



## PASSENGER RIGHTS

### The Issue

Over the past decade, national airline passenger rights regimes have proliferated, spurred by a small but high-profile number of tarmac delays and other incidents that are often outside the control of airlines.

There are now nearly 60 countries that have passenger protections of some kind. The spread of passenger rights legislation, some of which have extraterritorial provisions, creates difficulties for airlines and confusion among passengers.

Certain passenger rights regulations also have unintended consequences. For example, a number of governments impose significant fines on carriers if they experience a lengthy tarmac delay. The size of these fines and the nature of runway operations often results in airlines having to cancel flights rather than run the risk of a penalty. This effect significantly impacts passengers, particularly those traveling internationally. According to the US Government Accountability Office, flights were 24% more likely to be cancelled before leaving the gate after the US tarmac delay rules went into effect.

### The Vision

Governments should avoid the temptation of pursuing costly, duplicative, and often counterproductive passenger rights rules and regulations. Any such regulation should be subject to a rigorous cost-benefit analysis. The cost of delays and dissatisfied customers is something that every airline wants to avoid, but that is often not reflected in existing regulations. There should also be greater convergence and compatibility among existing passenger rights regimes, along the lines of the industry principles adopted at the 69th IATA AGM in Cape Town.

### The Solution

The industry principles are based on lessons learned from previous regimes and aim to strike a balance between protecting passengers and industry competitiveness. They are also compatible with the Montréal Convention 1999, and focus on providing consumers with the freedom to choose an airline that corresponds with their desired price and service standards - and ensure that consumers have access to information so they can make informed choices. IATA calls on government to incorporate these principles into existing or new passenger rights regimes.

Key elements of these principles are outlined below:

- Passenger rights regimes must be in accordance with previously adopted international treaties, such as the 1999 Montreal Convention (MC99). Like the 1929 Warsaw Convention before it, MC99 creates an exclusive and uniform legal framework for liability in the international air carriage of passengers and baggage. Articles 19, 22, and 29 of MC99 define the circumstances under which and the extent to which damages are paid in the case of flight delays or lost baggage. The Convention also specifies a limitation period of two years for claims involving international air carriage.

- Legislation should recognize the global nature of the aviation industry and should not interfere with other members states' ability to make legitimate policy choices. Passenger rights regimes, which apply to events occurring outside a country's territory and within the territory of other states, contravenes the 1944 Chicago Convention. Article 1 of the Chicago Convention recognizes that every country has exclusive sovereignty over its airspace. Articles 11 and 12 further stipulate that the laws and regulations of a country may be applied only at the point that an aircraft enters sovereign airspace and must necessarily abate at the point and time of departure
- IATA believes market forces should determine what services carriers provide to passengers and that separate regulations specifically on passenger rights – over and above the general consumer rights regulation that already exists in a particular country – are unnecessary. This position is consistent with the thinking currently espoused by the governments of Singapore and Australia. There exists a variety of different models today in the market – from full service carriers to new model airlines. Consumers have the option of a variety of prices that match a variety of service levels. In addition, the ultra-competitive aviation marketplace incentivizes carriers to find solutions that benefit the greatest number of passengers in the event of a delay or cancellation. Consumers can vote with their feet and their wallets to travel on other airlines should their experience on a certain carrier be unsatisfactory. Legislation or regulations should not prevent airlines from being innovative in their commercial offer. Rather, they should focus very narrowly on preventing fraud and/or deceptive practices by airlines.
- Passengers should be correctly informed of their legal and contractual rights to avoid raising expectations. Many claims stem from complaints, which have no grounds according to the prevailing passenger rights regime.
- There must be no compromise between safety and passenger rights protection. Safety related issues, such as technical issues with an aircraft, should be excluded from conditions, which require airlines to compensate passengers under passenger rights regimes.
- Passenger rights laws should be fair and reasonable in their cost to airlines and in their application to circumstances within airlines' control. Today, compensation in some existing regulations can be higher than the entire cost of the ticket paid by the passenger. The definition of "extraordinary circumstances" – e.g. circumstances outside of the airline's control – is enshrined in Article 19 of the 1999 Montreal Convention: "Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures." The majority of delays – 60% in Europe – are outside airlines' control due to weather, air traffic control, and/or other factors.
- Passengers should be treated comparably, whatever the transport mode chosen. Equal treatment doesn't necessarily mean identical rights but comparable ones. Oftentimes airlines are subject to more stringent passenger rights provisions than rail, sea, or road operations.

- Legislation should be clear and unambiguous. Certain passenger rights regimes, such as the existing EU regulations, have given rise to a large number of cases under the European Court of Justice (ECJ), with the Court's interpretation adding more complexity to the existing regulation or interpretation that varies across different courts. This creates legal uncertainty for airlines and consumers.

The principles are available on the IATA policy website:  
<http://www.iata.org/policy/Documents/consumer-rights-principles-2013.pdf>

### **The Benefits**

- **Reduced cost and complexity:** IATA estimates that compliance with EU Regulation 261 will cost the industry EUR 4 billion annually. In addition, airlines face additional costs of complying with multiple regimes around the world. As a result, passengers and shippers can expect higher costs, as airlines pass the costs of compliance with these regimes on to passengers. In a business with thin profit margins, the cost of complying with multiple consumer protection rules can also damage competitiveness and render routes unprofitable, reducing connectivity and its associated benefits on economies and societies. For tourist destinations, this could make competing points more attractive for airlines to operate in and for cost conscious tourists to visit. Passenger rights regimes that respect the principles outlined above will reduce costs, simplify the business for our members, and maintain connectivity for people and businesses.
- **Legal certainty:** The current environment of overlapping regulatory regimes creates legal uncertainty for airlines, causing confusion about which rules to apply in any given situation. In addition, several existing passenger rights regimes seem to be in contradiction of the 1999 Montreal Convention, as they set out differing rules for compensation in the case of delays or different limitation periods for claims. This contradiction further exacerbates the legal uncertainty faced by airlines and consumers and adds to the cost of doing business.
- **The ability to offer innovative, differentiated services:** Providing airlines with the freedom to decide which services they offer to passengers allows them to be innovative in their commercial offer and to differentiate themselves in the marketplace.
- **A level playing field:** Passengers having access to similar entitlements in the case of irregular operations across all modes of transport will enable airlines to compete more effectively with bus, rail, and sea services.

### **Current Status**

- Of the nearly 60 countries that have some form of aviation-specific passenger rights regime, 30 of them are less than seven years old.



- The United States has adopted two sets of comprehensive regulations (Consumer Rule I and Consumer Rule II) and is currently pursuing the passage of so called Consumer Rule III.
- The European Union has begun the process of revising Regulation 261 (the process is expected to take 12-18 months).
- In October 2013, the ICAO Assembly recognized the need for greater convergence and compatibility, and approved the developed of high-level, non-prescriptive principles on consumer protection that are balanced and also consistent with the Montreal Convention 1999. The industry principles will be taken into account as ICAO begins its work early in 2014.