

ERA POSITION ON AIR PASSENGER RIGHTS

Maintaining consumer choice and freedom

ERA and its member airlines support the protection of consumers. However, the rights of consumers must strike a fair balance between protecting passengers and not unduly burden airlines and passengers with excessive regulation or costs. All players within the “aviation supply chain” must be liable for their actions or misconduct affecting the rights of passengers.

The airline market within Europe is de-regulated and fiercely competitive. This has resulted in more routes being developed, innovative products and technologies, lower prices and greater choices for consumers.

ERA strongly opposes the imposition of any regulation which would reduce the ability of consumers to choose different products, services and prices for air travel.

Additional regulation to control a free market would reduce and limit consumer choice, stifle innovation and increase the cost of air travel. Additional regulation will also lead to a further discrimination of air transport compared to other modes of transport. Instead, common passenger rights should be established covering the basic rights on all modes of transport.

Key principles

ERA believes that the following principles are essential tests in any revision of existing or development of new passenger rights legislation.

- **Passenger rights legislation must not compromise safety and security.** Aviation is a safety critical business and the primary right of every passenger is to travel safely and securely to their chosen destination. No regulation should penalise airlines where a decision not to operate a flight as planned is guided by safety or security concerns.
- **Legislation must not be anti-competitive between modes.** Passengers have a right to equal treatment whatever the mode of transport they choose to travel by. Airlines should have the ability to compete with different modes on an equal and fair footing without differences in regulatory requirements. This applies equally to security screening requirements on different modes.
- **Legislation should balance contractual and regulatory rights leaving consumers free to choose the product and service levels they want.** Legislation should aim to provide a basic level of protection to all consumers. Additional contractual rights can be added (or removed) by consumers depending on the level of protection (and associated cost) sought. In a competitive market, over-regulation adds costs, stifles innovation and reduces the ability of airlines to offer innovative combinations of product, price and contractual rights.
- **Passengers must be more aware of their rights.** Airlines should ensure that passengers have easy access to information on both their regulatory and contractual rights. Equally the Commission should produce accurate passenger information and guidance.
- **Passengers must easily understand and be able to claim their rights, equally airlines must be able to understand and implement their obligations.** EU Regulation 261/2004 is ambiguous,



difficult to implement and enforce for both passengers and airlines. This results in legal uncertainty and frustration for passengers and airlines alike. There should be coherent guidelines for national enforcement bodies to ensure harmonised implementation and enforcement across all member states of regulatory obligations. The complaint handling process must be made more predictable with the affected passengers submitting complaints directly to the operating air carrier within a clear and defined timescale.

- **Legislation should only impose obligations on airlines to pay compensation to passengers under circumstances which are within an airline's control.** To do otherwise would expose airlines to liabilities and obligations over which they have no control. Equally third parties should be held accountable for their part in ensuring a trouble free air journey.
- **Compensation to passengers must be reasonable.** It should recognise the competitive operating environment within Europe and the services offered to passengers, including travel insurance options. The current levels of compensation are punitive and are, as such, as misnomer. They were agreed as part of a political process rather than one which recognises the real operating situation of the industry. Consequently the current compensation rates should be reduced.
- **Assistance to passengers must be proportionate.** The air carriers must provide passengers with a level of assistance which is proportionate to their essential and immediate needs following disruptions.
- **Legislation must be coherent, easy to enforce and be fully assessed before implementation.** Proposals for amendments to existing (or development of new) legislation must be accompanied with a full impact assessment before and after co-decision. Legislation should be clear and unambiguous. It should be coherent in its implementation and developed with the help of industry experts and be supported with information to help airlines and enforcement bodies accurately implement and enforce the law and passengers able to understand their rights.

The revision of existing passenger rights legislation

With the above key principles in mind the following comments apply to existing passenger rights legislation or issues under consideration by the European Commission.

1) Financial compensation for denied boarding

- ERA supports existing legislation designed to prevent denied boarding or to compensate passengers in the event of denied boarding.
- Where boarding is denied for reasons beyond the control of the airline it should not be held responsible to pay compensation.

2) Financial compensation for cancellations

- ERA accepts the principle that passengers should have a right to financial compensation where an airline cancels a flight for reasons within its control. However compensation levels are currently disproportionate and punitive, therefore they need to be reduced.
- The ambiguity of "extraordinary circumstances" in EU Regulation 261/2004 is a key weakness of the regulation for both passengers and airlines in defining who is at fault. The term does not make it clear when an event is clearly "force majeure" and beyond the control of the carrier.
- A clear and non-exhaustive list of scenarios should be developed, adopted and updated by the Commission in conjunction with industry. Accepting it will be impossible to define every scenario, a



non-exhaustive list of extraordinary circumstances will add greater certainty to passengers and the airlines.

