



The Consumer Voice in Europe

# Air passengers' rights

## Forthcoming revision of the legislation

Synopsis of BEUC's position

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BEUC welcomes the plans of the Commission to carry out a revision of the existing legislation on the rights of air passengers<sup>1</sup>. Experience from last years has shown that the **current legislation is not sufficient** anymore to deal with the various difficulties consumer/passengers face when purchasing air tickets and in case of disruptions.

**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. In the last 5 years the number of complaints in the air transport sector, has increased by 96% (ECC Report 2011).

Both the European Parliament and the European Economic and Social Committee have already adopted a series of recommendations in view of the revision of the legislation. BEUC hopes that the Commission takes due account of the concerns expressed in these recommendations when adopting its proposal.

### **Revision of regulation 261/04**

Generally, we think that **Regulation 261/04** contains a set of commendable rights that have contributed to improving the position of passengers, vis-à-vis the air companies. While BEUC acknowledges the need to **clarify and simplify** the text of the regulation 261/04, **any weakening** of the existing rights, would be **unwelcome**.

The right of passengers to receive **assistance in “extraordinary circumstances” should be maintained** as in the current Regulation; it is precisely in these circumstances that passengers need to be taken care of. Air transport cannot in this regard be equalized to other means of transport; often, in air transport long distances are involved and passengers are likely to find themselves stranded in far away and foreign/unknown places with no possibility to use alternative means of transport to get back home.

In addition, any “extraordinary circumstances” that could exempt airlines from having to pay compensation is closely linked to the specificities of each case; it is thus necessary to leave leeway to the courts to do justice in each particular case.

Notwithstanding, the practical application of Regulation 261/04 has revealed a number of **loopholes and gaps that need to be addressed in the future regulation**. In particular, the following issues must be dealt with in the future regulation:

- The **lack of information** to passengers is one of the main problems passengers face when they are confronted with disruptions of their flights. Air carriers should be obliged to inform passengers about their rights **at all key stages of their travel, starting by the booking of the ticket**.

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<sup>1</sup> See BEUC's response to the Commission's public consultation at:  
<http://www.beuc.eu/BEUCNoFrame/Common/GetFile.asp?ID=43182&mfd=off&LogoName=Guesten>

- Currently **non-EU carriers coming into the EU** do not have to abide by regulation 261/04. This exemption was at the origin of many complaints at the time of the ash cloud and is also problematic in the context of the proliferation of code-share agreements with airlines from outside the EU. **All air companies operating in the EU should be submitted to the provisions of Regulation 261/04.**
- The **judgments of the European Court of Justice (ECJ)** interpreting regulation must be reflected in the new text:
  - Regarding **technical problems** the ECJ ruled (*Wallentin* case) that technical failures cannot always be argued as amounting to extraordinary circumstances. It has to be emphasized that passengers have to means to verify the legitimacy of airlines' statements regarding the advent of technical problems;
  - Regarding the protection of passengers in case of **long delays** (more than 3 hours) the **right to compensation** should be provided, following the ECJ ruling in the *Sturgeon* case. Airlines generally refuse to comply with the Court's judgment.
- The new regulation should **complete the rights of air passengers** in events such as **missed connections, advance rescheduling of flights and tarmac delays**. These events are not effectively covered by the regulation while they often cause passenger inconvenience and consumer detriment.
- It should be expressly stated that the option of **re-routing includes flights with other airlines** and also in other means of transport (rail, bus, coach); this approach will encourage inter-modality between different modes of transport.
- The present rules on damaged and lost baggage should be improved; currently, passengers are insufficiently protected in these events.

### **Unfair contract terms and commercial practices**

The propagation of **misleading practices and the recurrent use of unfair contract terms** by most airlines is a source of continuous consumer detriment. This calls for the adoption of a series of measures to withstand the ever evolving (unfair) commercial practices of airlines:

- The **transparency obligations** included in Regulation 1008/2008 need to be clarified and enforced effectively: the proliferation of all kind of extras fees that are added to the headline ticket price ("drip-feeding" prices) during the booking process, make it impossible for passengers to compare different offers or to know from the start what will be the final price to be paid. These practices run counter the spirit of the legislation and cause consumer detriment. We believe that a (minimum) level of service should be included for free in the final price (e.g. check-in, boarding pass, one checked luggage). Besides, enforcement bodies should effectively pursue infringements of transparency obligations.

- The proliferation of **unfair contract terms** in the air transport sector needs to be tackled; air companies constantly “concoct” new terms and conditions whose fairness is contested by consumer organisations. In 2010, some of BEUC members (Test-Achats, DECO, UFC), sought legal actions against air carriers as regards the unfairness of many contractual terms used in air transport. Various court judgments have now been delivered in different countries, stating the unfairness of many contract terms. The “no-show” clause, the barring the refund of tickets in case of force majeure (of the passenger) or the application of excessive surcharges for the use of credit cards, are but a few examples of clauses that were declared unfair by courts.

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. In any case, the obligations of enforcement authorities as regards unfair terms in air transport contracts need urgently to be tightened.

### **Application and enforcement of passengers rights**

Rights are of No use if their application and enforcement fail. BEUC denounces the **systematic infringement by airlines of the rights of air passengers and the lack of appropriate enforcement measures**. We do praise the efforts being made by the Commission to strengthen the application and enforcement of the existing rules, inter alia through information campaigns and specific measures to improve the functioning of the enforcement bodies (NEB). Yet, more needs to be done in order to ensure that consumers benefit from adequate redress when problems arise; in particular we call on the Commission to adopt the following measures:

- Airlines should be required to **regularly report** on the quality of their services (delays, cancellations and other disruptions); this is already an obligation for the rail transport sector;
- National enforcement bodies (NEB) should also **regularly report** and publish the complaints they receive, handled and solved;
- Airlines’ **complaint handling procedures** should be regulated in order to offer passengers the right to access easy, non costly and effective redress (timelines for responses, free phone lines, e-complaint forms...)
- Airlines should be required to have a **representative in every airport** in which they operate. This will make live easier for passengers’ victims of disruptions and contribute to avoid situations of confusion in airports.
- Airlines should be required **to adhere to alternative dispute resolution schemes (ADR/ODR)**.
- The **competence of NEB’s** should be extended to deal with **baggage complaints**; currently when passengers are confronted with difficulties to be compensated for the loss or damage of baggage, there is no enforcement body they can refer to.

### **Protection of passengers in case of insolvency of airlines**

BEUC has been since long calling for the establishment of a guarantee system that equally protects all passengers against the occurrence of **airline insolvency**<sup>2</sup>. The recent insolvencies of European airlines Spanair, Malev and Sterling demonstrate that airline **insolvency is a reality** that European passengers are increasingly confronted with. A recent study by the Commission shows that European passengers suffer significant costs when the airline they fly with becomes insolvent. Where insolvency occurs, passengers are effectively denied the application of the rights of regulation 261/04. Therefore, BEUC urges the Commission to propose a regulatory measure, **imposing a compulsory guarantee on all air companies** to cover the risks of insolvency and of the withdrawal of an operating license.

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<sup>2</sup> See BEUC's latest position paper at:  
<http://www.beuc.eu/BEUCNoFrame/Common/GetFile.asp?ID=41984&mfd=off&LogonName=Guesten>