

PUBLIC CONSULTATION

On air passengers' rights

DRAFT RESPONSE FROM THE EUROPEAN PASSENGERS' FEDERATION

(1) Do you think that the information and the rights currently given to passengers regarding lost, damaged or delayed luggage are sufficient?

No

The European Passengers' Federation considers that passengers are frequently unaware of their existing rights under European law regarding lost, damaged or delayed luggage. EPF also considers that these existing rights need strengthening if the EU is to realise the full benefits of a competitive open market for air travel in the EU consistent with the Lisboa Treaty.

EPF is aware of the perceived short-comings of present arrangements from press comments, its member associations' contacts with European airport and airline users, the comments of statutory bodies, such as the Air Transport Users' Council in the UK, and from data published by organisations such as the Association of European Airlines. The regular Consumer Report published by the AEA highlights the poor record of certain of its members in this respect despite the generally good standing of its members. The data show that, amongst the 34 airlines that comprise the AEA, on average one bag goes missing for every seventy-seven passengers enplaned and that in 15% of cases the bags are still missing after 48 hours. This reflects unacceptably poor service standards. These latest figures (covering winter 2008-9) are an improvement on those for the previous year. As AEA implies, the change may be related to the business climate and the downturn in air travel.

We are also aware that a number of airlines who are not members of AEA – and whose performance data is therefore not recorded by the AEA – have questionable records in relation to their compliance with the letter or the spirit of the Montreal Convention and Regulation 889/2002 which transposed the Convention in to European Law. By way of example (although not the only one possible), we note from its web-site that Jet2 operates a policy that it will not consider claims for damage to baggage below 50€ (see <http://www.jet2.com/questions/delayed-or-damaged-baggage.aspx> in which the company indicates that this arises from its policy of keeping down overheads). Jet2, which has a fleet of more than 30 aircraft and carries over 3m passengers a year, operates from 6 hubs in the UK to over forty destinations. Any claim for damage must be received by the company in writing accompanied by a completed Property Irregularity Report (PIR), baggage tag receipt and original purchase receipts, the claimant having first reported the damage to the ground handling staff at the arrival airport.

We have the impression that certain low-cost airlines seem to make it more difficult than others to obtain information about what to do when bags go missing and that a number of passengers are under the impression that these airlines are deliberately obstructive in facilitating compensation, demanding receipts for each item of lost luggage, etc. We find this perverse, particularly as some of these airlines – including Jet2 - charge significant supplements for carrying

checked-in passenger baggage. The issues involved are not purely financial. Lost, delayed or damaged luggage can ruin a hard-earned family holiday or waste a business trip.

The European Passengers' Federation would like to see the introduction of revisions to existing European law in order to incentivise airlines and airport operators to improve their baggage handling arrangements and to ensure that when things do go wrong for passengers steps are taken as quickly as possible to ameliorate the situation in a straight-forward and practical manner.

In particular, we would like to see an improvement in the arrangements for compensating passengers for emergency items such as toiletries and a change of clothes when luggage is first delayed. We would like to see a simplification of the Property Irregularity Report (PIR) process and related procedures. We believe that airports and airlines should be obliged to give greater prominence to the procedures to be followed when luggage is delayed, lost or damaged, ensuring the passengers are made aware of their rights, that these processes should be designed to be user-friendly and easily accessible comprehensible for passengers who may be tired, frustrated by linguistic short-comings, agitated or unfamiliar with the environment in which they find themselves and given greater support in pursuing compensation.

We see these potential interventions as consistent with the principles of a competitive market economy: key parts of the air passenger market currently illustrate significant market failure. Despite the way in which some low cost pioneers espouse a commitment to competition to counter consumers' demands for greater regulation point-to-point competition does not exist on the majority of routes offered by low-cost carriers. This can be seen clearly by comparing the route maps with one another of the major 'low-cost' airlines operating from UK bases for example, Ryanair, Easyjet, and Flybe) and with those of the major European incumbent carriers (such as BA, Iberia, Lufthansa and KLM-Air France).

