

PASSENGER RIGHTS 2.0: TOWARDS BETTER CONSUMER PROTECTION AND A MORE RESILIENT TRAVEL SECTOR

Accompanying paper to BEUC's response to the European Commission's public consultation on the Better Protection of Passengers and their Rights Initiative



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Introduction

Passenger rights - in all modes - are one of the major achievements of the European Union, as they create common and harmonised rules guaranteeing strong rights for travellers. However, the evolution of the different travel markets, and the various successive crises have been stress tests that have highlighted legal gaps, and the need to reform the regulations.

BEUC welcomes the Commission plans for the "*Better protection of passengers and their rights*" initiative¹ which in our view identified well the current shortcomings of the EU passenger rights framework.

BEUC welcomes the main objectives of the initiative, namely to:

- improve the financial protection of air passengers against the risk of a liquidity crisis or insolvency regarding the reimbursement of tickets and passengers' repatriation;
- ensure the swift reimbursement of passengers booking via an intermediary ticket vendor;
- assess whether to consider introducing a right to refund to passengers when they cancel their tickets themselves due to a major crisis;
- propose an adequate framework of rules for the protection of passengers who experience travel disruption when changing from one transport mode to another.
- Ensure better enforcement of passenger rights.

However, we believe, that this initiative is an opportunity to be seized by the European Commission to go beyond the above objectives and tackle other structural problems of the transport sector, particularly aviation.

Many problems related to passenger protection, the enforcement of the rights, as well as the resilience of the sector could be addressed through a long-term vision and an ambitious legislative proposal on passenger rights.

This complementary paper, which builds on BEUC's feedback to the "Better Protection of Passengers and Their Rights" Initiative and complements our response to the public consultation in this area, intends to draw the European Commission's attention to, in our view, several important points that are not sufficiently considered or still missing in their current considerations.

The paper notably aims to:

- explain in more detail our recommendations on the five main topics of the public consultation;
- present our proposals on how to "phase out" full consumer prepayments to airlines, and/or how to secure the remaining consumer pre-payments (ex: "escrow" schemes);
- propose the harmonisation/streamlining of several passenger rights provisions to ensure clarity and consistency between passenger rights regulations.

This paper aims also to complement some of the BEUC answers to the public consultation, by detailing initiatives and good practices shared by our members at national level (effective national alternative dispute resolution schemes, automatic refund schemes etc.).

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13290-Travel-better-protection-for-passengers-and-their-rights_en , last consulted on 17.11.2022.

SECTION 1: BEUC's detailed views on proposed policy measures

Section 1 of this document follows the structure of the public consultation and details successively BEUC's positions on the main policy options proposed and our vision on the five main topics identified.

1. Passenger protection in case of an airline insolvency

1.1. Reimbursement of tickets and consumers' repatriation

BEUC fully agrees with the European Commission's "Sustainable and Smart Mobility Strategy" and its strong statement that, "The EU must help passengers when transport operators go bankrupt or are in a major liquidity crisis as in the context of the COVID-19 pandemic. Stranded passengers need to be repatriated and their tickets have to be reimbursed in case of cancellations by carriers."²

For BEUC, **the "Better protection of passengers and their rights" initiative should be a game changer for consumers affected by airline insolvencies.**

Indeed, **currently consumers are strongly impacted when an airline suddenly stops its activities.** According to a 2020 DG Move study on Air Passenger Rights in the EU,³ consumers affected by a bankruptcy lose on average **€431. 87% of this amount is not recoverable at all** because there are no mandatory protection schemes in the airline sector against insolvency, contrary to the package travel sector. In addition, when an airline goes bust, passengers can be left stranded abroad without any solution to be repatriated.

Unfortunately, disappearances of airlines **are not a rare phenomenon** and have even tended to multiply in the recent years according to the very same study (**87 airline insolvencies from 2011-2019) affecting 5.6 million consumers.**⁴ The COVID-19 crisis also greatly impacted airlines' finances as they had to resort to massive and unprecedented state aid⁵ to survive the crisis. All types of airlines are now concerned by bankruptcies⁶ or serious liquidity issues.

Faced with these striking facts, **BEUC calls on the Commission to correct this well identified lack of protection for consumers by introducing an obligation for airlines to subscribe to an insolvency protection mechanism.** The current lack of mandatory protection in case of an airline bankruptcy, is detrimental both for consumers, but also for tour operators/travel agents, which are currently bearing the costs and pay for the insolvency of airlines.

² Point 91 of the Sustainable and Smart Mobility Strategy.

³ Commission européenne, Direction générale de la mobilité et des transports, Kouris, S., Study on the current level of protection of air passenger rights in the EU : final report : study contract, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/529370>

⁴ Commission européenne, Direction générale de la mobilité et des transports, Kouris, S., Study on the current level of protection of air passenger rights in the EU : final report : study contract, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/529370>, points 8.3

And 8.17.

⁵ Special Report 15/2021: Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts

⁶ Norwegian Air, Virgin Atlantic, Czech Airline, Jet Time, SunExpress Deutshaland, Flybe, WOW Airline, to provide only a few examples.

However, for us, in spite of clearly identifying the problems and the important consequences for consumers, the policy measures proposed in the ongoing public consultation remain **clearly insufficient to remedy the identified problems and provide for a harmonised and EU-wide consumer protection when an airline goes bust.** At best, they only very partially solve certain problems raised by the insolvency of airlines.

The policy options currently being considered by the European Commission such as - better informing passengers about optional insolvency insurance available on the market or offered by airlines; or protection granted via certain payment methods have **already been identified by successive DG Move studies** (from 2011⁷ and 2020⁸ **as partial and insufficient to protect all consumers in the same way.**

We would like to recall that already in its 2013 Communication,⁹ the European Commission, decided to promote industry led initiatives and proposed to incentivise the travel and the insurance industries to propose solutions for consumers. The Commission proposed already almost a decade ago, for instance, to “engage with EU air transport associations to formalise the existing voluntary agreements on the provision of rescue fares and their effective promotion;” to “engage with industry to encourage the wider and more systematic availability of SAFI or similar insurance products across the EU;” or to “encourage the wider and more systematic availability of information about credit card refund schemes or similar products in a Member State to allow passengers to protect themselves against the risk of insolvency under national law”.

In 2022, almost a decade after this Communication, the observation is clear: market-led initiatives promoted at the time **did not deliver and the market situation remains the same for consumers and all actors impacted by an airline bankruptcy.**

The 2020 DG Move study¹⁰ on the current level of protection of air passenger rights in the EU confirms this state of play and notably highlights that between 2011 and 2019:

- 2% of passengers impacted by an insolvency were covered by SAFI;
- 13% would benefit from some protection from their credit card providers;
- 3% may be covered by IATA BSP schemes.

1.2. Optional travel insurance and other partial protections on the market

In 2019, the European Insurance and Occupational Pensions Authority (EIOPA) published a study identifying a lot of consumer protection problems with travel insurance policies. Among other things, they identified very high commission fees, poor value for money, useless products, many contractual exclusions, inadequate cover etc. As a result of those findings, EIOPA issued a formal warning to the travel insurance industry in response to the issues identified.¹¹

⁷ European Commission impact assessment on passenger protection in the event of airline insolvency, Final Report, February 2011, prepared by Steer Davies Gleave.

⁸ Commission européenne, Direction générale de la mobilité et des transports, Kouris, S., Study on the current level of protection of air passenger rights in the EU : final report : study contract, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/529370>, table 8.4, p. 194.

⁹ [Communication from the Commission](#) to the European Parliament, the Council, the European Economic and social committee and the Committee of the Regions on Passenger Protection in the event of Airline Insolvency, COMM(2013), 129 final, see in particular points 2.4 and 2.5.

¹⁰ Commission européenne, Direction générale de la mobilité et des transports, Kouris, S., Study on the current level of protection of air passenger rights in the EU: final report: study contract, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/529370>, section 8.

¹¹ https://www.eiopa.europa.eu/content/eiopa-identifies-consumer-protection-issues-travel-insurance-and-issues-warning-travel_en , last consulted on 01.11.2022.

Furthermore, during the pandemic, several of our members reported^{12,13} that travel insurance policies tended to be less protective than before COVID-19. **The promotion of optional travel insurance to protect consumers against airline insolvency is therefore not the appropriate way forward for complete and harmonised traveller protection.**

Regarding other partial protection mechanisms against insolvency on the market, for BEUC, none of the reported existing schemes currently available throughout the EU meets the necessary requirements to qualify as fully protective (covering in particular assistance to stranded passengers, reimbursement of flights and repatriation of passengers, voluntary vouchers accepted by consumers etc.)

