

Passenger mobility package – A feedback from the ECC-Net

On November 29th, 2023, the European Commission unveiled a "passenger mobility package"¹, comprising four proposals designed to enhance traveller rights and provide improved information for passengers.

- A proposal to revise the Package Travel Directive 215/2302
- A proposal amending the 4 regulations on passenger's rights (travel by air, by railway, by sea, and by bus or coach).
- A proposal for a Directive on multimodal transport of passengers
- A proposal to create a common European mobility data space

Key highlights that can be emphasized:

- Implementation of rules and responsibilities for booking platforms and online intermediaries handling transport ticket sales. The Commission addresses a legal gap that has been disadvantageous to consumers, particularly during the COVID-19 period. Currently, these obligations primarily focus on information provision, transmission of consumer data to carriers for effective communication and information, and a mandatory refund within 14 days if the consumer is entitled to it.
- Introduction of a framework for vouchers. Although the consumer's acceptance of vouchers instead of a refund for package travel is still required, the Commission suggests standardizing voucher conditions to ensure better understanding and utilization.
- Consideration of the passenger's or departure country's situation, not just the destination, when addressing travel-related issues.
- Bonus addition: Imposition of a limit on the deposit requested when a consumer books a package travel several months ahead of the departure date.

The major points, which remain to be addressed:

- Lack of discussion about airline insolvency, which remains a crucial concern for consumers.
- Inadequate protection for luggage transportation, including a basic option in air tickets, standardization of size and weight regulations, and clarification of compensation procedures in cases of loss or delay.

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- ¹ https://transport.ec.europa.eu/news-events/news/passenger-mobility-package-2023-11-29_en
 - Proposal for a Directive of the European Parliament and of the Council amending Directive 2015/2302 to make protection of travellers more effective and to simplify and clarify certain aspects of the Directives
 - Proposal for a Regulation of the European Parliament and of the Council amending Regulation n°261/2004, n°1107/2006, n°1177/2010, n°181/2011 and 2021/782 as regards enforcement of passenger rights in the Union
 - Proposal for a Regulation of the European Parliament and the Council on passenger rights in the content of multimodal journeys
 - Communication from the Commission: Creation of a common European mobility data space [COM(2023) 751]

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- Insufficient consumer protection in multimodal journeys, necessitating comprehensive coverage in cases of trip disruption (such as the right to rerouting, assistance, compensation, etc.). There is also a need to prevent sellers of combined transport from evading responsibility. Additionally, there should be clearer indications regarding which regulations would apply when different modes of transport are combined.
- No provision for requiring National Enforcement Bodies (NEBs) to produce an annual report, which would enable consumers and stakeholders to stay informed about problematic airlines and difficulties faced in the industry.

Urgent need for revision of passenger and travellers rights

Better application of rights

In ECC-Net's experience, it is becoming increasingly difficult to obtain the application of the rights foreseen by the EU legislation and case law of the CJEU through amicable agreements. Recourse to justice is no longer the last resort, it is often the only recourse for consumers.

The development of private claims companies specialised in airline and travel complaints is therefore not surprising.

For an effective application of air passenger rights, the following suggestions should be considered and extended to the 3 other passenger rights regulations (by train, bus and boat).

Many of these measures were previously outlined in the draft revision of Regulation 261/2004, which underwent submission for a vote in the European Parliament back in 2013. Despite this, they have yet to be finalized.

The Commission's proposal to amend the four passenger rights regulations, while starting to address these aspects, is still deemed inadequate for effectively managing passenger claims and rectifying delays.

Addressing the deficiencies in Regulation 261/2004 and other related regulations should be treated as a matter of utmost priority. These proposals aim to rectify these issues and should be given significant consideration.

- When faced with flight cancellations, delays, or denied boarding, the primary desire of a consumer is to receive clear and timely information and assistance. Consumers are not boarding a plane with the expectation of receiving compensation; rather, they seek to reach their final destination as promptly as possible.
- We strongly advocate for a comprehensive overhaul of the regulations, not merely amendments, aiming to simplify and clarify the rules. The current air passenger rights regulation, largely interpreted through various legal cases, poses challenges for application by European Consumer Centres (ECCs) and enforcement officers. Simplifying the regulation is crucial to ensuring that consumers are well-informed about their rights and to reducing disputes among involved parties.

