



## Joint AEA/ELFAA/ERA/IACA/IATA position on the Commission's proposal for the revision of Regulation 261/2004

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### Introduction

In a highly competitive sector such as air transport, the success of an airline depends on its ability to provide services that meet the expectations of its customers, both in respect of price and quality. Airlines therefore have a strong incentive to satisfy their customers fully.

EU legislation setting out compensation levels for passengers denied boarding has been in place since 1991. The current legislation, Reg. 261/2004, which came into force in 2005, substantially increased the compensation levels, extended them to flights cancelled for reasons within the control of the airline, and specified an explicit obligation of assistance for delayed passengers which includes refreshments, meals and hotel accommodation for overnight delays.

However, European air travel is probably unique in the field of retail commerce in that it is subject to a regulatory regime of punitive compensation for shortfall in service delivery and an unlimited liability of care and assistance to passengers, whatever the reason for the disruption.

A lack of clarity and imprecise wording in Reg. 261/2004 combined with a lack of uniformity in its interpretation by the courts and NEBs has led to unequal application of the granted rights and numerous court cases. Successive judgements by the European Court of Justice have substantively modified the scope of the regulation further. The Court has extended the compensation payments to situations beyond the carriers' control and introduced compensation for delay.

The scale of the burden of the assistance obligations became evident during the Icelandic volcano eruption of April 2010 when regulators decided to close very large parts of European airspace for up to five days. Hundreds of thousands of passengers were stranded for long periods and airlines had the obligation to provide them with care and assistance as set out in the regulation for the entire duration of the flight ban. This was not an isolated instance of massive or on-going schedule disruption as airlines also faced unlimited obligations in other extreme weather events, the Japanese radioactivity crisis and civil disturbances in North Africa and the Middle East.

The Commission has launched a revision of Reg. 261/2004 seeking to provide some clarity on the present legislation.

## Airlines reactions to the Commission's proposal

**The proposal contains a number of positive elements for both consumers and airlines, which we welcome.**

For consumers, the revision provides the following improvements:

- The right to care is established after a 2 hour delay for all flights, rather than 2/3/4 hours depending on the duration of the flight;
- The right to timely and comprehensive passenger information is reinforced, although the industry questions the practicality of providing written information to every passenger (family groups notwithstanding);
- Airports will be required to develop contingency plans for large-scale disruptions;
- Passengers will have the right to have an obvious mistake in the ticketing process corrected;
- Greater clarity for passengers on submitting claims and a more harmonised application of the regulation provided by a closer cooperation of NEBs.

Other positive elements include the following, which balance the rights of the passenger with the impact on the carrier:

- The introduction of 'trigger points' of five, nine and twelve hours (depending on journey length) for delay compensation provisions; this will give airlines sufficient time to fix the problem causing a delay instead of cancelling the flight to avoid both the cost of operating a flight and the cost of compensating the passengers; passengers' over-riding need is indeed to reach their destination and airlines should therefore be encouraged to operate flights rather than to cancel them.
- A time limitation on an airline's obligation to provide care in case of massive disruptions: an airline should not be the insurer of last resort and it should be up to everyone involved (authorities, airlines, airports, hotels and passengers) to accept a shared responsibility to resolve the situation;
- The much-needed annex clarifying "extraordinary circumstances";
- The clarification that a voluntary agreement, to the satisfaction of both parties, can override regulatory compensation provisions;
- Legal certainty in the clarification of 'ticket price' which will facilitate the calculation for compensation in case of "downgrading";
- A more practical "right of redress" vis-à-vis third parties in cases of situations beyond the airlines' control and for which the third party is responsible;
- Reinforcement of monitoring and harmonisation of the application of the Regulation by National Enforcement Bodies.

**There are nevertheless portions of the proposed legislation which are strongly opposed by the airlines**, as being particularly burdensome, unnecessary or impractical, and/or not taking into account the commercial and operational realities of the business. Some of these provisions additionally put a heavy burden on the competitiveness of European airlines.