As reported by the successive DG Move studies:

- SAFI (Schedule Airline Failure Insurance) is only available in a few Member States and **companies perceived as being in financial difficulty are excluded from SAFI**, while these are the companies more likely to fail and for which consumers really need protection. In any case, an optional system, as is the case for SAFI, would leave many consumers unprotected.
- The protection available through **credit cards** only provides for a very partial protection as often it only covers the costs of the flight not taken but NOT the repatriation in case of stranded passengers. Furthermore, it is clear that such potential protection scheme does not benefit all as not all consumers are using the same means of payment to book their tickets.
- Finally, so-called “rescue fares” and similar methods of protection are restricted to passengers on particular airlines or in specific Member States (e.g., interlining agreements). Again, this protection is only partial and not sufficient to protect all stranded passengers. Furthermore, it only covers the repatriation part, but leaves the question of the refund of consumers’ expenses and prepayments unanswered.

For BEUC, to correct the current problems faced by consumers when an airline bankruptcy occurs, **airlines should be obliged to subscribe to an insolvency protection mechanism**, at least mirroring the existing obligations of tour operators/travel agents in the Package Travel Directive.¹⁴

BEUC urges the European Commission to take inspiration from already existing and effective examples:

- *In the airline sector:* the Danish Government introduced in 2015 mandatory insolvency protection for airlines¹⁹ in the form of a fund valid for both package tours and single tickets. Under this scheme, all airlines departing from Danish airports have to contribute to the fund with a small fee per passenger, and all passengers departing (or planned to depart) from Danish airports are covered, irrespective of the nationality of the airline or the passenger. For now, **this mechanism has proven to be effective** and is now recognised and well accepted.¹⁵

¹² <https://www.which.co.uk/news/2021/04/coronavirus-what-it-means-for-your-travel-insurance/>

¹³ <https://www.test-achats.be/argent/assurances-assistance-voyage/dossier/coronavirus>

¹⁴ See Article 17 of the Package Travel Directive.

¹⁵ [Regeringen foreslår bedre forhold for flyrejsende \(em.dk\)](#) , last consulted on 19/10/2022.

- *In the Package Travel Sector:* the European Commission **should also take inspiration from the Package Travel Directive regime**²¹ where such mandatory insolvency protection schemes – despite not being perfect – have existed for a long time and have proven to be effective in fully repatriating stranded passengers and ensuring a refund for passengers.¹⁶

Regarding repatriation, BEUC fully agrees that in each Member State, a public authority should be designated to coordinate repatriation efforts when passengers are stranded abroad due to airline bankruptcy.

Again, the European Commission should take inspiration from already existing and effective examples like in the Package Travel Directive (PTD), where such a repatriation system is in place and had proven to be efficient following the Thomas Cook Bankruptcy, where around 600,000 travellers were affected. According to the European Commission report on the application of the PTD¹⁷: "The UK Civil Aviation Authority (CAA) organised the largest peacetime repatriation of more than 140,000 travellers. In the UK alone, the competent authority settled around 340,000 claims, at a value of almost £350 million covered by the government-run Air Travel Organiser's Licence (ATOL) protection scheme".

To conclude, such mechanisms exist, work well for consumers and should be replicated in the Air Passenger Rights Sector.

1.3. A stricter licensing oversight of EU air carriers

BEUC is convinced that a tighter supervision of EU airlines under the Air Services Regulation¹⁸ is indispensable. However, we consider that stricter supervision alone cannot avoid the occurrence of insolvencies and would not avoid problems in all cases given the strong competition that exists in the travel industry in general and among airlines. Moreover, conflicting economic/political/social interests are likely to impede an effective implementation of financial requirements.

For BEUC, the European Commission should take a combined approach to better protect consumers and ensure the financial resilience of airlines by:

- limiting the number of airline insolvencies via stronger monitoring of airlines' financial health under the Air Services Regulation;
- ensuring strong consumer protection if an airline - despite the enhanced surveillance - goes bankrupt by introducing mandatory subscription to an insolvency protection scheme.

¹⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:90:FIN>, see notably point 4, last consulted on 18/10/2022

¹⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:90:FIN>, point 4.1, last consulted on 01.11.2022.

¹⁸ Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community

BEUC Recommendations:

- 1) The Commission should make a legislative proposal establishing the obligation for air companies to provide for a financial guarantee covering their liabilities towards passengers in case of insolvency or removal of the operating license.
- 2) The guarantee scheme should cover:
 - the refunding of the sums paid by the passenger (pre-payments and pending refunds) in case of insolvency and withdrawal of operating licence under the Regulation 1008/2008;
 - all vouchers accepted by travellers;
 - the (full) repatriation costs if they are stranded abroad.
- 3) Each Member State should be required to designate an authority coordinating repatriation efforts when passengers are stranded abroad due to an airline's bankruptcy.

2. Intermediary ticket vendors

BEUC fully agrees with the identified issue, namely that "there are no specific provisions under the [Air Passenger Rights] Regulation ensuring the reimbursement of passengers where they booked their ticket with a ticket vendor (e.g. travel agent, online booking platform) acting as an intermediary between the passenger and the airline" and with the objective defined in the public consultation, namely to "Ensure the swift reimbursement of air passengers booking via an intermediary ticket vendor".

In our view, **all actors (airlines/intermediaries) selling air tickets shall comply with the current regulatory seven-day deadline defined in Article 8(1)(a) of the Regulation 261/2004 on Air Passenger Rights. The non-respect of the deadlines should lead to deterrent sanctions. The same remarks apply for other modes of transport.**

However, BEUC considers that the policy options proposed under the current public consultation to correct the current shortcomings are insufficient and/or somehow inadequate to ensure a high level of protection for consumers when booking via intermediaries and, thus, to ensure a swift refund for consumers.

For instance, BEUC disagrees with the policy measure proposing that when passengers booked an air ticket via an intermediary ticket vendor, they should only be entitled to turn to such intermediary to obtain a reimbursement in case of a cancellation, and not to the air carrier. From the consumer's point of view, putting the only and sole responsibility of refund on intermediaries, with no back up options to ask airlines for a refund in case of non-compliance is too risky.

Consumers' right to claim money back from airlines in case of non-compliance by the intermediary should be secured. Otherwise, consumers can still be "hostage" to the situation where, for example, an airline withholds the money making it impossible for intermediaries to refund consumers¹⁹, as notably happened during the pandemic. This would put consumers' right to a refund at stake.

BEUC is also very sceptical about any "*soft measures*" aiming to encourage online intermediaries to commit to improving transparency towards consumers about who is responsible for refunding. **Without clear and binding rules, the situation and treatment of consumer complaints will remain completely different from one intermediary to another, and if a new crisis arises, the whole situation that appeared during the pandemic will be replicated again** (consumers being ping ponged between different actors).

It is also worth recalling that at the time of drafting this paper, a Consumer Protection Cooperation Network (CPC-Network) coordinated action on online intermediaries²⁰ is ongoing and not yet concluded, after long months of negotiations. This highlights the difficulty to solve the problem via simple dialogue and commitments.

Therefore, for BEUC, **soft measures, like mere incitation and commitments from intermediaries, will not be sufficient to ensure strong protection for travellers when booking.** Clear rules are needed to ensure:

- a swift refund of consumers (ideally automatic - see section 1.5 on Enforcement for further details);
- legal clarity for all actors (i.e., who is responsible for what);
- consumers being able to benefit the same level of protection throughout the whole EU when buying a ticket via an online intermediary.

2.1. To whom to direct a claim?

Regarding "refund rules," BEUC considers that the best way to ensure consumers' protection is to enshrine **joint and several liability between online intermediaries and transport operators**, which would allow consumers to direct their claim to both.

In addition, the following measures should be introduced by law:

- clear deadlines for B2B refunds (airlines to intermediary) to allow intermediaries to comply with the seven-day deadline to reimburse consumers;
- deterrent sanctions for non-compliance (e.g., fines based on a percentage of traders' turnover, or periodic penalty payments);
- consumers that bought their tickets via an intermediary should be able to access to their reservations easily (i.e., the booking reference of the airline and the email address used for the reservation should be mentioned in the booking confirmation). The intermediary should also allow consumers to easily access via its website and communication toward consumers (mail/SMS etc.²¹) the relevant airline form or email address to ask for their refund;

¹⁹ See for instance, <https://eutraveltech.eu/press-release-airlines-refusal-to-refund-travel-companies-and-their-customers-has-to-stop/>)

²⁰ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en , last consulted on 03.11.2022.

²¹ See section 1.5 on how Technology should serve to better inform passengers and help them to enforce their rights.

- airlines should be required to implement an easy procedure to allow passengers to identify themselves and provide their payment details, at no cost, including by means of an online form on the carrier's website and a call centre;
- to facilitate the process, consumers' payment details (in full compliance with GDPR requirements), should be asked by the online intermediary during the booking process and communicated to the operator in case of consumer complaints. This would allow a direct refund of consumers by the airlines. It should of course be clarified that consumers' data can only be used for the reimbursement of the consumer or the payment of lump sum compensation.

