ERA position on the EC Passenger Mobility Package

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The adoption of the Passenger Mobility Package is a step forward in updating the relevant EU regulations governing passenger rights, but much more needs to be done to provide clarity for both airlines and consumers alike.

The air passenger rights framework needs an urgent revision, having not been updated since 2013. These new proposals should facilitate the reopening of negotiations between the co-legislators to address the key issues with Regulation 261/2004 which have made it one of the least clear and most litigated regulations in the canon of European law. Consumer protection extends to encouraging connectivity, the safe operation of airlines, and that airlines are significant employers in the regions whose existence is imperilled by increasing cost burdens placed on them by a regulation that is completely not fit for purpose.

1) Amending Regulation (COM(2023) 753)

ERA welcomes improvements related to the transfer of information between airlines and intermediaries for passengers whose tickets were booked through intermediary ticket vendors, which will now need to provide passengers' contact information to the airline. This is a key measure for airlines, which will avoid previous issues where passengers were not informed of cancellations/delays by the travel agents.

ERA agrees with the need for clear and binding timeframes for reimbursements among all the stakeholders involved in the value chain and therefore welcomes the introduction of clear deadlines for the reimbursement procedure of passengers that booked via travel agents. The refund process must follow **the flow of money** by setting a seven-day deadline for airlines to reimburse the intermediary ticket vendor and a further seven days for the intermediary to reimburse the passenger, as defined in the proposal. Such a process will provide clarity and security for passengers as it allows them to know from the outset who to contact in the event of a refund claim.

The combination of these two measures will solve two main issues that exist with the current reimbursement process:

- The payment issue, as the airline does not always receive the payment and has no information on the price paid by the passenger to the intermediary which can either be with a discount provided by the intermediary or with a markup added by the intermediary. It could also include extra costs such as agent handling fees, insurance and so on.
- The data issue, as most intermediaries do not provide passenger details and airlines do not have a legal right to obtain such information under the current EU framework. This makes it very difficult and often impossible for airlines to communicate potential disruptions to passengers and issue refunds. This therefore directly impacts compliance of the airlines with Regulation 261/2004, without any liability towards the intermediaries.

Nevertheless, ERA is concerned about the introduction in Article 8a (5)b of a 'last resort right' given to passengers to obtain the refund directly from the airline if the travel agent has not fulfilled its obligations by not reimbursing the passenger in time**. ERA does not understand the rationale behind this measure, which would only generate additional costs and complexity for airlines, creates confusion on who has the obligation to pay and may lead to a risk of double payments. Airlines would be required to monitor the reimbursement of all intermediaries and to intervene automatically if the passenger is not reimbursed after 14 days, which is unacceptable**.

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Therefore, in order to ensure fairness and clarity in the obligations imposed on the various actors in the value chain, ERA recommends that sanctions should be put in place to penalise travel agents who fail to pass on refunds to passengers. In parallel, National Enforcement Bodies (NEBs) should also have the right to investigate non-diligent intermediaries. The proposal assumes that airlines have a relationship with intermediary ticket vendors, but this is not always the case. Not all intermediaries have agreements in place with airlines. In addition, some of intermediaries are not IATA accredited and are not part of IATA Billing and Settlement Plan (BSP).

Overall, there is a need for a fundamental regulatory reform of the travel agency sector, both in the context of the revision of Regulation 261/2004 and the Package Travel Directive. An appropriate regulation and a binding code of practice should be introduced for travel agents, requiring any intermediary selling tickets with a flight segment to be able to demonstrate an agreement with the airline to act as an agent on its behalf.

ERA is also concerned about the introduction of "minimum service quality standards" which airlines will have to report periodically to NEBs as this will add an additional administrative burden to airlines, on top of the financial burden arising from current implementation of Regulation 261/2004. The question also arises of how to certify, monitor and verify the accuracy of the information provided, to prevent such a system from degenerating into a false instrument of competition.