The cases ECC-Net handles regarding air passenger rights are not restricted to the regulation 261/2004, but also cover luggage issues, issues regarding intermediaries, check-in fees and price comparison websites. New contracts enter the market e.g. multimodal transport which are meant to increase in these sustainable times and they are not covered by the actual regulation. No show clauses and airline insolvencies are also a source of issues our passengers face. For these „new“ problems in the APR-sector the ECC-Net is often the only body offering cross-border assistance free of charge.

We acknowledge that some of these challenges have been addressed in the Commission's proposals to revise the Package Travel Directive, amend the passenger rights regulations, and establish a Directive regarding multimodal journeys.

However, in certain areas, these proposals fail to seize the opportunity to establish robust, comprehensive, and enforceable consumer protections. These measures are essential for individuals who have not received adequate consideration from many professionals in the transport and tourism sectors over the years, particularly during the COVID-19 pandemic.

Therefore, the ECC-Net would like to share its experience by broadening the scope of the regulation to englobe all aspects concerning passenger rights.

- Require airlines to offer rerouting not only on their own fleet but on other airlines or other transport modes as well, if it allows the consumer to reach the destination earlier and in comparable transport conditions.
- Ensure that in case of intermodal transport passengers are well protected and it is clear which rules apply for example between air passenger and train passenger rights when one of the legs is realized by train. These rules should be harmonized across member states and apply to all airlines based in the EU. This is especially important nowadays, as consumers are increasingly demanding of greener and multimodal ways to travel. The Commission's proposal leaves a distinct possibility for traders to disregard the combination of two different means of transport, thereby not ensuring comprehensive protection for consumers in the event of disruptions during their journey. This omission results in a lack of provisions for consumers to claim refunds, rerouting, assistance, or compensation in such cases.
- Require airlines to immediately and correctly inform passengers about their rights at the airport. Effective enforcement of this information duty should be ensured.
- Ensure that airlines apply the CJEU case law ([Nelson case](#)) and guarantee identical rights in the event of cancellation or long delay of flights, particularly in the amounts and scales of compensation.
- Standardizing voucher policies (including validity periods, bonuses, etc.) is crucial to prevent confusion similar to what occurred due to airline practices during the COVID-19 pandemic. This standardization should not only apply to package travel but also to individual purchases of transport tickets.
- Increase the information given by airlines and sellers (intermediaries or travel agencies) about airport taxes (by clearly stating in the booking confirmation/ticket what costs concern the actual transport and what costs concern taxes) and make them refundable free of charge. Airport taxes are only due when a passenger effectively boards the flight, so consumers should

be entitled to a refund of the amount corresponding to these taxes if they do not board the plane without having to pay for it. Such a system has been in place in France since 2016 and has proven very effective.