In any case, information about the "complaints handling" policy and the refund process when booking via an intermediary should be provided to consumers at relevant moments, namely:

- at pre-contractual information stage (before booking);
- in the booking confirmation email;
- when travel disruption triggering the right to refund and compensation occurs via SMS, emails, via an app etc.²²

BEUC also recommends the creation of an EU standard complaint form available in all EU languages that should be mandatorily communicated to consumers if travel disruption occurs. This EU-wide standard complaint form for the refund of tickets bought via intermediaries and for compensation requests should be developed by the European Commission. Inspiration should be taken from the new provisions of the Rail Passenger Rights Regulation where such Commission power is set (Article 18(6)). This would harmonise the complaints handling process and further empower consumers to exercise their passenger rights when booking tickets via an online intermediary.

2.2. Other responsibilities of online intermediaries

BEUC considers that pre-contractual information requirements about the type of tickets bought by consumers and the refund policies are essential and should be clarified by law.

However, in our view, **online intermediaries' obligations and liabilities towards consumers should be broader and further defined by law**, notably in case of travel disruption (provision of real-time information, re-routing duties, etc.).

Such **legislative measures** should help avoid the practices of online intermediaries that we can observe now: i.e., claiming to be only intermediaries and refusing to refund consumers and/or even to help consumers as we have seen for years now and as exacerbated during the COVID-19 pandemic. In practice, intermediaries are the main (and sometime the only) direct interlocutor of consumers. **Thus, they should also have the following liabilities toward consumers:**

- **to inform consumers in real time** in case of travel disruption, using the appropriate technology (SMS, email, etc.) to provide direct information to consumers²³;
- **to inform consumers of the next re-routing options** available to them to reach their final destination (with the same carriers, competitors and other modes of transport if necessary).

²² Idem.

²³ Idem.

- If consumers opt for the re-routing option, they should **re-route consumers on the agreed alternative transport solution, at no extra cost**. This should be combined with an effective B2B right to redress.
- In case of failure to perform this legal obligation, **any additional costs** that consumers could occur because of the travel disruption **should be refundable** (new tickets, taxi expenditure etc.).
- **To proactively inform consumers about their passenger rights and how to exercise them** (if consumers benefit from a right to compensation, for instance).

See also BEUC contribution under section 4 "Passenger Rights for Multimodal journeys".

BEUC Recommendations:

- The European Commission should introduce a joint and several liability between the online intermediaries and the transport operators, allowing consumers to direct their claim to both actors.
- Additional obligations and liabilities of online intermediaries towards consumers should be defined by law especially in case of travel disruption (provision of real-time information, re-routing duties, etc.). Simple "information obligations" are not sufficient.
- Business-to-business (B2B) refund rules/deadlines should be defined by law, coupled with deterrent sanctions in case of non-compliance, to ensure a timely refund for consumers in compliance with the legal deadlines.

3. Passengers' right to cancel a trip in extraordinary circumstances

3.1. Consistent travellers' rights

BEUC strongly agrees with the problem identified, and the objective of the initiative, to ensure that consumers benefit from "Reimbursement in case of cancellation by air passengers in the event of major crisis such as a pandemic or a natural disaster".

The pandemic has highlighted discrepancies between the Package Travel Directive (PTD) and the passenger regulations that need to be corrected via the "Better Protection of Passengers and their Rights" initiative.

First, the PTD provides²⁴ that before the start of their package travel, consumers can cancel their contracts without paying any termination fee in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and significantly affecting the performance of the package. This right does not exist for consumers in any of the passenger rights regulations. Consumers are, in these cases, left to the mercy of the Terms and Conditions of the air/train tickets and/or their goodwill.

In BEUC's view, **consumers should benefit from the same cancellation rights at no cost in case of a major crisis, also if they buy only a standalone ticket, and for all modes of transport.**

Second, BEUC considers that the legal gaps between the Package Travel Directive and the Air Passenger Rights Regulation (but this also applies to other Passenger Rights Regulations) should be further corrected. **Passenger rights regulations should mirror the PTD provisions granting consumers a right to cancel their tickets any time before the take-off of the flight** against an "appropriate and justifiable" termination fee to the airline that should be defined by law.²⁵

BEUC is strongly against any soft measures to only encourage carriers to give the right to consumers to be refunded. During the pandemic, several BEUC members highlighted situations where, despite travel warnings discouraging consumers to travel, flights took off, leaving consumers empty handed. As this is considered as a "no-show" by most airlines, consumers often lost their money. Furthermore, BEUC would like to highlight, as pointed out in the different DG Move studies - and as recognised in the call for evidence of the present initiative - that passenger rights are not sufficiently implemented and respected by carriers. Consequently, mere incitation/soft measures will not solve the situation.

To the contrary, clear rights coupled with stronger enforcement provisions should be inserted in the review of the passenger rights regulations, especially air (See BEUC Contribution under section 1.5 on Enforcement).

Finally, BEUC is strongly opposed to possible policy measures aiming to promote voluntary insurances for passenger cancellation of the contract in the event of a major crisis. BEUC members^{26,27} have repeatedly pointed out during the COVID-19 crisis that travel insurance, bought by consumers and proposed by the industry is ineffective because it often excludes the risks of pandemics from their policies.

Furthermore, even pre-pandemic, travel insurance were already identified by EIOPA as problematic (very low coverage, numerous exclusions etc.)²⁸ Therefore, encouraging the promotion of such optional insurance will not solve the issue and could be detrimental for consumers.

²⁴ Article 12(2) PTD.

²⁵ Article 12(1) PTD.

²⁶ <https://www.test-achats.be/argent/assurances-assistance-voyage/dossier/coronavirus>

²⁷ <https://www.which.co.uk/news/2021/04/coronavirus-what-it-means-for-your-travel-insurance/>

²⁸ https://www.eiopa.europa.eu/media/news/eiopa-identifies-consumer-protection-issues-travel-insurance-and-issues-warning-travel_en

3.2. Clear definition of a 'major crisis'

The policy measures described in the public consultation of the "Better Protection of Passengers and their Rights" initiative would rely on a clear and unambiguous definition of the new concept of a 'major crisis' to ensure clarity on whether a passenger is entitled to reimbursement at no cost.

As proposed in our [position paper](#) on the Package Travel Directive,²⁹ in our view **the legal value of travel warnings should be clarified in the PTD and in the updated passenger right frameworks**. For us it should be clear that:

Any official statement made by an authority recognised as such in the country of residence of the consumer or in the country of destination of the package or the flight, discouraging or prohibiting consumers from traveling must be considered admissible and sufficient evidence to activate the right to a full refund of the package of the flight, without charge, penalty or fee.

Such clarification of the legal value of travel warnings will avoid the discussions/interpretations that took place during the recent crisis and will grant more legal certainty for consumers and all actors.

BEUC Recommendations:

- All passenger rights regulations should grant consumers a cancellation right at no cost in case of a major crisis.
- Passenger rights regulations should mirror the PTD provisions granting consumers a right to cancel their tickets any time before the take-off of the flight against an "appropriate and justifiable" termination fee to the airline that should be defined by law.
- The legal value of travel warnings triggering this right to compensation at no cost in case of a major crisis should be clarified in the different passenger rights regulations and in the Package Travel Directive.

4. Passenger rights in multimodal journeys

4.1. Current state of play

BEUC fully agrees with a problem identified by the European Commission, namely that passengers are not protected by the existing passenger rights rules when switching between different transport modes and that persons with disabilities and persons with reduced mobility receive no assistance when switching between transport modes.

²⁹ See point 7.1.

BEUC supports the four policy measures proposed to solve the situation. However, BEUC considers that such policy measures, despite being necessary:

- *First*, should be further developed and,
- *Second*, are far from being sufficient to ensure that passengers are protected when travelling multimodal.

A legally binding multimodal framework covering the essential passenger rights and providing for clear, strong and easily enforceable provisions should be established. Of course, considering the existence of the different types of multimodal tickets and the different actors (carriers, ticket vendors etc.). These rules should clarify the following questions:

- Who is responsible for providing consumers with information before the beginning of the multimodal journey and during the journey (real-time information) or if travel disruption occurs?
- Who is responsible for consumer assistance?
- Who is responsible for dealing with re-routing obligations?
- Who is responsible for dealing with consumer complaints?
- Which regime of compensation applies?

Such binding protection is in our view fundamental to promote the shift to multimodal travelling. Consumers increasingly want to travel using different modes of transport. It allows them to use less-polluting modes of transport for some segments of the journey (e.g., combination of Air-Rail). However, first and foremost they want to reach their final destination on time and therefore cannot compromise on their protection.

BEUC is opposed to relying on “soft measures” and “market led solutions” such as “voluntary continuation agreements” to protect consumers in multimodal journeys. This is the reality today on the “multimodal market” and, when disruption occurs, consumers are greatly impacted (no assistance, no information, no re-routing options etc.)³⁰

Furthermore, currently:

- the number of continuation agreements is still very low, so consumers are still, for most of their multimodal journeys, not protected;
- in several modes of transport, the number of continuation agreements is tending to decrease rather than increase (e.g., in rail);
- such continuation agreements are not known by consumers and not promoted at all by operators when disruption occurs. Consumer protection is therefore left to the goodwill and transparency of travel operators;
- such continuation agreements will lead - de facto - to a different consumer protection regime depending on the agreement between operators, leading to a very sparse and fragmented situation for consumers. To ensure consumers’ trust in multimodal journeys we need clear, simple, harmonised and easily enforceable rules.