In particular, we do not understand how the standard relating to the "cleanliness of the means of passenger transport and the terminal facilities (air quality and temperature control inside, hygiene of sanitary facilities, etc.)" is relevant for airlines when it comes to ensuring that passengers can benefit from their rights under EU261.

Furthermore, the standard relating to "adherence to industry standards on weight and dimensions of hand luggage" is not pertinent, as at this point there is not a common industry standard for hand luggage sizes and weights that would suit each European airline. As a general principle governing hand luggage, ERA believes that clear information on luggage policies should be made available to passengers at the time of booking and check in, and all airlines should allow at least one small cabin bag to be placed under the seat for free.

On the standardisation, several ERA airlines have highlighted considerable operational problems associated with the implementation of a regulation of standardised carry-on luggage dimensions. The size and weight of carry-on luggage differs between an ATR 42, Embraer 145, Airbus 320 and a Boeing 737 as the size of the overhead compartments on these aircraft is not the same. In addition to differences in cabin compartment size by aircraft type, there is also the issue of differing cabin compartment size even within the same aircraft type. **In any case, ERA believes that if such a standardisation measure was to be introduced, it would have to be adapted to the most restrictive aircraft in terms of overhead bin capacity**, thus potentially reducing the current luggage size and weight allowance that some airlines are offering to the consumers.

Overall, ERA is concerned that all these additional requirements on airlines will not contribute to addressing the real problem of Regulation 261/2004, but only impose an additional administrative and operational burden on airlines which are already struggling under the current legislative framework. The decisions that an airline makes in terms of the levels of competitiveness and quality of service it wishes to offer passengers should not be addressed at EU level. Airlines have powerful incentives to comply with passenger protection requirements not only to avoid penalties, but also to avoid negative publicity for failing to respect the rights of its passengers.

Moreover, ERA would like to express its concerns on the new measure introduced in the Omnibus proposal aimed at requiring airlines to carry a person with reduced mobility (PRM) accompanying person free of charge whenever this is required by their policies.

ERA regional airlines operate small regional aircraft on short-haul flights to provide essential connectivity for local communities, who often travel for medical reasons (for example, to a hospital on another island or in a bigger city) and therefore the number and proportion of PRMs on board is large compared to other commercial routes. On the Dash 8-100 and Dash 8-200 aircraft for instance, there is one cabin crew member for 39 passengers and in the event of an emergency, this person is responsible for evacuating the entire cabin in a very short time. In such a situation, the PRM accompanying person is essential to evacuating the aircraft as there is a real safety issue.

The co-legislators must bear in mind that safety and security requirements are much more complex for airlines than for any other mode of transport, and the reference to the existence of such a measure in other modes of transport as a justification is inadmissible.

If the PRM accompanying person's tickets are to be distributed free of charge, this could take up to one third of the seats on small regional aircraft which would be costly and have a huge impact on airlines with small fleets. We believe that regional airlines will be more penalised compared to other airlines operating on the same route with three or four cabin crew members, which will be able to afford greater flexibility with regard to accompanying persons and on routes that are less likely to have PRMs on board. Once again, it is the passenger who will be penalised in the end, as this sum will be recovered through an increase in ticket prices.

Finally, where reference is made to the rights of PRMs travelling with assistance dogs, the EU legislator should clarify what constitutes a trained assistance animal and what training certificates are acceptable. Some airlines accept dogs that have been trained by organisations accredited by Assistance Dog International (ADI) and the International Guide Dog Federation (IGDF), however a proper legal definition would considerably assist airlines in this area. Clarity is also required so that passengers do not confuse assistance dogs with the emotional support animal that is not accepted on board due to not being adequately trained to the same standards. Unfortunately, some passengers abuse the system to the detriment of those who really need an assistance dog.

2) Passenger rights in the context of multimodal journeys (COM(2023) 752)

As an introductory remark, it is important to recall that most ERA airlines operate in regions where air transport is the only possible mode of transport to ensure connectivity with the continent and/or capital cities. Therefore, the opportunities for commercial agreements with rail companies to offer 'single multimodal contracts' are very limited.

