



FACTSHEET

Air passenger rights back on the negotiating table

In 2013, the European Commission proposed to update the Air Passenger Rights Regulation, a 2004 Regulation giving important rights to passengers when flights are cancelled or delayed. However, since then the file has been blocked in the Council of the European Union. The proposal is now back on the negotiating table, in need of a revamp.

Why revise the rules?

The current Regulation granted passengers key rights, but enforcement has been toothless and inconsistent. Consumer complaints about poor compliance have risen. The COVID-19 crisis, developments on the aviation markets and the emergence of new actors such as booking intermediaries have exacerbated long-existing problems. The European Court of Justice has issued many rulings on critical topics of the Regulation. This shows the need to clarify it and help passengers enforce their rights.

Lax enforcement

According to a 2020 European Commission study, 17m passengers experienced flight cancellations and 16m experienced delays in 2018. However, only 38% of those entitled to benefit from a compensation finally get it.

Are the proposed amendments satisfactory?

The 2013 Commission's proposal included several advances and aimed to clarify some controversial points. However, several rights would be significantly reduced, e.g., the right to compensation for delays and cancellations. There are also unresolved issues which the proposal does not tackle.

Key issues to include in the final Regulation

STRONGER ENFORCEMENT

Passengers making reimbursement/compensation claims often experience frustration, which is why automated reimbursement and compensation schemes are needed. This would reduce the administrative burden for both consumers and airlines and enforcement bodies – as recommended by the European Court of Auditors.

Alternative dispute resolution and enforcement bodies' decisions should also be binding on airlines. The decision should also apply to all passengers on the flight who suffered the same disruption. Airlines and intermediaries failing to comply with passenger rights should face deterrents, such as fines based on their turnover¹.

COMPENSATION FOR LONG DELAYS

EU legislators should codify the CJEU rulings (Sturgeon, Nelson and Folkerts) which state that airlines are obliged to compensate passengers after a three-hour delay. However, the Commission proposed to increase the delay thresholds to five, nine and twelve hours based on distance. This would deprive 85% of passengers of a right to compensation and would roll-back existing rights. Current rules on compensation for cancellation are clear and should remain unchanged.

¹ Similar constructions have been already applied in the General Data Protection Regulation (Regulation (EU) 2016/679) or more recently in the Better Enforcement and Modernisation Directive (Directive 2019/2161).



RE-ROUTING

The 2020 Commission study says 75% of passengers choose re-routing instead of a refund for cancelled flights. However, it also found a lack of compliance by airlines. This right should be granted as soon as possible, even with competing carriers³, involve alternative means of transport if necessary and be available to delayed passengers too. The Commission proposal to allow airlines to do this within 12 hours (much too long) should be dropped.

FINANCIAL GUARANTEES AGAINST AIRLINE INSOLVENCY

When airlines go bust, passengers can be left stranded or without a refund. There have been 87 airline insolvencies from 2011-2019, affecting 5.6m consumers. On average, passengers lost €431, 87% of which was not recoverable because there are no mandatory insolvency protection schemes which have been called for by the European Parliament and the European Court of Auditors. BEUC and industry stakeholders also jointly called for it.

DEFINITION OF 'EXTRAORDINARY CIRCUMSTANCES'

The Regulation should define what constitutes 'extraordinary circumstances'. A non-exhaustive list of extraordinary circumstances should be established. Both the definition and the content of the list of extraordinary circumstances should be in line with ECJ decisions. 'Staff strikes' should never be considered as an extraordinary circumstance.

MINIMUM VALIDITY RULES FOR VOUCHERS

Currently, if a flight is cancelled, passengers can choose between a refund or re-routing⁴. The refund should be monetary or a voucher, but only if passengers agree⁵. However, the Regulation does not set rules on vouchers validity, which led to a lot of consumer issues during the pandemic. BEUC recommends codifying the Commission's Recommendation on vouchers, so that all vouchers have minimum validity rules.

THE RIGHT TO CANCEL AT NO COST IN CASE OF "EXTRAORDINARY CIRCUMSTANCES"

Like in the Package Travel Directive, the Regulation should allow consumers to cancel their ticket and receive a full refund at no cost "in the event of unavoidable and extraordinary circumstances"⁶. Currently, such a right does not exist and consumers are at the airlines' terms and conditions mercy and/or goodwill. Consequently, many lost money because they complied with national authorities' recommendations (e.g. travel bans to certain destinations) but their flights were maintained.

"NO-SHOW" CLAUSES

Airlines use "no-show" clauses when selling tickets to their customers. This is problematic when passengers have missed the first leg of a multi-leg itinerary. When reaching the airport to embark on their second part of the itinerary passengers find out their ticket has been cancelled and need to buy a new ticket or pay a fee to be able to use the original. The reviewed Regulation should fully ban such unfair clauses.

LUGGAGE POLICIES

Airlines too often create confusion around hand luggage policies they apply. The Regulation should clarify that hand luggage is included in the basic ticket price and should not be subject to additional fees. The text should define what is the "reasonable size and weight" for hand luggage. This will allow better transparency and price comparability for passengers and ensure legal certainty for all.

TARMAC DELAYS

Being confined on a plane stuck on tarmac can be a source of stress. These delays should be treated differently than delays in the terminal building. The Regulation should include assistance after one hour of waiting, including snacks and the right to disembark after two hours.

² In 2018, the Austrian Supreme court ruled that airlines are required to re-route passengers on competing airlines if necessary to fulfil their re-routing obligations. See judgment OGH 1 ob 133/18t.

³ Articles 5 and 8(1) of the EU 261/2004 Regulation on Air Passenger Rights

⁴ Articles 7(3) and 8(1)(a) of the EU 261/2004 Regulation on Air Passenger Rights.

⁵ Article 12(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.