



FACTSHEET Air Passenger Rights

In March 2013, the European Commission proposed an update of the laws governing air passenger rights when flights are cancelled, lengthily delayed or denied boarding (Regulation 261/2004).

What is the need for revision?

The regulation (R261) has granted passengers key basic rights. However, their enforcement has been toothless and inconsistent. Problems remain widespread and consumer complaints about poor compliance have risen steadily. Passengers are often left with the sole “alternative” of taking legal action against non-compliant airlines, which few pursue.

The European Court of Justice’s (CJEU) heavy caseload in recent years clearly shows the need to clarify fundamental aspects of the regulation and help passengers enforce their rights. Therefore it is crucial these rulings are codified in EU law.

Airlines’ consumer rights compliance costs remain low

A recent European Commission report shows airlines overstate R261 compliance costs.

- From 2010-2012, less than 1% of medium-haul, 0.4% of short-haul and 1.5% of long-haul flights required compensation.
- Care and assistance, including accommodation, was provided on 1.23% of all flights.

This clearly again demonstrates the compensation obligation after 3 hours delay as backed by the CJEU does not create a significant financial burden on airlines. Weakening passengers’ rights outlined in the *Sturgeon* rulings on such a basis cannot be accepted.

Is what has been proposed satisfactory?

The European Commission’s proposed review of R261 includes a few advances and clarifies some controversial provisions (e.g. the rights to re-routing by other transport means; assistance between a missed connecting flight; correct booking spelling mistakes).

Notably however, a number of key rights would be significantly reduced, particularly the rights to compensation for delays and to accommodation in “extraordinary circumstances”.

How has the European Parliament dealt with the issue?

On 5 February 2014, the MEPs’ Resolution significantly improved the proposal, the main achievements being a **prohibition of ‘no-show clauses’** on return flights; putting most technical problems outside the scope of “extraordinary circumstances”; **more re-routing options** after delays of 3 hours or more.

Key issues to include in the final Regulation

Compensation for long delay

EU legislators should codify the ECJ rulings (*Sturgeon*, *Nelson* and *Folkerts*) which state that airlines are obliged to compensate passengers after 3 hours of delayed arrival for all flights.



However, the Parliament's Resolution proposes a 3-tier approach of 3, 5 and 7 hours of delay dependent on distance. BEUC advocates the ECJ approach of 3 hours **for all EU flights**. This makes the law simpler and equitable. Moreover, the statistics above show that very few flights are affected by this obligation and passengers have no compensation right in "extraordinary circumstances".

Right to accommodation in extraordinary circumstances

Limiting R261's general right to accommodation to 3 nights and €100 per night, as the European Commission suggests, is unacceptable. Passengers often incur expenses significantly beyond this and it risks them being abandoned. The volcanic ash cloud incident in 2010 is the reason for this policy choice, but a highly exceptional event is an unsound basis for setting general rules.

BEUC believes the current R261 provisions should be left unchanged on this point. Again, analysis shows only 1.23% of flights were affected by this obligation between 2010 and 2012.

Re-routing as soon as possible



75% of passengers hit by cancelled flights choose re-routing instead of refund. This should be granted as soon as possible, involve alternative means of transport and be available to delayed passengers too. People should not be merely referred to a website or phone number to sort themselves.

Prohibit the 'no-show' clause

The new Regulation should include an outright ban on airlines denying boarding on a connecting or return flight where passengers have not taken/missed the outbound leg. This amounts to an unfair clause, as many courts have ruled e.g. in Austria, Germany and Spain.

Compulsory financial guarantee against airline insolvency

An airline which goes bust and suddenly cancels its flights can leave thousands of passengers stranded or without refund for the already bought tickets (e.g. Malev or Spanair recently). EU lawmakers should establish a mandatory guarantee against airline insolvencies.

The final Regulation should also require:

- A presumption that technical problems are not an "extraordinary circumstance". The newly suggested concept of "unexpected flight safety shortcomings" should be deleted as it is broad enough to include almost all technical defects, thereby exempting airline from their obligation to compensate.
- Airlines regularly report technical problems which cause delays and cancellations to their national enforcement bodies (NEBs).
- Advertised ticket prices include check-in, a boarding pass and 1 item of checked luggage.
- The right to transfer a ticket to another person if prevented from travelling.
- Airlines adhere to Alternative Dispute Resolution (ADR) systems.
- An airline representative in each airport they operate from.
- Inexpensive telephone helplines and available e-mail addresses.
- That they extend to non-EU carriers arriving in the EU and EEA.
- No time limit on filing a customer complaint. The proposed 6 months is too short and could tamper with normal judicial prescription periods.