

The Consumer Voice in Europe

REVISION OF PASSENGER RIGHTS REGULATIONS

The EU can do (far) more to Better Protect Passengers
and their Rights.



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EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2024-038- 16/04/2024

Why it matters to consumers

Passenger rights are a major achievement of the European Union, as they create common and harmonised rules guaranteeing strong rights for travellers. EU Passenger Rights covering all modes apply to more than 13 billion consumers every year¹. However, travel markets have evolved with the arrival of new actors such as online booking intermediaries. Recent times have highlighted shortcomings of current Passenger Rights regulations, most notably lax enforcement. The COVID-19 pandemic has also revealed legal gaps between traveller rights instruments, more specifically in the Passenger Rights Regulations and the Package Travel Directive², and the urgent need for reform. Lessons from the pandemic must be learnt to ensure that the EU better protects passengers and their rights and introduces greater fairness in the tourism value chain.

Summary

Overall, BEUC is disappointed³ by the Proposal for a Regulation in what regards enforcement of passenger rights in the Union⁴. While some provisions, in particular the ones on online booking intermediaries and information to consumers are welcomed, the proposal does not sufficiently address a pivotal question in the passenger rights sector: its enforcement. Furthermore, key and lasting consumer law issues have been put aside, despite an obvious need for regulation.

- **BEUC welcomes:**

- The introduction of refund and transparency rules for airlines' tickets booked via online booking intermediaries⁵. Deplores, however, that such rules are not replicated for tickets bought via intermediaries in all transport modes (buses, coaches, waterborne).
- The introduction of an EU-wide standardised refund and compensation form in all modes of transport (that could be used also when booking air tickets is made via an online booking intermediary).

¹ See Explanatory Memorandum of the Proposal for a regulation as regards enforcement of Passenger Rights in the Union.

² Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC

³ See BEUC [Press Release](#), The EU can do better to protect passengers and their rights, published on 29 November 2023.

⁴ Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union.

⁵ For Air, see Article 1 of the proposal Amending the Regulation (EC) n°261/2004 (new Articles 8a, Article 14a, Article 16aa). For Waterborne Passenger Rights, see Article 3, Amending the Regulation (EC) n°1177/2010 (new article 19a). For Bus and Coach, see Article 4 amending the Regulation EU n°181/2011 (New article 19a).

- **To be improved:**

- *Enforcement and Redress:* The measures proposed are welcomed but are largely insufficient to empower consumers to exercise their passenger rights easily and swiftly, and to deter wrong players from misconduct. To achieve these objectives, the proposal should be amended to notably introduce automated reimbursement (and where feasible automatic compensation schemes), truly dissuasive sanctions based on the turnover of the travel operators, mandatory participation in Alternative Dispute Resolution Schemes with binding decisions, etc.
- BEUC welcomes the improved information to passengers on their rights at booking time and during journey disruptions but calls for amendments and consistency between transport modes.

- **What is missing – coherence between the Passenger Rights initiatives and the Package Travel Directive is still absent**

- *Insolvency protection:* no mandatory insolvency protection schemes in the airline sector are proposed, despite ample evidence of the damages suffered by consumers and other stakeholders of the tourism industry that are supporting airlines' failures (intermediaries, travel agents etc.).
- *Cancellation rights:* There are still no statutory rights for passengers to cancel their tickets in the event of a major crisis despite an obvious need for alignment of the Package Travel and the Passenger Rights Regimes, as a matter of consistency and fairness for actors of the tourism value chain. In the PTD, where such rights exist for years⁶, consumers are able to cancel their tickets at no cost in crisis time and against an "appropriate and justifiable" termination fee in normal situation, the same should be for airline tickets.
- *No securitisation of consumers pre-payments are envisaged.* One of the main lessons to be drawn from the COVID-19 crisis is the precariousness of the business model of airlines and tour operators based on full prepayments far in advance by consumers. While the revision of the Package Travel Directive provides for a proposal to limit the prepayments that can be demanded from consumers, the issue is not addressed at all for airlines in the Proposal for a Regulation as regards enforcement of passenger rights in the Union initiative. To ensure the sector's resilience in the face of a new crisis, and to ensure that lessons are learned, BEUC encourages EU policymakers to consider phasing out prepayment practices or introducing a strong limitation on prepayments in all passenger rights legislation. Alternatively, BEUC recommends considering "escrow" systems to guarantee consumers' prepayment until the contract is fulfilled.

⁶ See Article 12 of the Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, available [here](#).

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1. Introduction

In the aftermath of the COVID-19 crisis, the European Commission announced in its Sustainable and Smart Mobility Strategy⁷ its intention to review the Passenger Rights Framework, to learn lessons from the crisis, and to ensure that consumers would be able to easily enforce their passenger rights. It was also announced that the revision of the passenger rights regulations will be conducted in coherence⁸ with revision of the Package Travel Directive, to correct inconsistencies between the travellers' rights texts, which are detrimental to consumers but also many actors in the tourism value chain. BEUC welcomed those different strong announcements⁹.

This materialized in the preparatory work for the "Better Protection of Passengers and their Rights" where strong commitments were made to tackle five well-identified and long-standing passenger issues which were¹⁰:

- The chronic difficulties for consumers to exercise their passenger rights.
- The lack of consumer protection in case of airline insolvency,
- The need to establish clear liabilities and rules for online booking intermediaries.
- The absence of consumers statutory rights to cancel their tickets in crisis situation.
- The absence of protection for passengers when travelling multimodal (combining different modes of transports).

However, despite the strong announcements, the recent Proposal for a Regulation as regards enforcement of passenger rights in the Union¹¹ and the Proposal for a Regulation on passenger rights in the context of multimodal journeys¹² (further discussed in another position paper¹³), can only be considered as **low-profile initiatives, and are not enough to be a game changer for consumers.**

While BEUC welcomes the new provisions aiming to provide transparency to consumers when booking via **online booking intermediaries** and to clarify which party is responsible for refund and in which timeframe, BEUC is disappointed that key points are missing.

For instance, **BEUC regrets that two fundamental points have been excluded from the initiatives**, namely an insolvency protection scheme for consumers in case airlines go bankrupt and a right for consumers to cancel their tickets free of charge in times of crisis. These issues were considered by the European Commission but have regrettably been left out which is bad news for consumers and other actors in the tourism value chain given the exposure to high financial losses when something goes wrong.

⁷ See Communication COM(2020) 696 final, New Consumer Agenda - Strengthening consumer resilience for sustainable recovery, available here.

⁸ See call for evidence for an Impact Assessment of the Better Protection of Passengers and their Rights initiative (2021)7881104. Available [here](#).

⁹PASSENGER 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, available here.

¹⁰ See Call for evidence for an impact assessment - Ares(2021)7881104.

¹¹ Enforcement of passenger rights: Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union.

¹² Multimodal passenger rights: Proposal for a Regulation of the European Parliament and of the Council on passenger rights in the context of multimodal journeys.

¹³ See BEUC [position paper](#) PROTECTING PASSENGERS USING MULTIMODAL TRANSPORT BEUC's position on the proposed Regulation on passenger rights in the context of multimodal journeys. See the related 2pager [here](#).

Furthermore, important legal gaps jointly¹⁴ denounced by a broad range of stakeholders, would also remain open, exposing them to the recurrence of the issues in case of new crisis.

