

## Better protection for passengers and their rights

### EPF position – 22.04.2023

The '[Better protection for passengers and their rights](#)' initiative aims to consolidate and simplify the passenger rights regulatory framework and to enhance its crisis resilience, ensuring a better application and enforcement and addressing a number of 'horizontal issues' currently not covered for all transport modes, such as rules on the role of intermediaries and adequate insolvency protection.<sup>1</sup>

Under this initiative, policy measures are being considered covering the following aspects:

- protection for air passengers against the risk of **a liquidity crisis or an insolvency**
- reimbursement of air passengers booking via an **intermediary** ticket vendor
- reimbursement in case of **cancellation by air passengers** due to a major crisis
- passenger rights for **multimodal** journeys
- improved **enforcement** of passenger rights in all transport modes.

#### KEY TAKEAWAYS FOR EPF:

1. Air passengers need **better protection against the risk of a liquidity crisis or an insolvency**, aligning passenger rights under the Air Passenger Rights' Regulation and under the Package Travel Directive.

2. The **role of intermediaries** needs to be clarified – for air travel, but also for multimodal travel – in terms of information provision, complaint handling, re-routing, reimbursement, compensation and assistance. To be effective, B2C obligations would need to be complemented by clear rules addressing B2B responsibilities and deadlines.

3. Passengers who booked a standalone flight should be **able to cancel their flight**, just like passengers who booked the same flight as part of a Package Travel – in case of a major crisis (official travel warnings should count as such) without having to pay a fee.

4. To make **multimodal travel** a convenient, reliable and safe choice, in principle, all core passenger rights should also apply to multimodal trips. For EPF, the top priorities are (i) journey continuation guarantee; (ii) practical information, advice and support; (iii) straightforward and appropriate compensation.

5. **Monitoring and enforcement** of passenger rights should be strengthened across the EU – for all modes. Passengers also need to be better informed and procedures for complaint handling, reimbursement and compensation requests should be simplified.

For EPF, the Better Protection for Passengers and their Rights initiative should **consider all modes**, to ensure it is future-proof and that multimodality is covered in all its facets. As horizontal topics, the role of intermediaries and the right to self-cancellation in case of a major crisis, notably, are relevant not only to air, but also to multimodal travel.

Measures to further **harmonize passenger rights** across modes seem to be missing so far. In such effort, the highest level of consumer protection should be aimed for or maintained.

<sup>1</sup> Call for Evidence for an Impact Assessment, Ref. Ares(2021)7881104 - 20/12/2021

## 1. Protection for air passengers against the risk of a liquidity crisis or an insolvency

Currently, passengers are not effectively protected (except in the case of package travels) when their chosen airline goes bankrupt or faces a liquidity crisis:

- Firstly, they might not be reimbursed for their ticket;
- Secondly, they might be stranded abroad and have difficulties to be repatriated.

Airline insolvency is not an uncommon issue. Between 2011 and 2019, 87 airlines went bankrupt in Europe, affecting 5,6 million consumers, losing on average € 431.<sup>2</sup> During the Covid-19 crisis, many more airlines would probably have gone bankrupt if they hadn't received significant state aid.

Some insolvency protection schemes already exist, e.g. SAFI, IATA BSP schemes, protection through the use of credit cards, rescue fares agreements, travel insurance. However, these offer only partial protection (e.g., covering only refund of the original ticket and not repatriation, or vice versa) and are not available to all passengers in a non-discriminatory way. Hence, merely informing passengers about such available options will not be sufficient to remedy the situation. This is why EPF, together with other consumer/end-user associations, industry representatives and insurance providers jointly wrote to the European Commission<sup>3</sup> to take strong action. Notably, we call for:

- a mandatory insolvency protection mechanism / guarantee scheme in the airline sector, mirroring the existing obligations of tour operators / travel agents in the Package Travel Directive, covering: refunds of tickets pre-paid by passengers; vouchers accepted by passengers as an alternative to cash refunds; repatriation costs for passengers stranded abroad (in case of actual airline insolvency, but also other situations leading to liquidity crises);
- the mandatory designation of a public authority to coordinate repatriation efforts in each Member State, including through liaison with counterparts and airlines, negotiation of rescue fares and provision of information to affected passengers through its website and possibly other channels: a system in place already under the Package Travel Directive which has proven to be efficient and which would ensure collective solutions (not feasible to achieve through individual action) and equal treatment of passengers involved.

