



FACTSHEET

Air Passenger Rights

In 2013 the European Commission proposed to update the Air Passenger Rights Regulation, a law from 2004 which granted important right when flights are cancelled or lengthily delayed. The proposal has been deadlocked since 2014¹. The EU institutions are now keen to kickstart the proposal. A recent study of the Commission² clearly illustrates that passengers are increasingly suffering from delays and cancellations as well as a lack of enforcement of their rights.

What is the need for revision?

The original regulation granted passengers key rights. However, their enforcement has been toothless and inconsistent. Problems remain widespread and consumer complaints about poor compliance have risen steadily. Passengers would often have to go to court against non-compliant airlines to enforce their rights, which few pursue.

Over the years, the European Court of Justice (CJEU) has produced a high number of judgements on essential issues of the Regulation which shows the need to clarify fundamental aspects of it and help passengers enforce their rights.

Enforcement is the Achilles heel of the law

According to this Commission study, in 2018, 17m passengers had their flights cancelled, while 16m experienced delays. However, only 38% of passengers who could have claimed compensation did so. This means that a big majority of people is still not getting the compensation they deserve.

Is what has been proposed satisfactory?

The Commission's proposed review from 2013 includes a few advances and intends to clarify some controversial points. For example, it would give passengers the rights to re-routing with other airlines and by other transport means, assistance in case of missed connecting flights and the ability to correct spelling mistakes in bookings.

However, several rights would be significantly reduced, particularly the right to compensation in case of delay and to accommodation in "extraordinary circumstances". There are also many unresolved issues for passengers which the proposal does not tackle.

Key issues to include in the final Regulation

COMPENSATION FOR LONG DELAYS

EU legislators should codify the CJEU rulings (Sturgeon, Nelson and Folkerts) which state that airlines are obliged to compensate passengers after a 3-hour delay to the arrival time for all flights. However, the Commission proposed to change the delay thresholds to 5, 9 and 12 hours based on distance. Because most delays are between 2 and 4 hours, this would mean that most delays will no longer entitle the passenger to compensation, which would be a significant reduction of the current standard³.

¹ P7_TA(2014)0092

² Study on the current level of protection of air passenger rights in the EU, Final report, Study contract n°MOVE/B5/2018-541

³ idem



RIGHT TO ACCOMMODATION IN EXTRAORDINARY CIRCUMSTANCES

Limiting passengers' right to accommodation to 3 nights and €100 per night, as the Commission proposes, is unacceptable. Passengers could incur significant expenses beyond these thresholds so limiting the expenses covered would be a significant reduction of current rights. Airlines are better equipped to deal with the risks of extraordinary circumstances than passengers.

RE-ROUTING AS SOON AS POSSIBLE

The Commission study estimates that 75% of passengers hit by cancelled flights choose re-routing instead of refund. However, according to the same study there is a lack of compliance from airlines with their re-routing obligation. This right to re-routing should be granted as soon as possible, even with competing carriers⁴, involve alternative means of transport if necessary and be available to delayed passengers too. The Commission proposal to allow airlines to do this within the much too long period of 12 hours should be deleted.

AUTOMATIC COMPENSATION AND BINDING ENFORCEMENT BODY DECISIONS

Passengers making compensation claims experience a complex and frustrating system with limited transparency, particularly when disputes arise. BEUC recommends the setting up of an automatic compensation scheme which would substantially limit the administrative burden not only for consumers, but also for airlines and enforcement bodies.

Alternative Dispute Resolution and enforcement bodies should also have the last word on the cases and their decisions should be binding on the airline. The decision should also apply to all passengers on the same flight who have had the same disruption. This would limit the flood of passenger complaints that national enforcement bodies⁵ and national courts receive⁶.

COMPULSORY FINANCIAL GUARANTEE AGAINST AIRLINE INSOLVENCY

An airline which goes bust and suddenly cancels its flights can leave passengers stranded or without refund for their tickets. There have been 87 airline insolvencies from 2011 to 2019, affecting 5.6m consumers. On average, passengers incurred €431 in costs, 87% of which was not recoverable because there are no mandatory protection schemes in place⁷. EU lawmakers should establish a mandatory guarantee scheme for airline insolvencies.

CLARIFYING WHAT AN 'EXTRAORDINARY CIRCUMSTANCE' IS

The Regulation should clarify that 'labour strikes' should never be considered as an extraordinary circumstance, which airlines invoke to avoid to pay compensation, and should establish a presumption that technical problems do not constitute an 'extraordinary circumstance'.

A FULL BAN OF "NO-SHOW" CLAUSES

Such clauses prevent passengers from using the return leg of an airline ticket, or the remainder of an itinerary, if they did not use the first leg. In these situations, passengers can either be denied boarding, have to pay fines to be able to use their original ticket or be obliged to buy a new ticket. BEUC encourages EU policy makers to fully ban such unfair contract terms.

⁴ In 2018, the Austrian Supreme court ruled that airlines to perform their re-routing obligations airlines are required to re-route passengers on competing airlines if necessary. See judgment OGH 1 ob 133/18t.

⁵ Automatic compensation schemes were also a formal recommendation of the European Court of Auditors. See the report on passenger rights, [published](#) in December 2018.

⁶ Study on the current level of protection of air passenger rights in the EU, Final report, Study contract n°MOVE/B5/2018-541, 2020, p.223 & p.158.

⁷ Idem, p.201.