³⁰ See BEUC [position paper](#) on multimodal (2017) for some examples of problems encountered by multimodal passengers already in 2017.

Similarly, **BEUC considers that introducing a mere pre-contractual obligation of providing information to consumers about the type of ticket they have bought is not the right solution.** In our view, we should avoid the same regime that exists in the updated Rail Passenger Rights Regulation where travel operators, and ticket vendors simply need to inform consumers before purchase, if tickets are "thought tickets" or not. **In the end, in BEUC's view, it is an easy way to escape any responsibilities towards consumers, leaving them largely unprotected.**

Finally, BEUC opposes using "optional travel insurance," as a predominant means to protect consumers in multimodal journeys.

4.2. What should be the core passenger rights in multimodal journeys?

A. Right to re-routing

When consumers face travel disruption, they have the right to choose between re-routing and the reimbursement of their tickets. This principle is established in all passenger rights regulations. Therefore, this fundamental passenger right to receive alternative transport as soon as possible, or to rebook for long delays, cancelled travel or denied boarding in multimodal transport **should be clearly defined by law,** as is the case in all stand-alone passenger rights regulations.

Consumers should be able:

- to "hop on the next transport service" (plane/rail/buses/coaches etc.), at no extra cost;
- be re-routed under comparable transport conditions;
- be re-routed with another carrier (competitor), if it is the quickest solution and,
- be re-routed with another type of transport mode, subject to consumers' agreement.

Regarding re-routing obligations, BEUC considers **that alternative re-routing options should be proactively proposed by transport operators and/or intermediaries (depending on the type of contract)** to consumers and consumers shall not have to arrange their re-routing by themselves.

If traders fail to re-route consumers, **any additional costs** linked to the fact that they need to make their "own rerouting arrangements" **should be refunded** (additional tickets + phone costs and taxis etc.), not only "the necessary, appropriate and reasonable costs incurred in obtaining the new ticket(s) similar to what is already required under Article 18(3) of Regulation (EU) 2021/782 on rail passenger's rights and obligations".

B. Right to care and assistance in case of travel disruption

For the moment, consumers who are victim of travel disruption in multimodal journeys remain empty handed if something goes wrong (cancellation, missed connection, delay etc.) Transport operators often refuse to take care of passengers or to indicate that the other operator is responsible etc.

To remedy the situation, BEUC considers that:

- the right to care and assistance (e.g., meals, hotels, transport between the airport and place of accommodation etc.) should be granted by the operator responsible for the disruption;
- consumers should be informed at time of booking and once again when the disruption occurs of who is responsible for care and assistance;
- the most protective standard for consumers should be applied to multimodal journeys. Thus, Article 20 of the new Rail Passenger Rights Regulation, indicating that after 60 minutes of delay or more, passengers benefit from the right to care.

C. Right to compensation

The compensation should be paid by the travel operators and/or the intermediaries, who should be jointly and severally liable under the revised passenger rights framework. An effective B2B right to remedy should be defined under this new multimodal framework.

D. Complaints handling procedures in multimodal journeys

The success of multimodal travelling will also be linked to the rapidity and facility for consumers to lodge a complaint with the different carriers and intermediaries if they are dissatisfied with multimodal services and/or if travel disruption occurs, therefore:

- Complaints handling mechanisms should be clear, transparent, and harmonised for consumers.
- Clear deadlines for carriers and intermediaries to deal with consumer complaints should be established by law based on the most protective existing standard in Passenger Rights regulations.
- A standard complaint form should be developed by the European Commission to facilitate consumers' claims.
- In case of travel disruption consumers should be proactively informed about the existence of such a form, and the email address to which it should be submitted, by the carrier or the intermediary, depending on with whom the contract was concluded.

E. Member States should be required to designate a National Enforcement Body (NEB) in charge to deal with multimodal journeys/complaints

Information about the competent authority should be given to consumers at time of booking by the carrier or the intermediary (depending on where consumers bought their tickets) and be part of the "passenger rights notice" proactively given to consumers when travel disruption arises.

F. Strong enforcement provisions should be defined

To avoid the pitfalls of the current passenger rights regulations, it is essential to determine effective and deterrent enforcement provisions from the creation of the legal framework of multimodal passenger rights.

4.3. Ticket selling entities

Entities selling “**separate tickets** together comprising a multimodal journey **that are integrated by ticket selling entities (ticket vendors/tour operators or carriers selling the tickets of other carriers) at their own initiative** (i.e. not on behalf of a given carrier), which do not afford passengers any comprehensive protection in case of disruption when changing modes, notwithstanding that the passenger pays for all individual tickets in one single commercial transaction” should have more obligations and liabilities towards consumers, than simply an information obligation, especially in case of travel disruption.

We consider that ticket selling entities should at least have the obligations and liabilities toward consumers defined in Section 1(2)(b) above.

BEUC Recommendations:

- To create consumers’ trust in multimodal journeys, it is essential to introduce strong and harmonised passenger rights framework on the “core” passenger rights (information, assistance, re-routing, refund, compensation etc.). Consumer protection should not be regulated by inter-enterprise agreements but by law.
- Additional obligations and liabilities of entities selling “separate tickets together comprising a multimodal journey that are integrated by ticket selling entities at their own initiative” towards consumers should be defined by law, especially in case of travel disruption (provision of real-time information, re-routing duties, etc.). Simple “information obligations” are not sufficient.

5. Enforcement of passenger rights

BEUC fully agrees with the problems identified in the public consultation. However, we believe that **the policy measures considered in the public consultation are far from sufficient to ensure better enforcement of passengers' rights and better compliance with EU law by travel operators, online intermediaries, ticket vendors, etc.**

Below you will find BEUC’s additional proposals that in our view, are key to ensure that the “Better Protection of Passengers and their Rights” will be a real step forward to empower consumers to enforce their rights.

5.1. Policy options being considered

“Transport carriers and terminal operators should regularly publish data on how they have complied with EU passenger rights (e.g., data on delays and cancellations of their services, assistance to persons with disabilities and reduced mobility etc.)”

For BEUC, **strict reporting obligations should be defined and harmonised between the different passenger rights regulations** (as well as in the new multimodal passenger rights framework once established). Following the consultation of our members on the reporting obligations of travel operators to the national enforcement bodies, it was found that for the moment:

- very few exist;
- often, the reporting obligations are either incomplete or do not specifically concern passengers' rights/passenger complaints, but other aspects (e.g., fuel consumption of travel operators etc.);
- the results of these reports are often not public, despite the fact that transparency is essential in this field for consumers and the authorities.

Those findings were confirmed by a European Court of Auditors (ECA) report³¹ published in the aftermath of the pandemic, which highlights that there is "a lack of information to allow effective enforcement of passenger rights".

To change the situation, BEUC considers that strict reporting obligations – as also proposed by the ECA – should be established in the all passenger rights legislation (and the Package Travel Directive) from:

- transport operators to the NEBs and,
- from the NEBs to the European Commission.

Transport operators should report **annually** to their NEBs and **NEBs should be required to report to the European Commission on the same basis** (or every two years to identify trends in the respective markets).

Good practices from non-EU countries can also be a source of inspiration for the introduction of "reporting obligations" and transparency towards consumers.

In the United States, airlines are required to report to the Department of Transportation (DoT). Information that has to be shared contains internal monitoring of performance, information on airline service quality and statistics such as on-time flight performance/delays, mishandled baggage, overbooking, consumer complaints, and the airline's reports of loss, etc. This information is published monthly³².

In Malaysia, there is also a strict reporting obligation to the aviation authority *inter alia* about type of consumer complaints against airlines and violations and breaches of the legislation, including measures taken by the airline to remedy the problems. A report is published bi-annually by the authority.³³

- "The Commission should, in cooperation with the national authorities, ensure a more uniform application of EU passenger rights".

BEUC fully agrees with this policy measure. In our view, a **stronger and formalised network of national enforcement bodies** in charge of the enforcement of passenger rights regulations (and the Package Travel Directive) **should be established to avoid discrepancies in passenger rights enforcement within EU countries.**

³¹ <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=58696> , see Paragraphs 40-43, 2021.

³² See point 7.38 of DG Move Study on the current level of protection of air passenger rights in the EU.

³³ See point 7.39 of DG Move Study on the current level of protection of air passenger rights in the EU.

Currently, only an informal NEB network exists which is a platform for exchanging information and good practices between the authorities. However, **in the light of incidents affecting large numbers of passengers all across Europe, happening more and more often** (especially in the air sector), a stronger and more formalised network of passenger rights enforcers is now needed. Such network of NEBs could be:

- a specific *ad-hoc* network of authorities, or,
- a working group of authorities within the CPC network.

