

# AIR PASSENGERS' RIGHTS

## PUBLIC CONSULTATION

Response by BEUC

EC transparency register: identification number 9505781573-45

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**Ref.:** X/013/2010 - 01/03/10

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## I. INTRODUCTION

1. BEUC welcomes this Commission consultation, which intends to tackle different European regulations in the field of air passenger rights (hereafter “APR”)<sup>1</sup>, and which runs at nearly the same time as the consultation by DG Sanco on the review of the package travel directive 90/314. As a matter of fact, most packages include at least a flight.
2. Yet, we regret that the consultation only covers a section of the problems passengers face with regard to flights. In practice, the rights and interests of passengers are severely impaired by:
  - Legal uncertainties concerning the interpretation of relevant legislation, in particular the rules of the APR regulation 261/2004 in case of delays and cancellations of flights: “extraordinary circumstances”, compensation in case of long delays – despite the recent European court cases -, liability when a passenger misses the subsequent leg of a connected flight are among such uncertainties.
  - Regulation (EC) No. 261/2004 is not comprehensive in terms of its impact insofar as it was not designed to regulate all of the contractual issues which can arise between an air passenger and an airline. Gaps in the contractual rights inter alia are most significant in case of delayed, damaged or mishandled baggage. A revision of the legal framework should set up clear and fair consumers rights in case of problems with baggage.
  - Shortcomings in the enforcement system: many national enforcement authorities (hereafter: “NEBs”) only enforce air passenger rights against air carriers concerning regulations 261/2004 and 1107/2006, but passengers are left to sue before courts when it comes to asserting their rights under other air transport regulations. This calls for setting up obligatory ADR (and/or ODR) systems, which only exist in a few member states like the Netherlands.
  - Inhibitory rules of international law for asserting passenger rights in a cross-border context. At present conflicts with regards to air passenger rights often fall under a jurisdiction other than that of the passenger’s place of residence. This makes it very difficult for passengers to be informed about their rights and to enforce their rights before the courts.

BEUC asks the Commission to include these aspects into its considerations for a reform of air passenger rights.

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<sup>1</sup> Indeed, until now, regulation nr 261/2004 on denied boarding, cancellations and important delays, was considered as the one and unique air passenger rights regulation.

3. BEUC pleads in favour of a review of all air passenger rights, in its widest sense, i.e. including pre-contractual, contractual, extra-contractual and post-contractual rights. This review should aim at a more comprehensive, coherent, transparent and non-discriminatory set of integrated rules<sup>2</sup>.
4. The regular reports by the EEC-Net<sup>3</sup>, indicate that most complaints concern transport (33 %) of which 80 % are related to air transport. 33 % concerned luggage complaints, 26 % cancellations, 16 % delays, 7 % denied boarding and 19 % other air passenger related issues ( unfair contract terms, misleading prices, etc.).
5. Although the inclusion in the current consultation of regulations 889/2002 and 2027/97 (luggage), 1107/2006 (persons with reduced mobility, hereafter "PRM"), 2111/2005 (safety information), 1008/2008 (air transport services and on non-discriminatory all inclusive prices) is welcome, the following directives should have been added: regulation 80/2009 on computer reservation systems (hereafter "CRS") and regulation 785/2004 on air transport insurances.
6. At the end of our answer to the questionnaire we add a chapter III where we deal more in detail with the following topics:
  - 1) Information requirements and transparency;
  - 2) Contractual conditions and prices;
  - 3) Interpretation and clarification of existing legislation;
  - 4) Proposals concerning air travel services;
  - 5) Liability;
  - 6) Insolvency protection;
  - 7) Jurisdiction and applicable law;
  - 8) Enforcement and redress schemes and procedures;
  - 9) A comprehensive and coherent framework.

## II. QUESTIONNAIRE

### 1. Questions related to mishandled luggage

#### *The Liability Regulation (889/2002)*

Information, monitoring and sanctioning powers regarding the application of the Liability Regulation

1. Information provided to passengers on their rights in the event of lost, damaged or delayed luggage does not seem to be sufficient at present. As shown by a recent Eurobarometer, when passengers have complained to the air carrier and have not been given satisfaction, a clear majority of EU consumers would like to have access to the expertise of an independent body that could quickly and at no cost investigate incidents involving mishandled luggage and give consumers precise information on their rights, as is the case for other air passenger rights.

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<sup>2</sup> See the answer by BEUC on the review of the PTD, particularly chapter IV, point A.2 until A.4, and A.6, and A.10.

<sup>3</sup> See the detailed ECC reports on :  
[http://ec.europa.eu/consumers/redress\\_cons/index\\_en.htm](http://ec.europa.eu/consumers/redress_cons/index_en.htm)

2. The Liability Regulation does not oblige Member States to appoint specific national enforcement authorities to monitor the compliance of air carriers with the Regulation, nor does it provide for sanctions against air carriers that do not comply with the Regulation, as is the case for other air passenger rights. The absence of specific national enforcement authorities means in practice that passengers are not able to complain to an administrative authority that has the power to monitor and enforce the Regulation to put a stop to non-compliance by airports and airlines. A further consequence is that there are no complete data on the number of mishandled luggage incidents every year in the EU.

**(1) Do you think that the information and the rights currently given to passengers regarding lost, damaged or delayed luggage are sufficient?**  
 Yes  
 No  
**If not, what would be your suggestion to improve the current situation?**  
**Comments**  
 1) As for the need for better passengers and travellers rights, see chapter III below; 2) A summary of all essential consumer/passenger rights, including complaints handling and redress, should be mentioned in all documents handed over and/or sent to the passenger, and should be available on the website when booking as well as in the contractual document, confirmation and e-boarding document; 3) Needed comprehensive legislation on all APR; 4) Needed information campaigns.

**(2) Do you think that the appointment of a specific enforcement body in each Member State under EU law to handle complaints and to enforce effectively the Regulation in the event of breaches — also through appropriate sanctions — would help to improve the current situation?**  
 Yes  
 No  
**Comments**  
 1) With choice by the passenger between NEB of country of residence or country of incident; 2) In the language of the consumer; 3) All concerned NEBS should be truly independent and competent to take measures or sanctions; ADR schemes should be established in order to resolve disputes between passengers and airlines; 4) Need for EU-coordinated monitoring and for a comparative database/website (see chapter III below); 5) these remarks and proposals concern also the other passenger rights (i.e. not only concerning mishandled luggage ).