- In cases of a flight delay, passengers are at a significant disadvantage compared to a cancellation. In the light of the ECJ case law, this distinction is not justified, because the outcome for the passenger is similar. Under the current rules, passengers who declare the withdrawal of the contract after the departure of their flight was delayed by minimum 5 hours are not entitled to a payment of compensation whereas passengers who in the event of a cancellation choose the refund of the ticket are entitled to a compensation and can freely choose an alternative flight even if a re-routing would make up less than 5 hours of delay.
- With regard to no-show policies, a harmonised approach across the EU to avoid differences in the application and understanding of common consumer rights, based on their country of residence or competent court should be considered.
- Clarify uncertainties under Art. 7 of the Air Passenger Rights Regulation such as a double compensation if the alternative flight is delayed/cancelled again or the calculation of the flight route in case of the incident happening during a multi segment flight. It is important to clarify the place of departure with regards to the calculation of the compensation payment. The ECJ judgement C-559/16 side number 29 does not answer this issue clearly.
- Clarify the definition of “denied boarding” under Art. 4 of the Air Passenger Rights Regulation, incorporating the judgment of the ECJ C-238/22 to precise that in cases of pre-emptively denied boarding, consumers are not obliged to present themselves for boarding under the conditions set in Article 3(2) to receive compensation.
- Not only require airlines to provide their full contact information and claim form on their website so that they can be easily contacted in the event of a claim but also impose an obligation on airlines to always send a copy of the messages put forward to airlines by consumers through means of online contact forms.
- Impose EU-wide harmonised, appropriate time limits for consumers to lodge their claims to airlines, but also response times for airlines and ways to enforce such rules. Airlines should be obliged to appropriate response times. In the 2013 proposal of the EU commission, a time limit of 3 months was suggested. Furthermore, they should be encouraged to develop efficient complaint handling mechanisms and to streamline compensation procedures.
- Introduce a harmonised limitation period for claims based on the air passenger rights regulation as already in place with regards to the Montreal Convention.
- Require airlines to be accessible in the language of the booking process: whereas airlines usually sell tickets via websites in various languages, customer services are often reachable in selective languages only. If an airline is unable to provide an after sales service in the language of the website the consumer bought from, this should be clearly indicated to the consumer before starting the booking process.
- Even if a reservation for a flight is made via an intermediary, airlines should allow consumers to manage their reservation directly and submit a refund request directly to the airline instead of referring them to the intermediary.

- Define the notion of extraordinary circumstances in line with the case law already developed by the ECJ and list the events that may justify non-payment of compensation by airlines.
- Introduce a freely accessible register where specific reasons and causes for delays/cancellations of specific flights are published by airlines on a compulsory basis. This way, passengers would obtain more information about their flight, and could more easily verify if the rejection of a compensation request is justified without necessarily having to recur to other bodies. This register could be set up with partnership and expertise of the NEBs in the Member States which could give their technical appreciation of the event.
- Encourage airlines to enter mediation with consumers when a claim cannot be solved directly between the parties involved, and to appoint an ADR body either in the Member State where the airline is based or in the Member State where tickets are sold by the airline.
- Challenges arise when consumers seek to appeal against airlines located outside the European Union, even though the regulation applies to them. Presently, navigating European Union legal procedures is not feasible in such cases, and there is a lack of a mandatory mediation body or alternative recourse for passengers. The ECC-Net is unable to help in these instances because the trader is not situated in a European State participating in the network.
- Defining the role of National Enforcement Bodies (NEBs) in relation to passengers is crucial. Additionally, their involvement in resolving disputes with Alternative Dispute Resolution (ADR) entities, consumer organizations, and European Consumer Centres (ECCs) is essential, especially considering their expertise with regards to extraordinary circumstances.
- Enhance the effectiveness of National Enforcement Body (NEB) actions by establishing a unified and deterrent mechanism for penalizing companies that fail to adhere to passenger rights and communicate the sanctions imposed.
- The proposed monitoring of National Enforcement Bodies (NEBs) is a positive step. However, it would be beneficial to additionally require the production of an annual report. This report would offer consumers genuine visibility into the traders' performance, enabling them to compare the quality of services not only during service provision but also in the post-sale period.
- Improve communication and cooperation between different actors (airlines, consumer organisations, ADR bodies and NEBs) to clarify for consumers the role of each of them and facilitate the resolution of the complaint as well as data exchange on recurrent issues.
- Evaluation and further follow up at European Union-level of the effectiveness of the current ADR/ODR legislation given the fact that ADR coverage and trader involvement seem not to meet set targets. It therefore seems necessary to ensure that each Member State provides an ADR in the APR sector to ensure that individual consumer disputes are dealt with. ADR must remain a swift option, easily accessible for consumers and as far as possible free of charge so that it remains a viable option for passengers/consumers.

To use ADR in the APR sector to its full potential, the ECC-Net draws the following conclusions for recommendations in its 2018 revision of the Air Passenger Rights Regulation:

https://www.europe-consommateurs.eu/fileadmin/Media/PDF/publications/prises-de-position/Air_passenger_rights_why_the_revision_of_Regulation_261_2004_is_urgent.pdf

Legal framework for price comparison websites and booking intermediaries

To get the best deal, consumers more and more rely on online price comparison websites and booking platforms. The ECC-Net has seen an increase in complaints relating to both types of intermediaries, which started long before the first COVID confinement.