Even where competition does exist, customers may not have access to complete information with which to make informed choices. Prospective travellers are unlikely to seek out information in advance about what different airlines may do should things go wrong with their baggage during transit; such details are unlikely to form part of a consumer's decision-making at the point at which a trip is being purchased. Consequently passengers are disadvantaged by systemic market failure. Appropriate regulatory intervention has a part to play in off-setting the potentially anti-competitive impact of market failure. It also reflects the additional importance accorded to consumer protection under Article 12 of the new consolidated Treaty on the Functioning of the EU and the requirement that it must be taken into account in defining and implementing other Union policies and activities.

European law should incentivise airlines and airport operators to improve their baggage handling arrangements and to ensure that when things do go wrong for passengers steps are taken as quickly as possible to ameliorate the situation in a straight-forward and practical manner.

Regulation can help off-set the potentially anti-competitive impact of the systemic market failure that arises from the difficulty that many passengers have in accessing appropriate information in making their choices.

(2) Do you think that the appointment of a specific enforcement body in each Member State under EU law to handle complaints and to enforce effectively the Regulation in the event of breaches — also through appropriate sanctions — would help to improve the current situation?

Yes

We consider that the work of national enforcement bodies should be promoted and that the Commission itself should arrange for the publication of audited comparative customer service and satisfaction data. We see this as both incentivising the activities of airlines and airports and also as reflecting the underlying purposes of greater competition in service provision and market opening in the European Union. We note that Ryanair uses its Passenger Charter (see: <http://www.ryanair.com/en/about/passenger-charter>) to “call on the European Governments and the European Commission to deliver to airline passengers what they really need, namely real commitments on pricing, on punctuality and on key services, by making it mandatory that all EU airlines publish their Customer Service Statistics each and every month”. We think that this is a strong argument and believe that it should be extended to the reporting of comparative customer service and satisfaction data for all EU airports and for all airlines operating out of them. The data should also reflect the performance of different airlines in relation to lost, damaged or delayed luggage. This could contribute significantly to the pursuit of market transparency and support the development of informed consumers. The preamble to the EU’s *Consumer Policy Strategy 2007-2013* makes a particular point that “confident, informed and empowered consumers are the motor of economic change as their choices drive innovation and efficiency” and that consumers can connect the EU to the daily lives of citizens most directly, thereby demonstrating the Union’s benefits.

The work of national enforcement bodies should be publicised and the performance and there should be monthly comparative reporting of customer service and satisfaction data statistics for all airlines operating within and from the EU and for all EU airports.

(3) In your view, what is the best way to address compensation for mishandled luggage? Please give your opinion on the following:

(a) Change the current maximum compensation in the European Union:

No

The issue can usefully be considered from two different perspectives.

First, there is that relating to the value of any baggage that is damaged or lost. Here the reputation of the sector is not good. Unfortunately a significant number of passengers, particularly in the leisure sector, are thought to abuse the potential for making claims that may

not withstand thorough investigation. This reinforces the tendency of many operators to adopt a curmudgeonly stance in dealing with such claims and leads to demands that are frequently difficult for passengers to comply with such as provision of proof of the original purchase price of luggage being required within an extremely limited period of time (see the Jet2 example cited in relations to response (1)). What is really important is that passengers have access to a system of basic compensation for damage or loss of baggage that is widely understood, accessible, predictable, reliable and uniform. The Montreal Convention continues to provide a sensible basis for such a system. However, we consider that it should be made to work more effectively and that the European Union could play a useful role in effecting this both by its own *acquis* and by working more closely with others such as the US Department of Transportation. In particular, EPF would like to see the EU drive development of a programme for ensuring that passengers are made more aware of their rights – for example through the provision at time of booking of readily digestible summaries of these rights and how they might be exercised or through a European Commission initiated passenger rights’ portal. At the same time, passengers need to be made aware that the existing provisions of international law may be insufficient in relation to their personal needs and that, if this is likely to be the case, individual travellers should supplement them with personal baggage insurance. Because there is likely to be a very great disparity between the potential needs of different travellers we think that such supplementary cover is best provided through the market rather than imposed as a levy on all passengers irrespective of need.