### **1.1.2. The amount of compensation in cases of mishandled luggage**

3. Under the Liability regulation, air carriers are responsible for incidents regarding lost, damaged or delayed luggage. The Regulation offers the possibility for passengers to make a special declaration at the latest at check-in in order to benefit from a higher liability limit by paying a supplementary fee. The number of lost luggage items never retrieved seems relatively moderate. Steps are being undertaken by the industry to reduce this number still further, such as the SITA (the leader company in baggage management) initiatives and the Baggage Improvement Programme chaired by IATA, to reduce the scale of the problem by 2012.
4. In the event of incidents, however, passengers have to face additional inconveniences. For instance, some passengers whose luggage is delayed until at least the following day may incur interim expenses to replace some essential items. Air carriers do not always bring the lost luggage to the passenger's place of residence, forcing the passenger to spend time and money to retrieve it, for instance when the luggage has been mishandled in a connecting airport between two flights operated by different air carriers. As shown by a recent Eurobarometer, questions regarding the limited liability for lost or damaged baggage are perceived as a major problem by passengers.
5. Where passengers do hold the necessary proof, the limited amount of maximum compensation set by the Montreal Convention and the Liability Regulation (1131 SDR, around 1223€) may not reflect the real economic value of the checked-in baggage and its contents. The US Department of Transportation has already raised this limited amount to \$3300 (around €2230) for domestic flights in the US<sup>4</sup> (international flights are subject to the Montreal rules). Furthermore, the contract conditions filed by some air carriers attempt, with respect to checked baggage, to exclude certain items, generally high-cost or fragile items such as electronics, cameras, jewellery or antiques, from liability for damage, delay, loss or theft. Such exclusions, which may not be prohibited in national contracts of carriage, need to be assessed in the light of the Liability Regulation and Article 17 of the Montreal Convention.
6. In its Communication COM(2008) 510<sup>5</sup>, the Commission noted that there are clear indications that passengers with reduced mobility (PRMs) who require mobility equipment are travelling by air relatively less than the general population, partly because of fear of the financial consequences if their checked-in mobility equipment is delayed, damaged or lost. In the Communication, the Commission encouraged airlines in the EU to voluntarily waive their current liability limits in order to bring the amount of compensation closer to the actual value of PRM mobility equipment, as is the case for domestic flights in the US.

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<sup>4</sup> 14 CFR Part 254 on Domestic Baggage Liability. RIN: 2105-AD80 [Docket DOT-OST-2008-0332].

<sup>5</sup> Communication from the Commission on the scope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air, adopted on 07.08.2008.

(3) In your view, what is the best way to address compensation for mishandled luggage? Please give your opinion on the following:

(a) Change the current maximum compensation in the European Union:

Yes

No

Comments

The compensation should be higher (Montreal Convention dates from 1999), in euro, with indexation every year; this would be more transparent and easier to apply in practise.

(b) Award automatic compensation to passengers whose luggage has been delayed for a certain time due to mishandling — for example until the following day:

Yes

No

Comments

This would make the APR more coherent, transparent, fair and effective; this would and should be in line with reg. 261 and with the case law of the ECJ (see i. a. cases C-402/2007, C-549/07 and pending case C-63/09); need for a "moral" compensation due to loss of time, distress, and inconvenience.

(c) Increase this automatic compensation after a reasonable period of time, for instance if the delayed luggage is handed over more than 48 hours after the arrival of the flight:

Yes

No

Comments

See comment to point b) above.

(d) Provide for unlimited liability in the event of losses due to mishandled mobility equipment for passengers with reduced mobility in the European Union:

Yes

No

Comments

1) Huge diversity in equipment and value; 2) Deterrent effect;

3) Not expensive via "mass insurance" premium spread over all passengers; 4) Article 25<sup>6</sup> of Regulation 1371 /2007 on rail passengers rights indeed provides for unlimited liability.

(e) Other measures.

<sup>6</sup> If the railway undertaking is liable for the total or partial loss of, or damage to, mobility equipment or other specific equipment used by disabled persons or persons with reduced mobility, no financial limit shall be applicable.

### 1.1.3. Conditions on the carriage of luggage

7. One fundamental principle is that Community air carriers and, on the basis of reciprocity, air carriers of third countries freely set air fares and air rates for intra-Community air services. This pricing freedom principle is also enshrined in many air services agreements concluded between the EU and third countries. In this context, the air transport industry offers different commercial products including different requirements on luggage, depending notably on class of the ticket<sup>7</sup>. New restrictions on the size and weight of a piece of luggage and special equipment (e.g. sports equipment), regarding both checked-in and hand luggage, have recently appeared in the market, and with them a new set of baggage fees. Where information on these conditions and fees is not clearly given early during the booking process, passengers may find themselves with unexpected extra fees to be paid at check-in, which may double the original booking fee. To avoid extra fees, passengers tend to carry as much hand luggage on board as possible, which may increase safety risks.
8. The lack of uniformity among carriers makes carry-on baggage a multi-faceted problem on board aircraft today. Current systems to check the weight, size, number, and contents of carry-on bags are not consistent, adequate and clear. These differences can be problematic when passengers have to take two or more flights to their final destination with different airlines applying different conditions.

<p>(4) Do you think that air carriers ensure that sufficient information on their policy on fees, size and weight of checked-in and hand luggage is provided early and clearly in the booking process?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Comments</p> <p>1) The websites are not yet transparent, and non optional fees and charges are still frequent (cf. different sweeps, in 2007 and 2009, and remaining complaints); 2) need to inform the consumer on the front page when booking; 3) Account should be taken of that in some countries 30 % to 50 % don't have access to the internet; 4) Need for more harmonized technical rules concerning luggage, e.g. taking into account safety and comfort of short haul or long haul passengers.</p>
<p>(5) Do you think that rules on the size and weight of checked-in and hand luggage should be harmonised among air carriers?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments</p> <p>Both checked-in and hand luggage should be regulated although most problems regard hand luggage so far.</p>
<p>(6) If yes, what kind of instrument would you recommend?</p> <p>(a) EU law:</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Comments</p> <p>Especially for technical aspects (need for targeted harmonization). See further comments in chapter III below.</p>

<sup>7</sup> Article 22 on Pricing freedom of Regulation (EC) No 1008/2008.

<p><b>(b) Voluntary agreements:</b>  <input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No  <b>Comments</b>  <b>(c) Other measures:</b> _____</p>
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**1.2. Directive 96/67**

9. Baggage handling is carried out at airports by a wide range of actors: check-in is usually carried out by passenger handling agents, baggage sorting and baggage transport within terminals are ensured by baggage handling agents, while loading and unloading of the aircraft and baggage transport between the aircraft and terminal are carried out by ramp handling agents. These handling agents always work on behalf of the airline whether they are the airlines themselves (self-handling) or subcontractors (also called third-handling parties), which can be specialised companies, other airlines or sometimes airport operators. At the same time, the proper handling of luggage depends on the airport infrastructure (baggage delivery/sorting systems management and layout, apron layout, etc.), which is the responsibility of the airport operator.
10. Industry initiatives have identified that, at a certain number of airports, communication and coordination issues, which can often explain baggage mishandling, can be improved. For instance, it can happen that a bag is delayed or lost because ground-handling agents are not familiar with the baggage delivery systems at their airport, and therefore underestimate the constraints of a baggage delivery system in relation to the maximum size of baggage, the minimum time needed to bring the baggage to the aircraft, or the detection of bag labels.
11. To enhance luggage handling at European airports, one possibility is to ensure that appropriate training is given to ground-handling agents (passenger handling, baggage handling and ramp handling) so as to improve the quality of baggage handling and coordination awareness. Training is addressed by the industry, as it can form part of the contractual conditions imposed by an airline on its ground handlers in order to ensure quality. Nevertheless, except in the specific case of the safety and security of aircraft operations, current EU legislation does not provide for any training obligation for ground-handling staff.