On **enforcement**, despite plenty of evidence of passenger rights violations by carriers (and intermediaries) both before – during – and after the COVID-19 crisis, no game-changing measure is proposed that would enable consumers to easily assert their rights. Introducing a standardised refund and compensation form for all modes of transport, and stricter reporting obligations on transport operators to authorities and service quality standards, is welcome but not sufficient.

2. Positive points

BEUC **supports** the following elements of the European Commission on the proposed Regulation as regards enforcement of passenger rights in the Union.

2.1. Online Booking Intermediaries

Online intermediaries are now key players in the field of online ticket booking, especially in the airline sector. It is estimated that around 450 million passengers per year booked airline tickets via intermediaries¹⁵.

However, no passenger rights regulations (except the updated Rail Passenger Rights Regulation¹⁶) deal with intermediaries and do not establish clear responsibilities. The COVID-19 has spotlighted on an unprecedented scale many long-standing problems, with consumers 'ping-ponged' between different parties and waiting months to be reimbursed. The revision of the Passenger Rights frameworks should introduce clear liability rules for the different parties in all passenger rights Regulations.

2.1.1. The proposal

New rules on reimbursement processes.

[Article 1 Amendments to the Regulation 261/2004 \(so called Air Passenger Rights Regulation – APR\).](#)

The initiative brings welcome legislative clarifications, in terms of responsibility towards consumers as to who is responsible for refunding airline tickets and within what timeframe, depending on the type of online intermediary.

¹⁴ See Joint letter to Mrs Adina Valean, Commissioner for Transport and Commissioner for Justice, M. Didier Reynders, from European consumers, industry, and insurance providers on Urgent need for mandatory insolvency protection scheme in the airline sector, https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-126_Urgent_need_for_mandatory_insolvency_protection_scheme_in_the_airline_sector.pdf, December 2022.

¹⁵ See the Explanatory Memorandum of the Proposal for a regulation as regards enforcement of Passenger Rights in the Union.

¹⁶ Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations.

In the text, two types of intermediaries are specified ¹⁷:

- the first one only passing consumers info and money to the carrier (so called "pass-through intermediaries") and,
- the second one paying on its own account with its own money (so called "merchant of record").

If a refund is made via an intermediary who has paid for the ticket from its own account ("merchant of record"), both the intermediary and the carrier will need to ensure that the **passenger receives the refund within 14 days**.

To ensure this, **the text also provides for Business to Business (B2B) refund rules** to enable intermediaries to meet their obligations and, ultimately, consumers to receive their money within the legal timeframe. Air carriers will have to refund intermediaries within 7 days, and intermediaries will have 7 days to refund consumers (14 days in total)¹⁸. Once the refund has been made, intermediaries must inform consumers and air carriers of the refund - (Article 8a(5a)).

If the 14-day period is not respected, airlines must proactively contact consumers the day following the expiry of the 14-day period to receive payment details from consumers and proceed to reimbursement within 7 days - (Article 8a (5b)).

Refunds through intermediaries should be **free of charge** - (New Article 8a(3)).

Clearer information on the refund process

The proposed Regulation as regards enforcement of passenger rights in the Union, introduces rules on information to be provided to consumers when they book air tickets via online booking intermediaries:

- *Firstly*, consumers shall be informed upfront, in a "clear, comprehensible and easily accessible manner at the time of booking and on the booking confirmation" by the intermediary and the air carrier of the refund procedure in place - (new article 8 bis, paragraph 2). In particular, the air carrier shall indicate publicly whether and with which intermediaries it accepts to do so - (new Article 8a, paragraph 4).
- *Secondly*, passengers will be informed of all information relevant to their journey (including delays, cancellations, care and assistance, re-routing, refunds and compensation claims) directly by the air carrier, even if they book through an intermediary, as intermediaries will be obliged to share consumers' contact details with the air carrier (in line with the GDPR regulation).¹⁹.

If passengers communicate their phone number or email address, they will receive all important information in digital format as well. Consumers should be able to keep all written correspondence including the date and time of the correspondence on a durable medium. All means of communication available for consumers shall allow them to contact the Air carriers and intermediaries quickly and to communicate effectively²⁰.

The Commission will also establish a common form for refund and compensation request that could be used by consumers when booking an airline ticket via an intermediary – (New Article 16aa).

¹⁷ See recitals 5 to 9.

¹⁸ See new article 8a(5) and recital 7.

¹⁹ New Article 14a(2) See recitals 8 and 9.

²⁰ New Article 14a(1).

2.1.2. BEUC position

BEUC applauds the European Commission's willingness to clarify by law who is responsible for refunding consumers when airline tickets purchase was made via an online booking intermediary and in which timeframe.

BEUC also welcomes the rules enhancing clarity and transparency for consumers on whom to contact for the refund, and introduction of clear upfront information from both the air carrier and intermediaries on how the reimbursement procedure will be carried out.

The current absence of rules is highly detrimental to consumers which end-up being “ping-ponged” between the different actors (intermediaries and airlines) about which one is responsible for the refund. During the pandemic, thousands of consumers had to wait for years, and a coordinated enforcement action of the Consumer Protection Cooperation (CPC) Network²¹, to finally get their money back. Clarification by law, is therefore highly welcomed.

However, to avoid any confusion, it should be established in the text that for purchases made via intermediaries that are “**pass-through**” only and for carriers which are not cooperating for refund with intermediaries, refunds shall be made within seven days, as per the current Air Passenger Rights Regulation 261/2004.

The rules on transfer of information from intermediaries to carriers was also needed, as under the current situation, consumers, in case of travel disruption, often have no means to contact carriers and to get the relevant information about their rights, as there is currently no obligation to share contact and booking details between intermediaries and carriers. Introducing such sharing obligation is thus an improvement for passengers – New Article 14a).

BEUC also supports the clarification that refund requests are free of charge (New Article 8a(3)) **and the willingness to streamline refund and compensation requests by introducing a standardized form** – (new Article 16aa). This would help passengers to exercise their rights easily. It should also be clarified that intermediaries shall refund all payments and fees applied at booking time. We suggest including the obligation for carriers and intermediaries to provide consumers with the references of the money transfer (number of transaction, screenshots etc.) as a matter of transparency. This would allow consumers to track the refund and carriers to fulfill their obligation under Article 8a(5)(b).

Despite clarifying the information duties of air carriers and intermediaries and the respective liabilities for the refund to consumers, the proposal does not define **the consequences of failure to respect the refund process and the information obligations**. To correct this, EU Policy Makers should ensure that the Regulation defines harmonised sanctioning rules, such as **periodic penalty payments** in case of non-compliance. While having a deadline is an interesting development, there should be strong consequences in case of non-compliance as to motivate intermediaries to adhere to these deadlines.

²¹ https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/air-travel_en, last consulted on 9 January 2024.

Furthermore, the current absence of rules **regarding price transparency applicable to booking intermediaries** creates **consumer frustration and complaints**. In practice, consumers often face important fees applied by intermediaries which are not disclosed upfront but given at the payment time or very late in the process. BEUC considers **that intermediaries should, at the pre-contractual stage, inform consumers about the ticket price and all mandatory costs** (administrative fees, cancellation fees, among others). Similar construction exists for instance in the Consumer Rights Directive and could be replicated²². **All the optional price supplements should be clearly visible next to the headline price** (at every step of the booking process).

Finally, **rules on online booking intermediaries are limited in scope to the Air Passenger Rights Regulation**. However, given the development and importance of online booking intermediaries in the various modes of transport (and this will become even more pronounced with the development of multimodal transport), it is essential that **all modes of transport be covered** by this reform, not just Air. **This would bring consistency to the passenger rights framework**.