Such a formalised system would help the network of authorities to take a "common position" for widespread and EU wide infringements (ex: authorities deciding that a situation is an extraordinary circumstance or not) and could clearly help in the interpretation of passenger rights legislation needed for enhanced passenger rights enforcement and the harmonisation of consumer protection within the EU.

The NEB network should speak with one voice when it comes to the interpretation of the EU passenger rights legislation and the application of the Court of Justice's case law in mass harm cases affecting passengers in many EU countries.

Formalised networks, dealing with EU consumer law matters, already exist in the European landscape and could serve as an inspiration.³⁴ Most importantly, the network of NEBs should have well established mechanisms for the authorities to effectively cooperate in order to jointly deal with infringements of passenger rights that have a widespread or EU dimension and be equipped with strong investigation and enforcement powers.

At minima, for cross-border passenger rights infringements, National Enforcement bodies (in all passenger rights sectors) should have the investigation and enforcement powers granted under article 9(3) & 9(4) of the Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC Regulation)³⁵.

Passenger rights authorities should also have the power to request access to the relevant data of carriers, terminal & infrastructure managers, ticket vendors and tour operators to conduct investigations, without undue delay and in any event within one month from the receipt of the request, as per Article 32(2) of the revised Rail passenger Rights Regulation.

Furthermore, in our view, National Enforcement bodies (NEBs) should all:

- deal with individual complaints and take binding decisions. Of course, the decision should be appealable;
 - take decisions that are applicable to all passengers with the same reason for action (ex: all passengers in the same flights);
 - be independent;
 - make the information about the sanctions they imposed public.
- *"The Commission should be able to request national enforcement bodies to investigate specific cases of infringements of passenger rights".*

³⁴ e.g., Consumer Protection Cooperation (CPC) Network.

³⁵ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

BEUC considers that this policy option has the potential to improve the situation for consumers, especially if it is applied and considered in all passenger rights Regulations. This could circumvent the reluctance of many national authorities to act against their national companies as we have seen during the pandemic.

Regarding the powers of the European Commission, BEUC would even propose to go beyond and recommends that under this new formalised NEBs network proposed above, the Commission should play a more important role and should also be granted with investigatory and direct enforcement powers for widespread and EU-wide infringements of passenger rights regulations³⁶.

5.2. *What else is needed?*

In BEUC's view, **more ambitious measures and policy options should be also considered to ensure that EU passenger rights are enforceable in practice.**

A. Automatic reimbursement and compensation schemes

Many passenger claims based on the passenger rights Regulations are very straight forward, especially if no extraordinary circumstance has occurred. Yet, even simple refund and compensation claims often end up in vain due to the crippled enforcement procedures.

This ends up being very frustrating for the passengers while it should not be. In most of the cases, the airline has all the passenger's data and could simply transfer the money to them automatically without the need for consumers to complain first.

This is why **BEUC is calling for the European Commission to consider obliging the airlines and all transport operators to introduce automatic reimbursement and compensation schemes** (where feasible).

Automatic compensation is also **an official recommendation of the European Court of Auditors** formulated in its report on passenger rights, published in December 2018.³⁷ BEUC supports this recommendation fully and suggests the Commission to consider putting it in place via its upcoming legislative initiative.

Similar schemes already exist in several sectors, including rail^{38,39}, energy in the UK⁴⁰ or public transport in Denmark.⁴¹ These innovations would have **real potential to improve the level of enforcement of passenger rights.**

Finally, a 2019 British study⁴² conducted in the rail sector aiming to determine what consumers really want from technology when travelling, confirms that consumers want enforcement and refunds to be more automatic.

³⁶ See articles Article 3(3) and 3(4) of the CPC Regulation.

³⁷ https://www.eca.europa.eu/Lists/ECADocuments/SR18_30/SR_PASSENGER_RIGHTS_EN.pdf

³⁸ In the UK, several rail companies (e.g., Avanti West Coast, Northern and Trans-Pennine Express, and others) propose automated reimbursement arrangements to their customers. Similar initiative in Sweden exist in the railway sector.

³⁹ <https://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2016/11/16173333/AGENCY-REPORT-delays-and-compensation.pdf>

⁴⁰ <https://www.ofgem.gov.uk/publications/customers-entitled-automatic-compensation-switching-problems-1-may>

⁴¹ <https://dinoffentligetransport.dk/en/customer-service/service/travel-guarantee/travel-guarantee-for-trains/>

⁴² Luis Oliveira, Claudia Bruen, Stewart Birrell, Rebecca Cain, What passengers really want: Assessing the value of rail innovation to improve experiences, Transportation Research Interdisciplinary Perspectives, Volume 1, 2019, 100014, ISSN 2590-1982, <https://doi.org/10.1016/j.trip.2019.100014>.

B. Technology should better serve passengers

The “Better Protection of Passengers and Their Rights” initiative is also a great opportunity to better explore the potential of technology to improve how consumers are informed.

In case of travel disruption, consumers should be proactively and quickly (which should be harmonised between the passenger rights regulations) informed about disruption, the reasons for the disruption (within 48 hours maximum), their rights as a passenger (assistance, re-routing, compensation, refund etc.)

This information could be sent by email, SMS etc. This communication to consumers should include direct links to a functional complaints email address and/or the EU standardised complaint form developed by the European Commission.

For example, *in Portugal*, our member DECO reports that on the 1 July 2017, a “Digital Platform” became operational, which allows consumers and users to submit their complaints in electronic format.⁴³ They then have the same value as the complaints submitted in physical format.⁴⁴ In this scheme, all suppliers of goods and service providers who carry out their business through a physical establishment open to the public must, at the same time, have the Complaints Book both in their physical and electronic form, even if they do not have a website. They must have an electronic email address, where the complaints in electronic format will be received.

When consumers raise a complaint via the platform, the service provider/seller of goods **and the regulatory body for the sector are simultaneously notified of the content of the complaint**. The traders have a maximum period of 15 working days from the date of receipt of the complaint to respond to it.

Regarding the use of technology to monitor the market and to deal with consumer complaints, **inspiration could also be drawn from non-EU countries** - like *Malaysia* - which seeks to use complaint management platforms to foster passenger rights enforcement, complaint monitoring and ensure transparency to the public.

The Malaysian Aviation Commission (MAVCOM) has developed a consumer awareness platform called FlySmart⁴⁵. This system allows the authority to review a passenger's complaint within a short period of time before sending it to the airline. The airline is then able to provide a full resolution directly to the passenger, a copy of which is also provided to MAVCOM. As a regulator, MAVCOM also has an overview of all complaints, their status and resolution, which allows delays or unsatisfactory resolutions to be addressed more quickly.

(<https://www.sciencedirect.com/science/article/pii/S2590198219300144>)

⁴³ Which is available at www.livroreclamacoes.pt

⁴⁴ The so-called “Electronic Complaints Book” (“Livro de Reclamações Electrónico”) was created by Decree-Law 74/2017, of 21st June and regulated by Regulation 201-A/2017 of 30th June.

⁴⁵ <https://flysmart.my/en/home/>

C. Mandatory and binding Alternative Dispute Resolution

In each Member State, **a unique and sector specific travel Alternative Dispute Resolution (ADR) scheme should ideally be created**, because currently - as highlighted by the Commission's report on the ADR Directive⁴⁶ - most ADR bodies are not specialised in travel services. This will provide consumers with a clear and easily accessible contact point if things go wrong and cannot be resolved with an airline or an online intermediary.

In order for the ADR scheme to become an efficient and real solution to consumer problems, **traders' participation in ADR schemes should be made mandatory** in all sectors, and especially in the transport area which is yielding a very high number of consumer complaints.

Moreover, **the decisions of the ADR bodies should be legally binding**,⁴⁷ but of course they should be able to be appealed before the courts. ADR can achieve higher results when traders are required to participate in the ADR procedure and when they do so in good faith. This line has been taken by the CMA (Consumer and Market Authority) in the UK which stated that mandatory ADR should be adopted "across all essential markets including air travel and those sectors where consumers are hugely vulnerable due to information asymmetries".⁴⁸

It is also noteworthy that **EU legislation has already made traders' participation in ADR mandatory**. This is for example the case of Art. 26 of EU Directive 2019/944 on common rules for the internal market for electricity or the EU Digital Services Act, which provides that "online platforms shall engage in good faith, with the body selected with a view to resolving the dispute and shall be bound by the decision taken by the body".⁴⁹

The need to revise ADR in the travel sector was also highlighted in the findings of 2020 DG Move Study on the current level of protection of air passenger rights in the EU, that demonstrated that ADR bodies are generally welcomed by airlines,⁵⁰ and which recommended as a potential solution to create "a mandatory EU-wide mediation body on air passenger rights".⁵¹

BEUC also calls for ADR entities to report to NEBs traders who systematically and unduly refuse to participate in ADR procedures or that participate in bad faith. As a complement to this proposal, BEUC would call for a requirement for NEBs to publicly disclose the names of traders who systematically and unduly refuse to participate in ADR procedures⁵².