<p><b>(7) Do you think that it would be advisable to require minimum compulsory training for ground handlers (in particular for staff in charge of handling baggage)?</b>  <input checked="" type="checkbox"/> Yes  <input type="checkbox"/> No  <b>Comments</b></p> <p><b>(8) If yes, under Directive 96/67, Member States currently have the possibility to make the activity of a ground-handling company conditional upon obtaining "approval". The criteria for such approval (or licence) do not currently include training. However, access to the European ground-handling market could be made conditional upon a licence that would include training conditions. What do you think of this solution?</b>  <input checked="" type="checkbox"/> Yes</p>
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No  
Comments

## 2. Questions relating to the APR Regulation (261/2004)

### 2.1. Reporting obligations under the APR Regulation

12. In 2007, the Commission adopted a Communication<sup>8</sup> on the state of play in the application of the APR Regulation. It already pointed out that better information could be collected on the status of flights (completed on time, considerably delayed or cancelled) and relayed to the national enforcement bodies (NEBs). This information could be used to improve assessment of both individual complaints and the overall compliance with the Regulation, and to improve data on the overall quality of service in the industry. However, the industry has yet not been able to provide on a voluntary basis, with figures on issues such as the number of flights on which incidents occur, the number of passengers affected by each of these incidents, or which routes and peaks of the day/year seem to be more affected by incidents than others.
13. Furthermore, the lack of reporting obligations in the APR and PRM Regulations renders more difficult the NEB tasks of monitoring compliance by air carriers and enforcing the Regulation, especially as regards detection of abusive patterns of conduct or repetitive misbehaviour on the part of an air carrier. Such repetitive abusive patterns of conduct may occur not only at national level but also at EU level. In the latter case, enhanced cooperation between NEBs is essential to ensure that the Regulation is enforced correctly and that competition is not distorted in the EU.
14. The rising number of complaints by air passengers demonstrates their increasing awareness of their rights. Following the passenger rights information campaign launched by the Commission in 2007, posters and leaflets are now visibly displayed in airports and can be ordered in all official languages of the EU on the Commission's website. The APR Regulation obliges airlines to provide information to passengers on their rights, and require competent national authorities to penalise carriers that do not fulfil their obligations. However, according to the recent Eurobarometer launched by the Commission, 64% of those polled feel that they are not informed of their rights as passengers. There is therefore still room for improvement in this field. Consumer organisations would like to see information on the quality standards of air carriers (such as information on their punctuality rate on each specific route, or the number of cancelled flights during a certain period of time) to help inform passengers when choosing the carrier and the service that suits them best. Air carriers already provide similar information to the Department of Transportation (DOT) in the US. The same applies to information relating to the PRM Regulation or the Liability Regulation.

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<sup>8</sup> COM (2007) 168, 4.04.2007.

- (9) Do you think that air carriers should regularly report to the national enforcement bodies on their implementation of the APR Regulation, notably on the number of incidents, the routes and peaks of the day/year where incidents happen more often, or the redress offered to passengers under the Regulation?
- Yes  
 No
- Comments  
 This should be organized within a comprehensive European Community reporting system (cfr. the earlier project on CAPR System -Community Air Passengers Reporting System); with comparative database and website); see further comments and proposals in chapter III. The Commission should also impose an effective complaints handling system and redress mechanism (ADR, ODR).
- (10) Do you think that the national enforcement bodies should regularly report on their activities, including a description of the action taken to implement the APR et the PRM Regulations, details of the sanctions applied, statistics on complaints and sanctions applied, and information on major court cases?
- Yes  
 No
- Comments  
 See above; most NEB's, don' t publish concrete reports on received and handled complaints; the proposed database/website could be completed with statistics on received and handled complaints and with specific case law (ECJ and important national case law ; cf. the "Unfair Contract Terms-database" set up by DG Sanco).

## 2.2. *Air carrier complaint handling and settlement of disputes*

15. Consumers have the right to complain to the air carriers whenever they feel that their rights have not been respected. Complaints to traders are a normal part of the market process, which do not necessarily indicate market malfunctioning, poor performance by the service provider or an actual breach of EU law. The APR and PRM Regulations give passengers the possibility to complain to the competent national enforcement authority (NEB). The latter then has to analyse in due time the circumstances of the complaints, allow the air carrier to express its opinion and provide passengers with a written opinion on their specific complaint. For this to happen, passengers must have previously submitted a complaint containing all the necessary information to the air carrier in an easy and understandable way. This will also contribute to avoid late, non-forthcoming or non-personalised answers from the air carrier to passengers. Passengers, in turn, will not have to write several times before finding out that their complaint has not been satisfactorily settled, which clearly discourages them from pursuing it further. It is therefore essential for air carriers to provide passengers with a reasonable set of tools allowing them to lodge their complaints.
16. The European Complaint form developed by the Commission services in agreement with NEB, and air carriers has helped passengers to correctly file a complaint with a NEB containing all the necessary information. Similarly, the

complaint form to be used by passengers to file a complaint with an air carrier could for example be aligned with the kind of information requested by NEBs when they analyse the passenger complaints they receive. Such harmonisation could help both passengers and air carriers, enabling them to benefit from economies of scale due to similar procedures for handling passenger complaints and handling enforcement authorities' requests for information.

**(11) Do you think the complaint handling procedures of air carriers should be harmonised through:**

**EU law:**

**Yes**

**No**

**Comments**

Passengers need to be sure that they can assert their rights in an effective way without having to spend much time or money. Air companies should be obliged to set up an effective, quick and easily accessible complaints handling system (e.g. with free phone numbers; email address; complaints form on their website...).

At present the complaint handling procedures of air carriers are not satisfactory; airlines often use weak excuses in order to discourage consumers from asserting their claims. This applies both to cases covered by the APR Regulation and to other passenger complaints.

This should be completed with an obligatory ADR-system (cf. Netherlands, where a limited ADR-system started in 2009, only dealing with regulation 261/2004) and/or ODR-system. Yet, the existing recommendations of 2001 and 1998 on mediation and arbitration-type dispute settlement have proven to be insufficient due mainly to their voluntary nature (recommendations); they should be turned into mandatory instruments (directives).

**Voluntary agreements:**

**Yes**

**No**

**Comments**

(12) Do you think that air carriers should in all events be obliged to provide passengers with a motivated response to their specific complaints within a fixed deadline and be sanctioned if they do not comply?

**Yes**

**No**

**Comments**

1) offering the possibility to the consumer to use the same channel and communication as for the reservation; 2) in the language of the consumer; 3) first answer without undue delay and not later than 15 days, and substantial answer within 6 weeks; for more comments and proposals, see chapter III below.

**3. Questions relating to the PRM Regulation (1107/2006)**

17. Air carriers or their agents or tour operators cannot refuse to book persons with reduced mobility or disabled person (PRMs) or refuse to allow them to board except on safety grounds. These safety requirements have to be established by international, Community or national law, including safety conditions imposed by the authority that issued the air carrier with an air operator's certificate. Currently, the differences between air carriers' policies and national safety rules render difficult for the PRMs to foresee in advance when he may be objectively requested to travel with an assistant. The regulation encourages the pre-notification to request assistance at least 48 hours before the scheduled time, to allow the airport and the air carrier to better plan and organise the provision of assistance. If no notification is made, the managing body is only bound to make all reasonable efforts to provide the assistance.

