



Draft Bill on Regulation of Tarmac Delays

The International Air Transport Association (IATA) is a global trade association for airlines representing some 290 airline members and accounting for 82% of total global air traffic. Our members include Asiana Airlines, Eastar Jet, Jeju Air, Jin Air, Korean Air, T'way Air and major foreign airlines that operate services to/from the Republic of Korea.

As the global airline association, IATA supports airlines in their commitment to ensure the safety and comfort of passengers and recognize the need for passengers to have access to basic protections during their journey. To that end, IATA members have affirmed a set of core principles on consumer protection that aim to strike a balance between protecting passengers while maintaining industry competitiveness and recognizing the power of the marketplace (see [Annex A](#)). The core principles were developed in accordance with the Montreal Convention 1999, which the Republic of Korea has been a party to since ratification in 2007.

IATA is deeply concerned about the announcement on 28 January 2019 on a draft bill that will introduce sanctions on airlines for tarmac delays, from the imposition of financial penalties to the suspension and revocation of licenses. Such sanctions deviate from the global framework on passenger rights that have been endorsed by the International Civil Aviation Organization (ICAO) and lead to unintended consequences that impose an enormous cost on airlines, passengers and the overall economy.

The negative impact arising from regulations on tarmac delays has been clearly demonstrated. Shortly after the introduction of the tarmac delay rule in the United States, the US Government Accountability Office estimated that the number of flight cancellations increased by more than 5,000 over similar time periods before the passenger rights rule went into effect. A study by researchers at Dartmouth University and the Massachusetts Institute of Technology in 2015 further noted that “the [tarmac delay] rule is estimated to have significantly increased passenger delays.”

IATA also wishes to highlight that tarmac delays can be caused by a myriad of factors such as bottlenecks along the aviation ecosystem and hence should not be solely attributed to the responsibility of the airlines.

As such, while IATA recognizes the right of the Government of the Republic of Korea to introduce legislation that seeks to protect air passengers, IATA is concerned that the proposed bill to regulate tarmac delays may not achieve the desired effect of reducing inconvenience for passengers but instead lead to unintended consequences that would further disrupt their travel plans. Among the chief concerns of the proposed bill is the severe sanctions that airlines would face in case of a tarmac delay, which may in fact be due to factors beyond an airline's control. In this regard, IATA strongly opposes the potential suspension of operations and revocation of licenses and permissions as a deterrent against tarmac delays. Regulations to protect consumers should reflect the principle of proportionality and the impact of extraordinary circumstances. In addition, IATA members are committed to employing their best efforts to keep passengers regularly informed in the event of a service disruption but in cases where delays or disruptions are outside an airline's control, governments should allow market forces to determine the care and assistance available to passengers.

On behalf of the airline industry, IATA would therefore like to suggest that the Government of the Republic of Korea reconsider the details of its draft bill on the regulation of tarmac delays, to realign the objectives and proposed measures, such that it provides adequate protection to air passengers while maintaining competitiveness of the airline industry and allowing consumers the freedom to choose an airline that corresponds with their desired price and service standards. IATA would be happy to further extend our support to the Government of the Republic of Korea by conducting a workshop on the Smarter Regulation Initiative (see [Annex B](#) for IATA's Smart Regulation Methodology), which would aid the Government in introducing regulation that delivers clearly defined and measurable policy objectives through a transparent, objective and consultative process, such that it reduces unnecessary burdens on consumers and businesses.



Annex A: Core Principles On Consumer Protection

- National and regional legislation should be consistent and in accordance with the international treaty regimes on air carrier liability, established by the Warsaw Convention 1929 (and its amending instruments) and the Montreal Convention 1999;
- National and regional legislation should not interfere with another States' ability to make legitimate policy choices.
- Passenger rights legislation, in accordance with the Chicago Convention 1944, should only apply to events occurring within the territory of the legislating State, or outside that territory with respect to aircraft registered there.
- Passenger rights legislation should allow airlines the ability to differentiate themselves through individual customer service offerings, thereby giving consumers the freedom to choose an airline that corresponds with their desired price and service standards. Governments should consider acknowledging voluntary industry commitments; government regulations should form the "lowest common denominator" and market forces should be allowed to determine additional standards of service levels.
- Passengers should have access to information on their legal and contractual rights and clear guidance on which regime applies in their specific situation;
- Passengers should have clear, transparent access to the following information:
 - Fare information, including taxes and charges, prior to purchasing a ticket;
 - The airline actually operating the flight in case of a codeshare service;
- Airlines should employ their best efforts to keep passengers regularly informed in the event of a service disruption;
- Airlines will establish and maintain efficient complaint handling procedures that are clearly communicated to passengers;
- Airlines should assist passengers with reduced mobility in a manner compatible with the relevant safety regulations and operational considerations;
- Passenger entitlements enshrined in regulations should reflect the principle of proportionality and the impact of extraordinary circumstances;
 - There should be no compromise between safety and passenger rights protection
 - Safety-related delays or cancellations, such as those resulting from technical issues with an aircraft, should always be considered as extraordinary circumstances such as to exonerate air carriers from liability for such delays and cancellations;
 - The industry recognizes the right to re-routing, refunds or compensation in cases of denied boarding and cancellations, where circumstances are within the carrier's control;
 - The industry recognizes the right to re-routing, refunds or care and assistance to passengers affected by delays where circumstances are within the carrier's control;
 - In cases where delays or disruptions are outside an airline's control, governments should allow market forces to determine the care and assistance available to passengers;
 - The responsibilities imposed by the regulator, related to both care and assistance as well as compensation, must be fairly and clearly allocated between the different service providers involved and should not impact on the contractual freedom of all service providers.
- Passengers should be treated comparably across transport modes, taking into account the particularities of each;
- Legislation should be clear and unambiguous



Annex B: IATA's Smart Regulation Methodology

Definition Statement

Smart regulation delivers clearly defined, measurable policy objectives in the least burdensome way. It is achieved through a transparent, objective, and consultative process.

Policy Design Principles

- Consistency and coherence – Regulations should be consistent with existing (and planned) rules and practices that are applicable to regulated activities so that there are no overlaps and contradictions (nationally or internationally). They should also be predictable and applied with clear oversight responsibility and without discrimination against those being regulated.
- Proportionality – Regulations should be used only when their necessity is demonstrated and should be proportionate to the problems identified so that the costs of compliance are minimized by pursuing the most cost-effective solution.
- Targeted at risk – Regulations should have specific and well-defined objectives that respond directly to the problems identified. Whenever appropriate, flexibility should be given to those being regulated to meet defined objectives.
- Fair and non-distortive – Regulations should be applied fairly and not create discriminatory burdens on any group/s in particular.
- Clarity and certainty – Audiences subject to regulatory compliance need to clearly know the regulations that will apply, what is expected of them, and have sufficient time to be able to comply with new requirements.

Process Principles

- The objective of the regulation should be identified based on sound evidence and available alternatives must be considered to select the most appropriate solution.
- There should be an assessment of the impacts from the regulation.
- The drafting of the regulation should involve those who are potentially affected; the decision-making process should be transparent and objective
- The process of developing the regulation should focus on reducing the compliance burden and allow for regular and systematic review (and subsequent modification, if needed) to ensure that the regulation is still appropriate.
- There should be clear procedures to respond to adjudications and appeals and to revise the regulation if necessary.