

Position paper on Air Passenger Rights

EPF comments on the proposed revision of Regulation 261/2004 on Air Passenger Rights and Regulation 2027/97 on Air Carrier Liability in respect of the carriage of passengers and their baggage

The proposed revision of Regulation 261/2004 on Air Passenger Rights and Regulation 2027/97 on Air Carrier Liability in respect of the carriage of passengers and their baggage – on hold since 2015 – is back on the table and will soon be discussed at the European Council. The European Passengers' Federation (EPF) wishes to seize the opportunity to express its views on the proposed revision, taking into account the results of the recently published study on the current level of protection of air passenger rights in the EU.

From the end-users' side, the following elements are our main priorities for preserving and strengthening air passenger rights:

- Address grey zones and inconsistencies
- Better enforcement and consumer redress options
- Air passenger rights should be improved, not weakened by the review.

1. Extraordinary circumstances

A clear definition of the concept “extraordinary circumstances” is needed. EPF supports the creation of a list of situations to be considered “extraordinary”, as this would contribute to more legal certainty. However,

- Labour strikes – especially if they are pre-announced – and labour disputes should not be considered “extraordinary circumstances”.
- EPF is worried that the term “unexpected flight safety shortcomings”, added in the 2015 compromise text, is too vague and may lead to misuse as on an airplane, basically any technical problem could be considered a “safety shortcoming”.
- The presumption should be that technical problems are not due to extraordinary circumstances, unless the airline can clearly prove otherwise – in line with ECJ case law (Wallentin-Herrman, C-549/07).

2. Right to re-routing

A clear definition is needed of the right to re-routing “under comparable transport conditions” and “at the earliest opportunity”.

- EPF strongly supports the revision's clarification that passengers, in case of cancellation, have the right to be re-routed, free of charge, on other carriers or other transport modes (e.g. train, bus, boat) – if necessary.
- However, the proposed time threshold for passengers to be able to benefit from this right should be removed. 12 hours waiting time can clearly not be considered “at the earliest opportunity”. Instead, the right to re-routing should indeed be offered as soon as possible – including alternative operators and modes, if this means passengers are able to reach their final destination quicker.
- Finally, the right to re-routing should also be granted to passengers who suffer a long delay.

3. Right to compensation in case of delay

EPF supports the right to financial compensation for delayed passengers. Indeed, a delay can cause as much trouble as a cancellation. A significant delay can negate the purpose of the trip (e.g. a business meeting) or

seriously inconvenience passengers (e.g. missing onward connections or accommodation bookings). The extra costs incurred are often much higher than the legal compensation. EPF also supports the Commission's proposal that the advance rescheduling of flights be considered a long delay in some cases.

In accordance with ECJ rulings (Sturgeon C-402/07-432/07), EPF is in favour of a single time threshold, i.e. passengers should be entitled to compensation in case of delay at arrival of 3 hours or more, independent of the length of the flight. The majority of delays at arrival are between 2 and 4 hours, hence increasing time thresholds for compensation to 5, 9 or even 12 hours – as proposed in the review – would significantly weaken the current level of passenger protection, which is not acceptable. It makes sense to keep the time threshold low, as many trips made by air are time critical and in fact speed is air travel's main USP.

4. Right to assistance and care

EPF supports the introduction of a single time threshold of 2 hours for access to care and assistance, such as refreshments, for all flights that are disrupted.

We also support the newly introduced right to assistance for passengers blocked on the plane for 1 hour or more. Passengers who are delayed on tarmac, as proposed in the European Parliament's position, should have the right to disembark after 2 hours – and not after 5 hours as stipulated in the 2013 proposal.

However, EPF strongly opposes the proposal to reduce the currently unlimited right to assistance in case of “extraordinary circumstances” by limiting the right to accommodation to a maximum of 3 nights and 100€ per night. In case of disruption, passengers' first priority is to receive care and assistance. The current right to assistance should not be reduced. In case passengers are stranded, accommodation should be provided as long as necessary, while costs should be kept proportionate and reasonable. In this context, EPF also welcomes the obligation for airports and airlines to set up contingency plans to deal with situations of mass disruption.

EPF suggests to include a provision in the Regulation that airlines should be required to designate a person at each airport that they serve, to inform and assist passengers in the event of disruption.

5. Missed connecting flights

EPF welcomes the new provision that provides passengers with the right to assistance and compensation for missed connected flights, in case of a single contract. We would like to add that:

- These rights should be guaranteed also if part of the travel is operated by another carrier (code sharing) or if part of the travel is operated outside the EU.
- The seller of the ticket should be responsible for handling any complaints.
- In case of separate contracts, passengers currently have no right to compensation; in such cases, the right to assistance should at least be guaranteed.