Passengers should have access to a system of basic compensation for damage or loss of baggage that is widely understood, accessible, predictable, reliable and uniform. This should be well publicised as should the possible need for passengers to obtain supplementary cover through the market.

The second perspective from which this can be considered relates to compensation for the cost or inconvenience of delay. A family’s hard-earned annual overseas vacation can be ruined by having to cope with delayed or lost baggage. In particular, we would like to see an improvement in the arrangements for compensating passengers for emergency items such as toiletries and a change of clothes when luggage is first delayed. We would like to see a simplification of the Property Irregularity Report (PIR) process and related procedures and greater prominence given to enforcement provisions. We believe that airports and airlines should be obliged to give greater prominence to the procedures to be followed when luggage is delayed, lost or damaged, ensuring the passengers are made aware of their rights, that these processes should be designed to be user-friendly and easily accessible comprehensible for passengers who may be tired, frustrated by linguistic short-comings, agitated or unfamiliar with the environment in which they find themselves and given greater support in pursuing compensation.

Finally, we consider that this whole area of concern (including the work of national enforcement bodies) should be monitored and reviewed by a European institution on a pre-determined, regular basis. Data relating to the relative performance of different air carriers, airports and national enforcement bodies should be published both to encourage improvement and to provide prospective passengers which may empower their decisions as consumers. (EPF has been impressed by the efficacy of the European Railway Agency’s work in relation to the work of

National Safety Agencies; the obligation to report data to a European institution has encouraged some of the less well-performing NSAs to improve.)

Arrangements should be improved for compensating passengers for emergency items such as toiletries and a change of clothes when luggage is first delayed.

(b) Award automatic compensation to passengers whose luggage has been delayed for a certain time due to mishandling — for example until the following day:

Yes

EPF would support a system of automatic compensation to passengers whose luggage has been delayed. As already noted, a family's hard-earned annual overseas vacation can be ruined by having to cope with delayed or lost baggage. In particular, we would like to see an improvement in the arrangements for compensating passengers for emergency items such as toiletries and a change of clothes when luggage is first delayed. We are not convinced that it would be helpful to make the provision of automatic compensation contingent of the delay being 'due to mishandling' since we have no confidence that all air-carriers or airports have a demonstrate record for integrity such that it can be safely assumed that there would be no attempts to avoid liability or protracted negotiations about whether or not an item had been 'mishandled'. The essential point would seem to be that if a piece of luggage does not arrive at the baggage carousel when expected by the passenger who had checked that baggage in for a particular flight the passenger is likely to be inconvenienced and should receive automatic compensation to cover any emergency expenditure.

If luggage does not arrive at the baggage carousel when expected by the passenger who had checked that baggage in for a particular flight the passenger is likely to be inconvenienced and should receive automatic compensation to cover any emergency expenditure.

(c) Increase this automatic compensation after a reasonable period of time, for instance if the delayed luggage is handed over more than 48 hours after the arrival of the flight:

Yes

Compensation should be proportionate to the inconvenience caused by delay and the likely costs incurred by passengers in remedying it.

Compensation should be proportionate to inconvenience suffered.

(d) Provide for unlimited liability in the event of losses due to mishandled mobility equipment for passengers with reduced mobility in the European Union:

Yes

Such provision seems consistent with the EU's commitment to human rights, its exemplary support for persons with reduced mobility and its contribution to securing the United Nations Convention on the Rights of Persons with Disabilities. EPF is firmly of the view that the provision should apply to all disabled persons or persons with reduced mobility, consistent with breadth of the definition of a 'disabled person' or a 'person of reduced mobility' in Article 2(a) Regulation 1107/2006 concerning the rights of disabled persons and persons of reduced mobility when travelling by air.

