

EUROPEAN COMMISSION CONSULTATION ON AIR PASSENGERS' RIGHTS

This is a copy of ABTA's response. For further information, or if you have any queries, contact Luke Pollard, Head of Public Affairs, or Susan Parsons, Manager Trade Relations, on 020 3117 0516.

Public Consultation on air passengers' rights

2. QUESTIONS RELATED TO MISHANDLED LUGGAGE

2.1 The liability Regulation (889/2002)

2.1.1. Information, monitoring and sanctioning powers regarding the application of the Liability Regulation

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

Yes

No

If not, what would be your suggestion to improve the current situation?

Comments

We believe the information and rights are sufficient. The legal responsibility for lost, damaged and delayed baggage is contained in the Montreal Convention which lays down a process on how air carriers are obliged to communicate passenger rights. The Convention was agreed by EU Member States and specifically entered into by the EU. It is incumbent on the air carrier to make this information available on its website and for ticket sellers to bring it to passengers' attention.

- (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

No

Comments

We do not see any need for a specific enforcement body in each Member State. Adding another body would not improve baggage handling, merely add to the cost which would have to be passed on to the passenger through increased ticket prices.

2.1.2. The amount of compensation in cases of mishandled luggage

- (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:

Yes

No

Comments:

The limits set under the Montreal Convention are sufficient. Passengers must take some responsibility when they check in high cost or fragile items.

- (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
 No

Comments:

Under the Montreal Convention, as well as by airline custom and practice, passengers whose luggage has been delayed do receive financial assistance to buy essentials. This would be followed with reimbursement to the passenger of the actual loss should the luggage not be recovered which we believe is sufficient.

- (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
 No

Comments:

See above. Practically, some destinations might have a very limited number of flights and it could be physically impossible to deliver delayed luggage within 48 hours. Every effort is made to return passengers' luggage as soon as possible.

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

Yes
 No

Comments:

UK air carriers have voluntarily agreed to pay the actual cost of damage for mobility equipment recognising the importance to the individual of their equipment. In any event, the PRM should be encouraged to take out personal travel insurance for their mobility equipment. We believe the EU should push for a voluntary approach on this issue.

- (d) Other measures

2.1.3. Conditions on the carriage of luggage

- (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?

Yes
 No

Comments

The EU has done a lot of work on the Air Services Regulation and its checklist of websites selling air tickets in line with consumer legislation, which we welcome.

Passengers should have luggage information sufficiently early so as to make an informed choice.

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

Yes

No

Comments

We do not agree with harmonisation, feeling this is a commercial decision for each air carrier and will vary according to the type of carrier (scheduled, charter, no-frills) and the class of travel. Hand luggage policies frequently reflect the aircraft type and layout, as well as physical restrictions on the operation of the aircraft. Any harmonisation would likely be at the lowest common denominator which we believe would not be in passengers' interests. Harmonisation should not be necessary providing sufficient information is clearly provided in advance – see question 4.

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

(a) EU law:

Yes

No

Comments

(b) Voluntary agreements:

Yes

No

Comments

(c) Other measures:

2.2. Directive 96/67 on ground handling

- (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)?

Yes

No

Comments

It is the responsibility of airports to deliver baggage handling facilities which operate efficiently. Air carriers frequently have no control over ground handlers, particularly in large airports with many air carriers and no self-handling. As pointed out, the current EU

legislation does not provide for any training obligations for ground handling staff. We believe that any compulsory training should be limited to aspects of safety and security.

- (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?

Yes

No

Comments

Whilst training limited to aspects of safety and security might be desirable, there is a cost for any training. Further, the need is for improved service standards rather than a licence saying that training has been undertaken.

3. QUESTIONS RELATING TO THE APR REGULATION (261/2004)

3.1. Reporting obligations under the APR Regulation

- (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

No

Comments

In line with the principles of Better Regulation, the UK Civil Aviation Authority already collects and publishes a significant amount of data regarding airline operation, including detailed data analysed by route on punctuality. We do not see any benefit in requiring additional data, the cost of which would outweigh any benefits.

- (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 and the PRM Regulations, details of the sanctions applied, statistics on complaints and sanctions applied, and information on major court cases?

