

QUESTIONS AND ANSWERS

What is the no-show clause?

Airlines sometimes use no-show clauses when they sell tickets to their customers. These clauses allow the airline to cancel reservations when the passenger has missed either: (a) the first leg of a multi-leg itinerary; or (b) the outbound flight of a round-trip itinerary. Passengers may have missed, or found a more convenient form of transport, for the first leg but still intend to use the subsequent leg(s). The passenger usually then goes to the airport to take the second flight only to find out his ticket has been cancelled, and either needs to purchase a new ticket or pay a fee to be able to use it again.

What are consumer groups doing?

BEUC and its members (national consumer organisations) are taking action today against the use of the 'no-show' clause by various European airlines.

Dutch consumer group Consumentenbond and Greek consumer group EKPIZO are announcing their legal actions against Dutch airline KLM.

UK consumer group Which? is sending pre-action letters to Air France, KLM, Swiss, Qatar, Emirates, BA, Virgin Atlantic, Flybe and Singapore Airlines to ask them to stop using the clause. Two airlines active in the UK (Thomas Cook and Aurigny) have already claimed they will stop using the no-show clause following Which? action.

Maltese consumer group CA Malta and Greek consumer group KEPKA are also writing to airlines to ask them to stop using the clause.

KEPKA, CA Malta, Czech consumer group dTest, Swiss consumer association FRC and Danish consumer organisation Forbrugerrådet Tænk are going to complain to their national authorities about the use of the clause.

Belgian consumer group Test Achats/Test Aankoop is already in court against Air France and KLM since July 2018 for their use of the no-show clause.

Austrian consumer organisation VKI, German consumer organisation vzbv and Spanish consumer organisation OCU have already won court cases against different airlines in the past (e.g. Austrian, Lufthansa, Iberia and British Airways).

BEUC today is writing to the European Commission to ask it to ban the clause and is also sending a letter to the public authorities responsible for consumer protection at national level (CPC network) to urge them to open an investigation into the no-show clause.

Why is the 'no show clause' unfair?

'No show clauses' create a significant imbalance between the rights and obligations of airlines and consumers, to the detriment of the latter.

Passengers, who are refused boarding the plane and either need to buy a new single ticket or are asked to pay high additional fees to be able to continue their journey, very often end up paying double or even triple what their ticket initially cost them. At the same time the airlines do not incur any extra costs from the passenger not using one of the segments of his/her trip. What it does is enable the airline to resell the cancelled ticket and earn twice on the same seat for the same flight.

Most of the time consumers are not sufficiently informed about the existence of these clauses. When they do find out, it is usually at the airport which comes as a very unpleasant surprise.

Why should the no-show clause be banned at EU level?

We have been pushing for a ban of this clause for years at EU level.

The European Commission proposed a partial ban in 2013 as part of a reform of the Air Passenger Rights Regulation. However, the proposal has been blocked at Member State level for five years and it is unlikely that the proposal will be taken up in the short/mid term.

In the absence of an outright ban of this clause, which would be necessary to protect passengers adequately, we are taking action either in court or towards national authorities to have the clause stopped, or asking the airlines themselves to stop using it.

In the meantime, several EU Member State courts have already decided that (partially) the use of the no-show clauses is not compliant with consumer law thanks to action by consumer groups from the BEUC network.

For example, the highest courts in Germany, Spain and Austria have ruled that those clauses are unfair or partially unfair contract terms based on their national laws which reflect the EU's Unfair Contract Terms Directive. Unfortunately, these rulings only protect consumers flying with the respective airlines from these countries, which means that consumers from other EU countries can still be victims of no-show clauses.

What types of 'no-show clauses' are out there?

No-Show clauses can come in three main forms:

1. The consumer is denied boarding unless he/she pays the new price of the ticket.
2. The consumer is denied boarding or pays the new price of the ticket if he/she did not inform the airline within 24 hours of not taking the first leg.
3. The consumer has to pay a high penalty otherwise he/she is denied boarding.

