


PROTECTION OF PASSENGERS IN CASE OF INSOLVENCY OF AIRLINES

BEUC Position

Contact: Nuria Rodríguez – consumercontracts@beuc.eu
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BEUC, the European Consumers' Organisation
80 rue d'Arlon, 1040 Bruxelles - +32 2 743 15 90 - www.beuc.eu

 EC register for interest representatives: identification number 9505781573-45 

Summary

- ✚ Unlike some years ago, consumers are now more willing to purchase travel in component forms rather than buying ready-made packages. In particular, leisure travelers rely now increasingly on bookings of seat-only flights and on “dynamic packaging” rather than on packages pre-arranged by a travel agency. These market developments call for an update of the existing legislation. In particular, the discrimination between different patterns of travelers in terms of standards of protection should be removed.
- ✚ Due to existing EU legislation, (only) package travelers benefit from a protective scheme that covers the damages suffered in case the service provider of the package goes bankrupted. On the contrary, passengers who buy seat-only tickets have to suffer and pay themselves the consequences of airline failure.
- ✚ The latest study¹ on passenger protection in case of insolvency of airlines shows that none of the existing forms of protection available for seat only passengers in various member states offers comprehensive coverage to all passengers at low costs. This study also concludes that self-regulatory measures in this field are insufficient.
- ✚ The mandatory guarantee should cover the refunding of the sums paid by the passenger as well as the (full) repatriation costs of the passenger if he/she is stranded abroad. The guarantee scheme should also cover other eventual liabilities of the company and ensure that the consumer is neither obliged to pre-finance nor to organise the repatriation himself.

¹ European Commission impact assessment on passenger protection in the event of airline insolvency, Final Report, February 2011, prepared by Steer Davies Gleave.

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BACKGROUND

BEUC has been since long calling for the establishment of a guarantee system that equally protects all passengers against the occurrence of airline insolvency². The fact that package travellers, unlike seat-only travellers are protected against the risk of insolvency, coupled with a constant decrease of package travellers compared to seat-only travellers³, results in a situation where less and less air travellers are protected against the risk of insolvency of the air company they fly with.

Yet, both seat-only travellers and package travellers pay in advance services that they will enjoy at a later stage. Thus a system of protection of the money pre-paid is justified in both cases and there is no valid reason to discriminate passengers against each other when they face the insolvency of the company they fly with.

In May 2011 Commissioner Dalli, responsible for consumer protection committed the College before the European Parliament to take action to ensure that all passengers are protected against the insolvency of airlines⁴. The EP had last called for such action in its resolution of 25 September 2009.

The latest study commissioned by DG Move⁵, demonstrates that travellers with a seat-only tickets affected by an airline failure are badly hit by such an event⁶. The majority of EU countries do not have any guarantee system offering comprehensive protection for travellers purchasing standalone air tickets. Those protection schemes that are currently available covering stand alone tickets are seen as ineffective in terms of their limited availability and as not meeting the policy objectives i.e. comprehensive protection for all passengers at low costs⁷.

² BEUC/X/074/2007.

³ Flash Eurobarometer 291 Survey on the attitudes of Europeans towards tourism

⁴ <http://www.europarl.europa.eu/document/activities/cont/201106/20110608ATT20989/20110608ATT20989EN.pdf>

⁵ European Commission, Impact assessment of passenger protection in the event of airline insolvency, Final Report, March 2011.

⁶ The immediate average costs incurred by a passenger hit by an insolvency is 796 Euro (page 9 of the Report of March 2011)

⁷ It is estimated that of the passengers purchasing standalone tickets affected by insolvency over 2000 to 2010, 76% of them did not have any form of protection (European Commission,

Among the policy options analysed in the study, self-regulatory options have been clearly assessed as insufficient. BEUC is indeed against any measure that would rely on self regulation to take care and compensate passengers in case the air company goes bust. Consumers' rights cannot be relegated to self regulatory measures; the latter can only complement a clear set of rights but can never be a substitute to them! In the past, BEUC has already experienced the failure of self regulatory initiatives proposed by the airline industry⁸.

Thus BEUC urges the Commission to propose a regulatory measure, imposing an compulsory guarantee on all air companies to cover the risks of insolvency and of the withdrawal of an operating license.

INSOLVENCY OR THE REVOCATION OF AN OPERATING LICENSE – THE NEED FOR A COMPULSORY GUARANTEE

According to the findings of the Commission study, over 2000 to 2010, 96 insolvencies of airlines were identified and although the proportion of passengers impacted does not seem to be very high, the impact on affected passengers was significant⁹. Over this period 76% of passengers did not benefit from any form of protection.

None of the reported schemes currently available to address consumer detriment in this field (e.g. SAFI, credit card, IATA travel agents...) throughout the EU meets the necessary requirements to qualify as fully protective (covering in particular assistance to passengers stranded, reimbursement of flights and repatriation of passengers stranded).

As reported by the study, SAFI¹⁰ (Schedule Airline Failure Insurance) is only available in 6 member states and companies perceived as being in financial difficulty are excluded from SAFI (while these are the companies more likely to fail). In any case, an optional system as it is SAFI would leave many consumers unprotected mainly due to its high costs¹¹. The protection available through credit cards only covers the costs of the flight not taken (not repatriation in case of stranded passengers) and does not benefit all

impact assessment of passenger protection in the event of airline insolvency, Final Report, March 2011).

