

# AIR PASSENGERS' RIGHTS IN THE EU

Synopsis of BEUC's concerns<sup>1</sup>

Meeting with Commissioner Kallas, 14 June 2011

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<sup>1</sup> Please note that this is a synopsis of BEUC's position. Please refer to our response to the latest Commission public consultation for more details: X/013/2010

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## AIR PASSENGERS' RIGHTS IN THE EU

### Synopsis of BEUC's concerns

BEUC welcomes the plans of the Commission to carry out a revision of the existing legislation on the rights of air passengers'. The current legislation is not sufficient to deal with the various difficulties consumer/passengers face when travelling by air in case of problems.

Consumer complaints in the transport sector are at the top of the rankings. The ECC (European consumer Centers) reports of 2008 and 2009 indicate that consumer complaints in the transport sector represented 30% of all complaints; circa 80% of those, concern air transport.

The lack of a comprehensive and coherent legislative framework together with the shortcomings in the application and enforcement of the existing rights need urgently to be addressed. We thus urge the Commission to adopt the necessary legislative initiatives as soon as possible in order to ensure a high level of consumer protection for air passengers.

Surely, the adoption of regulation 261/94 was an important step forward in the protection of passengers. Yet, the existing legislation is not comprehensive as it by no means covers all the contractual issues and the liability of air companies vis-à-vis passengers in case of problems. For instance gaps in the contractual rights are most significant in case of delayed, damaged or mishandled luggage. Also the protection of passengers buying a seat-only ticket in case of the insolvency of the air company should be urgently regulated; there is no valid reason why a consumer buying a package (under the package travel directive) should be better protected in case of insolvency than consumers buying seat-only tickets.

The lack of information to passengers is one of the main problems passengers face when they are confronted with disruptions of their flights. A consumer survey carried out in 2010 by some BEUC members (Belgium, France, Italy, Portugal and Spain) showed that 92% of passengers who suffered a delay, reported that they did not receive any written information about their rights under regulation 261/94, 89% of passengers who suffered a cancellation were not informed in writing.

### **The Ash cloud "syndrome" in the context of the legislative revision**

The sudden and unexpected volcanic eruption in Iceland in April 2010 lead to serious disruptions in European airports with passengers left stranded far away from their homes sometimes for many days. On the grounds of the volcanic eruption, air companies have been urging the Commission to reduce the rights of passengers in case of extraordinary circumstances.



We consider on the contrary that (ab)using the ash cloud crisis as a yardstick in the revision of the legislation would be ill-founded. First, extraordinary circumstances also arose before the ash cloud and the rights of passengers in particular to be cared for were not disputed. Second, the advent of a more recent eruption last month did not result in major disruptions as it was the case last year while the legislation is the same as last year.

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Moreover, BEUC thinks that the different needs of passengers depending on the mode of transport they take (air, rail, bus) call for distinct solutions (although within a common category of rights). The solutions adopted in the maritime and bus and coach sectors cannot always be transferred to apply in the air sector.

### **Interpretation of Regulation 261/04 – “extraordinary circumstances”**

BEUC agrees that there is a need for more legal certainty around the concept of “extraordinary circumstances”. Whether strikes, weather conditions or technical problems for instance can always be an “excuse” used by air companies, should be further clarified. In this context one has to remind that air companies are obliged to *implement all reasonable measures* to reduce the impact on passengers of the advent of such circumstances (see ECJ C-294/10).

The European Court of Justice has also ruled on a number of cases that show a clear trend towards an interpretation of the legislation in favour of passengers. Recently, the Court ruled that a technical problem does not always qualify as an extraordinary circumstance (cases 549/07, 402/07, 432/07) and that delays longer than 3 hours should trigger the same right to financial compensation as cancellations (*Sturgeon v. Condor*, C/402-07).

In spite of this case law to be of direct application and thus binding on air companies, most of the companies simply ignore it. We thus urge the Commission to ensure that these rulings are codified in the future legislation.

### **Transparency of air fares**

The commercial practices of most air companies (and other air tickets service providers) in relation to their pricing policies often cause consumer detriment. The practice of adding all kind of supplements (e.g. fuel supplements, taxes, baggage fees, card payments fees etc) to the advertised price of the ticket (drip-feeding prices) is overspread in the air transport sector.

“Drip-feeding” pricing practices should be considered misleading and should be more effectively prosecuted and fined. Also the existing legislation should be strengthened on this point taking into account current market practices.

### **Unfair contracts terms in the transport sector**

The proliferation of unfair contract terms in the air transport sector needs to be tackled; air companies constantly “invent” new contract terms whose fairness is often contested by consumer organisations. In 2010 a number of BEUC members (Test Achats, DECO, UFC) engaged legal actions against air carriers as regards the unfairness of many contractual terms used in air transport: e.g. lack of transparency of contract terms, luggage registration, extra luggage, mishandled luggage, force majeure, illness, limiting rights of PRMs, code-sharing etc).

BEUC considers that the issue of unfair terms in the transport sector deserves a sectoral approach and we urge the Commission to adopt the appropriate measures in order to address this problem.

### **Application and Enforcement of passengers' rights**

The shortcomings in the application and enforcement of the rights of passengers are of utmost concern. BEUC welcomes the measures announced by the Commission in the Communication of 11 March 2011 (2011/174) to achieve a more effective enforcement of passengers' rights: e.g. Clear mandate to NEB, extensive competences of NEB, reporting on compliance by the industry).

In particular the following measures should be taken in order to improve the application and the enforcement of the air passengers' rights:

- The liability of the air company should be extended to the contractual carrier (e.g. tour operators selling air tickets) ;
- In case of code sharing the consumer should be informed of this arrangement and his rights should be intact vis-à-vis the company effectively operating the flight;
- The amount of the fines imposed in case of non-compliance with the legislation should be higher i.e. dissuasive enough to provide for an economic incentive for airlines to comply with the legislation (Study Steer and Davies, February 2010);
- An information/complaint desk at airports need to be established. Very often air companies do not meet the needs of passengers at airports (no desk available at the airport, no staff to handle complaints);
- Air companies should be obliged to adhere to ADR schemes for solving disputes out of court.
- A group of passengers should be able to collectively file a complaint to obtain compensation for the infringement of their rights; a group action should be introduced at EU level and fully apply in the transport sector which is cross-border by definition.

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