²² See Article 6 of the Consumer Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

BEUC Recommendations:

- **BEUC supports the amendments proposed to inform in a clear and comprehensible** and easily accessible manner at the time of booking (and in the booking confirmation) about the refund process – (Article 8a(2))
- **BEUC supports the introduction of clear liabilities for refunds and strict deadlines** to comply with (14 days for Merchant of Records intermediaries).
- **Amend Article 8a** to clarify in the text that for purchases made via intermediaries that are “pass-through” and for carriers which are not cooperating for refund with intermediaries, refunds shall be made within seven days as per the current Air Passenger Rights Regulation 261/2004.
- **Amend article 8a to ensure that intermediaries should, at pre-contractual stage, inform consumers about the ticket price and all mandatory costs** (administrative, service or cancellation fees etc.). All the optional price supplements should be clearly visible next to the headline price (at every step of the booking process). Inspiration can be drawn from the Consumer Rights Directive¹.
- **Amend article 8a to mandate intermediaries to inform consumers if flights purchased in a single booking are connected flights or not.** Where passengers are not correctly informed, selling entities should be liable as if those tickets were a single ticket.
- **BEUC supports the clarification that refund via intermediaries is free of charge** – (Article 8a(3)). Recommends clarifying that all booking fees should also be refunded.
- **Amend Article 8a(5)(a) to ensure that carriers and intermediaries provide consumers with the references of the money transfer** as a matter of transparency.
- **BEUC welcomes the obligation for the intermediary to transfer consumers contact and booking details to the carrier** to ensure that carriers can comply with their obligation under the Air Passenger Rights Regulation, this in full compliance with the GDPR – (Article 14a(2)).
- **BEUC recommends broadening the scope of the proposed rules for tickets booked via intermediaries to cover all transport modes (not only Air),** given the prominence online booking intermediaries have and will have in the coming years.
- **BEUC recommends introducing the consequences of the non-compliance with refund rules** in the Regulation itself such as periodic penalty payments.
- **BEUC welcomes the introduction of an EU standardized common form** for refund and compensation request – (Article 16aa).

2.2. Easier transfer of information to passengers

In the event of a travel disruption, the first thing people want is to be informed, as quickly as possible, of the situation (estimated delay, reasons for the delay etc.). Nothing is more frustrating for a passenger than waiting without information. It creates frustration among travellers. This could be solved by more real-time information to consumers, on their travel disruption.

Furthermore, consumers awareness about their passenger rights is limited in the EU. For instance, only one consumer in three is aware that they are covered by EU passenger rights rules²³. De facto, this lack of awareness of rights has an impact on the number of travellers exercising them. Therefore, consumers also need to be better informed about their rights as passengers at key moments.

²³ See Page 1 of the Explanatory Memorandum of the Proposal.

2.2.1. The proposal

For air travel: Passengers will receive all relevant information for their journey (including delays, cancellations, provision of care, re-routing, reimbursement, compensation requests) directly from the air carrier, even if they booked through an intermediary – (new Article 14a (1) & (2)).

To ensure this, intermediaries will have to transmit the contact details of the passengers to the air carrier – but for this purpose alone. Air carriers will face sanctions if they use these data for any other purpose and shall respect strict data retention periods in line with the General Data Protection Regulation (GDPR).

When information is passed to consumers via electronic means, air carriers and intermediaries - (if there is one involved) - shall ensure that consumers can keep a copy of it including with the date and time. All means of communication shall enable consumers to contact airlines and intermediaries effectively – (Article 14a(1)). A similar obligation is replicated in amendments to other passenger rights regulations²⁴.

For all modes: If passengers communicate their phone number or email address, they will receive in case of travel disruptions, all important information (re-routing options etc.) and information about their passenger rights in digital format.

For travel by bus or boat:

Amendments to Bus and Coach and Waterborne Passenger Rights Regulations²⁵ even specify that information about passenger rights should be given, in case of travel disruption, as soon as possible and, in any event, not later than 30 minutes after the scheduled departure time, and by electronic means if consumers contact information are available to carriers.

Amendments to Article 23(3) of Waterborne Passenger Rights Regulation also establish that carriers should inform consumers about their contact details on board of ships, ports and in terminals.

2.2.2. BEUC position

BEUC welcomes these new obligations for carriers to proactively inform consumers in the event of travel disruptions of their passenger rights, notably in electronic format, if consumers have provided their contact information at booking time. This is likely to be an improvement for consumers as they will be better informed of their rights and so, encouraged to assert them.

However, **to make the provisions fully operational, BEUC recommends further amending certain wordings** (“where technically possible”, and “if feasible”), **and provisions**, which are too vague and may allow operators and intermediaries to evade these information and transparency obligations.

BEUC also recommends that certain obligations should be replicated consistently across all transport modes. For example, the obligation to inform consumers about the

²⁴ Article 3 amending the waterborne passenger rights (New Article 23a), See Article 4 amending bus and coach passenger rights (New Article 25a), See Article 5 Amending Rail Passenger Rights (New Article 30a).

²⁵ See Amendments to Article 16(1) et (4) of the Regulation (EU) No 1177/2010 on Waterborne Passenger Rights and Amendments to Article 20(1) and (4) of the Bus and Coach Passenger Rights Regulation.

development of travel disruptions as soon as possible, and **no later than 30 minutes** after the disruption has occurred, as set out in the coach and bus passengers and waterborne passenger rights Regulations, **should be replicated across all modes of transport**²⁶.

Finally, BEUC recommends that **a direct and functional contact details** (e-mail address, telephone number) of **carriers and intermediaries should be communicated to consumers** at booking time, and at the same time as information on travel disruption and passenger rights is sent electronically (e.g., within 30 minutes of the disruption). In the aviation sector in particular, it can be very important to have a **rapid channel of communication** to react to short-term changes in the travel plan and organize appropriate alternative transport with the air carrier in accordance with Article 8 paragraph 1 of the Air Passenger Rights Regulation.

BEUC Recommendations:

BEUC supports better information obligation from carriers and intermediaries to consumers about their passenger rights and about travel disruptions, notably the use of electronic means to do so (consumer email address, SMS etc.).

- To ensure the efficiency of these information obligations, **BEUC recommends withdrawing the wording such as “where technically possible” or “if feasible”**, likely to alter their efficiency. Information should be provided by electronic means as long as carriers and intermediaries have consumer contact details.
- Replicate the obligation for carriers to share information to consumers about the travel disruption and passenger rights, **by electronic within 30 minutes in all transport modes (including Air)**.
- Ensure a swift exercise of passenger rights, by mandating the provision by carriers and intermediary of **functional contact details** (phone and email) **in the booking confirmation, but also at the time of the communication of the passenger rights notice** (e.g. 30 minutes after the disruption). **Phone line should be free of charge**

3. To be improved

3.1. Enforcement and Redress

Lax enforcement is the blind spot of all passenger rights regulations.

As explained by the European Commission in the Explanatory Memorandum of the initiative the *“first and foremost problematic areas in the passenger rights regulations are shortcomings in the implementation and enforcement of passenger rights [which] prevent passengers of all modes of transports from enjoying their rights fully”*²⁷.