6. Right to information

The right to information – before purchase and at the various stages of travel – is one of the 10 core passenger rights put forward by the European Commission¹.

EPF fully supports the new information provisions in the 2013 proposal which state that passengers should be better informed on their rights, including about complaint handling procedures, contact details of enforcement and ADR bodies.

The right to information includes the right to be informed as soon as possible about the causes of delay/cancellation – and whether these are considered “extraordinary circumstances”. Such information can not only reduce the stress felt by passengers confronted with a disruption – it is also relevant in terms of knowing whether they are entitled to compensation.

¹ COM(2011) 898 final– “A European vision for Passengers: Communication on Passenger Rights in all transport modes”

7. Improved complaint handling and consumer redress options

Passengers expect effective passenger rights that protect them if something goes wrong. They also expect an easy and clear way to enforce their rights. However, in practice it is still not the case.

To start with, many passengers are not aware of their rights and often, wrong/incomplete information is provided to them by airlines. EPF therefore welcomes the new information provisions in the 2013 proposal which state that passengers should be better informed on their rights, including about complaint handling procedures, contact details of enforcement and ADR bodies.

When something goes wrong, passengers have in theory a lot of options: They may address the airline directly, contact the NEB or an ADR agency, go to court (small claims procedure) or hire the services of a claim agency. The fact that there are several alternatives may be confusing in itself. In addition, procedures are often long and complex. Seeking redress requires time, know-how and in some cases comes with a cost.

EPF suggests the following improvements should be included in the revision:

- The obligation of airlines to set up in-house complaint-handling procedures, to respect a deadline of two months to respond, and to be easily accessible to consumers: by e-mail and telephone, and by ensuring the presence of a representative at the airport to inform passengers in case of disruption.
- NEBs should be able to address individual complaints. Their decisions should be binding. NEBs' role should be extended to monitor compliance with Regulation 2027/97 (and the Montreal Convention) (delayed, lost or damaged baggage) and Regulation 1008/2008 (provisions on price transparency).
- Airlines should be obliged to participate in ADR schemes and ADR decisions should be legally binding. Clear deadlines should be introduced for the ADR bodies to handle customer complaints.
- European passengers should have the possibility to seek redress via collective court actions. The New Deal for Consumers contains a proposal for consumer collective redress², which enables group actions for breach of Regulation 261/2004 – which would be especially valuable in case of mass disruptions.
- Finally, automatic compensation could be a solution in some cases. Automatic compensation would significantly decrease the administrative burden for all parties involved – including airlines, NEBs and ADR bodies – and would make the activities of claim agencies to a large extent redundant.

8. Better enforcement

The number of delays and cancellations has increased significantly between 2011 and 2018. Due to increasing load factors, the number of passengers affected has increased at an even higher rate. Passenger claim rates for compensation have also gone up but still, in 2018 only 38% of the passengers entitled to compensation effectively exercised this right³. These numbers show that compliance and enforcement are real issues.

EPF suggests the following improvements in terms of enforcement, monitoring and sanctioning:

- NEBs should apply effective and truly dissuasive sanctions – e.g. a percentage of an airline's annual turnover – if airlines do not comply with the Regulation (e.g. if they don't pay the due compensation or if they do not offer re-routing within a reasonable amount of time).
- NEBs should be able to address individual complaints. Their decisions should be binding.
- NEBs' role should be extended to monitor compliance with Regulation 2027/97 (and the Montreal Convention) (claims for delayed, lost or damaged baggage) and 1008/2008 (price transparency).

² Proposal for a directive on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC (COM(2018) 184 final).

³ Study on the current level of protection of air passenger rights in the EU, Final report, Study contract n° MOVE/B5/2018-541, 2020, confirmed by the Special Eurobarometer study on passenger rights (485), published 2020.

- Enhanced cooperation and exchange of information should be encouraged – between NEBs, between NEBs and ADR bodies, and between NEBs and the Commission – through formal coordination procedures and reporting obligations, which would enable harmonised enforcement and coordinated action to deal with EU-wide infringements.
- Provisions should be improved for monitoring, reporting and publishing data on performance of carriers, operators and NEBs (e.g. number of complaints). Airlines should be obliged to regularly report on the quality of their services (e.g. on delays and cancellation rates). Public exposure is an excellent driver of improved performance & would allow NEBs to develop best practices.
- Airlines should be obliged to participate in ADR/ODR schemes and ADR decisions should be legally binding.