**(13) For PRMs using mobility or respiratory equipment or required to travel with an assistant during flights, do you think that air carriers should harmonise their policies or provide better information on these issues?**

Yes

No

Comments

**(14) Do you think the pre-notification at least 48 hours encouraged by regulation 1107 should be made compulsory, in order to provide better assistance to PRMs?**

Yes

No

Comments

1) Should be a recommendation; 2) Ensure clear information at all times and in all documents/website; 3) Take into account sudden PRM-situations just before the departure; 4) Current limitations on inter alia a limited number of allowed PRM's per flight should be monitored and sanctioned.

**4. Business practices whose impact on passengers may merit the Commission's attention**

**4.1. Reservation and check-in on-line**

18. On-line reservation and check-in has, through technology, greatly improved comfort and seamless travel for passengers, airlines and airport operations. However, this has led to a number of complaints concerning unexpected problems or factual mistakes when booking. The risk of something going wrong with the airline booking system or incorrect passenger information being encoded is currently felt by the passengers as being borne mainly by them. There are no clear rules issued by air carriers or their associations on the problems posed by these new practices, defining for instance at least a minimum period during which passengers can detect errors and correct them at no cost.

19. Secondly, passengers are more and more encouraged to do their own check-in on-line or use the self-check-in machines at the airport, while some companies charge extra fees for those who still prefer to check in at airport desks. These

practices risk excluding from the market PRMs and the more vulnerable segments of the population. Further, if something goes wrong with the on-line check-in system when attempting to print out their boarding cards ahead of travel, passengers will incur additional cost and inconvenience if the airline charges fees for checking in at the airport, which are sometimes higher than the price of the ticket itself.

**(15) Do you think that the new e-booking and check-in practices introduced by air carriers should be harmonised through:**

**EU law:**

Yes

No

**Comments**

**Important to regulate in order to ensure legal certainty. E-booking and check-in (off and on line) should be free of charge.**

**Voluntary agreements:**

Yes

No

**Comments**

**See our comment on question 11.**

**(16) Which kind of new specific measures to protect passengers in such cases could be introduced in the EU? Please give your views on:**

**(a) Fixing a minimum time for passengers to detect an error in their reservation or check-in online and ask the air carrier to correct it at no cost?**

Yes

No

**Comments**

**At least during 48 hours.**

**(b) Ensuring that passengers are not charged unreasonable fees if they check in at the airport?**

Yes

No

**Comments**

**No fees at all should be imposed (check-in is an essential part of the air transport).**

**(c) Other measures**

**At least one check-in luggage should be free of charge. Hand luggage should always be free of charge.**

#### **4.2. Rescheduling of flights**

20. Some other practices common in the air passenger transport industry — such as the rescheduling of flight departure times — seem to have lately increased, imposing on passengers the burden of checking whether the other party to their contract, the air carrier, has unilaterally changed a key element of the service to be provided without ensuring that passengers have been fully informed of, and have agreed to, such a change. At present, passengers need to turn to the general terms and conditions of the air carrier to check policy regarding rescheduling. The average clause allows the air carrier to change its scheduled departing time until the very last minute, unilaterally and obliges

passengers to check themselves if any changes have been made. When passengers have bought their ticket through a tour operator or a travel agency, either at a physical branch or through the internet, it is not always easy for them to determine who should have informed them of the rescheduling, with both the air carrier and the travel agency often pointing at each other. It could be argued that the burden of proof that passengers have been informed should be on the party who unilaterally changes a key element of the contract<sup>9</sup>.

21. Secondly, air carriers do not always offer care and assistance to passengers who, following the rescheduling of the first leg of their flight, are suddenly subject to a delay of several hours, sometimes a whole night, before getting on the connecting flight to their final destination.
22. Many airlines allow passengers to cancel their ticket and be reimbursed if the new departure time does not suit them. However, it seems that the full amount paid by passengers is not always reimbursed. Furthermore, passengers with a return ticket are not always allowed to change the return flight following a unilateral change to the departure flight in order to adapt their trip as a whole to the new conditions. Finally, it might be argued that when a company reschedules the outbound flight of a return ticket and passengers decide not to use it, they should be allowed to retain the right to use the inbound flight (i.e. the "no-show policy" discussed below should not apply to these cases). For the increasing number of short-trip travellers (weekend travellers, city-hoppers), the unilateral rescheduling of the departing flight may make the return journey impossible and nullify the purpose of their whole trip.

**(17) Do you think that minimum rules regarding passengers' rights in the case of rescheduling of flights should be agreed?**

- Yes  
 No

**if yes, through:**

**EU law:**

- Yes  
 No

**Comments**

1) Unfair contract terms (UCT) should be forbidden (e.g. via a sector-specific black list of UCT; e.g. "flight schedules always under reserve" or "obligatory use of sequence of flight coupons") (cfr. existing case law in some member states prohibiting these clauses); 2) growing problem of advanced (mainly charter) flights, which are not tackled by regulation 261/2004 nor by the Montreal Convention.

**Voluntary agreements:**

- Yes  
 No

**Comments**

**(18) What kind of new, specific measures to protect passengers in such cases could be introduced in the EU? Please give your**

<sup>9</sup> By analogy, Article 5(3)(c) of Regulation 261/2004 requires air carriers to inform passengers of the cancellation of a flight.

views on:

- (d) Giving passengers whose departing flight is rescheduled by more than 5 hours the choice of not flying and being reimbursed the price of the whole ticket, including the return flight whenever the passenger has a return ticket.

Yes

No

Comments

The scope, sanctions and compensation rules of regulation 261/2004 should be clarified, and increased, following case law of the ECJ (e.g. case C-402/2007 concerning important delays). See further comments and proposals in chapter III below.

- (e) Obliging air carriers to make all reasonable efforts to use all possible means of communication at their disposal to inform passengers of changes within a reasonable time to allow them decide whether to accept them.

Yes

No

Comments

Using mobile phones and internet (mails, SMS...) as communication channel, or any other fast and effective communication channel.

- (f) Other measures claiming of consequential damage in these cases – for example a connecting flight with other airline etc should be possible too \_\_\_\_\_

#### 4.3. The so called "no-show policy"

23. The contract conditions that airlines apply require passengers to use flights bought under the same travel contract consecutively, otherwise they may not be allowed to board the subsequent flight(s). Passengers who decide not to take, for instance, the first leg of a flight with one or more stops, but wish to board the flight at the first transit point (or are unable for whatever reason to take the outbound flight of a return ticket) may be denied boarding for the next leg of the flight or the return flight by the airline, which considers their ticket no longer valid. EU Passenger rights legislation does not deal with this so-called "no-show policy" as such. At present, passengers need to turn to the general terms and conditions of the air carrier to check what its policy is on this issue. Not all airlines follow the approach described here, covering both connecting flights and return journeys. Airlines that apply this practice differently depending on the type of flight or ticket include corresponding conditions in the contract terms. As there are indeed several cases to be distinguished, the question of the fairness of such terms and conditions needs currently to be assessed case by case in the light of the Directive on unfair terms and conditions<sup>10</sup>. In addition, there seem to be differences between national legislations and jurisprudences, which may distort competition between companies.