²⁶ No such obligation exists in the current Air Passenger Rights Regulation 261/2004. In Rail, Article 20 of the new Rail passenger Rights regulation only provides that [...] as soon as such information is available” consumers should be informed. No time limit is defined. Idem, information to passengers about their rights in Article 30 of the regulation only provides that “When selling tickets for journeys by rail, railway undertakings, station managers, ticket vendors and tour operators shall inform passengers of their rights and obligations under this Regulation”. To comply they only have to use the summary Regulation prepared by the Commission in either paper or electronic format. They shall specify where, in the event of cancellation, missed connection or long delay, such information can be obtained. This obligation is not consistent with other modes of transport.

²⁷ See page 1 of the Explanatory memorandum of the Proposal for a regulation as regards enforcement of Passenger Rights in the Union.

The Commission even acknowledged that lax enforcement “[...] *has been recurring since the adoption of the various passenger rights regulations [...]*” and was “[...] *already identified in reports and studies of the Commission*”.

Reviewing all passenger rights regulations to ensure better access to redress for consumers and better enforcement by authorities is therefore both essential and desirable.

3.1.1. The proposal

The proposal for a Regulation as regards enforcement of Passenger Rights in the Union provides for several welcomed provisions to facilitate enforcement and redress for consumers.

First, the proposal introduces a **standardized EU-wide refund and compensation form** for all modes of transports, that could be used by passengers (the form is not mandatory). It can also be used when airline tickets are bought via an intermediary²⁸.

In case of unclarity or incompleteness of consumers’ demands, **carriers shall proactively contact passengers for further information**. All carriers (and intermediaries for airline tickets) will also have to put at consumers’ disposal an email address to enable sending the complaint form, except where other electronic means of communication (such as a form), already exist²⁹.

Second, all carriers for all modes of transport will have to **adopt and implement Service Quality Standards** and report every two years on their implementation on their websites³⁰. Same obligations will also apply to airport, train station and port managers. Carriers will also have to report about the implementation of Passenger Rights to National Enforcement Bodies (e.g. on the provision of information to consumers, how they handle complaints, the punctuality of their services, and the assistance for persons with disabilities).

Finally, **National Enforcement Bodies (NEBs)** in charge of the enforcement of passenger rights regulations **will have a more proactive role and will be granted with additional powers to further detect carriers and terminal managers non-conformities³¹, which is a welcomed step forward**. NEBs will have to establish “a compliance monitoring program to monitor the compliance of airlines, airport managing bodies and intermediaries”. Such program shall allow the detection of infringements to the Passenger Rights Regulations and shall include monitoring activities.

To ensure compliance monitoring activities, the proposal clarifies that NEBs shall conduct audits, interviews, on-site inspections, examination of documents where relevant and shall include both announced and not unannounced activities. The risk assessment should be carried out every two years and be provided to the European Commission every two years.

NEBs shall ensure a swift rectification of non-compliance by carriers, intermediaries and station and airport managing bodies and **shall require an action plan to solve the identified non-compliance**.

The **Regulation also provides for deadlines for carriers to provide National Enforcement Bodies the relevant information and documents** to conduct

²⁸ For Air See Article New Article 16aa, for sea and inland waterway see New Article 19a, for Buses and Coaches see New Article 19a.

²⁹ Idem

³⁰ For Air See New Article 15a Service Quality Standards, Annex II. For sea and inland waterway see New Article 24a and Annex V, for Buses and Coaches, Article 26a and Annex III.

³¹ For Air See New Article 16ba, Article 16bb, Article 16bc, for sea and inland waterway see New articles 25a, 25b, 25c, for buses and coaches see New Articles 28a, 28b, 28c, for Rail see New articles 32a.

investigations (1 month after the request that could be extended by three additional months in complex cases).

Finally, **NEBs will have an obligation to provide information about the existing Alternative Dispute Resolution scheme**, if any.

3.1.2. BEUC position

European passengers have strong rights on paper, but respect for these by carriers leaves a lot to be desired, as regularly demonstrated by BEUC and its members, but also by many other stakeholders, before³² - during³³ - and after³⁴ the pandemic. So much so, that **enforcement and redress provisions are the weak point in passenger rights, as recognized by the Commission itself.**

BEUC welcomed the strong commitments made by the European Commission in the Sustainable and Smart Mobility Strategy, especially that "fair mobility also means the protection of passengers and their rights" and the statements that "mass cancellations during the COVID-19 pandemic showed the importance of European rules and their uniform implementation and enforcement" and that "EU passenger rights should be better implemented, [...] and appropriate sanctions should be provided if the rules are not properly applied".

Unfortunately, **the various provisions put forward by the European Commission in the proposal, *while necessary*, represent only a timid step forward and are by no means sufficient** to enable consumers to exercise their rights easily and quickly, nor to deter bad actors from committing infringements on a large scale.

Reaction to the proposed provisions

- *New EU-wide standardized refund and compensation form*

BEUC welcomes the Commission's willingness to create an EU-wide harmonised refund and compensation form in all modes of transport as it would make easier for individual consumers to seek redress. Nowadays, there are often disproportionate hurdles to submitting a refund or a compensation request, such as downloading an application, creating a user account, filling in a form with limited wordings and so on. In many cases, there is no quick and easy way to get in touch with the carrier or intermediary.

However, to make sure this provision is efficient, BEUC recommends that the **standardized form should be mandatorily communicated to consumers** if travel disruption occurs. This would ensure that consumers are informed quickly and can exercise their rights easily. Inspiration can be drawn from the Consumer Rights Directive, where traders have an obligation, for contracts concluded online, to provide consumers with a standardized withdrawal form, if the right of withdrawal exists³⁵.

³² See [BEUC Position Paper](#) on the Revision of the Air Passenger Rights Regulation 261/2004, EU AIR PASSENGER RIGHTS AND ENFORCEMENT - REAL IMPROVEMENTS ARE NEEDED BEUC updated position paper, 2019.

³³ See [BEUC external alert](#) to the network of national consumer protection authorities and the European Commission (CPC-network) in July 2020, reporting major airlines for breaching passenger rights and calls for industry investigation.

³⁴ See [BEUC external alert](#) to the network of national consumer protection authorities and the European Commission (CPC-network) in June 2023, against 17 airlines for greenwashing.

³⁵ Article 6(1)(h) of the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

Furthermore, to make this measure effective, it is **fundamental that consumers have access to a functional email address for sending the form**, irrespective of whether carriers have other means of communication for requesting refunds or compensation (such as an in-house form). It is pivotal because currently a lot of carriers have their own refund form or process, however, very often they are unclear, relevant forms are difficult to find, or worse, not functioning. Providing, in any circumstances a functional contact email address would be a real progress for EU passengers. Consumers should also **receive an acknowledgment of receipt** when submitting the form or any complaint to the carrier or intermediary and **receive a full copy of the communication** sent to the carrier (with the date and key information).

This email address should be communicated to consumers at the same time as the standardized form.

BEUC recommendations:

Improve the new provisions introducing the common form for reimbursement and compensation requests:

- by making it **mandatory for carriers and intermediaries to provide consumers with the form when a travel disruption occurs**, and,
- by **making always a valid and functional email address available** to passengers, irrelevant if other electronic means of communication allowing consumers to request refund or compensation exists.
- **Extend the obligation to provide a functional email address to other claims arising from the contract of carriage** (breach of re-routing, care and assistance obligations, etc.).
- **Ensure that consumers receive an acknowledgement of receipt** for any communication with carriers and intermediaries (full copy of the exchange & form) with essential information (date of the submission).