As a general principle, ERA believes that multimodal journeys should always be regulated by commercial agreements between the different carriers. Subjecting intermodal travel arrangements to excessive regulation will discourage carriers and other transport providers from engaging in the practice as the multimodal market is still limited today.

ERA calls on the co-legislators to consider the two proposals i.e., that on the Omnibus and that concerning multimodal passenger rights jointly, as some of the measures contained in the multimodal proposal refer to those included in the omnibus proposal. In particular, those relating to the sharing of passenger data and the reimbursement procedure which are key for airlines and travel agents. Consistency between regulations is essential and the co-legislators must ensure that this new proposal will not result in the creation of a new financial business for claims agencies, comparable to what occurred with Regulation 261/2004.

ERA is concerned about the new obligations relating to the sharing of travel information under Article 5. The lack of information in real life between different modes of transport should be kept in mind by policymakers when addressing multimodal journeys, as today air and rail do not necessarily share all journey information [time schedules/minimum connecting times] and carriers cannot be legally obliged to

provide information to passengers that they usually do not have. Such obligations could only be agreed and managed through commercial agreements between partners.

In addition, there are also concerns about the introduction of rights for passengers in the case of a 'combined multimodal ticket' where the ticket has been combined by the travel agent without the airline having any view of the content. The problem is that, most of the time, intermediaries sell and advise on these tickets as a single and complete journey whereas the carriers concerned have not signed agreements to allow baggage transfer and data sharing to inform consumers of delays and/or schedule changes.

It should be recalled once again that OTAs and screencrapers do not act "on behalf of the carrier", and the proposal only seems to cover these situations as an assumption in Article 5(1). OTAs and screencrapers generally combine services through their platforms without carriers being aware of this and being held responsible for the costs.

In Article 7, it should be clarified that these reimbursement and re-routing obligations are not additional to the rights granted by Regulation 261/2004. The same applies to Article 9 on assistance and Article 10 on compensation. The proposed 75% compensation cannot be added to the EU261 one and an exception to this article should be made for air transport, as Regulation 261/2004 already contains the highest flat-rate compensation amounts of all modes of transport.

Regarding Article 8(5)(b), the same remark as that made above for the Omnibus proposal applies i.e., it is unacceptable that the air carrier's obligation to reimburse should apply regardless of the intermediary's decision to reimburse the passenger. Liability should therefore fall to the intermediary ticket vendor or this paragraph should at least provide for penalties for defaulting travel agents and/or a right of redress available to airlines. Article 8(1) should also clarify that where the passenger has bought the single multimodal contract through an intermediary, the contracting carrier may make the reimbursement of the sums it received from the intermediary.

Finally, the proposal also includes the establishment of ‘single points of contact’ for PRM assistance at multimodal hubs which will be responsible for accepting the requests for assistance at terminals and communicating individual requests for assistance to terminal operators and carriers. Here, the regulation should define the practical implementation and the sharing of the burden between carriers and terminal managers to avoid liability issues.

3) Proposal for a revision of the Package Travel Directive

The Passenger Mobility Package introduces significant changes to the Package Travel Directive. In this respect, ERA urges that greater consideration is given to airlines’ input to the recent developments at the European Parliament about this file to ensure a smooth and efficient economic circle in package travel services for the benefit of the consumer.

ERA strongly opposes new rules introducing a limitation of downpayments for package organisers to 25 per cent which risks weakening the different players in the tourism ecosystem – including airlines – to the ultimate detriment of consumers.

Such a policy change will certainly not protect customers but will most certainly exacerbate the issue as more and more tour operators and travel agencies selling package travels will find it difficult to survive, thus reducing consumer choice within the EU Internal Market.

In addition, more airlines will give up selling tickets as part of packages because the model will no longer be profitable (20 per cent of the ticket price at the time of purchase does not allow an airline to cover its operating costs), thus reducing choice and connectivity for consumers.