1) Clauses to set a new ticket price

Under this clause, if the passenger does not use a part of his/her itinerary,

- the air carrier will recalculate the fare

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- the passenger will be asked to pay the difference
- the airline reserves the right to deny carriage if the amount is not paid.

Example:

British Airways <https://www.britishairways.com/en-be/information/legal/british-airways/general-conditions-of-carriage> (accessed on 3 December 2018)

"Your ticket is no longer valid if you do not use all the coupons in the sequence provided in the ticket. Where you change your travel without our agreement and the price for the resulting transportation you intend to undertake is greater than the price originally paid, you will be requested to pay the difference in price. Failure to pay the price applicable to your revised transportation will result in refusal of carriage."

2) Clauses to set a new ticket price unless 24-hour notice

Under this clause, if the passenger does not use a part of his itinerary,

- the airline will recalculate the fare
- the passenger will be asked to pay the difference
- the airline reserves the right to deny carriage if the amount is not paid.

BUT

- no recalculation will be done, and no amount will be asked if the passenger informs the airline within 24 hours from the scheduled time of the missed flight.

Example:

Brussels Airlines <https://www.brusselsairlines.com/en-be/misc/conditions.aspx> (accessed on 3 December 2018)

"If carriage is not used on all individual legs or not used in the sequence anticipated on the Ticket with otherwise unchanged travel data, we will recalculate the fare according to your altered routing."

Please be advised that in the event you do not show up for a flight without advising us, we may cancel your return or onward reservations. However, if you do advise us in advance or within 24 hours after the scheduled departure time of the flight sequence you did not take, we will not cancel your subsequent flight reservations."

3) Clauses to set a high penalty

Under this clause, if the passenger does not use part of his itinerary, he is asked to pay a penalty, ranging from €125 to €3,000.

Example:

Air France

https://www.airfrance.be/BE/en/common/transverse/footer/edito_cgt1_airfrance.htm

(accessed on 3 December 2018)

"Any non-compliant use by the Passenger (for example, if he or she does not use the first Coupon or if the Coupons are not used in the order in which they were issued) noticed on the day of travel will result in the payment of a extra fixed-rate fee at the airport: €125 on short-haul flights (metropolitan France and Corsica), €250 for an Economy medium-haul flight, €500 for a Business medium-haul flight, €500 for an Economy or Premium Economy long-haul flight, €1,500 for a Business long-haul flight and €3,000 for a La Première long-haul flight (or the equivalent in the local currency)."

Do all airlines use the no-show clause?

Most airlines which sell multi-leg or return tickets use the no-show clause in the EU, including many of the larger airlines like British Airways, Lufthansa or Air France/KLM. They use different versions of the clause (see previous answer), which are sometimes also adapted to specific countries [1].

The no-show clause allows the airline to refuse boarding to a passenger on later segments of his itinerary. Meanwhile, the airline retains the original passenger's payment, in addition to any payment for the ticket's re-sale.

We have found that airlines usually invoke two arguments [2] for using the 'no-show clause' linked to their pricing strategies.

The first is that strict conditions, as regard to the sequence in which passengers have to use their flying coupons, are needed in order for them to be able to offer better prices and compete on the market with the airlines offering direct flights.

The second reason invoked is what they call 'directional imbalance'. Where a directional imbalance exists, airlines assert that no-show clauses allow them to price one direction higher than the other, in order to reflect the difference in demand. A customer who buys a cheaper round trip ticket and only uses it to travel in the more expensive direction undermines the airline's ability to charge a higher price for the in-demand route.

ENDS

Notes

[1] However, we have not undertaken a systematic research to identify all the airlines which use the clause.

[2] For more details see for example the IATA position paper from 2013:
<https://www.iata.org/policy/Documents/coupon-use-paper.pdf>.