· New proactive roles for NEBs

BEUC welcomes the new proactive roles of NEBs (the Risk-based approach to monitor compliance with passenger rights, reporting obligation of carriers to NEBs, authorities' power to request documents, to conduct audits, inspections interviews etc).

However, BEUC considers that those provisions are necessary **but clearly insufficient to deter wrong carriers and intermediaries to commit widespread or EU-infringements**.

To achieve the objectives defined in the Sustainable and Smart mobility to ensure a uniform implementation and enforcement of passenger rights, it is key that the following is considered by EU policy makers in the upcoming negotiations.

Finally, we would like to emphasize that NEBs powers to require the different actors to submit “action plans” to remedy non-compliance should be drafted in a coherent way between the different texts. Authorities should be able to ask such plans to carriers but also intermediaries (and more broadly all actors having obligation toward consumers under the Passenger Rights Regulations. It is not the case in all texts under the current proposals.

BEUC Recommendations:

- **Amend Article 16ba(5), Article 28a(5), Article 32a(5) to ensure that authorities can also require intermediaries action plans to remedy non-compliance.**
- **A formalised and stronger network of National Enforcement Bodies should be created**, as it exists in the Consumer law field with the CPC-Network. At minimum, all National Enforcement Bodies should be granted the investigative and enforcement powers granted in Article 9 of the Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC Regulation).
- **Decisions of the enforcement bodies should legally be binding upon carriers**, of course, the decision should be appealable.
- **National Enforcement bodies (NEBs) should all deal with individual complaints**,
- **NEBs should make the information about the sanctions they imposed public.**
- **Applicability of NEBs decisions to other passengers travelling together who experience the same travel disruption should be expanded** as it exists in Canada.
- Information about the competent **NEB should be given to consumers by the intermediary and the carrier at the conclusion of the contract.**
- **NEB should also be able to require intermediaries to submit an action plan to remedy non-compliance.** For now, it is only applicable to air carriers.

· New cooperation between Member States and the European Commission

BEUC welcomes the new provisions in the Buses, Waterborne and Rail passenger rights regulations, introducing cooperation between Member States and the European Commission, as it will allow to detect widespread non-conformity or unfair practices conducted by carriers.

BEUC also welcomes **the possibility for the European Commission to request the National Enforcement Bodies to investigate suspected practice** by one or several carriers and report its findings to the Commission within 4 months of the request. However, we regret that, no power is granted to the Commission in case of substantiated widespread infringements (ex: enforcement powers in case of EU-wide infringements).

Furthermore, **such new provisions should also be integrated in the Air Passenger Rights Regulation 261/2004, which is the most prone to consumer complaints. It is by far the sector where the most consumer complaints happen and, it is also a matter of coherence between the passenger rights legislations.**

BEUC Recommendations:

- Amend Article 1 to ensure that this **cooperation between Member States and the European Commission is present in all Passenger Rights Regulations, including Air.**
- Amend the Regulation to **grant the European Commission, in all passenger rights Regulations with investigative and enforcement powers for widespread and EU-wide infringement of passenger rights regulations.**
- The **European Commission, in all modes of transport, should also be able to examine cases where differences in the application of Passenger Rights Regulation arise,** to promote a common approach and speak in one voice.

- *All actors having obligations toward consumers should establish and monitor Service Quality Standards*

BEUC welcomes the European Commission's will to develop monitoring and reporting obligations for carriers³⁶. Currently, such reporting is non-existent, except in the rail sector, leading to data shortage in case of widespread infringements as it happened during the COVID-19 crisis.

However, **to be effective** and provide real added value for consumers and the authorities, **such reporting obligations must focus on compliance with the different obligations of the Passenger Rights Regulation, not monitoring of self-established quality standards.** This would empower NEBs to really check what is happening in practice and to react quickly to possible non-compliance.

Furthermore, **the current rules are limited in scope.** It is unclear why such obligations do not apply to all actors **having obligations towards passengers** under this regulation (intermediaries, ticket vendors etc.).

Therefore, **BEUC recommends that this obligation should be mandatory for all relevant actors (intermediaries etc.).**

In addition, to ensure the effectiveness of the Service Quality Standards provisions, it is essential that **performance of carriers and intermediaries are assessed by 'independent watchdogs'** as it exists for instance for certain sector in Denmark or in the UK³⁷. Alternatively, the **competent authority** should be in charge to monitor traders' performance. **Only this could guarantee a neutral assessment.**

³⁶ Article 15a, Article 24a, Article 26a.

³⁷ See Passagerpuls in Denmark (<https://passagerpulsen.taenk.dk>) and See Transport Focus in the UK (<https://www.transportfocus.org.uk>).

Content wise, all Annexes establishing the minimum quality standards, should be amended to introduce the following additional elements: the number of compensations paid by carriers and intermediaries to consumers under the respective regulations and under which timeline they have been paid, the adherence and cooperation with Alternative Dispute Resolution, the timeframe by which consumers complaints are solved.

Finally, BEUC recalls, **that binding rules for luggage are necessary, not establishment of industry standards**³⁸. In our view, all airlines should accept a minimum of one piece of checked-in luggage at no extra cost, as per the European Court of Justice decision (Vueling case)³⁹. Common size and weight of carry-on luggage should be harmonized by law.

BEUC Recommendations:

- **Extend the obligations of to establish Service Quality Standards (SQS) to all actors having obligations toward consumers** under this Regulation (intermediaries, ticket vendors etc.).
- Ensure that **compliance with all provisions of passenger rights Regulations are covered** by the SQS (ex: payment of compensation etc.).
- **Amend the relevant provisions to ensure that Service Quality Standards are monitored by National Enforcement Bodies** or independent “watchdogs” to guarantee a neutral assessment
- **Amend all Annexes establishing minimum quality standards to broaden their scope.**
- Establishment of industry standards on the weight and dimensions of hand luggage are no way the direction to be taken to ensure better comparison between operator services. Binding rules are necessary.

The missing game-changers provisions

- *Introducing automatic refund and, where feasible, 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 on the co-legislators 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 2018.⁴⁰ BEUC supports this recommendation fully and suggests the Commission to consider putting it in place via its upcoming legislative initiative.

³⁸ See Recital 14 and Annex 1 on Service Quality Standards.

³⁹ C-487/12 - Vueling Airlines SA against Instituto Galego de Consumo de la Xunta de Galicia, 18 September 2014 – (point 40).

⁴⁰ https://www.eca.europa.eu/Lists/ECADocuments/SR18_30/SR_PASSENGER_RIGHTS_EN.pdf

Similar schemes already exist in several sectors, including rail^{41,42}, energy in the UK⁴³ or public transport in Denmark.⁴⁴ These innovations would have **real potential to improve the level of enforcement of passenger rights**.

Finally, a 2019 British study⁴⁵ 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.

- *Introduce truly dissuasive sanctions based on transport operators and intermediaries' annual turnover.*

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 airlines⁴⁶. Moreover, information about the sanctions imposed is not publicly available.

BEUC calls for an introduction of higher sanctions for infringing the Passenger Rights Regulations (especially Air), which would be based on the percentage of the airlines' and intermediaries' annual turnover. Such measures send a strong message to bad actors and grant national authorities with deterrent powers to stop the infringements rapidly.

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 (Consumer Rights Directive, Unfair Commercial Practices Directive, Unfair Contract Terms Directive, Price Indication Directive).

- *Oblige airlines and intermediaries to adhere to ADR and make their decisions binding.*

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 Directive⁴⁷ - 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.