There should be unlimited liability for mishandled mobility equipment for persons of reduced mobility.

(e) Other measures

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(4) Do you think that air carriers ensure that sufficient information on their policy on fees, size and weight of checked-in and hand luggage is provided early and clearly in the booking process?

No

It is clear from a random examination of a number of European air carriers' web-sites that such information is not always readily accessible. This is particularly unfair for those occasional passengers who are neither greatly familiar with air travel nor with the use of the web nor other information sources. The provision of such information can make an important contribution to the more effective operation of the market and help improve the competitiveness of a key European industry.

Appropriate, readily accessible information should be provided, thereby facilitating the competitiveness of the air market.

(5) Do you think that rules on the size and weight of checked-in and hand luggage should be harmonised among air carriers?

Yes

Any person who visits a baggage shop will quickly become aware of the lack of familiarity of consumers with the varying baggage restrictions applied by airlines. While there may be good commercial reasons for encouraging different airlines to develop their own innovative product offerings (e.g. in encouraging greater use of carry-on luggage to avoid the costs associated with handling checked-in luggage) consumers must not be unduly disadvantaged by the small print policies imposed by particular companies relating, for example, to variances in the dimensions of cabin baggage between one airline and another. With the emergence of low cost airlines many passengers appear to spend more on acquiring new holiday luggage than they spend on the basic airfare. It is only right that these consumers are not trapped unwarily by the rules of different carriers concerning the dimensions of their luggage.

International Airline Carry-on Luggage Allowances:

(<http://thetravelinsider.info/travelaccessories/internationalcarryonluggageallowances.htm>)

Airline	Allowance	Max wt per piece	Max size per piece
Aer Lingus	One plus small personal items	6kg/13lbs	22" x 18" x 10"
Aeroflot	One plus small personal items	10kg/22lbs	115cm/45"
Air Canada	One piece plus one personal item	10kg/22lbs each	21.5" x 15.5" x 9" personal item 17" x 13" x 6"
Air France	One plus one accessory	12kg/26.4lbs for both 18kg/39.6lbs in business class	115cm/45"
Air New Zealand	One plus personal items	7kg/15lbs	115cm/45"
Alitalia	One	5kg/11lbs	55cm x 35cm x 25cm (22" x 14" x 10")
All Nippon Airways	One plus personal items	10kg/22lbs	115cm/45" but max dimensions 22" x 16" x 9"
Asiana	One plus	10kg/22lbs	55cm x 40cm x

	personal items Two plus personal items for first/business class		23cm
Austrian Airlines	One	8kg/18lbs	115cm/45"
BMI British Midland	One plus one personal item	"You must be able to lift it yourself"	55cm x 40cm x 23cm
British Airways	One plus one personal item	not specified (was formerly 23kg/51lbs)	56cm x 45cm x 25cm
Cathay Pacific	One plus one personal item J/P pax can also bring 1 garment or soft bag	7/10/15kg (15/22/33lbs) for coach/bus/first	115cm/45"
easyJet	One	no weight limit specified	55cm x 40cm x 20cm
EI AI	One	8kg/17.6lb	22" x 18" x 10"
Emirates	One for coach Two for J/P pax	7kg/15lbs 12kg/26lbs total for J/P pax	22" x 15" x 8"
EVA Air	One plus a laptop	7kg/15lbs	56cm x 36cm x 23cm
Finnair	One plus personal items Two for Business Class plus personal items	8kg/18lb coach 10kg/22lb combined for Business Class	22" x 18" x 10"
Garuda	One plus personal items	7kg/15lbs	56cm x 36cm x 32cm
Iberia	One plus personal items	10kg/22lbs	115cm/45"
Icelandair	One plus personal items	6kg/13lbs	115cm/45"
Japan Airlines	One plus one	10kg/22lbs	115cm/45"

