, 2020).

* *Attention: The translation above is informal.*