



The Consumer Voice in Europe

# Air passengers rights-Revision of Regulation 261/04

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## The new proposal: a bumpy lift-off

- Major consumers concerns with Regulation 261/04
  - Complaints in air transport top the rankings
  - Gaps in scope and passengers' rights in some situations
  - Non-compliance by the industry, biased interpretation
  - Consumers' difficulties to obtain redress when disputes
  - Innefective enforcement of rights
  
- **Objective:** a high level of consumer protection, easily understood rules, uniform interpretation and efficient enforcement and redress
  
- Existing rights must not be cut back:
  - Some key changes would lead to a significant weakening of rights;
  - Non-compliance by the industry cannot be « rewarded » by reducing their obligations
  - Impact assesement assumes that less obligations will be an « incentive » for compliance

## KEY rights at stake

- Right to compensation in case of loooong delays:  
as of 5 hours.....9 hours .....12 hours
  - CJEU rulings *Sturgeon* ( 3 h delay = cancellation) ignored
  - The Commission's argument is not clear: Why will more flights be cancelled as a result? as right to compensation is due if flights are cancelled;
  - NB: In any case, the passenger does not have this right in case of "extraordinary circumstances"
  - Impact of compensation for > 3hours delay : for 2006-2009 Commission estimated: only *less than 1% of medium-haul flights* and 0,4% of short haul flights were concerned (SEC(2011) 428)

## KEY rights at stake

- Right to assistance in extraordinary circumstances: only for 3 nights and € 100 per night!
  - Again: CJEU ruling ignored; Disproportionate response to exceptional ash cloud event ; unlikely to reproduce (Impact Assessment)
  - Air transport implies long distances from the consumer's home: alternative transport is difficult to find and organise for consumers
  - Hotels will raise prices! consumers cannot negotiate
  - Outcome = passengers stranded in EU airports
  - Contingency plans do not offer extended care
  - Tarmac delays : 5 hours confined to an aircraft is too long;

## Key rights at stake

- Re-routing...
  - Passengers want to arrive on time to final destination
  - Re-routing is essential to meet consumer expectations and to fulfill the main contractual obligation (get to destination) by the company
  
  - 12 hours waiting before other airlines participate in re-routing is too long and maybe unrealistic (night comes in)
  
  - Re-routing at the earliest opportunity will avoid accommodation obligations
  
  - Long delays at departure (e.g. as of 5 hours) should trigger the right to re-routing

## Sequential use of coupons –no-show policy

- The attempt made by the Commission to restrict the airlines' no-show policy is not sufficient
- The no-show policy was considered UNFAIR in many court ruling across the EU initiated by consumer organisations (Spain, Germany, Austria); currently the situation raises big uncertainty for consumers
  - The practice entails a significant imbalance of the rights and obligations of the parties;
  - The passenger should not be obliged to use the service but only to pay the price ( no comparison in other service sectors)
  - Once the price is paid by the passenger, the company cannot proof any damage if the passenger misses or decides not to take the flight
- No-show policy should be banned entirely

## Extraordinary circumstances

- We welcome attempts to clarify the situation
- But: the proposed list in the annex could create new problems of interpretation :
  - It is still not clear when technical problems are extraordinary (e.g. outside the routine management and before the flight operation?)
  - The list of extraordinary circumstances seems too extensive (strikes, air traffic management problems, labour disputes, all meteorological conditions..)
- The definition of extraordinary circumstances should be amended:
  - It can only be extraordinary if the airline proves that it made reasonable efforts to avoid the disturbance

## Positive elements in the new proposal

- Missed connecting flights are now covered
- Right to re-routing also with other means of transport
- Spelling mistakes can be corrected free of charge
- More effective enforcement; but the rules for consumer complaints handling need to be improved



# Important missing elements for adequate consumer protection

- Measures to put an end to the current proliferation of unfair terms in air transport contracts
- A compulsory guarantee on airlines to cover their liabilities in case of bankruptcy: reimbursement and repatriation

## Conclusions

- Current passenger rights as established by the CJEU would be reduced by the review as proposed
- **Facit:** Overall, the proposal does not strengthen but weaken passenger rights
- We call on the European Parliament to ensure that the necessary improvements will be made in line with the Parliament's previous positions



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