	personal item		
KLM	One plus one personal item	12kg/26lbs	55cm x 35cm x 25cm (115cm total/45")
Korean Air	One plus one personal item	12kg/25lbs	55cm x 40cm x 20cm (21" x 16" x 8" in) = 115cm/45"
LanChile	One piece plus one personal item	8kg/18lbs 16kg/35lbs for first/business class	55cm x 25cm x 35cm = 115cm
Lufthansa	One piece plus personal items	8kg/18lbs	55cm x 40cm x 20cm
Malaysia Airlines	One piece plus one personal item	5kg/11lbs	115cm/45" on widebody, 40" on single aisle planes
Mexicana	One piece	10kg	115cm/45"
Olympic Airlines	One piece	8kg	56cm x 36cm x 23cm
OpenSkies	One piece plus a laptop or briefcase	23kg/51lbs - must be able to lift into overhead unaided	56cm x 45cm x 25cm
Qantas	One plus personal items 2 pieces for J/P travel except to/from the US when only 1	7kg/15lbs	115cm/45"
Ryanair	One	10kg/22lbs	55cm x 40cm x 20cm
SAS	One	8kg/18lbs	115cm/45"
Singapore Airlines	One plus personal items	7kg/15lbs	115cm/45"
South African Airways	One	8kg	115cm/45"
Swiss	One plus personal items Two for J/P pax	8kg	115cm/45"

Thai Airways	One	7kg/15lbs	115cm/45"
Virgin Atlantic	One plus personal items Two for Upper Class	6kg/13lbs 16kg total, no more than 12kg each for Upper Class	115cm/45"
WestJet	Two	10kg each	First 21.5" x 15.5" x 9"; second 16.5" x 13" x 6"

The varying range of detailed rules is a nightmare for passengers. They should not be unduly disadvantaged by the small print policies.

(6) If yes, what kind of instrument would you recommend?

(a) EU law:

Yes

We consider that the eventual objective should be to secure global agreement but that it would be prudent to start at the EU level. To those who argue that such matter is best left to the market and to the innovative qualities of individual air carriers we would note that, while EPF readily acknowledges the contribution that market discipline may make to securing improved customer service, it is necessary to reflect the realities of the sector. The offerings of many aspects of the European and international airline industry related to baggage rules are inevitably over-shadowed by the commonality of much of the key equipment – aircraft types, for example – and by dependence on common services (e.g. ground handling) as well as by international safety and security standards. It is hard to see how the rules applied by specific carriers can materially improve the lot of passengers within this framework.

Passengers deserve consistent, easily understandable rules. In the absence of global action a start should be made by the EU.

(7) Do you think that it would be advisable to require minimum compulsory training for ground handlers (in particular for staff in charge of handling baggage)?

No

EPF considers that this is a matter most properly left to the air carriers to determine. We are sceptical about the ability of inter-governmental process to deliver a better result for consumers and consider that this is an area where an individual operator's insights into and commitment towards consumer satisfaction is likely to yield the most cost-effective results.

Industry training needs and arrangements are usually better determined by operators than by public officials.

(8) If yes, under Directive 96/67, Member States currently have the possibility to make the activity of a ground-handling company conditional upon obtaining "approval". The criteria for such approval (or licence) do not currently include training. However, access to the European ground-handling market could be made conditional upon a licence that would include training conditions. What do you think of this solution?

n/a

(9) Do you think that air carriers should regularly report to the national enforcement bodies on their implementation of the APR Regulation, notably on the number of incidents, the routes and peaks of the day/year where incidents happen more often, or the redress offered to passengers under the Regulation?

Yes

As indicated in our response above data relating to the relative performance of different air carriers, airports and national enforcement bodies should be published both to encourage improvement and to provide prospective passengers which may empower their decisions as consumers.

The provision of accessible, reliable, comparable performance data will incentivise air carriers and airports to improve their services and empower consumers.