⁴⁶ https://ec.europa.eu/info/sites/info/files/com_2019_425_f1_report_from_commission_en_v3_p1_1045545_0.pdf

⁴⁷ https://www.beuc.eu/sites/default/files/publications/beuc-x-2019-083_eu_air_passenger_rights_and_enforcement.pdf, See BEUC position paper on Air Passenger Rights (2019).

⁴⁸ CMA, Reforming Competition and Consumer Policy, Driving growth and delivering competitive markets that work for consumers, (4 October 2021):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1022615/Reforming_Competition_and_Consumer_Policy_publication_4.10.21.pdf, p. 60

⁴⁹ Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC COM(2020) 825 final, 15 December 2020.

⁵⁰ See points 4.81 and 6.34 of the study.

⁵¹ See table 9.1 – item 9 of the study.

⁵² https://www.beuc.eu/sites/default/files/publications/beuc-x-2022-062_adr_position_paper.pdf, See BEUC position Paper on ADR : Alternative Dispute Resolution for consumers: Time to move up a gear, published in 2022.

Several examples of good ADR schemes in the tourism sector already exist and have been considered by the Commission's ADR Report as good models.

In *Germany*, a public ADR body has been set up for consumer disputes in the airline sector. National legislation requires airlines to participate in ADR procedures before such a body unless they join a certified private ADR entity. Legislation has encouraged airlines to become members of an association operating an ADR body in the passenger transport sector. Today, 44 of the association's members are airlines. By joining the association, airlines accept the binding nature of the rules of procedure of the ADR entity. In 2018, the ADR body reached a settlement rate of 86% for disputes between airlines and consumers.⁵³

In *the Netherlands*, the Foundation of Consumer Dispute Boards (*Stichting Geschillencommissies voor Consumentenzaken*) manages a general council and more than 50 sector dispute resolution councils. The rules of procedure of the sectorial councils are agreed upon by the trade association and the consumer organisation of the relevant retail sector. As members of their trade association, merchants are required to participate in the proceedings before the sector council and to comply with its decisions. Compliance with these conditions is furthermore ensured by a guarantee system managed by the professional association: if the board of directors orders the professional to pay a sum of money to the consumer and the professional fails to do so, the consumer can claim this sum directly from the professional association⁵⁴.

In *Portugal*, our member DECO highlighted that since 2019, and the entry into force of the Law no. 51/209, that amended Law no. 23/96 a mechanism in the Portuguese legal order was established to protect users of essential public services. Under Portuguese law transport services have been included in the list of essential public services. Therefore, transport services are submitted to mandatory participation in ADR schemes.

In the *United Kingdom*, our member Which? indicates that the Energy and Rail Ombudsman could be good examples to take inspiration from because both schemes support their respective sectors to improve complaint handling and address business practices that result in complaints. For example, the Rail Ombudsman makes recommendations to service providers to improve the way their service is delivered and publishes case studies and data which can provide insight into common complaints and how to raise standards. *The Energy Ombudsman* publishes the Ombudsman Services Consumer Impact report and has established a formal tripartite agreement between Citizens Advice (BEUC member), and OFGEM, the British energy regulator to share data and identify market trends.

Also, Which? would like to highlight as a good example the quality of the Consumer Council reporting of passenger complaints and how it can set an example of the type of good data sharing and reporting that can help both consumers and industry in their decision making.⁵⁵

⁵³ See the Conciliation Body for Passenger Transport's ('Schlichtungsstelle für den öffentlichen Personenverkehr – söp') 2018 annual activity report, available at:

https://soep-online.de/assets/files/14.03_soep_Jahresbericht%202018.pdf, p. 16.

⁵⁴ [Report](#) from the Commission to the European Parliament and the Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes - COM/2019/425 final – Box 3.

⁵⁵ See example of their Transport Hub with historical price data:

<https://www.consumerCouncil.org.uk/transportknowledgehub>

In Denmark, our member Forbrugerrådet Tænk considers that they have a good ADR complaints system, but that when it comes to aviation, it is somewhat complicated as several ADR schemes are competent depending on the type of claims submitted. According to our member, what is interesting in Denmark is that:

- almost all decisions in these ADR schemes are followed by traders;
- transport operators can, however, within 30 days of a decision, state that they do not intent to follow a decision;
- if they do not contest, **it becomes legally binding**. If they do contest, the consumer can take them to court for free – all legal fees are paid by the state.

D. A standardised and harmonised complaint form

The complaints handling policies of travel operators differ greatly and are sometimes very problematic for consumers who:

- struggle to find information on traders' websites/apps and where to complain to (multiples clicks and research to find the relevant form etc.);
- are faced with complaint forms limited in number of words or with an impossibility to attach documents;
- sometimes face broken links or recurring bugs preventing them to submit their complaints etc.

BEUC believes that all travel operators' complaints handling policies should be harmonised and standardised across transport modes. To this end, BEUC encourages the Commission to draw inspiration from the new provisions of the article 18(6) of the updated rail passenger rights regulation, which stated that the Commission will adopt an implementing act to establish a common form for reimbursement requests in a format which is accessible to persons with disabilities and persons with reduced mobility. **This should be replicated in all passenger rights regulations.**

However, BEUC recommends going further and to create a standardised complaint form also for compensation requests.

E. Clear and strict deadlines for operators to deal with passenger complaints

Passengers struggle to obtain timely and complete travel operator responses to their complaints. In practice, they often need to send reminders to obtain a response or are even being ignored by the airlines. Since no time limits are set in the current Air Passenger Rights Regulation for handling consumer complaints, it is also often not clear for the passengers how long they need to wait for the response before they should proceed to the next step of the enforcement procedure.

This could be easily remedied by introducing **strict deadlines for dealing with passenger complaints**, for travel operators, retailers and intermediaries. In case of non-compliance by traders with the deadlines, penalties should be introduced in the passenger rights regulations such as periodic penalty payments or interest on overdue payments for consumers per day of delay.

F. Truly dissuasive sanctions

Under the current passenger rights regulations, sanctions for infringements need to be “effective, proportionate and dissuasive”. In practice, such a vague provision leads to a very fragmented landscape. In many countries, sanctions are very rarely imposed and if they are their amounts are not sufficient to have a real dissuasive effect on airlines. Moreover, information about the sanctions imposed is not publicly available.

BEUC calls for an introduction of higher sanctions for infringing the APR Regulation, which would be based on the percentage of the airline’s annual turnover. Similar provisions already exist in more and more consumer legislations and beyond: the [GDPR](#) (Article 83), in the [Digital Services Act \(DSA\)](#) (Article 42), in the [Directive \(EU\) 2019/2161](#) as regards the better enforcement and modernisation of Union consumer protection rules etc.

G. Information about the reasons of travel disruptions should be made public

Passengers are often not informed about the exact reasons of their travel disruption, even if this information is crucial for them to assess which air passenger rights apply in their specific case. Moreover, passenger complaints for compensation are sometimes rejected on the basis of the exception for extraordinary circumstances (especially in aviation), without the operator specifying the exact reason for their journey being cancelled or delayed. This adds an additional burden on consumers who in order to verify the airline’s statements must send additional follow up messages to the airline and failing this, complain to the NEBs or ADR bodies.

To **improve the transparency** in this area, BEUC supports the recent recommendation made by the European Court of Auditors, in its report on passenger rights,⁵⁶ to oblige the airlines to publish a note to passengers within 48 hours of the occurrence of the travel disruption of its causes and specifically, whether it was due to extraordinary circumstances. This should be further considered in the context of the “Better Protection of Passengers and their Rights” initiative and replicated in all passenger rights regulations.

⁵⁶ [European Court of Auditors special report no 30/2018](#): EU passenger rights are comprehensive but passengers still need to fight for them.

BEUC Recommendations:

More ambitious measures to ensure that consumers fully and swiftly enjoy all their passenger rights should be proposed to ensure that the initiative will be a game change for consumers. This should include:

- introducing automatic refund and, where feasible, compensation schemes;
- creating a formalised and stronger network of the national enforcement bodies;
- making the decisions of the enforcement bodies legally binding;
- Expanding the applicability of NEBs decisions to other passengers; travelling with the travel disruption and having the same cause for action;
- granting the European Commission with investigatory and enforcement powers for widespread and EU-wide infringement of passenger rights regulations;
- introducing clear, strict and harmonised deadlines for travel operators and intermediaries to deal with passenger complaints in all passenger rights Regulations;
- introducing truly dissuasive sanctions based on transport operators and intermediaries' annual turnover;
- introducing periodic penalty payments and interest on overdue payments to the benefits of consumers in case of non-compliance with deadlines for refund/compensation;
- making public information about the reasons for travel disruption and communicated to consumers and NEBs within 48 hours of the disruption;
- obliging airlines to adhere to ADR and their decisions should be made binding;
- further using digitalisation (SMS, email) to better inform consumers in case of travel disruption and to help them enforce their rights;
- Establishing yearly reporting obligations for operators/online booking intermediaries/station and airport managers to NEBs and from NEBs to the European Commission in all passenger rights regulations.