The above measures would align passenger rights under the Package Travel Directive and the Air Passenger Rights' Regulation, so that passengers who booked a package and those who booked a standalone flight are in both cases protected adequately in case of an insolvency or liquidity crisis of an air operator.

As a good example, the Danish Government introduced a mandatory insolvency protection scheme for airlines in 2015 covering also standalone tickets, which has proven to be well-accepted and effective.<sup>4</sup>

EPF supports legislative action on this topic as merely 'encouraging' stakeholders to act risks to have no effect and instead increase fragmentation and legal uncertainty for passengers. Many 'soft' measures were already proposed by the Commission in its 2013

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<sup>2</sup> European Commission, Directorate-General for Mobility and Transport, Kouris, S., *Study on the current level of protection of air passenger rights in the EU : final report : study contract*, Publications Office, 2020, available here <https://data.europa.eu/doi/10.2832/529370>

<sup>3</sup> Joint call from European consumers, industry, and insurance providers on urgent need for mandatory insolvency protection scheme in the airline sector – 07/12/2022 (available on EPF website [here](https://em.dk/nyhedsarkiv/2015/januar/regeringen-foreslaar-bedre-forhold-for-flyrejsende/))

<sup>4</sup> <https://em.dk/nyhedsarkiv/2015/januar/regeringen-foreslaar-bedre-forhold-for-flyrejsende/>, last consulted 22.04.23

Communication on Passenger Protection in the event of Airline Insolvency<sup>5</sup> and did not deliver. Similarly, the EC's Recommendation on vouchers<sup>6</sup> issued during the Covid-19 pandemic, being non-binding, had little effect.

Finally, EPF finds it important to stress the importance for passengers, in addition to the financial aspects, of receiving immediate and practical assistance in time of need, particularly for those arriving on delayed flights at geographically or linguistically 'foreign' destinations where the airline relies on third-party subcontracted agents to provide passenger support, if any. Here's where the national authorities mentioned above should play a coordinating role, cooperating with and ensuring information flow between all relevant parties involved (notably the airlines, other carriers and possibly operators from other transport modes, airports, tour operators and ticket sellers, ...). Such coordinated action should be ensured not only in case of an airline's actual insolvency, but also in other situations of (mass) disruptions.

## **2. Reimbursement of air passengers when booking via an intermediary ticket vendor**

When passengers book a flight via an intermediary ticket vendor (travel agent, online booking platform, ...) and the flight is cancelled, their ticket is not always reimbursed within 7 days as foreseen in the Air Passenger Rights' Regulation. When trying to claim their right to reimbursement, sometimes passengers are being 'ping ponged' back and forth between operators and ticket vendors. Without clear and binding rules, this problem is likely to persist, especially in case of mass disruptions (as we have seen during the Covid-19 crisis).

Hence, the role of intermediaries needs to be clarified – not only with regard to reimbursement, but also addressing other questions such as: Who is responsible for providing (real-time) information, for addressing complaints, for handling compensation requests, for re-routing passengers, for providing assistance? Such questions are relevant not only to air, but also to multimodal trips (see 4. below).

Both at the time of booking and whenever a disruption occurs (delay, cancellation), both intermediaries and carriers, as a legal obligation, should proactively provide passengers with all relevant and necessary information (by sms, e-mail, app notifications etc., depending on the passenger's preferences). This includes: information on passenger rights, real-time information on the disruption and impact on the rest of the trip, information about the cause of the delay or cancellation, (and hence on whether this counts as 'extraordinary circumstances' or not), and information on how to proceed and whom to address. Simplified (and faster) procedures for receiving reimbursement or compensation (preferably automatically) are needed (see also 5. below).

For EPF, the most logical solution would be that passengers first address the party they bought their ticket from (which can be an airline or an intermediary), as it is their first and perhaps only point of contact, after which reimbursement should follow (either by the intermediary or directly by the airline) within 7 days, as obliged by law. If for some reason a problem occurs with reimbursement through an intermediary (including, but not limited to, insolvency or liquidity crisis), the passenger should be entitled to pursue their right to reimbursement with the carrier, as a back-up solution.