⁴¹ 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.

⁴² <https://d3cez36w5wymxj.cloudfront.net/wp-content/uploads/2016/11/16173333/AGENCY-REPORT-delays-and-compensation.pdf>

⁴³ <https://www.ofgem.gov.uk/publications/customers-entitled-automatic-compensation-switching-problems-1-may>

⁴⁴ <https://dinoffentligetransport.dk/en/customer-service/service/travel-guarantee/travel-guarantee-for-trains/>

⁴⁵ 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>. (<https://www.sciencedirect.com/science/article/pii/S2590198219300144>)

⁴⁶ See Point 2.1.1 of the COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT REPORT Accompanying the documents Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 261/2004, (EC) No 1107/2006, (EU) No 1177/2010, (EU) No 181/2011 and (EU) 2021/782 as regards enforcement of passenger rights in the Union.

⁴⁷

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

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. This is the line taken by the European Parliament in its position on the review of the Directive 2013/11/EU on alternative dispute resolution for consumer disputes (the 'ADR Directive') mandating airlines participation⁴⁸.

Moreover, **the decisions of the ADR bodies should be legally binding**,⁴⁹ 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".⁵⁰

In this regard, in Austria, very good experiences have been made with the compulsory participation of companies in arbitration proceedings in the rail and air sectors. Another example comes from Spain June 2023 when the State Aviation Safety Agency (AESA) received accreditation as an alternative dispute resolution entity for flight claims⁵¹. This accreditation grants AESA reports on flight delays, cancellations, denied boarding, and overbooking mandatory compliance status for airlines. Participation for carriers is mandatory and the decision is binding upon them.

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".⁵²

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**,⁵³ and which **recommended as a potential solution to create "a mandatory EU-wide mediation body on air passenger rights"**.⁵⁴

⁴⁸ See [REPORT A9-0060/2024](#) on the proposal for a directive of the European Parliament and of the Council amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828.

⁴⁹ 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).

⁵⁰ 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/R_eforming_Competition_and_Consumer_Policy_publication_4.10.21.pdf, p. 60

⁵¹ The new procedure for claiming incidents with airlines in Spain is based on Regulation (EC) No. 261/2004 of the European Parliament and of the Council, which establishes the rights of air passengers in cases of flight cancellation, delay, or denied boarding. This regulation has been implemented in Spain through Law 7/2017, which sets a clear framework for passengers to file claims and seek appropriate compensation if their rights are denied. The Order TMA/201/2022, dated March 14, regulates the alternative dispute resolution procedure for air transport users.

⁵² 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.

⁵³ See points 4.81 and 6.34 of the study.

⁵⁴ See table 9.1 – item 9 of the study.

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 procedures⁵⁵.

- *Introducing clear, strict, and harmonised deadlines for travel operators and intermediaries to deal with passenger complaints in all passenger rights Regulations.*

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.

- *Making the information about the reasons for travel disruption public and communicating it to consumers and NEBs within 48 hours of the disruption.*

Passengers are often not informed about the exact reasons for 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 based on the exception for extraordinary circumstances (especially in aviation), without the operator specifying the exact reason for their journey being cancelled or delayed. This adds burden on consumers who 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 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 Proposal for a Regulation as regards enforcement of passenger rights in the Union initiative and replicated in all passenger rights regulations.

⁵⁵ 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.

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

4. The missing: still no coherence between Air Passenger Rights and the Package Travel Directive

The European Commission has repeatedly stated, during the preparatory work for the passenger rights initiatives⁵⁷ and the revision of the Package Travel Directive⁵⁸, that the lessons of the pandemic must be learned, and that both texts must be revised in a coherent way to close existing legal discrepancies, detrimental to consumers and beyond.

In the area of passenger rights, this was reflected in the five issues identified in the initial inception impact assessment of the passenger rights initiatives. Of these, two - the possible introduction of insolvency protection for airlines and the introduction of statutory rights for consumers to cancel their tickets free of charge in the event of a crisis - would have brought consistency between legislations as they already exist in the Package Travel Directive for years and would have introduced a level-playing field between tour operators, travel intermediaries and airlines.

Despite **repeated calls for coherence from a wide range of stakeholders, these two key issues have been dismissed by the European Commission**, leaving the door open for similar problems to reappear in the event of new widespread crisis.

In BEUC's view, both topics should be a priority for EU policymakers, and put back on the negotiating table.

4.1. Mandatory insolvency protection for airlines

4.1.1. The proposal

Despite strong commitments taken by the European Commission in its Sustainable and Smart Mobility Strategy stating that “the EU must help passengers when transport operators go bankrupt” and that “stranded passengers need to be repatriated and their tickets have to be reimbursed in case of cancellation by carriers [...]”⁵⁹, and despite repeated joint calls to Commissioner for Transport Mrs. Adina Valean, from European consumers, industry, and insurance providers on urgent need for mandatory insolvency protection scheme in the airline sector, and despite repeated positions from the European Parliament⁶⁰ and the European Court of Auditors⁶¹ on this matter, the Proposal for a Regulation as regards enforcement of passenger rights in the Union **does not introduce a mandatory insolvency protection for airlines that would mirror the PTD obligations applicable for decades.**

⁵⁷ See Call for evidence for an impact assessment - Ares (2021)7881104,

⁵⁸ See Inception impact assessment - Ares (2021)5004927.

⁵⁹ Point 91 of the Sustainable and Smart Mobility Strategy, available [here](#). Last consulted on 10 January 2024.

⁶⁰ <https://www.europarl.europa.eu/news/en/press-room/20191017IPR64571/thomas-cook-bankruptcy-better-consumer-and-employee-protection-needed> ,

⁶¹ https://www.eca.europa.eu/Lists/ECADocuments/SR21_15/SR_passenger-rights_covid_EN.pdf; See Recommendation 1, point D.

4.1.2. BEUC position

BEUC and 8 co-signatories⁶² (ranging from consumers to industry stakeholders) fully supported the European Commission initial willingness to correct the legal gaps between the Air Passenger Rights Regulation and the Package Travel Directive and provided for ample evidence of harms suffered by consumers and other stakeholders because of this legal discrepancy⁶³. The absence of a proposal to introduce a mandatory insolvency protection mechanism is therefore incomprehensible at this stage.

The EU Policy makers should ensure that, in the context of the initiative for a Regulation as regards enforcement of passenger rights in the EU, airlines have to provide financial guarantees covering their liabilities towards passengers in case of insolvency or removal of their operating license which covers - *at minima* – the full refund of travellers' pre-payments, voluntary vouchers accepted by consumers, and their repatriation, if needed.

Only airlines should support the risk of their activities, not consumers, nor taxpayers. Nor should package guarantee providers have to extend their protection to cover airline failures, which is a whole new and different risk.

Finally, it is also a question of fairness for package organisers - often SME-sized - which currently bear the risks of airline failures.

It is worth noting that such insolvency protection schemes exist for decades in the Package Travel Sector. A precedent for airlines also existed in Denmark for years, highlighting that it is both possible and functioning (See Annex 1 for more details on the Danish Airline insolvency protection fund).

BEUC Recommendations:

- 1) **Amend the Regulation to introduce an obligation for airlines 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.

⁶² Age Platform Europe, BEUC, European Consumer Centers (ECC-Net), European Travel Agents and Tour Operator's Association (ECTAA), European Guarantee Funds' Association for Travel and Tourism (EGFATT), European Disability Forum (EDF), European Passenger Federation (EPF), European Tourism Association (ETOA), EU Travel Tech.