3) Financial compensation for delays

- The delay to be considered in any revision to legislation on air passenger rights is delay at departure, as air carriers have no control on en-route and/or on arrival delays.
- EU Regulation 261/2004 was not drafted to require airlines to pay compensation in the event of a delay. However ERA acknowledges the recent interpretations by the Court of Justice of the European Union (CJEU) stating the principle that passengers should have a right to financial compensation in case of long delays. The current three-hour threshold set by the CJEU for long delays is arbitrary and needs to be adapted to the reality of air operations with an increase in the number of hours of delays required before triggering the obligation to pay compensation.
- Financial compensation in case of long delays must not be due when the air carrier offers (and the passenger accepts) re-routing.
- There are many reasons why an airline might delay a flight, some within its control and others not. However, providing the passenger is safely transported to his/her final destination the contract between the passenger and airline should be deemed to have been fulfilled.
- Air carriers are already liable for damage caused by delays in the carriage by air of passengers under the terms of the Montreal Convention.

4) Responsibilities of third parties

- Airlines should not be responsible for compensation payments for cancellations or long delays caused by third parties over whom the airline has no control or where there is no accountable third party, for example where statutory immunity exists or where the event is deemed as an “*act of god*”.
- The European Commission should come forward, as a matter of urgency, with proposed legislation which obliges third parties to pay for damages caused to airlines as a result of their actions or which gives air carriers a clear legal right to recover the costs incurred as a result of third parties’ actions.
- Should an airline be required to compensate a passenger on behalf of a third party, it should have a clear legal right to reclaim the cost of any financial compensation payments and damages claimed against them by passengers for events caused by third parties.

5) Compensation levels

- Compensation should not be punitive to the airline and should recognise the operating environment and financial situation of the industry.
- The current levels of compensation in Regulation 261/2004 were originally designed as a punitive payment to disincentive excessive overbooking by airlines.
- The current levels of compensation in Regulation 261/2004 were agreed as part of a political process rather than one which recognises the real operating situation of the industry.
- In particular, on routes subject to public service obligations (PSO) the level of compensation can be completely disproportionate to the regulated fares applied.
- Consequently the current compensation rates are unreasonable and should be reduced.
- Compensation levels for long delays should in all cases be lower than those due in case of cancellation. To do otherwise would give airlines more incentives to cancel their flights instead of operating them with long delays.

6) Passenger assistance requirements

- ERA accepts that obligations should be placed on airlines to provide reasonable and immediate care and assistance to passengers in the event of denied boarding, long delays and cancellations.



- Where an air carrier is not responsible for a disruption, as a result of extraordinary circumstances or as consequence of third parties' actions, the carrier should only be obliged to provide immediate, on-the-spot assistance to passengers and, when applicable, the obligation to provide hotel accommodation should be limited to EUR 80 for a maximum of 2 nights.
- A clear list of scenarios should be developed in conjunction with industry, consulted upon and agreed where a flight cancellation or long delay is not within the control of an airline and therefore its obligations to provide assistance are limited.
- The obligation on air carriers to provide meals and refreshments, hotel or other accommodation should be imposed only when and when available and physically possible.
- When mass disruptions occur, local authorities should offer public facilities to host disrupted passengers.

7) Liability and compensation for lost and delayed baggage

- ERA accepts the principle that an airline should be liable for lost and delayed baggage consistent with an airline's obligations under the Montreal Convention.
- The industry is working hard to reduce lost and delayed bag occurrences below their already low levels.
- Passengers should be made aware of these limits and be encouraged to take out additional protection (ie, insurance products) if they are not satisfied with the provision granted.
- Airlines should have a clear legal right to recover the cost of any financial compensation or liability payments and damages claimed against them by passengers for lost or delayed baggage for events caused by third parties.
- Varying and different local infrastructure at airports does not allow a general framework to be established.

8) Reporting of incidents covered by Regulation 261/2004

ERA does not support the mandatory reporting of incidents covered by Regulation 261/2004 without clear evidence that additional reporting would bring benefits to consumers. It is for national enforcement bodies to take appropriate measures to ensure compliance with any existing regulation.

9) E-booking and check-in rules and practices

ERA does not support additional regulation to control e-booking practices and check-in rules: differentiated practices form part of a carriers' ability to compete in a free market. A one size fits all solution would limit consumer choice and stifle innovation.

10) Flight rescheduling

ERA does not support additional regulation to compensate passengers in the event of flight rescheduling. There is no apparent evidence to demonstrate that significant changes in flight schedules routinely take place and/or if this is a major problem for consumers.

11) Passengers who "no-show" for first (or another) sector

ERA does not support additional regulation to control or limit the ability of air carriers to set individual conditions of carriage associated with different ticket types. These differentiated practices form part of a carrier's ability to compete in a free market by offering consumers different priced products/ contractual conditions.

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