- Under no circumstances should consumer rights issues intrude into safety-related operational decisions. In particular, diversions, which are inevitably for safety, security or medical emergency reasons, should not be treated as delays or cancellations (which could possibly trigger compensation payments). Even if they may be classified as extraordinary circumstances, pilots or other operations staff should not have to take into consideration the potential costs associated with passenger rights when making such decisions;
- The notion of defining a delay when arriving at final destination and therefore applying delay provisions to missed connections on multi-sector journeys is misguided, (as shown by the examples in the annex):
  - It places the onerous financial compensation liability on the first airline, which may be a regional feeder and which may have experienced only a short delay not actionable under the Regulation in other respects;
  - It places assistance obligations on the receiving carrier, which has departed with no delay at all;
  - If the connecting flight is from an EU to a non-EU country, it purports to extend the Regulation's provisions to flights from a non-EU state into the EU which are otherwise excluded from the Regulation for reasons of extra-territorial application;
  - Industry standards are already in place to offer protection to passengers who experience missed connections; a few examples are given in the annex;
- The revision would treat as denied boarding the cancellation of a passenger's bookings in the event that he or she no-shows for an earlier flight in his itinerary. The elimination of unnecessarily empty seats on aircraft is in the interests of passengers, airlines and the environment;
- The provision that extraordinary circumstances can be invoked only for the flight on which the disruption occurred and the flight immediately following it, fails to recognise the realities of scheduled air transport operation, in which reactionary delays can have a much longer-lasting impact. Again, airlines have an incentive to resolve schedule disruptions simply with a cancellation rather than work to progressively eliminate a delay.
- The revision proposes that if a flight is cancelled and no further seats are available on its own services within 12 hours, the airline must re-route on other airlines or modes of transport. 12 hours is not a reasonable timeframe for instance if the disruption happens late in the evening. In addition there should be a limit on cost or class of service.

### **For further information please contact:**

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## Annex to the industry joint position paper

### Examples of compensation for delays in the case of connecting flights

These examples show why a delay should not be defined at final destination but at the destination of the flight. A regulation that doesn't take the reality of examples like these into account will be very detrimental to passenger (if interlining is destroyed), highly unfair to carriers (who would have to pay undue compensations) and challengeable in courts (because some examples show the undue broadening of the scope).

#### 1. Arrival at final destination due to missed connections (as per article 6a)

##### 1.1. **Flights connecting in the EU**

- **Edinburgh-London-Bangkok** : first short segment of the journey operated by an EU regional carrier arrives with a short delay (example: one hour), the passenger misses connection on the long-haul flight (operated by an EU or a non-EU carrier) and, because of the re-routing, arrives late at his final destination.

According to article 6a, the first regional carrier would have to pay the compensation (potentially a very high amount since the arrival at final destination is after the long haul flight London-Bangkok).

Issue: destroys interlining (no airline would accept this kind of burden), an essential feature of international airline cooperation: without interlining, a passenger would no longer be able to buy his journey with one contract but would need to buy two tickets (in our example), collect and re-check his baggage in London, etc... Obviously a huge damage for passengers that would potentially also destroy EU regional connectivity.

- **Casablanca – London - Bombay**: first segment of the journey (operated by an EU carrier or a Moroccan carrier) arrives with a short delay (example: one hour), the passenger misses his connection on the long-haul flight (operated by the same EU carrier or by an Indian carrier) and, because of the re-routing, arrives late at his final destination.

According to article 6a, the compensation would be due by the first carrier but only if it is an EU carrier; if the first flight is operated by a non-EU (Moroccan) carrier, the journey is not in the scope of the Regulation.

Issue: here, on top of issue of interlining, there is unfair treatment of the EU carrier.

## Annex to the industry joint position paper

### 1.2. Flights connecting outside the EU

- **London-Bombay-Bangkok**: first segment of the journey (operated by an EU carrier *i.e.* interline connection or by an Indian carrier *i.e.* on-line connection) arrives with a short delay (example: one hour), the passenger misses his connection on the long-haul flight (operated by a non-EU carrier) and, because of the re-routing, arrives late at his final destination.

According to article 6a (2) &(4), the first carrier would have to pay the compensation (however, the care and assistance would not be due by the non-EU carrier operating Bombay-Bangkok by virtue of article 6(4))

Issue: potentially destroys interlining between the EU and the non-EU carrier.

- **Athens - Istanbul- Helsinki**: first segment of the journey (operated by an EU carrier or a Turkish carrier) arrives with a short delay (example: one hour), the passenger misses his connection on the next flight (operated by the same Turkish carrier or by an EU carrier) and, because of the re-routing, arrives late at his final destination.

According to article 6a and 6a(4), the compensation would be due by the first carrier, including if the second carrier is Turkish, *i.e.* including if the second flight is normally out of the scope of the regulation.

Issue: interlining is threatened if there are two carriers on the journey; in addition, 6a(4) broadens the scope of the regulation by including a flight which is normally not covered (Istanbul-Helsinki normally falls in the scope of the Turkish regulation)

### 2. Arrival at final destination **not due** to missed connection (as per definition of final destination):

- **London-Bombay-Bangkok**: first segment of the journey operated by an EU air carrier arrives on time but the second segment of the journey is operated by a non-EU air carrier and arrives late.

Theoretically, since the second flight is not in the scope of the regulation, there should be no compensation paid. However, because the text 1/ defines final destination as the destination of the last flight in case of connecting flights, and 2/ considers that a delay is a delay at final destination, the passenger should be compensated (not sure by whom?).

Issue: this will be unenforceable on the second carrier and it would be unfair to impose the compensation on the first EU carrier whose flight was not late.