The widespread travel cancellations caused by COVID-19 made the difficulties and absence of consumer rights when dealing with such sellers even more apparent on a global scale.

Price comparison websites

Comparing ticket prices pre-booking is becoming more and more difficult, sometimes even impossible, as every intermediary decides what to include in its reference price.

To allow transparent consumer information and fair competition between air carriers, price comparison tools and booking intermediaries, the following suggestions should be considered in the proposal for the revision of the Package Travel Directive or of the Regulation 1008/2008 on common rules for the operation of air services:

- All unavoidable and foreseeable price elements should be included in the headline price to allow comparison between operators and retailers. The optional price supplements should be clearly visible next to the headline price (at every step of the booking process).

The headline price should include:

- the ticket price
- all unavoidable and/or foreseeable service fees, such as administrative fees, luggage charges (refer to luggage prices below), seat selection costs, and credit card fees (where permissible) – even if the consumer may eventually receive a discount based on the chosen payment method
- The final price should include a breakdown of the tariff in the different categories, including taxes with refundable taxes to be clearly indicated.
- Price comparison websites and booking intermediaries should easily indicate whether tickets are flexible or refundable. They should also utilize the same terminology used by the airline, allowing consumers to review and compare the transport conditions of airlines. They should also indicate whether flights which are purchased in a single booking are connected flights or not.

Booking intermediaries

Booking intermediaries commonly position themselves as acting for consumers, often charging a service fee for their intermediary services. Consequently, it is reasonable to propose that they should be obligated to adhere to a minimum standard of service for their customers.

The recent COVID-19 crisis has especially emphasized the various problems encountered when engaging with such platforms.

While the ECC-Net appreciates the proposals within the draft revision of the Package Travel Directive aimed at establishing regulations governing the relationship among intermediaries, consumers, and carriers, the ECC-Net wishes to highlight lingering issues regarding booking intermediaries that have not been addressed in the text.

- Require booking intermediaries to immediately and correctly inform passengers about the type of tickets and services they purchase (i.a. price, flexible or not flexible tickets). It is essential that when doing so, intermediaries convey special conditions or restrictions from airlines to their customers as currently general terms and conditions and transport conditions may differ. For example, some airlines impose very strict rules regarding ID controls or minors not being allowed to travel alone etc.
- «Membership/premium systems » should be clearly explained and conditions detailed. Service providers should be obliged to use a button as in Art. 8 para 2 of the CRD Directive, making it clear to the consumer that a new service is added to the booking which will entail further costs, thus being a safeguard against falling into a hidden subscription trap.
- Require booking intermediaries to clearly inform passengers, in the event of the sale of disconnected flights, about the legal implications that a schedule change, delay, or cancellation may impose on the subsequent portions of the journey. Additionally, provide information on passengers' rights to assistance or compensation from the airline in such circumstances. Booking intermediaries should also inform about the consequences during travel (i.a. luggage not checked in until final destination).
- If booking intermediaries fail to adhere to this requirement, they should be held accountable for the consequences that airlines must bear in terms of compensation.
- Require booking intermediaries to provide their full contact information and claim form on their website so that they can be easily contacted in the event of a claim. A consumer should always immediately receive a copy of the message put forward to the trader.
- Require booking intermediaries to be accessible in the language of the booking process. Whereas airlines usually sell tickets via websites in various languages, customer services are often reachable in a few languages only. If an airline cannot offer an after sales service in the language of the website the consumer bought from, this should be clearly indicated to the consumer before the booking starts.