9. No-show clauses should be banned

No-show clauses allow airlines to deny boarding to passengers who have missed – or decided not to take, for whatever reason – either the first leg of a multiple-leg itinerary or the outbound flight of a round-trip itinerary. As a result, they are obliged to buy another ticket or pay a disproportionate fee. EPF considers that such clauses are clearly “unfair contract terms”, which has been confirmed by several national courts.

The partial ban introduced in the 2013 revision text (i.e. for round trips, not sequential trips) is welcome but insufficient. Instead, EPF supports a full ban of “no-show clauses”.

Related to this, it should be noted that most passengers are not aware that in case of no-show or voluntary cancellation, they are actually entitled to a partial reimbursement (for airport charges and government taxes). This issue is currently discussed in the context of the review of the Air Services Regulation (1008/2008).

10. Protection in case of airline insolvency

Between 2011 and 2019, it is estimated that 5,6 million passengers were impacted by airline insolvencies, on average incurring 432€ in costs of which 83% non-recoverable.⁴

Measures should be taken to protect passengers in case of airline insolvency. Passengers who booked a standalone flight should receive the same level of protection as passengers who booked a travel package: they should receive a refund and if necessary, be repatriated.

To achieve this, possible solutions could be the creation of a guarantee fund, compulsory insurance and better monitoring of the financial health of airlines (the latter is currently discussed in the context of the review of the Air Services Regulation 1008/2008).

11. Luggage (Regulation 2027/97)

EPF welcomes the following provisions with regard to baggage, introduced in the 2013 proposal:

- New and improved rules for the carriage of musical instruments
- Increased liability of air carriers up to the actual value of PRM mobility equipment by compelling airlines to automatically offer to make a value declaration at check-in
- Better transparency on baggage rules by requiring air carriers to clearly indicate cabin and hold baggage allowances both at the time of booking and at the airport
- Ability to submit baggage handling complaints at the airport
- Adaptation of liability limits in accordance with general price inflation
- Extending NEBs’ role under 261/2004 to cover also 2027/97 related issues.

However, EPF is strongly opposed to the new article 6d included in the 2013 proposal, indicating that airlines enjoy “full commercial freedom” to decide on the conditions of carriage of luggage, as we consider

⁴ Study on the current level of protection of air passenger rights in the EU, Final report, Study contract n° MOVE/B5/2018-541, 2020, confirmed by the Special Eurobarometer study on passenger rights (485), published 2020.

it is not in line with the price transparency provisions contained in the Air Services Regulation (1008/2008), which is currently also under review. Airlines increasingly unbundle and charge extra for ancillary services. For passengers, it has become very unclear which services they can expect to be included in the basic price, and which are optional, i.e. selected on an opt-in basis. Additional fees for such services vary greatly across airlines and are often not included in the final price shown at the beginning of the booking process, which makes effective comparison very difficult. In fact, charging extra for hand luggage can be seen as misleading, because passengers reasonably expect this to be included in the basic price.

In order to address these issues, EPF asks more clarity on what constitutes

- elements that are ‘unavoidable and foreseeable’ and should always be included in the basic price
- ‘core ancillary services’, the price of which should be indicated next to the final price.⁵

In terms of baggage, at least hand luggage of a normal size should always be included in the basic price, as confirmed by ECJ case law (Vueling, Case C-487/12). In addition, it should be ensured that the price of hold luggage is clearly indicated at the beginning of the booking process.

In addition, it would be useful to introduce common standards for size and weight for both cabin and hold luggage. Now, rules differ which makes it difficult to compare prices and also creates problems in case of connecting flights with different airlines. A bag permitted free of charge as cabin baggage with one airline may be 2 cm over length with another, requiring an additional hold charge which may lead to a significant difference in final price.

To address problems related to price transparency, EPF suggests that the NEBs’ role should not only be extended to monitor compliance with Regulation 2027/97 (and the Montreal Convention) but also with Regulation 1008/2008 (price transparency provisions).

12. Correction of mistakes and transfer of tickets

As a final point, EPF welcomes that the EC’s proposal introduces the right to correct spelling mistakes within 48 hours of booking. In the same spirit, passengers should also be allowed to correct any other mistakes – day and time of flight, for example – within 48 hours. They should also be allowed to transfer their tickets, at a reasonable fee, in case they are not able to travel.

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⁵ EPF’s position on the review of the price transparency provisions in the Air Services Regulation can be consulted on our website: <http://www.epf.eu/wp/review-air-services-regulation-epf-position-on-price-transparency/>