<sup>10</sup> Council Directive No 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts - OJ L 95/29, 21.4.1993.

**(19) Do you think that minimum rules regarding passengers' rights should be agreed, through EU law or voluntary agreements, to restrict and clarify conditions for the use of a "no-show policy"?**

Yes  
 No

**Comments**  
 The obligatory use of sequence of flight coupons should be prohibited through EU law (see question 17).

**4.4. *Reduced space between plane rows***

24. Some air carriers have reduced the distance between rows on a plane to allow them to sell more seats. This may pose problems for PRM and other segments of passengers. The room allowed between rows is in principle a matter for the commercial policy of each carrier, providing it complies with the aircraft cabin certification conditions, which are based on standard biometrics and applicable Community air safety legislation. There are a number of air carriers that already offer extra room for a price. Extra room is clearly one of the "quality services" offered by airlines, which marks the difference between the quality standards of air carriers and the prices charged for different kind of tickets.

**(20) Do you think that the minimum distance between plane rows ensured by current safety rules should be further regulated?**

Yes  
 No

**Comments**  
 Minimum seat pitches and seat width taking into account flight distances (long haul versus short haul), safety and health considerations, and PRM's needs should be regulated

**If yes, through:**

**EU law:**  
 Yes  
 No

**Comments**  
 Cf. intentions by some airlines to organize "standing" flights (instead of seating!), or to oblige corpulent persons to buy 2 seats!

**Voluntary agreements:**  
 Yes  
 No

**Comments** \_\_\_\_\_

**5. Questions relating to air carrier insolvency**

25. Liberalisation of the air transport sector has been a driver of profound changes in the EU market through the creation of low-cost carriers and the restructuring of network carriers. Competition has sharply intensified. It has multiplied the number of new entrants, and led to consolidation among existing carriers. Increased competition has also driven some airlines out of the market. The global economic downturn caused by the financial crisis is also having a very significant, negative impact on demand. Despite global recovery expectations in a near future, these tough economic conditions may force



more carriers into bankruptcy with potentially severe effects on consumers. Consumers can be affected in two ways: stranded passengers travelling at the very moment their airline got bankrupt cannot return home without at least some delay and very possibly extra cost. Passengers who bought their tickets in advance, and paid the whole amount, should in case of bankruptcy enrol in the list of creditors, which in practice normally means that they cannot get their money back.

26. An independent study for the European Commission, issued in 2009<sup>11</sup>, shows that there have been a number of bankruptcies during the last decade. Looking at the period 2005-2008, the majority of bankrupt carriers (41%) were relatively small regional scheduled carriers. The total number of bankruptcies since January 2000 is at least 79, a higher rate than that reported in the 1990s. Since the study was issued, moreover, at least 14 more European airlines have ceased to operate. The number of individual bankruptcies alone does not give a clear indication of the scale of the impact. Firstly, a study from 2005 shows that 50% of airlines filing for bankruptcy are less than one year old. Secondly, the severity of the situation varies depending on the size of the carrier (larger carriers tend to have a bigger impact) and the type of destinations served, as alternative capacity is in general more difficult to source for long-haul destinations, and stranded passengers would have fewer options to return home in terms of alternative forms of transport.
27. A number of legal and contractual remedies are available at national, European and international levels in order to reduce the impact of the cancellation of air services in case of bankruptcy.
28. Precautionary standards with respect to airline operator licensing, as well as truth-in-marketing requirements are set out in Regulation 1008/2008, which obliges licensing authorities to suspend airline operations in the event of financial problems. Authorities can revoke or suspend an operating licence or grant a temporary license in order to redress financial difficulties. These rules have been in force since 1 November 2008. It is therefore still difficult to assess their efficiency and in any case they do not deal with consumer protection once the bankruptcy occurs.
29. The most far-reaching passenger protection in case of insolvency is currently offered under the so-called Package Travel Directive<sup>12</sup>. It provides protection to passengers in the event of any of the professional parties performing services included in a package becomes insolvent, e.g. airlines, tour operators and travel agents. Retailers/organisers carry liability to provide sufficient evidence of security for both refund of money and repatriation in case of stranded passengers. Member States have all implemented this at national level: the level of protection should thus be of a similar standard, although protection schemes currently differ, e.g. national travel guarantee funds, insurance or bank guarantees. However, airline tickets, when not sold as part of a package (as a standalone ticket), are not covered by the Directive. As a result of the growing share of independent travel compared to traditional packages (according to recent survey, 56%<sup>13</sup> of EU citizens organise their holidays themselves), an increasing number of consumers going on holiday are not covered by the insolvency protection in the Package Travel Directive.

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<sup>11</sup> Booz&Co Study on Consumer Protection against Aviation Bankruptcy, for DG TREN, January 2009.

<sup>12</sup> Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours - OJ L 158, 23.6.1990, p. 59-64.

<sup>13</sup> Flash Eurobarometer 258, Survey on the attitudes of Europeans towards tourism.

30. Isolated protection measures may also exist at national level. National authorities may take responsibility for repatriation in certain cases, while national funds set up in related sectors such as travel agents may do so as well<sup>14</sup>.
31. In this context, it is important to determine whether the current scope and content of the existing protection of passengers against air carriers' insolvency under national, European and international law is satisfactory. Such assessment should be carried out in relation to: (1) repatriation of passengers who have been stranded and (2) reimbursement of the tickets already paid for when the insolvency announcement was made. If protection is not satisfactory, it is also important to identify the most appropriate remedies (e.g. guarantee funds, mandatory insurance, optional insurance etc.) and decide whether they should be introduced by regulatory or non-regulatory means.

## ANNEX ON AIRLINE INSOLVENCY

### SECTION A: THE CURRENT SITUATION AS TO INSOLVENCY

BEUC is a pan-European organization. We therefore only answer to a few questions in this section while for the other questions referring to the individual responses sent to the Commission by our members.

The current rules on insolvency pertain only to package travel products and do not cover stand alone products. However, following a recent spate of airlines going bust, it is important to consider whether the level of protection currently being offered to consumers is appropriate.

- (1) What kinds of protection schemes against airline insolvency are currently available in your country for standalone products? (tick all that apply)

- |   |                          |
|---|--------------------------|
| National guarantee fund                                       | <input type="checkbox"/> |
| Bank guarantees   | <input type="checkbox"/> |
| Insurance schemes   | <input type="checkbox"/> |
| Other ( <i>please specify</i> )                               | <input type="checkbox"/> |
| There are no such protection schemes in my country (go to Q4) |                          |

- (2) If you have chosen more than one scheme (in Q1), please estimate the market share for each scheme in your country?

<sup>14</sup> XL Airways was a charter carrier based in the United Kingdom which went into administration on 12th September 2008. The UK Civil Aviation Authority under the UK's Air Travel Organisers' Licensing (ATOL) Scheme initiated an airlift to repatriate stranded package passengers; flight-only passengers were able to participate on payment of a fee.

