

# IMPACT ASSESSMENT OF PASSENGER PROTECTION IN THE EVENT OF AIRLINE INSOLVENCY

European Commission's questionnaire

BEUC answer

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## Questions for consumer organisations

(prepared by Steer Davies Gleave on behalf of the Commission)

### Factual information on airline insolvencies

1. Please see attached a list of failures of airlines registered in your State since 16 September 2008 which we have evaluated from OAG data and other sources. Please confirm if this is correct and if there are any omissions.
2. Please provide any information you have as to the number of passengers who had booked to travel on these carriers at the time that they failed and/or the number of passengers stranded away.
3. If you have any similar information on insolvencies of airlines registered in other States (e.g. where an insolvency resulted in a large number of passengers being stranded in your State) please provide details.

[See Booz& Co Study on consumer protection against bankruptcy, for DG Tren, January 2009.](#)

[See study See Report on the functioning of the Internal Market for Air Transport, conducted by the Transport Studies Unit of the University of Oxford \(Contract No: TREN/04/MD/s07.36609\).](#)

### Existing protection schemes

4. Please provide details of any existing schemes to protect passengers in the event of airline insolvencies (to include what proportion of passengers is covered; and which costs the schemes cover). In particular this could include:
  - schemes to ensure protection of package holiday passengers, in accordance with the Package Travel Directive;
  - any credit card protection schemes;
  - any Scheduled Airline Failure Insurance.
5. Has there been any change in the proportion of passengers covered by these schemes, or what costs are covered, since 2000 (e.g. due to changes in the travel market)? If there have been, why?
6. Would you expect any further change in the proportion of passengers covered by these schemes, or what costs are covered?
7. Is there any evidence that the proportion of passengers covered by different schemes varies with airlines/ticket costs?

### Impact of airline insolvencies

8. In the cases of airline insolvency described above, what costs have passengers incurred? How far are these different for those covered/not covered by an existing scheme? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.

9. In the cases of airline insolvency described above, how have passengers tried to recover losses they have incurred (for example, through claims against the airline or its owners)? Have national authorities provided any assistance to passengers in doing this?
10. In these cases, to what extent have passengers succeeded in recovering costs?
11. As far as you are aware, what costs, if any, have different bodies (such as airlines or national authorities) incurred in repatriating, providing assistance to, and/or compensating passengers in cases of airline insolvencies? To the extent that you are able, please identify which of these costs are accounted for by information, care, repatriation and reimbursement.
12. In order to help us assess the impact of airline insolvencies on passengers, please could you provide any information you have (for example from passenger surveys) of:
  - mix of passengers on flights departing from your State (short/long haul);
  - average advance booking periods for passengers;
  - average length of stay (in days) for passengers;
  - proportion of travel which is for business or leisure purposes;
  - extent to which any of these factors have changed since 2000.

## Policy options

The Commission has proposed the following options for addressing airline insolvency which will be evaluated against a 'no change' option. Your responses will help inform our assessment of the options.

### **A. Monitoring of carriers' financial position**

*The financial oversight of EU air carriers would be strengthened, through the adoption of raised standards of financial fitness requirement and/or making the monitoring of carriers more pro-active. This would be implemented at a national level, and could include measures to be implemented both by Member States and by licensing authorities.*

- What issues/ benefits would there be from providing ongoing monitoring of the air carriers operating in each Member State?

We do support the strengthening of the financial requirements to be provided by air companies in order to get operating licenses as well as closer monitoring of their financial situation. Yet, these measures 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.

***B1. Introduction of an obligation for States to plan and coordinate the repatriation of stranded air passengers***

*Member States would be obliged to provide protection to passengers stranded by the insolvency of carriers for which it had issued the operating license (under Regulation 1008/2008). This would be implemented at a national level, with method of obtaining assistance depending on the State's legal framework. There are several options for which State would be responsible; the State in which the passenger is stranded could be a practical option.*

- What issues/benefits would there be if such a requirement was introduced?

We do not support such an approach as unfeasible and not comprehensive. First, in a situation of financial crisis and public indebtedness Member States will reject such a burden. Second this option will only include repatriation for affected passengers, leaving aside reimbursement and the compensation for damages suffered by the passenger. Finally such an option will maintain uneven protection to passengers buying a package travel and those buying a seat-only flight, package travellers having the right to reimbursement and/or alternative arrangements.