SECTION 2: Pre-payments in the travel sector

1. A progressive phase-out of full and advance consumer prepayments

The current business model of airlines and tour operators, fully based on a "pay-in-advance" model, has proven to be unsustainable in times of crisis. It is one of the reasons why the pandemic has had a considerable impact on travellers, airlines, and tour organisers. This long-established business model in fact generates permanent interest-free loans from consumers to airlines and tour operators, as the money for flights or package tours is paid long in advance and is used to pay for the travel of those who booked several months before.

However, when a crisis leading to massive cancellations such as COVID-19 hits, traders are simply not able to refund consumers within the time limits set by travellers' rights legislation.⁵⁷ As a result, most of the actors of the tourism industry engaged in widespread violations of travellers' rights and unfair practices towards consumers (imposition of vouchers etc.)⁵⁸

In BEUC's view, this situation could have been avoided, or significantly mitigated, if travel operators and airlines did not require the full payment of tickets and packages in advance.

1.1. What would be the benefits of such a shift?

A progressive phase-out of this full pre-payment practice in the airline sector would be beneficial in the long-run for all stakeholders.

A. For consumers

- Travellers will not have to wait months to receive their monetary refunds and have their rights respected.
- It will strengthen consumers' confidence in the tourism sector which has been severely impacted by industry practices, as demonstrated by BEUC members.⁵⁹ A review of the current business model will also ensure a high level of consumer protection, an objective present in all travellers' rights legislation and, reaffirmed in the New Consumer Agenda⁶⁰ and the report on the application of the Package Travel Directive.⁶¹
- In the airline sector, such an overhaul of the airline prepayment business model would also limit the risk of financial loss for consumers as long as no mandatory protection scheme exists in the air travel sector, unlike in the package travel industry.
- Limiting pre-payments will also help eliminate different practices that emerged during the pandemic and that have been considered as unfair by national consumer protection authorities, such as "ghost flights".^{62, 63}

⁵⁷ Seven days according to the Article 5 and 8(1)(a) of the Air Passenger Rights Regulation & 14 days according to the Article 12(2) and 12(3)(b) of the Package Travel Directive.

⁵⁸ BEUC's [coordinated action](#) against 11 airlines launched on 22 July 2020. : 'BEUC reports major airlines for breaching passenger rights and calls for industry investigation'.

⁵⁹ As a result of these repeated breaches, our British member Which? discovered in an [investigation](#) published in November 2020, that nearly four in ten (37%) people who have had a package holiday cancelled by their provider since the beginning of the outbreak said the experience has had a negative impact on their confidence in the travel industry.

⁶⁰ See [Communication](#) from the European Commission to the European Parliament and the Council "New Consumer Agenda Strengthening consumer resilience for sustainable recovery" - COM/2020/696 final, published on 13 November 2020.

⁶¹ See [Report](#) from the European Commission to the European Parliament and the Council on the application of Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements - COM/2021/90 final, point 6, published on 26 February 2021.

⁶² During the COVID-19 crisis, several unfair and potentially unfair airline practices developed strongly. Among them the so-called "ghost flights". These consist for the companies in selling tickets to cancel them, in order to ensure a quick cash flow. Consumers are harmed by this unfair practice and then have to wait weeks or even months for refunds.

⁶³ See the [decision](#) of the Italian Competition Authority, Autorita Garante della Concorrenza e del Mercato, dated on 24 May 2021 condemning respectively Ryanair, Easyjet and Volotea to 4.2, 2.8 et 1.4 €millions for their numerous breaches of the Air Passenger Rights Regulation and the unfair practices conducted toward consumers notably on their reimbursement practices (misleading information, ghost flights etc).

B. For the industry

- Airlines (and tour operators) will not have to reimburse large sums of money to consumers in a short period of time, which will put them in a less precarious financial situation.
- The resilience of the sector will be strengthened and less vulnerable to new crises, which is a central objective of the new Sustainable and Smart Mobility Strategy 64.

C. For Member States

- The current business model of the tourism industry also had an impact on the finances of the Member States and on their citizens as taxpayers. In April 2021, the European Commission announced that nearly €31bn of state aid had already been distributed by Member States, and this only, for the airline sector during the COVID-19 crisis.⁶⁵ If we add the amount of state aid also allocated to the package travel sector, this amount would be significantly higher. With a change of airlines (and tour operators') business models, Member States will less have to bail out tourism and travel sector professionals with financial contributions to help them, among other things, to meet their obligations towards travellers, to cover imposed vouchers etc.

1.2. What would be the impact of "pay-as-you-check-in" on the airline sector?

According to the Study on Prepayment in the Travel and Airline Sector of the Lucerne University⁶⁶ conducted for the German market, if the advance payment obligations were to be completely abolished, airlines and travel providers would have to take out loans for their necessary advance payments, as is quite common in a lot of industries⁶⁷ (hotels etc.) As a result, according to the study, airlines and tour operators would incur additional capital costs which would not account for more than 3.3 % of the German air travel market volume, and 1.1% of the German package holiday market volume,⁶⁸ even assuming that the general conditions were worse.

1.3. A limited financial impact for passengers and holiday makers.

According to the same study, even if the entire additional capital costs resulting from a complete shift from "Pay-in-advance" system to "Pay as you check-in" models were passed on to the end consumers, this would only result in a moderate price increase of:

- 1.1% for package holiday contracts and,
- 3.3% for flights tickets, even assuming that the general conditions were worse.⁶⁹

⁶⁴ Point 73 of the Sustainable and Smart Mobility Strategy : "[...] *This strategy must help the sector and relevant ecosystems such as travel and tourism bounce back better from this crisis and become greener, smarter and more resilient*".

⁶⁵ In April 2021, nearly 31 billion euros had already been distributed by the Member States of the European Union to the various airlines.

⁶⁶ See Lucerne University of Applied Sciences and Arts, Report on Prepayment in the Travel and Airline Sector, published on 21 December 2020, available at:

https://www.vzby.de/sites/default/files/downloads/2021/03/09/gutachten_bezahlungsmodelle_21dezemer2020.pdf

⁶⁷ *Idem*.

⁶⁸ *Idem*, pages 2 & 3.

⁶⁹ *Idem*, pages 2 & 3.

These very limited increases of price might be acceptable for a more crisis resilient tourism sector and to ensure that consumers are better protected.

According to the same study, the technical prerequisites to introduce payment at “check-in” are essentially already met by prevailing payment infrastructure.⁷⁰

2. Securing consumer payments via trusted accounts or “escrow” services

As an alternative to the full prohibition of consumer pre-payments in travellers' rights legislation, it could be possible to hold travellers' payments in an escrow/trusted account until the flights take off in the case of a simple transport service contract, or until the start of the package tour for package travel contracts.

A trusted account, or escrow service, is a system in which a third party temporarily holds the payments until a particular contractual condition or legal obligations have been met. This third party could be a bank, or any financial institution recognised as capable of providing these services under Member States' national law.

The escrow provider's responsibilities in a transaction would include receiving and holding payments from consumers and disbursing funds to traders when contractual conditions are met or when legal obligations are fulfilled. Traditionally, its role in the transaction is to protect the payments of the buyers and sellers before they are transferred from one party to the other.

Applied to our specific case of airlines and tour organisers, the third party would:

- collect consumer payments;
- hold them;
- transfer the payments to traders, only when the contract of carriage is fully performed (the flight takes place), or, in the case of a package travel contract when the package travel begins.

Only when these prerequisites are met will the funds be released by the escrow providers to the professionals (airlines and tour operators/travel agencies). On the contrary, if the airline, tour organiser or travel agency fails to fulfil their legal and/or contractual obligations (cancellation of flights etc.), then the funds will be returned to consumers.

In our view, this solution can also be an interesting and viable alternative to the current system of direct prepayments from consumers to airlines and tour operators and would have various benefits for travellers as well as for airlines and tour operators.

A trusted account system would solve the following pre-departure problems:

- *On one hand*, in the event of a flight cancellation by an airline or cancellation of a package travel contract, the money would be immediately returned to consumers by the third party. This will prevent consumers from having to wait months to be reimbursed as happened during the COVID-19 crisis⁷¹. *On the other hand*, professionals will not have to directly refund large sums to travellers in a short period of time, since the money will be blocked in a third-party trusted account.

⁷⁰ *Idem*, pages 22 to 26.

⁷¹ See [BEUC's report](#) “COVID-19 and EU Travellers' Rights - Evaluation of the Member States Implementation of the EU Recommendation on vouchers”, published on 10 December 2020.

Therefore, this will also ensure their financial viability and strengthen the resilience of the sector to new crises.