- Require booking intermediaries to be the intermediary of the passenger in case of:
 - change of schedule or disruption of flight: the intermediary should pass all information it is aware of to the consumer immediately.
 - change of tickets (i.a. name change) during a specific deadline: a right to correct spelling errors in passengers' names should be introduced covering mistakes from consumers and changes during the booking process by intermediaries. In addition, there should be a possibility for a name change in case of marriage, divorce, adoption, or similar cases. As currently, intermediaries often refer to the airlines and this policy differs from airline to airline, the right to name correction should be directly applicable to airlines as well. The fee charged for this service should be free of charge or not exceed an appropriate service fee (max. 40 Euro).
 - difficulty to reach the airline directly by the consumer.
 - refund of a ticket: intermediaries should be obliged to forward refunds made by an airline to the consumers within 7 days (as already stated in the proposal for a regulation on passenger rights in the context of multimodal journeys, it should apply to all journeys).
- Impose time limits for consumers, but also response times for booking intermediaries, to encourage them to develop their efficiency in handling and tracking consumer complaints and to streamline refund procedures.
- Oblige booking intermediaries to immediately reply to consumers and/or forward a consumer's request to the airline if the flight is imminent.
- Enhance communication and collaboration among various stakeholders, including airlines, booking intermediaries, consumers, consumer organizations, Alternative Dispute Resolution (ADR) bodies, and National Enforcement Bodies (NEBs). This improvement aims to clarify the roles of each entity for consumers, fostering a better understanding of their respective responsibilities and to facilitate the resolution of the complaint as well as data exchange on recurrent issues.
- Compel air carriers, online travel agencies and other intermediaries to provide consumers with the booking process history upon request.
- Implement a prohibition on booking intermediaries from creating bookings with fictitious customer contact details. Certain airlines restrict booking intermediaries from making flight reservations. To circumvent this restriction, online travel agents often book directly with the airline using fabricated customer information, such as email addresses and telephone numbers, to conceal the intermediary nature of the booking.

Protection against airlines insolvencies

In its communication COM (2013) 129 final, the European Commission committed to encourage cooperation between the competent authorities of the various Member States, monitor their licensing oversight under Regulation 1008/2008, and assess whether a legislative initiative would be needed to guarantee the protection of passengers in the case of airline insolvency.

For several years, the ECC-Net has alerted on the issues of airline insolvencies, and recent experience shows that the protection of consumers in these cases is insufficient. The COVID-19 crisis heightened public awareness regarding this issue, as numerous airlines operating in the EU faced financial distress or filed for insolvency. Larger companies were able to survive largely due to government assistance, raising concerns about potential vulnerabilities should a similar situation occur in the future.

Already a year ago, a [Joint call from European consumers, industry, and insurance providers on urgent need for mandatory insolvency protection scheme in the airline sector \(beuc.eu\)](#) was published.

Learning from the neighbours

In Denmark, a Travel Guarantee Fund covers the legal duty of package tour operators to have an insurance. Passengers can also contact this fund if they bought only a flight ticket directly from an airline and this airline goes bankrupt (for travels with departure and return in Denmark with this airline).

Airline insolvencies	Member State	Year
Flyr	Norway	2023
Alitalia	Italy	2021
Czech Airlines	Czechia	2021
Flyby	United Kingdom	2020
Ernest Airlines	Italy	2020
Adria Airways	Slovenia	2019
Thomas Cook	United Kingdom	2019
XK Airways	France	2019
Aigle Azur	France	2019
WOW Air	Iceland	2019
Flybmi	United Kingdom	2019
Germania	Germany	2019
NIKI	Austria	2018
Small Planet Airlines	Lithuania	2018
Primera Air	Denmark	2018
Cobalt Aero	Cyprus	2018
Nextjet	Sweden	2018
Air Berlin	Germany	2017
Monarch Airlines	United Kingdom	2017

Air Mediterranee	France	2016
Estonian Air	Estonia	2015
Cyprus Airways	Cyprus	2015
Intersky	Austria	2015
EuroLOT	Poland	2015
Belle Air Europe	Italy	2014
OLT Express	Germany	2013
Helitt Lineas Aereas	Spain	2013
Spanair	Spain	2012
MALEV Hungarian Airlines	Hungary	2012
Wind jet	Italy	2012
Blue1	Finland	2012
Cimber Sterling	Denmark	2012
Skyways	Sweden	2012
Islas Airways	Spain	2012
ItAli Airlines	Italy	2012

Source: Consultation of stakeholders in relation with the study on the current level of protection of air passenger rights in the EU, European Commission 2019, and ECC-Net.