(10) Do you think that the national enforcement bodies should regularly report on their activities, including a description of the action taken to implement the APR et the PRM Regulations, details of the sanctions applied, statistics on complaints and sanctions applied, and information on major court cases?

Yes

As indicated in our response above data relating to the relative performance of different air carriers, airports and national enforcement bodies should be published both to encourage

improvement and to provide prospective passengers which may empower their decisions as consumers.

National enforcement bodies can play a key role in ensuring the availability of meaningful performance data that assists the industry and its customers.

(11) Do you think the complaint handling procedures of air carriers should be harmonised through:

EU law:

Yes

With the increasing emphasis on the importance of co-modality and recognition that relatively few end-to-end journeys make use of only one mode and acknowledging the success of the EU in promoting passengers' rights across a range of modes we think that complaint-handling procedures should be harmonised across all modes. To work effectively passenger rights need to be consistent across modes and territories, their existence (and remedies) publicised, sufficiently straight-forward not to discourage their use by consumers, properly enforced and monitored to enable continuing improvements to be made over time both by regulators and operators. Harmonisation will facilitate these things.

Passenger rights need to be consistent across modes and territories, their existence (and remedies) publicised, sufficiently straight-forward not to discourage their use by consumers, and properly enforced and monitored.

(12) Do you think that air carriers should in all events be obliged to provide passengers with a motivated response to their specific complaints within a fixed deadline and be sanctioned if they do not comply?

Yes

Effective responses should be delivered in a timely manner. A harmonised and effective system of sanctions needs to be available and applied in cases of non-compliance. These cases should be publicised *pour encourager les autres*.

An obligation to provide an effective response could make a significant contribution to passengers' rights.

(13) For PRMs using mobility or respiratory equipment or required to travel with an assistant during flights, do you think that air carriers should harmonise their policies or provide better information on these issues?

Yes

(14) Do you think the pre-notification at least 48 hours encouraged by regulation 1107 should be made compulsory, in order to provide better assistance to PRMs?

Yes

**(15) Do you think that the new e-booking and check-in practices introduced by air carriers should be harmonised through:
EU law:**

No

We can see no clear consumer benefit likely to derive from harmonising e-booking and check-in practices in the EU although we think that there might be a case for authorising voluntary agreements between operators should there be evidence that the present arrangements give rise to passenger misunderstandings.

Harmonisation of e-booking arrangements and check-in practices could stifle innovation.

(16) Which kind of new specific measures to protect passengers in such cases could be introduced in the EU? Please give your views on:

Fixing a minimum time for passengers to detect an error in their reservation or check-in online and ask the air carrier to correct it at no cost?

Yes

We think that the introduction of a minimum time period during which it would be possible to review or cancel a reservation would be in passengers' interest. We note the Rail Europe, the SNCF subsidiary, provides such a facility for on-line rail bookings.

There should be an automatic cooling-off period for e-bookings.

Ensuring that passengers are not charged unreasonable fees if they check in at the airport?

No

Although we do not condone the charging of unreasonable fees by air carriers we suspect that such matters are best left to the market to deal with provided there is a legal obligation on all carriers to present all relevant information about all their charges in a transparent and accessible way.

This issue is best left to the market provided that there is an obligation on operators to publicise their terms and conditions effectively.

(17) Do you think that minimum rules regarding passengers' rights in the case of rescheduling of flights should be agreed?

Yes, through EU law:

We agree that there should be agreed rules in the event of rescheduling and would support application of the principle reflected in Article 5 (3) (c) of Regulation 261/2004 which requires air carriers to inform passengers of a cancellation of a flight. We are also concerned from recent experience with Ryanair that some operators may be using the loophole provided by Article 5 (1) (c) (i) to inform passengers of cancelled flights at the final limits of the two weeks' prior notice point thereby avoiding the need to pay compensation. In our experience such cancellations can leave the intending passenger significantly out of pocket. They may have made onward travel arrangements (which will then be no use) or non-refundable hotel bookings

There is evidence that some operators may be exploiting existing loopholes and thereby causing passengers unnecessary inconvenience and expense. The rules should be tightened.