- (3) On a scale of 1 - 5 (with 5 = highest), how would you rate the effectiveness of the current insolvency protection requirements/schemes for standalone airline tickets in your country?

1            2            3            4            5     

**SECTION B: THE POSSIBLE FUTURE AS TO INSOLVENCY**

- (4) Rules on airlines' financial fitness have been recently reinforced. To which extent do you consider that they address the problem of airline insolvency effectively? Have you noticed improvements since they came into force? Please give reasons for your answer.

No improvements are noticed. On the contrary, the number of insolvencies, close downs and bankruptcies has increased the last years (in 2009: Myair, SkyEurope, Air Comet, Quantum Air, FlyGlobespan ...)

- (5) Do you think it should be compulsory, optional or not required at all when offering **standalone airline tickets** (i.e. not as part of a package) to provide specific protection (or insurance) so that passengers would be **reimbursed for money paid** over or repatriated if the **airline went bankrupt**?

It should be compulsory and included in the price

It should be optional (passengers may choose whether to buy, but all airlines must offer it, i.e. optional insurance) Go to Q7

Airlines should not be required to offer protection Go to Q7

Don't know

- (6) If compulsory, what kind of protection schemes against airline insolvency would be the most adequate? Please choose only one option.

National guarantee funds

Pan-European guarantee fund

Compulsory Airlines' Insurance schemes ( see comment in chapter III )

Other (*please specify*)

- (7) At which level do you think that rules on insolvency protection should be adopted? Please choose only one option.

EU harmonisation of rules ( see comment in chapter III )

Action at national level

Self regulation of the industry

other - please specify

Don't know

- (8) In your experience, what would be the cost of the different insolvency protection schemes (see Q5 and Q6) for the industry, public authorities and passengers? Please quantify if possible.

Related costs would be very limited, if spreading the risk among all passengers (cf. most other insurances, like the travel guarantee insurances based on art 7 of the PTD). For further comment and proposals, see chapter III below.

- (9) In your experience, what would be the benefit of the different insolvency protection schemes (see Q5 and Q6) for the industry, public authorities and passengers? Please quantify if possible.

Horizontal insolvency protection across all industry actors will ensure fair competition conditions (on an equal footing). Consumers will feel more confident, and legal certainty will be improved as compared with the current situation i.e. uncertainty as to which passengers are protected or not.

- (10) How much do you think the price of a single air ticket might increase as a result of introducing protection (guarantee fund or insurance) against airlines going bankrupt to cover repatriation, reimbursement of money paid prior to departure and accommodation and meals where necessary?

Impact would certainly be very limited (cf. PTD) (see question 8 above).

- (11) As to the answer to question 10, should the cost of such protection in your opinion be charged as a fixed percentage of the ticket price or as a standardized lump sum?

Fixed % (cf. current insolvency protection concerning package travel in Austria).

- (12) Do you think the same remedies / protection measures should apply for both repatriation and reimbursement? If not, please identify which aspects should be modified for each item.

Yes, with an extension to :

- liability problems towards a bankrupt airline,
- a possible continuation of the holiday (cf. Belgian guarantee fund under the PTD).

### III. ADDITIONAL REMARKS AND PROPOSALS

#### 1. Information requirements and transparency

- 1.1. Information requirements should be strengthened and/or properly monitored and enforced. Many passengers don't file complains against airlines as the former are not properly informed about their rights<sup>15</sup>.
- 1.2. A number of sweeps carried out at some airports (e.g. Schiphol 2006 and Brussels Airport 2007)<sup>16</sup> have demonstrated that many airlines fail to make available the compulsory<sup>17</sup> information leaflet at their information or reservation desk<sup>18</sup> explaining the APR regulation, and if they did so, its content was limited to denied boarding, cancellation and important delays, and did not mention useful addresses for further contact nor complaining.
- 1.3 BEUC suggests imposing a comprehensive standard information form, alike the complaint form which is now available on the website of the Commission<sup>19</sup>. Another solution would be the obligation for big or medium airports to set up in the airport a "mixed" information and ombudsservice<sup>20</sup> where every passenger and victim could get information, introduce a complaint, and ask for an informal first intervention (e.g. when no representative of the operating carrier is present at the airport, as happens sometimes).
- 1.4 The provisions in regulation 785/2006 on computer reservation systems should be taken as an example as regards information requirements on inclusive prices, customer comfort (e.g. seat pitches), connecting flights, environmental information, interoperability and inter-modality<sup>21</sup>.
- 1.5 BEUC urges the Commission to set up a comparative database and website about airlines and airports, in order to enable the passenger/consumer to make informed choices, and to stimulate competition concerning all measurable quality indicators (delays, cancellations, denied boarding, luggage problems, persons with reduced mobility, safety incidents, enforcement measures and sanctions, environmental information ), and possible satisfaction ratings . The former CAPRS-project (Community Air Passengers Reporting System), organized by DG TREN should be taken over, using

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<sup>15</sup> See e.g. the Consumer Detriment Study, London Economics, November 2009, p. 56.

<sup>16</sup> See e.g. Test-Achats/ Budget & Droits nr 188, September 2006 and B&D nr 190, January 2007, p 6.

<sup>17</sup> Article 14 of regulation 261/2004.

<sup>18</sup> Some airlines at the Brussels Airport only handed out an English version of the regulation No 261/2004 to French or Dutch speaking passengers.

<sup>19</sup> See complaint form on the website of DG TREN; see also the standard information documents annexed to the recent timeshare directive 2008/122.

<sup>20</sup> Such a general information desk, which exists already in some airports, could be organized as such, with both private and public funding; cfr. also the private complaint handling initiative by the private company EU claim (see [www.euclaim.nl](http://www.euclaim.nl)).

<sup>21</sup> See the White Paper on the European transport policy for 2010 (COM (2001) 370, 12 September 2001).

the current new technology, instead of the ongoing COQPIT-initiative<sup>22</sup>, which adds little value to the passengers/consumers.

## **2. Contractual conditions and prices**

- 2.1. Contractual transport conditions should be fair, transparent, legible and easily accessible/printable at any moment before, during and after the booking process, and they should be in the language of the country of residence of the consumer. A set of the main contractual terms should be put in a prominent place of the website, and on any pre-contractual and contractual document.
- 2.2. The existent contractual requirements on air passenger rights spread in different regulations should be made more coherent and gathered in one legal instrument (concerning prices, name of the contractual and operating airline, code-sharing, interlining, schedules, the essential and fair legal terms, useful contact and complaint address, and ADR or ODR-mechanisms). These contractual requirements should apply in all sales channels, providing the consumer/passenger with a written confirmation (or equivalent), included concerning reservations by phone and last minute bookings.
- 2.3. Since flight tickets are more and more bought via the internet, a cooling-off period should be introduced, at least for earlier bookings (e.g. SAS always offer a "cooling off" period of 24 hours, if one books a flight on the internet<sup>23</sup>).
- 2.4. A minimum period of 48 hours should be given to the passenger to allow him/her to detect and correct a possible error in the reservation or check-in<sup>24</sup>.
- 2.5. The existing exclusive liability of the operating carrier under regulation 261/2004 should be widened into a joint liability with the contractual airline. A tour operator who sells flight tickets, either as component of a package, or as a stand-alone arrangement, should also be considered as a contractual airline and thus liable. This would not only offer a greater legal certainty and confidence to the consumer, but would be in line with a tendency in the case law and legal doctrine in some countries like Germany, the Netherlands and Belgium<sup>25</sup>.
- 2.6. Special attention should be paid to the recurrent and frequent unfair contract terms in air transport conditions (e.g. "non refundable" or "non transferable" tickets<sup>26</sup>, obliged "sequential use of flight coupons"<sup>27</sup>, taxes and charges, check-in conditions, rescheduling, refusal to board, luggage, non liability for agents, force majeure,

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<sup>22</sup> I.e. the Community Quality and Punctuality Indicators Table; see:

[http://ec.europa.eu/transport/passengers/air/coqpit\\_en.htm](http://ec.europa.eu/transport/passengers/air/coqpit_en.htm)

<sup>23</sup> See answer by BEUC on the consultation concerning the revision of the PTD.