Definition and harmonization of dimensions and weight of cabin and registered luggage

The price of an airline ticket is becoming more and more intransparent. As every carrier is free to define what is included in its air tariff or not, comparison of prices often becomes impossible unless consumers go through every step of the booking procedure to see what additional charges are imposed along the way. One of the issues is the price of hand luggage, which is now excluded from some basic tariff tickets.

The issue is not unknown, and Italy's Competition Authority (AGCM), has already issued penalties to Ryanair (3 million euros) and Wizzair (1 million euros) for their cabin luggage policy.

„The changes made to the rules for the transport of large hand luggage constitute an unfair commercial practice as they deceive the consumer regarding the actual price of the ticket, no longer including an essential element of the air transport contract in the basic tariff which is the big hand baggage,“ AGCM said in a [statement](#)

However, this is only the interpretation of one country's enforcement authority, there is no harmonization or common understanding across the EU.

In a [European Parliament resolution dated 4th October 2023](#), MEPs call for standardised dimensions for carry-on luggage and *“Recalls that, in accordance with the CJEU ruling(4) in case C-487/12, hand baggage (i.e. luggage that is not checked in) must be considered as constituting a ‘necessary aspect’ of the carriage of passengers on condition that such baggage meets ‘reasonable requirements’ in terms of its weight and dimensions, and that its carriage cannot, therefore, be made subject to a price supplement; urges the Member States, therefore, to ensure that this ruling is respected, and, in the meantime, to strive for transparency with regard to the disclosure of any fees charged for carry-on luggage, whenever a flight’s price and schedule information is provided, in order to strengthen consumer protection;”*

- In order to allow consumers to proceed to a real comparison of prices with regard to air fares including cabin luggage and to ensure fair competition between operators, it should be defined and harmonised which services are included in the minimum fee of a ticket.
- It should always be clearly stated in the beginning of a booking process which services are included in the minimum fee. Ideally, all passenger rights should be codified in one single place as to allow consumers to easily understand and research their rights.
- Inviting airlines to harmonise the size and weight of hand luggage is a first step, but the need of such harmonization cannot wait any longer. The proposal may directly impose the common size and weight allowed in the cabin or in the hold. Moreover, the text should clarify what is included in the size of the luggage (Handle? Wheels?).
- The Montreal Convention, adopted nearly 24 years ago, could benefit from an update to standardize the varied practices that have emerged among airlines concerning the assessment of damages in luggage incidents. Currently, the text heavily favors airlines, enabling them to exploit these discrepancies: some provide a fixed compensation to passengers, others apply deductions, and some seem to lack a consistent policy as cases are handled disparately.

The overarching legislation regarding delayed, lost, or damaged luggage requires clarification and enhancement:

- Officialise the existence of the Property Irregularity Report (PIR), making it mandatory for airlines to provide it to passengers in case of luggage problems and establishing it as the initial step for consumer claims. However, the filing of a PIR should not be a prerequisite for consumers to make a claim.
- Mandate precise rules for calculating passengers' entitlements in instances of delayed, lost, or damaged luggage. This could include a defined scale or specific formula to determine compensation amounts, along with a list of items that can or cannot be compensated, thus improving legal certainty.
- Prohibit airlines from transferring hand luggage to the hold without prior notification to consumers, as passengers often store their most valuable possessions in their hand luggage.
- Introduce an option for passengers to insure their belongings, allowing them to surpass the limitations imposed by the Montreal Convention's compensation ceiling.

For more information on APR please refer to the reports and position papers of the ECC-Net, and do not hesitate to get in touch with us.

- > Alternative Dispute Resolution in the Air Passenger Right Sector 2017
- > Revision of EU air passengers rights legislation:
- > European Consumer Centres Network position paper (Update by ECC France and Germany 2017)
- > Air Passenger Rights Report 2015 : Do the consumers get the compensation they are entitled to and at what costs?
- > ECC France and Germany's position paper : Air passenger rights : why the revision of Regulation 261/2004 is urgent?