(18)

What kind of new, specific measures to protect passengers in such cases could be introduced in the EU? Please give your views on:

Giving passengers whose departing flight is rescheduled by more than 5 hours the choice of not flying and being reimbursed the price of the whole ticket, including the return flight whenever the passenger has a return ticket.

Yes

However, there may be circumstances where a rescheduling of more than five hours imposes additional costs on the passenger. Many low cost airlines operate at times when connecting land-based services have either not started for the day or have closed for the night. Where a

departing flight is rescheduled it is important that the air carrier should have an obligation to provide any assistance, free of charge, of the sort described in Article 9 of regulation 261/2005 that might be required as a consequence.

Such arrangements should take account of any additional inconvenience and costs that may arise if flight times are rescheduled to unsocial hours.

Obliging air carriers to make all reasonable efforts to use all possible means of communication at their disposal to inform passengers of changes within a reasonable time to allow them decide whether to accept them.

Yes

(19) Do you think that minimum rules regarding passengers' rights should be agreed, through EU law or voluntary agreements, to restrict and clarify conditions for the use of a "no-show policy"?

Yes

EPF understands that there may be circumstances where there are reasonable commercial grounds for applying a 'no-show policy'. For example, because of the relatively great demand for travel to Los Angeles and the poor demand for travel to Mexico City from London, it can be cheaper to buy a London Heathrow-Mexico City return fare with inter-ling at Los Angeles than a London-Los Angeles return ticket. Passengers who fail to make use of the onward bookings from Los Angeles to Mexico City and back may find themselves barred from the Los Angeles-London return flight. 'No show policy' rules, and the reasons for them, should be more clearly communicated to unsuspecting passengers.

'No show' rules should be communicated to passengers more clearly.

(20) Do you think that the minimum distance between plane rows ensured by current safety rules should be further regulated?

No

While many passengers complain about cramped seating we consider that this is a matter more appropriately left to the market to determine.

Seating parameters are best left to the market unless there are safety implications.

(21) Other Matters

Derogation for helicopter services:

Article 3(4) of Regulation 261/2004 should be amended to remove the exclusion of protection provisions for passengers on scheduled helicopter services. The current derogation is an anomaly. It appears to have arisen when providers of such services argued successfully that helicopter loadings needed to take account of varying atmospheric conditions and that these services should therefore have a blanket derogation. This was argued despite the provisions of Recital 14 of 261/2004 relating to “meteorological conditions incompatible with the operation of the flight concerned” as giving rise to ‘extraordinary circumstances’ let-out provision. Oddly, the operators of scheduled services using light aircraft (sometimes on routes that parallel those served by helicopter operators such as those between the English mainland and the Isles of Scilly) do not appear to have deployed this argument. It is also evident from the text of the draft Regulation relating to maritime passengers’ rights that meteorological considerations have not deterred the Commission and the Parliament from proposing the extension of passenger rights to maritime passengers. The derogation for operators of scheduled helicopter services – of which we have identified six that are currently operating within the EEA - is wholly inconsistent with the principles of the legislation relating to the protection of passengers rights. The European Union acknowledges the need for legislation that protects the rights of passengers as the weaker party to the transport contract – see, for example Recital 3 to Regulation 1371/2007. The EU has legislated to protect the rights of airline passengers and rail passengers and there is draft legislation covering similar rights for bus and coach and for maritime passengers.

The current derogation applying to users of scheduled helicopter services is an anomaly requiring correction.