<sup>24</sup> Cf. art. 6 of the airlines commitment in 2001 which provides for a 24 hours period.

<sup>25</sup> See DCCR nr 82, 2009, p102, and DCCR nr 70, 2006, p68.

<sup>26</sup> Mainly by classic airlines, in contrast with some low cost carriers and charter flights.

<sup>27</sup> See case Landgericht Frankfurt am Main (nr 2-2 O 243/07) of 14/12/2007.

dynamic packs, and redress<sup>28</sup>). The rules of the APR regulation presently do not prohibit a very asymmetric allocation of rights: The airlines can cancel a flight without any economic consequences until two weeks before the scheduled date, while the passenger often does not get any refund in case he or she needs to cancel the ticket.

- 2.7. BEUC proposes to include all sold flights or combined packages, including a flight (either sold via one website, or via different websites which are clearly linked), under the future scope of a “travel services directive”. And there should be a clear and effective link between the future (package) travel directive and the (one or different) air passenger regulation(s); or – in a further step - the passenger rights should be integrated in one comprehensive “travel services directive”<sup>29</sup>.
- 2.8. Prices should always be all inclusive (and upfront when booking a flight), except for clearly announced optional services. Neither payment nor transaction fees, nor check-in or confirmation fees should be allowed and at least one piece of luggage should be for free.
- 2.9. Before and during the booking procedure, either on the internet or via another booking channel, the airline or the concerned broker or seller, should inform the consumer about the lowest possible prices and current promotional offers.

### **3. Interpretation and clarification of existing legislation**

- 3.1 There is a need for legal certainty and for legislative action to prevent airlines from using practices undermining air passenger rights. The exception clause of “extraordinary circumstances” requires further clarification, e.g. whether strikes, weather conditions or technical problems can be qualified as extraordinary circumstances should be clarified.
  - 3.2 Recent ECJ case law ruled that technical problems do not always qualify as extraordinary circumstances<sup>30</sup> (Art. 15 para. 3, and recital 14 of the APR regulation) and those delays of more than 3 hours meriting the same compensation as flight cancellations<sup>31</sup> shows a pro-passenger interpretation by the EU judges. This interpretation should be formally included into APR legislation to abolish remaining legal uncertainties.
3. 3. Other cases are pending before the ECJ:
- a question submitted by the German BGH (Bundesgerichtshof) concerning a flight time modification imposed on consumers by

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<sup>28</sup> Currently different injunction procedures are pending in Belgium, France and Portugal concerning some classic airlines and low cost carriers. See also: “Assessment of contract conditions and preferential tariff schemes”, September 2008, prepared by Steer Davies Gleave for DG TREN.

<sup>29</sup> For further proposals on the minimum character and/or a targeted harmonized character of such a directive, see BEUC’s answer on the review of the PTD, chapter IV, A.1.

<sup>30</sup> See ECJ case nrs C-549/07, C-402/07 and C-432/07.

<sup>31</sup> See ECJ case nrs C-402/07 and C-432/07.

the travel organiser that have been decided against consumer interests without reference to the ECJ<sup>32</sup>;

- a judgment by the German BGH concerning missed connection flights while the same carrier was operating these subsequent travel legs<sup>33</sup>.

3.4. A list of EU wide prohibited unfair contract terms (black list) in air carrier general conditions should be established.

#### **4. Proposals concerning air travel services**

- 4.1. BEUC applauds the intention of the Commission to tackle also quality of air transport services. A special attention should be paid to seat pitches and seat width<sup>34</sup>, luggage requirements (e.g. at least one piece free of charge; minimum or maximum standards), check-in requirements (e.g. free of charge), transport of children and PRM's (and their needed materials).
- 4.2. Quality of services should not be tackled only through vague and unenforceable codes of conduct. This does not exclude the possibility by European and national authorities, to promote best practises.

#### **5. Liability**

- 5.1. For the sake of coherence and transparency, the liability rules from the Montreal and Warsaw Convention, and from the current EU regulations on accidents, luggage and delays (Reg. 2027/97 and Reg. 889/2002), and on "air passenger rights" (Reg. 261/2004 and Reg. 1107/2006) should be gathered in one legal instrument while clarifying the current "compensation" and liability rules. The recent case law of the ECJ concerning liability issues in air transport<sup>35</sup> and in package travel<sup>36</sup> are useful in this context. Questions to be answered in a consistent way concern for instance the "immaterial" or moral damage in cases of stranded consumers, mishandled luggage or other non respect of passenger rights.
- 5.2. The various rules on assistance, which rest on (operating and/or contractual) airlines on the one hand, and on travel agents and touroperators on the other hand, should be made more coherent and should be part of a joint liability system. Indeed, if a passenger/traveller is stranded in a foreign airport, he should be able and authorized to contact all concerned airlines and/or concerned touroperator to assist him and to make it/them liable for the consequences of lacking assistance and information.
- 5.3. Unfair contract terms, which limit the liability of airlines concerning all passenger rights should be void.

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<sup>32</sup> Beschluss vom 7 Oktober 2008 – X ZR 96/06.

<sup>33</sup> Urteil vom 30 April 2009 – Xa ZR 78/08.

<sup>34</sup> The passengers' health and safety should be the first criterion; the comparative database/website and the CRS-systems should provide detailed information on such "essential comfort" elements.

<sup>35</sup> See ECJ cases C-549/07, C-402/07 and C-432/07.

<sup>36</sup> See ECJ cases C-140/97, C-237/97, C-168/00, and C-400/00.



## **6. Insolvency protection**

- 6.1. BEUC proposes to solve the important problems concerning bankruptcy, insolvency or sudden closing down of activities by airlines<sup>37</sup>, either by widening the existing insolvency protection under art. 7 of the PTD into airlines<sup>38</sup> and/or by widening the existing insurance requirements under regulation 785/2006<sup>39</sup>. Special attention should be paid to an effective cross border protection.
- 6.2. Finally, the often used argument by trade and industry that a an insolvency protection scheme would make rise consumer prices considerably, is invalid, since the wide dispersion of the insolvency risk among all airlines or passengers<sup>40</sup> will have a very limited impact on prices. This has proven to be the case when implementing the insolvency protection for tour-operators and travel agents under art. 7 of the PTD.