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<sup>5</sup> Passenger protection in the event of airline insolvency (COM/2013/0129 final), available [here](#)

<sup>6</sup> Commission recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic, available [here](#)

To ensure a sustainable and viable solution for all parties involved, B2C obligations would need to be complemented by clear rules addressing B2B responsibilities and deadlines to be respected, enabling a smooth and timely reimbursement process.

### **3. Reimbursement in case of cancellation by air passengers in the event of a major crisis**

Currently, air passengers have no right to reimbursement of the ticket price in case they cancel their ticket themselves due to a major crisis at the place of departure or destination, causing them to be unable to travel (e.g., a global health crisis, terrorist attack or natural disaster, which can be considered as 'force majeure').

For EPF, passengers who booked a standalone flight should enjoy the same rights as passengers who booked a flight as part of a Package Travel, i.e. they should have the right to cancel their tickets:

- In case of a major crisis, without having to pay a fee;
- For any other reasons, whereby an appropriate and justifiable termination fee could apply (it should be clear at the time of booking how much).

In fact, such rights should apply not only to air travel, but to all transport modes and multimodal travel.

Under 'major crisis' should be understood any unavoidable and extraordinary circumstances, either at the place of departure and/or at the place of destination or its vicinity, significantly affecting passengers' travel plans. In particular, the legal value of official travel warnings (discouraging or even prohibiting citizens to travel) should be clarified, and such should be considered as sufficient evidence to have the right to self-cancellation without having to pay a termination fee.

EPF supports legislative action on this topic as merely 'encouraging' stakeholders to act risks to have no effect and instead increase fragmentation and legal uncertainty for passengers. Travel insurance is not a good alternative either, as it often offers poor value for money and insufficient protection<sup>7</sup>.

### **4. Passenger rights for multimodal journeys**

Currently, passengers are not covered by existing passenger rights when switching between different transport modes. EU passenger rights apply only to long-distance trips and only if there is a single contract of carriage (i.e. through ticketing). They do not tackle the issue of disruptions in a multimodal context and do not cover urban and local transport. For multimodal trips, in most cases each operator is only aware of and responsible for the journey segment that they provide themselves. There is no overall guarantee for arrival at the final destination. A missed connection may leave passengers stranded and they may only be able to complete their journey by buying new tickets. An adequate level of protection to passengers when using combinations of different transport modes is needed to make multimodal travel a convenient, reliable and safe choice.

EU passenger rights are based on three cornerstones: non-discrimination; accurate, timely and accessible information; immediate and proportionate assistance. In principle, all ten core passenger rights<sup>8</sup> should also apply for multimodal travels.

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<sup>7</sup> See for ex. the 2019 study *Consumer Protection Issues in Travel Insurance* by EIOPA, available [here](#)

<sup>8</sup> A European vision for Passengers: Communication on Passenger Rights in all transport modes, COM(2011) 898 final, available [here](#)

### **(1) Right to non-discrimination in access to transport**

Without prejudice to social tariffs, transport service providers, ticket vendors or tour operators shall offer contract conditions and tariffs to the general public without direct or indirect discrimination on the basis of the passenger's nationality or of the place of establishment within the Union of the transport service provider, ticket vendor or tour operator. A provision on non-discriminatory contract conditions and tariffs has been included in the Rail Passenger Rights' Regulation recast (EU) 2021/782 (§5) and the same principle should apply to all transport modes and also to multimodal travel.

### **(2) Right to mobility: accessibility and assistance at no additional cost for disabled passengers and passengers with reduced mobility (PRM)**

Persons with disabilities or with reduced mobility should receive assistance when switching between different transport modes. Ideally, there should be a Single Point of Contact to address for any questions on accessibility and requests for assistance, including during disruptions. Such a Single Point of Contact is foreseen in the Rail Passenger Rights' Regulation recast (EU) 2021/782 (§24) and the same principle should apply to all transport modes and also to multimodal travel.