⁶³ See [Joint call](#) from European consumers, industry, and insurance providers on urgent need for mandatory insolvency protection scheme in the airline sector.

4.2. Consumer cancellation rights

4.2.1. The proposal

The proposal does not tackle this long-standing issue despite an obvious need for regulation and harmonisation between the Passenger Rights Frameworks and the Package Travel Directive.

4.2.2. BEUC position

One of the objectives of the Passenger Mobility Package and the reforms of the Passenger Rights Framework (especially Air) and the Package Travel Directive was to ensure consistency between the frameworks which are deeply interlinked. This to ensure greater protection for passengers and holiday makers, and to correct important legal gaps that are detrimental to consumers but also on numerous other actors of the tourism value chain (intermediaries, travel agents etc.)⁶⁴.

One of the divergences between the frameworks is the lack of alignment of consumer cancellation rights.

While consumers benefit from cancellation rights under the PTD⁶⁵ (Article 12 PTD) since years, this right does not exist for consumers under Air Passenger Rights Regulation, either in normal times or in times of crisis.

As a result, during the pandemic, despite negative warnings from Member States, consumers lost money because flights continued to take off.

This reform is an opportunity to change this situation, as it is highly detrimental not only to consumers, but also to other players such as travel agents, who have a strict responsibility towards consumers. Thus, if consumers decide to cancel their package, they have to refund them in full, without having any right of recourse against the transport operators as no cancellation rights exists.

Therefore, BEUC urges EU Policy Makers to ensure the coherence of the frameworks by introducing consumer cancellation rights in the Air Sector, as initially considered by the European Commission in the preparatory work of the Passenger Rights initiatives⁶⁶.

⁶⁴ See joint ECTAA and EU Travel Tech factsheet: THE PACKAGE TRAVEL DIRECTIVE: How can we make it fit for purpose?, available [here](#).

⁶⁵ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, See article 12, Available [here](#).

⁶⁶ See call for evidence for an Impact Assessment of the Better Protection of Passengers and their Rights initiative (2021)7881104. Available [here](#).

BEUC Recommendations:

Passengers buying stand-alone tickets should be able to cancel them at no cost if extraordinary circumstances occur (as is the case already for passengers buying their flight as a part of a holiday package), and against a cancellation fee in a normal situation.

4.3. Vouchers

4.3.1. The proposal

The proposal **is silent** regarding vouchers.

4.3.2. BEUC position

BEUC recommends the introduction of clearer rules for vouchers, as envisaged in the revision of the Package Travel Directive⁶⁷.

The Passenger Rights Regulations are clear, and all stated that vouchers can only be voluntary and cannot be imposed on consumers. This was confirmed by the European Commission guidelines during the COVID-19 pandemic⁶⁸.

However, the texts do not provide for prescriptive minimum validity rules for vouchers.

The absence of rules was highly detrimental for consumers during the pandemic. Despite the welcomed EU Recommendation on vouchers⁶⁹, which reiterated that vouchers could only be voluntarily, as this Recommendation was not binding, its application and implementation by Member States and operators on the ground was clearly insufficient as demonstrated by BEUC⁷⁰ and acknowledged by the European Commission in the explanatory memorandum of the proposal⁷¹.

Indeed, numerous Member States⁷² took advantage of this legal loophole to introduce derogatory rules authorizing transport operators, travel agents, tour operators to delay refunds and impose vouchers on consumers, with random conditions that varied widely across the EU. Sometimes these vouchers were neither covered against insolvency, nor refundable, etc. This situation forced the European Commission to launch infringement procedures against the non-complying Member States.

⁶⁷ See new Article 12a (Vouchers) of the proposal for a Directive amending Directive (EU) 2015/2302 to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive. Available [here](#).

⁶⁸ COVID-19: Commission provides guidance on passenger rights https://ec.europa.eu/commission/presscorner/detail/en/ip_20_485, last consulted on 10.01.2023.

⁶⁹ Commission Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic.

⁷⁰ See BEUC report: "COVID-19 and EU Travellers' Rights - Evaluation of the Member States Implementation of the EU Recommendation on vouchers.

⁷¹ See Explanatory Memorandum of the Proposal for a Directive Amending the Directive (EU) 2015/2302 to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive. Available [here](#).

⁷² Idem.

To avoid repetition of such situation, Passenger Rights Framework should be adapted to provide for rules of validity of vouchers, as proposed by the European Commission in the context of the revision of the Package Travel Directive⁷³.

BEUC Recommendations:

- The introduction of minimum validity rules for vouchers mirroring what is proposed in the proposal for a revision of the Package Travel Directive.

4.4. Better Securitisation of consumers pre-payments

4.4.1. The proposal

There is an urgent need to better secure consumers' pre-payments in the airline sector and to avoid the money flow problems encountered during massive cancellations during the pandemic. Despite this fact, the proposed Regulation is silent on this topic.

On the other hand, in the revision of the Package Travel Directive⁷⁴, the European Commission's proposal introduces a new Article 5a aiming to limit consumers' pre-payments. As a matter of coherence, and to ensure the financial resilience of the sector in crisis time, the same should be done in the airline sector.

4.4.2. BEUC position

- Why better securing consumers pre-payments in the transport and tourism sector is pivotal?

The successive Thomas Cook and COVID-19 crises have highlighted the fragility of the travel and package holiday sectors business model, one based on consumers' full (and far in advance) pre-payments. **This business model is both precarious and not resilient in times of crisis.**

Better protecting consumer pre-payments is an essential lesson to be learnt from the successive crisis as it will benefit consumers by limiting their financial losses, help travellers get refunded in case things go wrong, and limit the airlines exposures to massive and simultaneous refund requests.

BEUC would therefore recommend EU Policy Makers to introduce **a progressive phase-out of this full pre-payment** practice in the airline sector would be beneficial in the long run for all stakeholders.

⁷³ See Article 12a Vouchers of the proposal for a Directive to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive.

⁷⁴ See Article 5a Payments of the proposal for a Directive to make the protection of travellers more effective and to simplify and clarify certain aspects of the Directive

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

As an alternative to the full prohibition of consumer’s pre-payments in passenger rights legislation, **BEUC would favour the introduction of provisions 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 obligation has 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 would 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 pre-payments from consumers to airlines and tour operators and would have various benefits for travellers as well as for airlines and tour operators. It is also a solution favoured by the European Court of Auditors⁷⁵ and some industry stakeholders⁷⁶.

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

- *On the 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 crisis⁷⁷. *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.

⁷⁵ See [Special Report](#) Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts, Recommendation 1, Last consulted on 07 December 2023.

⁷⁶ See EU Travel Tech presentation in the IMCO Hearing on the Package Travel Directive, https://www.europarl.europa.eu/cmsdata/279277/EU%20Travel%20Tech_PTD.pdf , last consulted on 07 December 2023.

⁷⁷ 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.⁷⁸

In practice, such protection systems, despite not being mandated by **law are *de facto* already present in many areas of consumption, including the tourism sector.**

For example, several well-known payment-receiving marketplaces such as AirBnB⁷⁹ , Alibaba⁸⁰, Viagogo⁸¹, BlablaCar, Vinted⁸², block consumer payments for a certain period until the services have been performed.