⁸ http://ec.europa.eu/transport/air_portal/passenger_rights/doc/2001/commitment_airlines_en.pdf

⁹ See footnote 6.

¹⁰ SAFI is available from some insurers on a commercial basis. SAFI usually covers the costs of repatriation if the passenger is stranded, or reimbursement for the cost of the original flight tickets in the case that the passenger cannot recover it. It does not usually cover the cost of purchasing another ticket on a different carrier at short notice (except where the passenger is stranded away from home), other elements of the trip which may be non-refundable such as accommodation or car hire, or other additional costs (such as additional accommodation) that a passenger may incur if stranded.

¹¹ The impact assessment study report a cost of 3-5 Euro per person.

passengers but only those who dispose or have brought the flight with a credit card. IATA billing settlement plan (BSP)¹² only applies in certain circumstances and only covers the refund of the money paid. Other methods of protection are restricted to passengers on particular airlines or in specific member states (e.g. interlining agreements)

Therefore, we call on the Commission to come up with a legislative proposal establishing the obligation for air companies to provide for a financial guarantee to cover their liabilities towards passengers in case of insolvency or removal of the operating license.

The guarantee scheme should cover the refunding of the sums paid by the passenger as well as his/her (full) repatriation costs if he/she is stranded abroad, together with fair compensation for the damages incurred due to the airline failure. The costs of such system should be included in the final price of the ticket. As the risk is spread among all passengers, related costs would be very limited for each passenger¹³. The guarantee scheme should ensure that the consumer is neither obliged to pre-finance the repatriation or to organise it himself.

POLICY OPTIONS

The impact assessment study puts forward and evaluates the feasibility of several policy options. Some of those policy options are oriented towards ensuring tighter financial supervision of airlines and more transparency and information to passengers also involving the intervention and participation of member states (for instance in repatriating stranded passengers). Other policy options are of a regulatory nature (e.g. insurance requirement, reserve fund) and finally self regulation is also analysed.

BEUC is convinced that a tighter supervision of companies alone cannot avoid the occurrence of insolvencies. Eventual stricter supervision should be combined with appropriate passenger protection both in case the authorities decide to remove the operating license of an air carrier and in case of bankruptcy. In fact, stricter conditions would not avoid problems in all cases; given the strong competition that exists in the travel industry in general and among airlines in particular. Moreover, conflicting economic/political/social interests are likely to impede an effective implementation of financial requirements.

¹² Travel agents make one single payment to their national BSP, covering sales on all airlines which participate in the BSP; the BSP makes regular payments to the airlines and if the airline becomes insolvent IATA may withhold the payment and refund the passenger.

¹³ Estimated at between 0.42 Euro and 1.38 Euro pr return flight (Impact assessment Report, March 2011).

In relation to transparency, we support the measures aiming to ensure the provision of more information to passengers on the risks they incur in relation to eventual insolvencies. Yet, this information cannot be seen a replacement for a set of tangible rights for passengers vis-à-vis insolvent air companies.

The proposed obligation for member states to assist and repatriate stranded passengers does not appear to be a realistic option because in a situation of financial crisis and public indebtedness Member States will reject such a burden. Besides, this option is not comprehensive as it only covers assistance and repatriation of stranded passengers, leaving aside reimbursement and the compensation for damages suffered by the passenger.

The solutions based on self-regulatory measures have been assessed as insufficient in the Report of March 2011¹⁴. BEUC is against any measure that would rely on self regulation to compensate passengers in case the air company goes bust. Consumers' rights cannot be relegated to self regulatory measures; the latter can only complement a clear set of rights but can never be a substitute to them.

Only a regulatory measure, be it an compulsory insurance or a general reserve fund is able to meet the policy objectives of providing comprehensive protection for all passengers at low costs.

- The introduction of a general reserve fund

The referred study prepared for the Commission concludes that the introduction of a general reserve fund is the best option to address the policy objectives as carrying significant benefits and providing protection for passengers. Yet, it is considered that this option could distort competition as more stable airlines would subsidise the less strong. It is also mentioned that the management of the fund is costly.

We do acknowledge those concerns. However, we think that these concerns could be addressed if the contribution to the fund and its management are based on the number of tickets sold. Besides, it is always the consumer/passenger who pays the costs through the prices.

- Compulsory insurance against insolvency

Another valid option for BEUC would be the introduction of an compulsory insurance, requiring all companies and covering all passengers. We do not see any legitimate reason why package travel is insurable (under the package travel directive) but not standalone tickets. Moreover, the costs involved in

¹⁴ European Commission, Impact assessment of passenger protection in the event of airline insolvency, Final Report, March 2011.

providing comprehensive coverage for passengers are likely to be low and should therefore not lead to any substantial increase in the ticket prices¹⁵.

The guarantee should cover the refunding of the sums paid by the passenger, the (full) repatriation costs of the passenger if he/she is stranded abroad and any eventual liabilities of the airline. The guarantee scheme should ensure that the consumer is neither obliged to pre-finance the transport nor to organise it himself.

- Optional insurance against insolvency

BEUC does not support this option. Under an optional insurance system, not all passengers but only those financially comfortable will be able to benefit from the protection. Moreover, the cost for airlines will be greater than under a wider (compulsory) insurance as in the former case airlines will not be able to benefit from economies of scale.

END

¹⁵ See Report on the functioning of the Internal Market for Air Transport, conducted by the Transport Studies Unit of the University of Oxford (Contract No: TREN/04/MD/s07.36609) page 163.