### **(3) Right to information before purchase and during travel, notably in case of disruption**

Passengers must be informed by carriers and ticket vendors/tour operators *at the time of purchase* on (at least) the type of multimodal ticket (single contract or integrated separate tickets, and associated rights), time schedules, available connections and tariffs, PRM accessibility. *During the journey*, carriers and ticket vendors/tour operators must provide real-time information to passengers on the disruption, possible next connections, and security alerts.

As a starting point, the revised Rail Passenger Rights' Regulation recast (EU) 2021/782 (§9 and Annexes) contains a list of information elements to be provided pre-journey and during the journey. Similar requirements should be introduced for all transport modes and also for multimodal travel. It would be useful to add to this list, especially relevant in case of multimodal travel, minimum transfer / connection times. As passengers' awareness of their rights is still (too) low, information on these rights in general and also on how to assert them should be proactively provided to passengers, both pre-journey and during the journey whenever a disruption occurs, by operators and ticket vendors.

### **(4) Right to renounce travelling (reimbursement of the full cost of the ticket) when the trip is not carried out as planned**

In case of a cancellation or long delay, passengers should be entitled to a full reimbursement if they choose to not continue their trip. As for air-only tickets (see 3. above), the role of intermediaries needs to be clarified, also for other transport modes and for multimodal trips. It must be clear to passengers whom to address and which procedures to follow when they bought their (multimodal) ticket from an intermediary. For EPF, the most logical solution would be that passengers first address the party they bought their ticket from, whereby B2C obligations (reimbursement within 7 days) would need to be complemented by mirroring B2B responsibilities and deadlines to be followed.

### **(5) Right to the fulfilment of the transport contract in case of disruption (rerouting and rebooking)**

Generally, in case of disruption, journey continuation is passengers' main priority. Rerouting should be offered to passengers, as is the case under the current mode-specific passenger rights Regulations, under comparable transport conditions, and possibly

making use of other carriers and/or modes if that is faster and/or more convenient. If the carrier or ticket vendor does not re-route passengers within a given time limit, e.g. 100 minutes, then passengers should be entitled to make their own alternative arrangements, the cost of which should be refunded to them. If journey continuation is not possible in an acceptable manner, e.g. during night time, having to stand, having a much longer travel time by bus instead of rail or air, ... then passengers should have the option to choose between immediate continuation or next day travel (and being offered accommodation).

#### ***(6) Right to get assistance in case of long delay at departure or at connecting points***

In the event of long delays or cancellations, passengers must be offered care and assistance, as is the case under the current mode-specific passenger rights Regulations. Such care should include assistance on how to continue the journey (rerouting and rebooking), meals and refreshments and, if rerouting is not possible on the same day, accommodation and transfer to and from accommodation.

#### ***(7) Right to compensation under certain circumstances***

In case of long delays and cancellations, passengers shall be paid appropriate compensation, except if the delay or cancellation is due to extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Compensation should be ensured in a timely manner and following simple and easy to understand procedures. For passengers, it must be clear whom to address and which steps to take. As for reimbursement, the role of intermediaries must be clarified.

#### ***(8) Right to carrier liability towards passengers and their baggage***

The issue of protection in case of stolen or damaged luggage, is not tackled (to the same extent) for all modes. Further harmonization and extending such protection to multimodal trips is called for.

#### ***(9) Right to a quick and accessible system of complaint handling***

Passengers should have the possibility to complain to carriers, ticket vendors and terminal managers about problems occurring during their multimodal journey. Carriers, ticket vendors and terminal managers should have, to this purpose, an online and offline complaint-handling mechanism for multimodal passengers, and respect clear deadlines for addressing such complaints.

#### ***(10) Right to full application and effective enforcement of EU law***

As is the case for all Regulations, enforcement is needed for them to effectively protect passengers. Enforcement is still insufficient and fragmented across the EU and must be improved (see 5. below).