Yes

No

Comments

This already happens to some degree – see above – with the NEB reporting to their own Member State. However, a more consistent approach across the EU would be welcomed to reduce inconsistencies across the Member States.

3.2. Air carrier complaint handling and settlement of disputes

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

EU law:

Yes

No

Comments

We don't believe there should be harmonisation and feel this must be an individual

decision for air carriers – it is all down to the service they offer. To be noted that complaints against charter airlines are likely to be addressed to the tour operator rather than the air carrier, and the tour operator is obliged to address those complaints under the Package Travel Directive.

Voluntary agreements:

Yes

No

Comments

Voluntary agreements on a national basis may be a more appropriate approach than complaint handling procedures being harmonised through EU law. However, it is debatable whether voluntary agreements would have any effect on air carriers' behaviour and, as pointed out above, it is all down to the service offered by the air carrier.

- (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

No

Comments

ABTA, as a regulatory association, has a Code of Conduct which requires its members to acknowledge a complaint from clients within 14 days of receipt of correspondence with a detailed reply within 28 days. This approach has worked well over many years. We would have no objection to a similar approach being applied to specific airline complaints. Whilst ABTA can, and does, take action against its own members for not responding to clients' correspondence, it is not clear how sanctions could be managed against airlines.

4. QUESTIONS RELATING TO THE PRM REGULATION (1107/2006)

- (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

No

Comments

We do not believe there should be harmonisation of air carriers' policies. It is an individual air carrier's decision as to the service they offer and subject to the aircraft type and configuration. It's also down to practicalities such as availability of medical oxygen in overseas bases. Allowing passengers to carry their own portable oxygen cylinders or battery powered oxygen concentrators could perhaps be standardised (e.g. a permitted size) but not air carriers' own provision. Air carriers should, however, be required to provide proper information so that passengers can make an informed choice.

- (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

No

Comments

Whilst desirable, if the PRM is required to pre-notify, it follows that the airport/air carrier would not be obliged to provide assistance if notification was less than 48 hours. In practice, ground handlers take the line of least resistance so as not to have disagreements with PRMs and do not check whether they have pre-notified. There should be an incentive to encourage PRMs to pre-notify, such as priority being given to those who do pre-notify, which would encourage those who had not to do so the next time. However, some passengers, particularly the elderly, don't realise they need assistance until they find themselves in the airport and realise just how large it is. Whilst the intent of Regulation 1107 is supported, since its introduction air carriers' costs have risen dramatically whilst service levels, most critically safety, have fallen. The benefits of pre-notification should be better publicised at national and EU level.

5. BUSINESS PRACTICES WHOSE IMPACT ON PASSENGERS MAY MERIT THE COMMISSION'S ATTENTION

5.1. Reservation and check-in on-line

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

EU law:

Yes

No

Comments

Such practices are the individual decision of air carriers and are very dependent on the medium used by passengers to book airline tickets, also the technology available at the time. To note that in the charter airline market, it is generally tour operators who are responsible for booking and any harmonisation would involve hundreds of tour operators. Any harmonisation is likely to lead to cost increases for passengers.

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

(a) 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

No

Comments

There should not be a minimum time for detection of any errors, as bookings made by an agent on a scheduled air carrier through a CRS are reported electronically to the air carrier on a daily basis and changes cannot be made after midnight. The onus must be on the passenger to check details at the time they make the booking.

Online check-in, where it exists, varies considerably and can be done in as much as 60 days in advance or as little as 24 hours. We would expect carriers to look at each case on an individual basis.

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

Yes

No

Comments

Lack of accessible IT facilities might mean it is not possible to check in in advance. Whilst business passengers will be used to checking in online, infrequent leisure passengers might not be and it would be unfair to penalise them. However, there is a cost to air carriers to provide check-in desks at airports. This must be a commercial decision for the air carrier and their policy must be made clear to the passenger at the time of booking.

(c) Other measures

Air carriers can, and do, pass on debit and credit card charges but usually these are quoted at a flat rate and bear little relation to the actual cost incurred by the air carrier. Debit cards are normally charged at a flat rate which would be less than €0.50 per transaction. Credit cards are normally charged at a percentage of the transaction cost. Some air carriers charge a credit card fee per person per sector which can be substantial in relation to the cost of the air ticket and, inevitably, more than the actual cost to them.