The car rental sector is another interesting example of how securing consumer prepayments can be done. Consumers' payment is blocked on their bank account until the contract is fulfilled, after which it is released into the retailer's account. The same goes for the deposit in case of damage to the car, which is blocked and then refunded to consumers fully or partly if damages are made to the vehicles⁸³. Other major players such as PayPal⁸⁴ also function as trusted account providers.

At national level, the real estate sector also provides examples that work well. For instance, in Belgium, when consumers buy a house or an apartment that still needs to be built, their pre-payments are strictly regulated in proportion to the progress of the construction (calendars etc.)⁸⁵.

Numerous examples EU policy makers can inspire of are present on the market and could be a way, to 1) better protect consumers pre-payments in the transport and tourism sector and ensure their swift refund also in crisis time, 2) better protect enterprises by avoid massive money flows, due to simultaneous consumers refund requests, in case of widespread crisis.

⁷⁸ 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.

⁷⁹ See AirBnB webpage, When you'll get your payout : https://www.airbnb.co.uk/help/article/425?set_beve_on_new_domain=1701439374_YmZkNjlmMzQ3Zjgw, last consulted on 06 December 2023.

⁸⁰ See 5 Successful Marketplaces That Use Escrow, available [here](#), last consulted on 06 December 2023.

⁸¹ <https://www.viagogo.be/LandingPage/1000748>

⁸² https://www.vinted.co.uk/terms_and_conditions , last consulted on 11 January 2024.

⁸³ See ECC-Net webpage on care rental : <https://www.europe-consommateurs.eu/en/travelling-motor-vehicles/motor-vehicles/car-rental.html>, last consulted on 06 December 2023.

⁸⁴ <https://www.paypal.com/us/webapps/mpp/paypal-safety-and-security>, "If there's a problem with a transaction, we'll put a hold on the funds until the issue is resolved. We investigate and stay involved every step of the way". Last consulted on 6 December 2023.

⁸⁵ See so called loi "Breyne", available [here](http://www.ejustice.just.fgov.be/cgi/loi/change_lq.pl?language=fr&la=F&cn=1971070930&table_name=loi) : http://www.ejustice.just.fgov.be/cgi/loi/change_lq.pl?language=fr&la=F&cn=1971070930&table_name=loi , last consulted on 06 December 2023.

BEUC Recommendations:

Amend the Regulation and introduce a new Article 8, to ensure that consumers pre-payments in the airline sector are better protected against insolvency and in crisis time. This could be achieved:

- 1) by the banning consumers' pre-payments or limiting them, as envisaged in the PTD revision proposal, or
- 2) by securing consumers prepayments in "trusted accounts" or "escrow schemes", as existing in other consumer sectors (tourism, retail etc.).

5. Conclusions

BEUC welcomes some provisions of the Proposal for a Regulation in what regards enforcement of passenger rights in the Union, notably on information to consumers and on rules regarding reimbursement of Air Tickets when bought via online booking intermediaries. Nevertheless, we are overall disappointed with this initiative as we find crucial points are missing from the text, namely an insolvency protection scheme for consumers in case airlines go bankrupt and a right for consumers to cancel their tickets free of charge in times of crisis. EU co-legislators should fill those historical legal loopholes during the legislative process. This is not only a question of consumer protection, but also of fairness in the tourism sector⁸⁶.

Furthermore, despite ample evidence of passenger rights violations by carriers, and clear recognition by the European Commission that passenger rights enforcement is a "recurring issue"⁸⁷, no ambitious or game-changing measures are proposed to EU consumers.

At the moment, EU passenger rights only seem to benefit the most persistent consumers, who are prepared to invest a great deal of time, energy and sometimes money in enforcing them. This situation is no longer acceptable.

In view of the growing diverse problems consumers face in asserting their rights as passengers, any review of the various regulations should take much more ambitious steps than the ones proposed, to really empower consumers to assert their rights and to provide authorities with deterrent powers against wrong doers in case of widespread infringements.

Halfway solutions are no longer enough. What is needed is a genuine reform of passenger rights, that includes automated refunds (and automatic compensation if possible), a network of NEBs with harmonized powers whose decisions would be binding and applicable to passengers with the same causes for action, compulsory participation of carriers and intermediaries in ADR Schemes, and the introduction of sanctions based on the turnover of players to give deterrent powers to the authorities.

⁸⁶ See the joint call from European consumers, industry, and insurance providers on urgent need for mandatory insolvency protection scheme in the airline sector. Letter sent to Commissioners Valean and Reynders on December 2022. Available [here](#).

⁸⁷ See explanatory memorandum of the initiative.

Annex 1: Costs and relevant data of the Danish airline insolvency protection scheme

This document aims to provide data concerning the Danish Scheme in the airline sector.

It confirms – once again – that airline industry claims concerning significant costs of setting up such schemes are not justified.

The Annex also reports on the smooth treatment of the various airline insolvencies that the Danish insolvency protection fund had to manage.

All data in this document comes from BEUC, European Consumer Centres (ECCs), ECTAA⁸⁸ and EGFAAT⁸⁹.

1. The Danish Airline Insolvency Protection Fund in a nutshell

In Denmark a fund was set up to protect against airline insolvencies:

- The Danish fund covers travellers with a flight only ticket departing from and returning to a Danish airport.
- Domestic flights are not covered.
- The fund covers stranded travellers abroad who are repatriated by TGF.
- If there is sufficient money in the fund, travellers who were supposed to depart after the time of the bankruptcy will get their prepayment reimbursed with a deduction of EUR 134 per person.
- If the fund is insufficient, a proportional coverage will be calculated.
- The fund is separate from the package travel fund and is built up by contributions from all airlines departing from Danish airports.
- A fee of **€ 0.30** per passenger is paid to the Danish authorities (along with the safety contribution that all airlines must pay). The authorities transfer this money to the fund every month.
- When the fund reaches approximately €13.4 million, further contributions are not collected from the airlines.
- The limit of €13.4million. is a maximum limit, meaning that in case an airline bankruptcy cost more than that amount, it is not covered
- The limit of €13.4million. is defined by law and based on a political agreement.
- If the fund goes below €10million., contributions will be reactivated.
- If the fund goes below €3.5million., passenger contributions will be €0.60 until the fund again is built up to the maximum.
- Coverage of “flight only” was introduced in 2015, and in 2020 the fund stood at €14 million.

⁸⁸ The European Travel Agents' and Tour Operators' Associations.

⁸⁹ European Guarantee Funds' Association for Travel and Tourism.

2. Insights from recent insolvency procedures of airlines in Denmark

The Danish Travel Guarantee Fund:

The total sum/capital available in the fund on 31 December 2021 was:
DKK 97,642,000 (approximately €13,000,000)

Registered airline bankruptcies between 2017 – 2021

2021	Great Dane Airlines A/S Fund payments DKK 474,000 (approximately €63,000)
2019	Adria Airways Fund payments DKK 169,000 (approximately €23,000)
2019	Thomas Cook Airlines Fund payments DKK 278,000 (approximately €37,000)
2019	Jet Airways Fund payments DKK 5,000 (approximately €700)
2019	WOW Air Fund payments DKK 2,220,000 (approximately €300,000)
2019	Flybmi (British Midland Regional Ltd) (Fund payments DKK 164,000 (approximately €22,000))
2018	Primera Air (Fund payments DKK 14,816,000 (approximately € 2,000,000))
2017	Air Berlin PLC & Co. Luftverkehrs KG (Fund payments DKK 1,239,000 (approximately € 165,000))



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