The above rights should apply to all multimodal trips that are sold as a **single contract**, offered by carriers or by ticket vendors on behalf of carriers. The same rights should also be extended to passengers who bought an **integrated ticket** from an intermediary, unless they are very clearly informed otherwise (as is currently the case in the revised Rail Passenger Rights' Regulation (§12) whereby tickets bought in a single transaction are considered a through-ticket, except if the passenger is clearly informed it is not). Nevertheless, **in all cases** whereby passengers buy a ticket in a one-stop-shop (also without it being explicitly or implicitly assumed a 'through ticket'), the responsibilities of intermediary ticket vendors should be extended and aligned with those of operators in that:

- At the very least, passengers must be **informed in real-time** about any disruption, its impact on the trip and possible next connections. For this, information exchange is necessary (cf. revised Rail Passenger Rights' Regulation §10) between all actors involved: operators, infrastructure managers, ticket vendors. Alignment should be sought on this topic with other relevant initiatives such as the MMTIS Regulation and the upcoming MDMS initiative, dealing with data exchange and the (FRAND) terms and conditions for distribution agreements.
- Intermediaries, in addition to operators, should assume responsibility for providing, proactively, information to passengers about their **passenger rights and how to exercise them**. Moreover, passengers should be able to address intermediaries if they are entitled to a reimbursement or compensation and if they have a complaint about their (multimodal) trip.
- Intermediaries, in addition to operators, in case of a disruption should help passengers to **re-route** in order to reach their final destination (with the same carrier, another carrier or possibly other modes if that is faster and/or more convenient) and, failing to do so, reimburse passengers for the costs they incur as a consequence of the disruption (combined with a right to B2B redress).

The willingness of potential passengers to use (multimodal) sustainable transport options for complex journeys is compromised by fears that, in the event of disruption, they may not be able to get to their planned final destination at the earliest available opportunity without paying additional charges. This seriously limits passenger use with undesirable economic, environmental and social consequences. Hence, a universal **journey continuation guarantee** would be helpful and desirable. Such journey continuation agreements partly exist in the rail (AJC, CER/CIT) and air sector (interlining agreements). Such sectorial initiatives are welcome *as a starting point*. For multimodal trips, we need to take a step further and achieve journey continuation guarantees not only across operators, but *also across modes*. As intermediate steps on our way to achieve this goal, we could imagine to start by:

- Offering very clear information at booking stage to passengers about minimum connection / transfer times needed (taking into account walking distances, which can vary greatly depending on the size of the station/airport/...), as this would already greatly diminish the risk of missed connections;
- Looking at existing journey continuation agreements (e.g., AJC, interlining), how they function in practice, what the limitations are, how their implementation can be broadened;
- Introducing a journey continuation obligation first to PSO services (such guarantees can be included in PSO contracts), before extending it to other, open access services;
- Including the right to re-route with other carriers and possibly other modes in case of long delays or cancellations to all modes and multimodal travel (as currently included in the Rail Passenger Rights' Regulation recast).

Operators should be challenged to identify actual avoidable costs before accepting their objections on cost grounds to improved passenger rights' measures – as in EPF's view, in most cases the marginal cost of taking one more passenger on the next train/bus/flight is negligible –, while also considering what can be gained: more passengers will be inclined to travel with sustainable / multimodal modes if they feel more sure about reaching their final destination. Price increases or supplements – if any – for full journey continuation guarantee should reflect such actual marginal cost, net of any income growth that can be attributed to additional passengers taking the journey because they have the assurance of the guarantee.

## 5. Improved enforcement of passenger rights in all transport modes

Currently, the enforcement of passenger rights varies greatly across the EU and is not effective enough. The Covid-19 crisis has exacerbated structural enforcement problems, as evidenced by the European Court of Auditors' Special Report on Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts<sup>9</sup> and the evaluation reports of the Regulations dealing with the rights of passengers travelling by Bus & Coach, by Sea and Inland Waterways, and PRM travelling by air.<sup>10</sup>

In general, monitoring and enforcement should be strengthened – for all modes –, e.g. through:

- Stronger reporting obligations (by operators, infrastructure managers and tour operators / ticket vendors to NEBs, and by NEBs to the Commission), e.g. on number of complaints, service quality,... (all modes);
- Stronger mandates (making their decisions binding) and more resources for NEBs to do their job effectively;
- Stronger cooperation between NEBs, sharing experiences and best practices, and bundling forces to address cross-border, EU-wide infringements and multimodal travel;
- Truly dissuasive sanctions in case of non-compliance, e.g. a % of a company's annual turnover;
- Mandatory participation of operators in Alternative dispute resolution bodies (ADR); ADR bodies' decisions being made binding upon traders.