5.2. Rescheduling of flights

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

Yes

No

if yes, through:

EU law:

Yes

No

Comments

Regulation 261 already prescribes for passenger rights if cancellation is less than 14 days in advance. It would serve no purpose to extend this and would add to costs which would have to be passed on to all passengers through the cost of their tickets. Package travel customers are protected from significant changes and have rights under the Package Travel Directive. Any attempt to create rigid rules may create practical difficulties. For example, a 5 hour change may be significant to a passenger who is planning to be away for just a few days' break but is of less relevance and importance to a passenger on a 2 week holiday.

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

(a) 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

No

Comments

As mentioned in 17 above, a 5 hour change may be significant to a passenger who is planning to be away for just a few days' break but is of less relevance and importance to a passenger on a 2 week holiday

- (b) 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

No

Comments

The requirement to promptly communicate any schedule changes should also apply to any intermediary involved in the booking e.g. travel agent.

- (c) Other measures

5.3. The so called "no-show policy"

- (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

No

Comments

In general we would support this policy. However, it does not seem unreasonable if the passenger has purchased a package holiday, and has either not arrived for their outbound flight nor used their accommodation in the destination, to require the airline to keep their return seat available for them.

5.4. Reduced space between plane rows

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

Yes

No

Comments

The UK does impose seat pitch rules on safety grounds to allow for aircraft evacuation in a timely manner. Other than this, we completely agree with the Commission's narrative that it is an individual air carrier's commercial decision and down to the service they offer.

ANNEX ON AIRLINE INSOLVENCY

SECTION A: THE CURRENT SITUATION AS TO INSOLVENCY

The current rules on insolvency pertain only to package travel products and do not cover stand alone products. However, following a recent spate of airlines going bust, it is important to consider whether the level of protection currently being offered to consumers is appropriate.

- (1) What kinds of protection schemes against airline insolvency are currently available in your country for standalone products? (tick all that apply)

- | | |
|--|-------------------------------------|
| National guarantee fund | <input type="checkbox"/> |
| Bank guarantees | <input type="checkbox"/> |
| Insurance schemes | <input checked="" type="checkbox"/> |
| Other (<i>please specify</i>) | <input type="checkbox"/> |
| There are no such protection schemes in my country
(go to Q4) | <input type="checkbox"/> |

- (2) If you have chosen more than one scheme (in Q1), please estimate the market share for each scheme in your country?

Scheduled Airline Failure Insurance (SAFI), is available where it is sold although we have concerns that take up does not achieve complete or even majority protection for consumers purchasing standalone products. To be noted that cover is excluded for any airline in US Chapter 11 or equivalent.

On a scale of 1 - 5 (with 5 = highest), how would you rate the effectiveness of the current insolvency protection requirements/schemes for standalone airline tickets in your country?

- 1 2 3 4 5

SECTION B: THE POSSIBLE FUTURE AS TO INSOLVENCY

- (4) Rules on airlines' financial fitness have been recently reinforced. To which extent do you consider that they address the problem of airline insolvency effectively? Have you noticed improvements since they came into force? Please give reasons for your answer.

There has been no improvement in airlines' financial fitness.

ABTA has serious concerns that protection against airline failure is not universal for all travellers in the aviation sector. ABTA supports protection for passengers regardless of how they have booked their travel and therefore are strongly in support of efforts to extend consumer protection to include standalone airline tickets and scheduled carriers.

We believe there is an uneven playing field in the European aviation sector when it comes to airline protection between scheduled/no-frills airlines and charter airlines/air travel booked as part of a package. The current system affords protection to only some flights and is not universal. ABTA believes that all flights should be included but that in such circumstances as currently exist in the UK where only some flights are included this should either be a 'catch all' or a 'catch none' system in order to ensure a level playing field for aviation players to compete on equal terms.

- (5) Do you think it should be compulsory, optional or not required at all when offering **standalone airline tickets** (i.e. not as part of a package) to provide specific protection (or insurance) so that passengers would be **reimbursed for money paid** over or repatriated if the **airline went bankrupt**?

It should be compulsory and included in the price	<input checked="" type="checkbox"/>
It should be optional (passengers may choose whether to buy, but all airlines must offer it, i.e. optional insurance) Go to Q7	<input type="checkbox"/>
Airlines should not be required to offer protection Go to Q7	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

- (6) If compulsory, what kind of protection schemes against airline insolvency would be the most adequate? Please choose only one option.