- Holding travellers' pre-payments on a third party's account will also, mathematically limit the number of pre-payments received and handled by tour operators, travel agencies and airlines. As a result, the amounts to be covered against their insolvency would decrease drastically. Therefore, this is likely to remedy the difficulty of finding insolvency insurances providers, which was pointed out by tourism professionals in the report on the application of the Package Travel Directive.⁷²

BEUC Recommendations:

In the context of the Better Protection of Passengers and Their Rights initiative, BEUC encourages the European Commission:

- to consider the progressive suppression of pre-payment practices or introducing strong limitation of prepayments in all travellers' rights legislation;
- alternatively, to consider "escrow" schemes to secure consumers' prepayments until the performance of the contract;
- all remaining pre-payments to airlines (if any) should be protected by a mandatory insolvency protection scheme.

SECTION 3: Harmonisation of passenger rights

In the context of the "Better protection of Passengers and their Rights" initiative, BEUC considers that several provisions of passenger rights regulations, where there are no substantial grounds for having different rules depending on the mode of transport, should be harmonised for more consistency and legal clarity. Below, you will find a non-exhaustive of such provisions:

1. Reporting obligations of all actors should be reinforced and harmonised

In BEUC's view, strict reporting obligations should be established in the different passenger rights regulations (as well as in the new multimodal passenger rights framework once established). Transport operators should report annually to their national enforcement bodies and national enforcement bodies should be subject to a reporting obligation to the European Commission on the same basis to identify market trends/recurrent infringements etc.

⁷² See [Report](#) from the European Commission to the European Parliament and the Council on the application of Directive (EU) 2015/2302 of the European Parliament and of the Council on package travel and linked travel arrangements - COM/2021/90 final, point 4.2.2, published on 26 February 2021.

2. Right to care and assistance

The provisions on the "right to assistance" or/and "right to care" should also be harmonised. Currently, different time thresholds apply in the different passenger rights regulations to trigger the right to assistance (meals, refreshments etc.). BEUC considers that these should be harmonised in order to make the different passenger rights regulations consistent.

The updated Rail Passenger Right Regulation is in our opinion a good basis that should be used for this harmonisation since the right to assistance is due in case of a foreseeable delay of 60 minutes or more⁷³.

Similarly, the assistance in the form of providing for an overnight stay in a hotel should be harmonised between the different regulations. It is difficult to understand why passengers have different rights in such situations depending on the type of transport as they are facing the same harm. As a default, the highest standard of consumer protection should be replicated in all passenger rights regulations.

3. Deadline for consumer refunds

BEUC considers that there is no valid reason to have different time thresholds between the different passenger rights regulations to proceed with the passenger refunds. Indeed, currently deadlines vary from seven days in the Air Passenger Rights Regulation to 14 days for buses and 30 days in the new rail passenger regulation, for instance. In our view, **the shortest deadline should be replicated in all regulations, namely seven days** as provided in the Air Passenger Rights Regulation⁷⁴. However, for BEUC, a **real innovation that would be highly beneficial for consumers** would be to the introduction of automatic refund and compensation schemes (See above section 1.5 on Enforcement).

4. Deadlines for the payment of the compensation should be established in all passenger rights regulations and harmonised

In addition to fighting hard to get their refunds, consumers must fight even harder to get their rights to compensation respected by travel operators. They often have to wait months or years to receive compensation payments they are entitled to, even in clear-cut cases. This is particularly true in the airline sector where according to the last DG Move study, only one-third⁷⁵ of the consumers entitled to compensation benefit from it. This is – in addition to the lack of enforcement - notably because the Air Passenger Rights Regulation, unlike other texts, does not indicate a deadline to proceed with the payment of compensation.

To reinforce the enforcement and consumer protection, **BEUC believes that automatic compensation payments for clear cut cases should be introduced**. For other cases, a strict, short, and harmonised deadline to pay the compensation should be introduced among all passenger rights regulations. BEUC proposes to use the **seven-day deadline established in the Air Passenger Rights Regulation as standard** to be duplicated in other modes of transport.

⁷³ Article 20(2) of the New Passenger Rights Regulation.

⁷⁴ Article 8(1)(a) of the Air Passenger Rights Regulation.

⁷⁵ Study on the current level of protection of air passenger rights in the EU Final report Study contract no. MOVE/B5/2018 – 541.

5. Provision of information (travel disruption, reason for disruption, consumer rights etc.).

One of the main frustrations for passengers is to be left without real time information on travel disruption, the state of their travels, as well as the transport alternatives available.

In BEUC's view, the timeframe in which the information should be communicated to consumers when a travel disruption happens should be harmonised **as there is no justification for discrepancies between the different modes of transport**. The provisions of Article 20 of the Regulation (EU) No 181/2011 concerning the Rights of Passengers in Bus and Coach transport could serve as a minimum basis for the other texts.

This Regulation states that consumers in the event of cancellation or delay in departure must be informed by the carrier or, where appropriate, the terminal managing body, of the situation as soon as possible and in any event **no later than 30 minutes after the scheduled departure time**, and of the estimated departure time as soon as this information is available. Paragraph 4 of the same article also provides that where feasible, the information requirements shall be provided by electronic means to all passengers, including those departing from bus stops, within the 30 minutes timeframe, if the passenger has requested this and has provided the necessary contact details to the carrier.

In BEUC's view, this is good provision that should be replicated also for other transport modes. However, for us, travel intermediaries, and travel operators will require consumers contact details to allow provision of real time information, of course in compliance with GDPR requirements. Such information requirements should also include the reasons for the travel disruption, the passenger rights information notice, who to consult for rerouting options, and the complaint handling policies.

6. Re-routing with other carriers

When consumers face a travel disruption, they have the right to choose between re-routing and reimbursement of their tickets. This principle is established in all passenger rights regulations. Most of the time, consumers choose re-routing, with the objective to reach their final destination as soon as possible.

In BEUC's view, the provisions regulating rerouting, in different passenger rights legislations should be clarified to allow consumers facing a cancellation or a long delay, to be re-routed:

- as soon as possible;
- under comparable transport circumstances;
- at no cost;
- **AND if necessary, with competitors** (another airline, train operator etc.) or with another means of transport, if necessary and if the consumer agrees (a train instead of a plane, for instance).

For now, we only have the possibility for consumers in the updated Rail Passenger Rights Regulation⁷⁶ for railway undertakings to allow the passenger, "at his or her request, to conclude contracts with other providers of transport services which enable the passenger to reach the final destination under comparable conditions, in which case the railway undertaking shall reimburse the passenger for the costs that he or she incurs."

⁷⁶ Article 18 of the update Rail Passenger Rights Regulation.

It is also stipulated that “Where the available re-routing options are not communicated to the passenger within 100 minutes from the scheduled departure time of the delayed or cancelled service or the missed connection, the passenger shall be entitled to conclude such a contract with other providers of public transport services by rail, coach or bus. The railway undertaking shall reimburse the passenger for the necessary, appropriate and reasonable costs that he or she incurs”.

- However, in our view, such types of provision can put the burden of searching for rerouting options on consumers. They will likely incur additional costs and the need to actively ask for their reimbursement. Instead, it should be made clear in the legislation that travel operators should proactively do everything possible to find a rerouting option.
- In addition, **it** should be also clarified across passenger rights regulations that all rerouting options offered to travellers - irrespective of whether it is with the same airline or airline alliance or with a competitor or another mode of transport - must be **at no cost for consumers**. Travellers should not have to pay extra costs in case of travel disruption.
- Finally, in case of failure to propose re-routing options to consumers, it should be clear in all passenger rights regulations that consumers can choose their own re-routing options and be fully refunded for any additional costs.

This would greatly clarify the EU passengers' rights framework and avoid passengers being stuck for hours or days in airports waiting for a re-routing proposal from airlines.

7. Minimum thresholds for compensation should be abolished

For BEUC, minimum thresholds established in the rail passenger rights⁷⁷ and the waterborne⁷⁸ passenger rights regulations under which payments for compensation will not be made by transport carriers should be abolished. **In BEUC's view, there is no reason to justify the non-payment of even a small amount of compensation to passengers if they are entitled to it.** Maintaining these thresholds is likely to further weaken the position of consumers and in our view, it clearly does not encourage rail and maritime operators to comply with passenger rights when they know that they can be exempted from paying compensation.

Therefore, we believe that instead of exempting travel operators from paying small compensation amounts, they should be required to automatically pay it to consumers. This is even more needed in the light of the fact that, consumers often do not assert their rights because they consider that the gain at stake is too small and time consuming.⁷⁹

END

⁷⁷ Article 19(8) of the Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations.

⁷⁸ Article 19(6) of Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway.

⁷⁹ See for instance point 3.58 of DG Move study on the level of protection of Air Passenger Rights in the EU (2020) which highlights that consumers sometimes do not raise their claim because they consider it useless to complain (45%), the amount is too small (25%), the complaint process is too burdensome (16%).



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