For individual passengers, the following measures would be beneficial:

- Information on passenger rights when booking, both by carriers and intermediaries, including the procedures to be followed and whom to contact in case of complaints or disruptions;
- Information to be provided whenever a disruption occurs – both by carrier and intermediaries, including: cause of disruption (extraordinary circumstances or not?), passenger rights, whom to address and procedures to follow for reimbursement and compensation, but also re-routing and assistance;
- Simplified complaint handling mechanisms, including a standardized EU complaint form available in all EU languages, and strict deadlines for dealing with complaints;
- Introducing automatic reimbursement and compensation schemes, where possible;
- Mandatory participation of operators in ADRs, making ADRs' decisions binding;
- Ability for individuals to address complaints to NEBs, making NEBs' decisions binding;
- Making ADRs' and NEBs' decisions applicable to all passengers in the same situation (e.g., all passengers on the same delayed flight having the same right to compensation)

### Missing elements and concluding remarks

As a first general comment, for EPF the Better Protection for Passengers and their Rights initiative should consider all modes, including air and rail. Indeed, some provisions are already included in the Air Passenger Rights' and revised Rail Passenger Rights' Regulation; however the new initiative should cover all modes to ensure it is future-proof and that

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<sup>9</sup> European Court of Auditors, Special Report 15/2021: Air passenger rights during the COVID-19 pandemic: Key rights not protected despite Commission efforts, available [here](#)

<sup>10</sup> Available [here](#)



multimodality is covered in all its facets (e.g. in the case of the APR Regulation, only air-rail is covered whereas also e.g. air-bus or air-rail-bus should be considered). As horizontal topics, the role of intermediaries and the right to self-cancellation in case of a major crisis, notably, are relevant not only to air, but also to multimodal travel.

Secondly, as mentioned in the Call for Evidence for an Impact Assessment of the Better Protection for Passengers and their Rights initiative<sup>11</sup>, “Passenger rights across modes, and compared to package travel rules, are not fully consistent, as many rules differ with limited operational justification (e.g. threshold for delays, level of compensations) and some provisions and definitions lack clarity”.

Measures to further harmonize passenger rights across modes seem to be missing so far. EPF wishes to stress that in such effort, the highest level of consumer protection should be aimed for or maintained, e.g., deadlines to deal with consumer complaints; rules on right to re-routing, reimbursement, compensation and assistance.

Whereas the policy measures proposed in the context of the Better Protection for Passengers initiative do address potential alignment with the Package Travel Directive, alignment with other (reviews of) EU Regulations is also key, including the expected proposal for a Regulation on Multimodal Digital Mobility Services (upcoming, dealing with data sharing and conditions for distributing multimodal tickets). We should also look to the new provisions included in the recast of the Rail Passenger Rights' Regulation, as many of these (e.g., the right to be re-routed by other carriers and other modes of transport, the need/obligation for information exchange between operators, infrastructure managers and ticket vendors) are also relevant for other modes and notably for multimodal travel.

To conclude, an overview of EPF's top priorities:

- Whenever a disruption occurs, people generally prioritise being able to complete their journey at the earliest opportunity, in an acceptable manner (perhaps, for example, avoiding travel in the small hours, having to stand, or long journeys involving coach substitution), at no extra cost, irrespective of territory or operator. We should therefore aim for the roll-out, continent-wide, of an obligation on all operators – and all modes – to commit to something like the CER/CIT ‘Agreement on Journey Continuation’ to create confidence and trust, inciting passengers to choose more sustainable and multimodal travel options.
- The second priority is to ensure that disrupted passengers have ready access to practical information, advice and support when journeys go wrong (e.g., significant delays), to be provided to them proactively by operators and also intermediaries or to be obtained by passengers with minimum convenience, by means of an informed staff presence ideally but with an on-line/telephone back-up where staff are not available or where the issue is beyond their competence (for example, because it knocks on to services in another territory).
- Thirdly, people need to be compensated in an accessible and straight-forward manner if they are obliged to incur actual additional costs as the result of delay and disruption (e.g., reasonable refreshment and accommodation, phone calls, etc.).

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<sup>11</sup> Call for Evidence for an Impact Assessment, Ref. Ares(2021)7881104 - 20/12/2021