



FACTSHEET

Air passenger rights for the post-pandemic age

In 2013, the European Commission [proposed](#) to update the Air Passenger Rights Regulation, a 2004 law giving important rights to passengers when flights are cancelled or delayed. However, since then the file has been blocked in the Council of Ministers. A recent Commission [study](#) and reports from the [European Court of Auditors](#), showed that passengers are suffering from the lack of enforcement of their rights and that improvements are needed to ensure better consumer protection.

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, where thousands of consumers were harmed by airlines' practices (e.g. imposition of vouchers, failure to inform passengers of their rights) exacerbated long-existing problems. To enforce their rights, passengers often have to take court action against airlines, which few pursue. 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](#), in 2018 17m passengers had their flights cancelled, while 16m experienced delays. However, only 38% of those entitled to claim compensation did so. A recent Consumer Protection Cooperation Network action following a [complaint by BEUC](#) and its members, highlighted [widespread lack of compliance](#) with passenger rights. Many consumers who had vouchers imposed on them during the pandemic are still waiting for a reimbursement.

Are the proposed amendments satisfactory?

The 2013 Commission's proposal included several advances and aimed to clarify some controversial points. For example, it would give passengers re-routing rights with other airlines and by other transport means, assistance in case of missed connecting flights and the ability to correct spelling mistakes in bookings.

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 automatic 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 failing to comply with passenger rights should face deterrents, such as fines¹.

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. As [most delays](#) are two to four hours, this would rule out most delays and would roll-back existing rights. Current rules on compensation for cancellation are clear and should remain unchanged.

RE-ROUTING

The 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 carriers², 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 protection schemes. Mandatory guarantee schemes for airline insolvencies are vital as the [European Parliament](#) and the [European Court of Auditors](#) have called for, and as considered by the [European Commission](#).

DEFINITION OF 'EXTRAORDINARY CIRCUMSTANCES'

The Regulation should define what constitutes 'extraordinary circumstances' in line with CJEU case law and clarify that 'staff strikes' should never be considered as such. Finally, it should establish a presumption that 'technical problems' do not constitute an 'extraordinary circumstance'.

MINIMUM VALIDITY RULES FOR VOUCHERS

Currently, if a flight is cancelled, passengers can choose between a refund or re-routing³. The refund should be monetary or a voucher, but only if passengers agree⁴. However, the Regulation does not set rules on the validity of vouchers, which led to a lot of [frustration](#) for consumers 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'

As 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"⁵. Currently, such a right does not exist and consumers are at the mercy of airlines' terms and conditions 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.

¹ Similar constructions have been already applied in the General Data Protection Regulation (Regulation (EU) 2016/679) or more recently in the proposal for the directive on better enforcement and modernisation of EU consumer protection rules (COM(2018) 185 final).

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.