National guarantee funds	<input checked="" type="checkbox"/>
Pan-European guarantee fund	<input type="checkbox"/>
Compulsory Airlines' Insurance schemes where insurance is secured by airline not self-insurance by passenger	<input type="checkbox"/>
Other (<i>please specify</i>)	<input type="checkbox"/>

- (7) At which level do you think that rules on insolvency protection should be adopted? Please choose only one option.

EU harmonisation of rules	<input checked="" type="checkbox"/>
Action at national level	<input type="checkbox"/>
Self regulation of the industry	<input type="checkbox"/>
other - please specify	<input type="checkbox"/>

Don't know



We want an EU wide scheme organised nationally. We don't want the UK to be disadvantaged against other countries.

- (8) In your experience, what would be the cost of the different insolvency protection schemes (see Q5 and Q6) for the industry, public authorities and passengers? Please quantify if possible.

Currently in the UK a fee of £2.50 is paid into the ATOL protection scheme for flights purchased as part of a package in order to safeguard against airline/operator insolvency. With a mandatory scheme and critical mass, it is possible that the sum per passenger would average at less than the current £2.50 level, and might reduce to a much lower level when it reaches a fully-funded financial level.

The CAA ATOL scheme operates well on £2.50 per passenger on flight-based package holidays and seat only sales sold by ATOL holders. We believe this gives a good indication of the likely cost to the airlines of extending financial protection.

- (9) In your experience, what would be the benefit of the different insolvency protection schemes (see Q5 and Q6) for the industry, public authorities and passengers? Please quantify if possible.

The biggest benefit of bringing airlines into national guarantee funds (ATOL in the UK) would be an increase in consumer confidence and certainty that either they will be repatriated or refunded in the event of failure, so are able to purchase a replacement ticket. A simple easy to understand scheme would be a great advantage to all parties. We want to avoid the uncertainty that goes with any voluntary scheme or any scheme which is dependent on the airline giving the customer the option of purchasing protection.

Our position on extending financial protection to all airline tickets is built on the strong belief that any measures to address consumer protection against airline failures should not create a new or perpetuate the current uneven playing field between scheduled and no-frills airlines on the one hand and charter airlines for whom protection regimes are already in force.

- (10) How much do you think the price of a single air ticket might increase as a result of introducing protection (guarantee fund or insurance) against airlines going bankrupt to cover repatriation, reimbursement of money paid prior to departure and accommodation and meals where necessary?

The travel industry is highly competitive and the market generally decides the costs that airlines can sell their tickets for. It is therefore quite likely that whilst some airlines may increase their costs in part it is unlikely that the full costs would be passed on to the consumer in total.

- (11) As to the answer to question 10, should the cost of such protection in your opinion be charged as a fixed percentage of the ticket price or as a standardized lump sum?

As is consistent with the operation of the current ATOL scheme we believe the cost of airline insolvency protection should be included within the price of the ticket and be a standardised cost across the industry.

- (12) Do you think the same remedies / protection measures should apply for both repatriation and reimbursement? If not, please identify which aspects should be modified for each item.

Yes, protection should cover both repatriation and reimbursement.

It is essential that airlines whose flights have been suspended, also fall under this scheme so that passengers are not left in the lurch as happened with Air Madrid when the airline was not declared bankrupt for two weeks after it suspended operations.

Final Comments:

The recent European Court of Justice decision on **Denied Boarding Compensation** (Regulation 261) for flight delays has raised issues which have not been properly thought through and for which no Impact Assessment has been undertaken. The implications on the financial performance of airlines are of serious concern. We believe that the net impact of this ruling, if followed by other courts, will not only lead to increased cancellations to mitigate delays over three hours, but also lead to considerable price inflation of aviation in the longer term which will deny access to consumers at the margin of both flying and package holidays. We are concerned that weaker airlines may be forced out of business with inevitable consequences for jobs and consumer choice.

We believe that in order to remove the uncertainty and confusion that this ruling brings, EU legislation needs to be redrafted to clarify the DBC levels. We would also call for an Impact Assessment to be undertaken.

1 March 2010