Read-across of passengers’ rights legislation:

EPF considers that there should be broad consistency between the provisions of the EU’s passenger rights legislation, irrespective of mode. This is for two reasons. First, a common framework is likely to prove easier for consumers to understand and thus to use effectively. Secondly, as noted previously, relatively few end-to-end journeys involve just one mode. A system that shares common principles across different modes and territories will afford better consumer protection. The aim of effective consumer protection is consistent with the Commission’s consumer strategy (*EU Consumer Policy Strategy, 2007-2013*, COM (2007) 99). The Commission says that the overall objective of its strategy is to empower consumers, to enhance their welfare and to protect them effectively. It says that it wishes to achieve by 2013 a single, simple set of rules for the benefit of consumers and retailers alike, making the European Union a tangible reality for each European citizen through guaranteeing their rights as consumers in their everyday life.

Passenger rights need to be seen in the context of end-to-end journey arrangements. There should be broad consistency between modes.

Enforcement:

There is a widespread perception that the provisions of Regulation 261/2004 are flouted widely by the airlines. This suggests that enforcement is poor, at least in some Member States. See user web-sites such as www.holidaytravelwatch.com , www.flightmole.net , www.flyertalk.com , www.consumeractiongroup.co.uk , www.askaboutmoney.com etc. There appear to be significant variances in the enforcement measures used by national enforcement bodies. For example, it appears that the Luftfahrt-Bundesamt levies financial penalties on deviant operators whereas the UK Government believes that it is better to “make reasonable efforts to secure compliance by entering into dialogue with the air carriage contractor concerned” and only to embark on legal proceedings if the contractor “has failed to comply after suitable requests from the CAA”. In its response to a public consultation on enforcement measures arising from Regulation 2111/2005 the UK Government provided no indication how many such “suitable requests” would be required before legal action is taken (see <http://www.dft.gov.uk/consultations/aboutia/ria/sectioncivaviaregs/pageeuaircarrierid>).

Anecdotal evidence suggests that a number of airlines are still failing to comply with the intent of 261/2004. Ryanair has been reported to our member associations on a number of occasions for cancelling flights and refusing assistance or compensation, claiming that it was exempted from so doing on grounds of ‘bad weather’ (presumably relying on the language of Recital 14 of 261/2004 which cites “meteorological conditions incompatible with the operation of the flight concerned” as giving rise to ‘extraordinary circumstances’ which “may” exist). In the case of one particular flight from the all-weather, Defence Ministry maintained, airport at Newquay we understand that no report of significant adverse conditions was visible on the UK Meteorological Office website at the time. In another case, as recently as June 2009, following an air traffic controllers’ industrial dispute in Athens Easyjet advised passengers awaiting boarding at Gatwick that the estimated delay to departure was just under two hours. Had this exceeded two hours the delay provisions of 261/2004 would have been triggered. In fact, the flight departed from the terminal two hours and twenty minutes late (although no assistance or compensation was offered since passengers were assembled at the departure gate prior to boarding prior to the two hour point). A number of passengers who were familiar with Easyjet’s operations at Gatwick said that that this was common practice in the event of similar delays.

In the UK, the Civil Aviation Authority has recently published the results of research that it was asked to undertake by the UK Government in relation to improving passenger experience. Customer service and the attitude of airport staff were highlighted as performing particularly poorly. The CAA reported that concerns were also expressed about this area of service from the airlines, the passenger services sub committees and the CAA’s own passenger survey. (See *Research on the air-passenger experience at Heathrow, Gatwick, Stansted and Manchester Airports*, ORC International, based on 1619 passenger interviews conducted in August and September 2008 for the CAA, www.caa.co.uk/docs/33/ORC_CAA_report.pdf .)

There should be greater consistency and effectiveness in the way that national enforcement bodies carry out their duties.

Textual clarity:

Existing legislation should be reviewed with a view to the removal of ambiguities and lack of the clarity necessary to enable effective enforcement. At the same time, the opportunity should be taken to align the legislation with relevant ECJ rulings.

Existing legislation should be reviewed to ensure less ambiguity, greater consistency and consequently more effective enforcement of passengers' rights.