***B2/B3. Insurance against insolvency***

*Carriers would be obliged to offer optional insurance / provide compulsory insurance to their passengers, on booking, against the risk of insolvency. This would cover reimbursement, assistance and repatriation. The method of implementation would be decided at a Member State level, and non-EU carriers could be considered for inclusion.*

- What issues/benefits, if any, would be created by the introduction of either:

B2. an obligation for all carriers to offer passengers optional insurance against their insolvency; or

No overall benefits; only passengers financially comfortable would be able to benefit from insurance. Under such an optional system it is likely that the premium costs become too high compared to a compulsory insurance for all passengers as it will not be possible to benefit from economies of scale.

B3. an obligation for all carriers to have insurance against insolvency, covering all passengers?

We support this obligatory insurance, obliging all companies and covering all passengers. This would guarantee a full coverage of the risk. The costs of providing such insurance should be added to the final price of the ticket (all-in price as the final price to be effectively paid by the passenger).

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.

- To what extent would consumers be willing to pay higher ticket prices to cover the costs of this insurance?

The costs involved in providing comprehensive coverage for passengers are likely to be low and should therefore not lead to any substantial increase in the ticket prices: 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.

**B4. Introduction of a general reserve fund:**

*A general reserve fund would be established through a new charge collected on each air ticket sold, to cover the insolvency risk of air carriers. The insurance would cover reimbursement, assistance and repatriation. This would be implemented at a national or supra-national level. One approach could be to States to be responsible for passengers stranded by carriers who they licensed, and for the fund to be based on the existing PTD funds; however the exact format for implementation is open for discussion.*

- What issues/benefits, would be created by the introduction of a general reserve fund (for example funded through a levy on air tickets) to cover costs of repatriation, refunds, and assistance for passengers in the event of airline insolvency?

We do not support such option. This option would not reflect the risk of each different airline and thus would be unfair.

- To what extent would consumers be willing to pay higher ticket prices to cover the costs of contributing to such a fund? Would a small contribution (€1-2 per ticket) have any impact on the demand for air travel?

We are not in favour of flat fees. A flat fee would be neither cost-effective nor proportional.

**B5. Amendment to national insolvency/bankruptcy laws:**

*Current general bankruptcy and / or insolvency laws in Member States would be adapted and extended to cover the insolvency risk of carriers within individual States.*

- What issues/benefits, if any, would be created by changing national insolvency/bankruptcy laws to give priority to assistance and repatriation of passengers who were impacted?

No clear benefits. Due to the cross-border character of air transport, and in order to foster competition in the insurance sector, an EU wide guarantee scheme should be established at EU level. Such guarantee scheme should have a large scope namely covering flights operating in the EU and both going out and coming into the EU. A large scope will also ensure fair competition between carriers.

- What other methods could be used to achieve the same outcome (e.g. bank guarantees)?

We are not in favour of bank guarantees as bank services are not adapted to the specificities and needs of the air industry.

***C1. Introduction of a requirement for member states to provide information:***

*Responsibilities for disseminating information on airline insolvency would be clearly defined, both regarding risks (e.g. financial stability of carriers), and in the event an air carrier becomes insolvent (e.g. which organisation would substitute an insolvent carrier).*

- What issues/benefits would be created by requiring national authorities to communicate to the public the financial fitness of the carriers that they licensed?

National authorities could have a role in informing passengers on airline insolvency. However, it is not realistic to rely on the effectiveness of their actions for a number of reasons. Conflicts of interest (economic, political...) will come into play and distort the information given; also one can expect that public measures will not be sufficiently fast to have real benefits for passengers.

On the contrary BEUC proposes (see BEUC answer to the commission public consultation) the setting up of a reliable and independent reporting system for instance within the framework of the previous "*Community Air Passenger Reporting System*" ("*CAPRS*").

- How could this be done in a way that provided consumers with clear and relevant information?

Through a CAPRS website.

***C2. Introduction of a requirement for airlines to provide information:***

*Marketing websites and other sales outlets would be required to advise ticket purchasers of the risks relating to insolvency, any insurance options, and other forms of protection (e.g. credit cards). This would be monitored at national level.*

- What issues/benefits would be created by requiring airlines to advise ticket purchasers of risks and existing/potential protection on websites where tickets were sold?

We rather support the setting up of a system of information based on the “CAPRS” mentioned above. Relying on the air industry to inform passengers about insolvency issues carries the risk that the information is distorted due to conflicts of interest.

Yet, information about insolvency risks has to be combined with effective protection when insolvency occurs providing the passenger with the right of repatriation, continuation of the travel, reimbursement and damages.

END