## **7. Jurisdiction and applicable law**

- 7.1. At present, conflicts regarding air passenger rights are often governed by a legislation other than that of the consumer's country of residence. This makes it very difficult for consumers to be informed about their rights and to enforce their rights before courts.
- 7.2. BEUC therefore proposes that for all B2C air travel contracts Art. 6 (1) and (2) of the Rome I Regulation should apply, i.e. the mandatory provisions of the consumer's country in case the conditions are fulfilled.
- 7.3. There is a need to ensure a more transparent implementation of the international private law rules and to ensure effective redress mechanisms (e.g. concerning place and time of contract conclusion).

## **8. Enforcement and redress schemes and procedures**

- 8.1. The existing regulations (e.g. regulation 261/2004, 889/2002, 1107/2006 and 1008/2008) each provide for different rules and obligations as regards enforcement measures, particularly concerning the - limited and often ineffective - role of the NEBs (national enforcement bodies) or other enforcement procedures. Many NEBs only deal with regulation 261/2004; others deal also with PRMs, and only a few deal with other complaints; different public authorities are often competent for other passenger rights, e.g. on luggage, price-supplements, etc... This situation makes the enforcement of air passenger rights by the different competent authorities (monitoring,

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<sup>37</sup> See e.g. the cases of Air Madrid, XL Leisure, and the more recent cases of MyAir, SkyEurope, Flyglobespan, and Air Comet; see also report Booz (footnote 11), mentioning 5 possible solutions.

<sup>38</sup> This approach implies a significative widening of the scope of the PTD, as proposed in BEUC's answer on the Commissions Consultation on the review of the PTD.

<sup>39</sup> Indeed, not all airlines are selling their flights directly.

<sup>40</sup> Ca. 300 European airlines (classic, low cost, charters) which transported ca. 650 million passengers in 2009.

measures and sanctions), and the redress in favour of harmed passengers (where and how to complaint in an effective way) difficult.

- 8.2. Under regulation 261/2004 the main redress by the passenger concerns only the “operating carrier” while both the operating and contractual carriers are responsible under regulations 889/2002 and 2027/97. These divergences do not facilitate the communication to the passenger of his/her rights.
- 8.3. The tasks and competences by the NEBs should be evaluated and re-oriented, distinguishing between monitoring and sanctioning<sup>41</sup> on the one hand, and complaints handling and redress on the other hand.
- 8.4. Both the NEB of the country of the registered airline but also the NEB of the country of residence of the harmed passenger/consumer should be made competent to monitor and sanction unwilling airlines, at the choice of the passenger<sup>42</sup>.
- 8.5. The NEBs should be made competent for the monitoring and sanctioning of all passenger rights (see point 1.4.).
- 8.6. The pre-contractual travel information should clearly mention an easily contactable address. Ideally, the consumer should be able to file complaints using the same channel as for the earlier conclusion of the contract (e.g. via the website for internet bookings), not only concerning possible complaints but also concerning any problem or “after sales service”. This information should also be mentioned in the order form as well as in the confirming contract, and in other documents/messages given or sent to the consumer (e.g. check-in document).
- 8.7. Regarding complaints handling, the provisions of the air passenger regulations are insufficient. Most of our members report that passengers face great trouble asserting their rights against air carriers. The NEB is of limited use to passengers since it does not have the competence to take a decision on civil law claims. ADR systems covering airlines do not exist in most member states. The consequence is that passengers have to sue before court in order to assert their rights. In general the reviewed APR should not only elaborate on the procedure to be followed in case the consumer needs to introduce a complaint (e.g. by imposing an e-complaints form), but it should also oblige the MS to impose an ADR and/or ODR-system (online dispute resolution). The reference to ADR should be based on the Commission recommendations on ADR. It should be expressly stated that any appropriate solutions would be at no extra cost for the consumer (cfr. paying for a telephone call to a 0900 number by some airlines for complaining about dynamic packages).
- 8.8. An efficient solution would be the create the obligation for big or medium airports to set up in the airport a “mixed” information and

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<sup>41</sup> By criminal or administrative sanctions.

<sup>42</sup> After 5 years of application of Reg. 261, in the 27 member states only a few sanctions have been taken by the “home NEBs” of the concerned airlines, which did not respect the APR.

ombudsservice<sup>43</sup> where every passenger and victim could get information, introduce a complaint, and ask for an informal first intervention (e.g. when no representative of the operating carrier is present at the airport, as happens sometimes).

- 8.9. Special attention should be paid to the frequent luggage problems and the need for a more effective complaint handling and ADR-redress mechanisms, not only by improving the handling and tracking systems<sup>44</sup>, but also to offer a similar protection as under regulation 261, and to oblige the member states to set up a comprehensive complaints handling and redress system. The strict legal cut-off periods of 7 days (damaged luggage) and 21 days (delayed or lost luggage) as imposed by the Montreal convention, should be replaced by and put within a wider and more consumer friendly redress system, including an immediate and effective reporting system<sup>45</sup>.
- 8.10. BEUC suggests obliging member states to set up small claims procedures and collective redress system as well as ADR and ODR systems (cf. the Netherlands). In doing so, special attention should go to the language and translation problems concerning cross border complaints<sup>46</sup>.

## 9. A comprehensive and coherent framework

- 9.1. Currently the legal framework for the protection of air passengers is a patchwork of rules spread in different legal texts. As a result, consumers experience difficulties to find out their rights in case of disputes<sup>47</sup>. The findings of the Eurobarometers<sup>48</sup> illustrate the lack of coherence of travel legislation.
- 9.2 The existing regulations and directives in the air transport sector, including the PTD, (see introduction, point 4), should be integrated, made more coherent or at least more clearly linked, not only regarding their scope (notions, definitions, basic rules, liabilities), but also concerning their monitoring, enforcement and redress. A future comprehensive directive on travel services would be a huge benefit for consumers/passengers and would be an example of "better regulation" (whether buying a package or a "seat only").

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<sup>43</sup> Such a general information desk, which exists already in some airports, could be organized with both private and public funding; cfr. also the private complaint handling initiative by the private company EU claim (see [www.euclaim.nl](http://www.euclaim.nl)).

<sup>44</sup> Cf. SITA & World Tracing System.

<sup>45</sup> Indeed, many airlines (based on the vague art. 17 of the Montreal Convention) oblige the harmed consumers to dress a formal Property Irregularity Report and to confirm their complaint in a second formal way by sending e.g. a registered letter within one, resp. 3 weeks (which are considered as cut-off periods).

<sup>46</sup> The ECC-Net could play a positive role in this field.

<sup>47</sup> See the above mentioned ECC report concerning 2006, p. 7-13: 39 % information demands versus 61 % complaints, and as for the outcome: 12 % invalid claims and 7 % partially resolved.

<sup>48</sup> See e.g. Flash Eurobarometer 258, Survey on the attitudes of Europeans towards tourism.

- 9.3 Notwithstanding, Regulation 261/2004 concerning delays, cancellations, and long delays, as well as regulation 889/2002 concerning accidents and luggage problems should be revised thoroughly and as soon as possible, taking into account the frequent problems, the huge legal insecurity and the recent case law by the ECJ.

END