

Strengthening air passenger rights in the EU

SUMMARY

Over recent decades, the liberalisation of air transport in the EU has brought notable benefits to air passengers, including some lower air fares and a wider choice of airlines and services. At the same time, however, increased numbers of passengers and planes travelling through bigger and more crowded airports, and fragmented air space, increase the risk of problems such as flight delays and cancellations, and lost luggage.

The EU has adopted several regulations on air passenger rights, which complement the relevant international conventions and recommendations, to deal with such problems. However, not all passengers are aware of, or insist on, enforcement of their rights. For their part, airlines claim to struggle with financial costs and legal uncertainty. Grey areas, gaps in the current legislation and inconsistent implementation have led to numerous cases on passenger rights coming before the Court of Justice of the EU.

In 2013, to address these shortcomings and the Court's decisions, the European Commission proposed to modify the existing air passenger rights regulations. Among other provisions, it specified in greater detail certain air passenger rights, clarified key definitions, and modified certain time thresholds for compensation measures, as well as limiting the obligation for airlines to provide assistance in case of long delays.

The outgoing Parliament adopted its first-reading position on the proposal in February 2014. It introduced certain new elements and rejected some provisions that, in Parliament's view, weakened air passenger rights. Although the Council has made some progress on the file, it has not agreed on a general approach for negotiations with the Parliament. Stakeholders generally welcomed the clarifications in the Commission proposal and the EP's position, although they do not support all the modifications.



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Background

Over the past three decades, there has been a boom in [mobility](#) in Europe, facilitated by the integration of the European economy, the lowering of travel costs and the conclusion of the Schengen agreement. Hundreds of millions of passengers [travel](#) annually, using different modes of collective transport, from one EU country to another.

The air transport sector has been subject to particular focus in recent years. [Before](#) the creation of the single market for air passenger services, the European airline sector was fragmented into distinct domestic markets, usually dominated by one state-owned national airline. Successive EU reform packages liberated the airline sector, by allowing any European airline to operate any service, in and out of any European airport. The sector [contributes](#) about €365 billion (2.4%) to European GDP, and employs around 5.1 million people. Air passenger traffic in the EU28 reached a record total of 577 billion passenger-kilometres in 2012 (see figure 1) and this trend is expected to continue.

Liberalisation has brought some benefits for air passengers. For example, the choice of airlines and services as well as the regularity and range of direct flights has increased overall. The emergence of low-cost airlines has put downward pressure on ticket prices and frequently stimulated the development of regional airports, offering passengers a larger choice of airport.

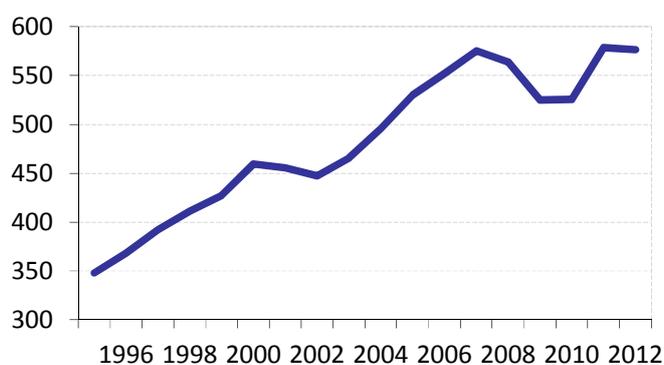
At the same time, this growth has caused certain problems. For example, [airspace congestion](#) causes more delays. Crowded and bigger airports, with longer walking distances between gates or terminals, engender risks for passengers of missing flights, or losing luggage. Moreover, passenger numbers are expected to continue to grow, possibly increasing such inconveniences in the future.

Regulatory framework

International framework

Before the EU regulated air passenger rights, these were set out in various international conventions. In addition, airlines could decide to follow recommendations agreed by the [International Civil Aviation Organisation](#) (ICAO) or the [European Civil Aviation Conference](#) (ECAC), by the airline associations, the [International Air Transport Association](#) (IATA) and [Association of European Airlines](#) (AEA), or could develop their own policies.¹ The first international convention addressing claims for damage to persons and property in international air transport was signed in 1929, in [Warsaw](#). Since then, countries have [concluded](#) several other agreements and modified the Warsaw Convention to increase liability limits for airlines. For example, in 1999, ICAO² contracting states adopted the [Montreal Convention](#), which regulated airline liability in the event of damage to individual passengers, their baggage or goods during international journeys.³ Among other provisions, it introduced the possibility to use

Figure 1 – Air passenger traffic in the EU28 (expressed in billion passenger-kilometres) 1996-2012



Data source: [EU transport in figures](#), European Commission, 2014.

e-tickets, and set the principle of airline civil liability in case of bodily injury to passengers. The convention came into force in 2003, but so far only [55%](#) of ICAO contracting states have ratified it (Russia, for example, has not).⁴ The EU ratified it via Council [Decision](#) in 2001 and modified [Regulation 2027/97](#) on air carrier liability in the event of accidents, to bring it into line with the Montreal Convention (by adopting [Regulation 889/2002](#)).

EU framework

At EU level, [passenger rights](#) have developed from earlier legislation on consumer protection, package travel,⁵ international conventions, the Charter of Fundamental Rights,⁶ and relevant national legislation. In 1991, the EU adopted [Regulation 295/91](#) on a denied-boarding compensation system in scheduled air transport. In 2000, the Commission proposed to modify the Regulation to extend its scope (to cover charter flights),⁷ increase penalties and require the payment of compensation, not only for those denied-boarding, but also for cancelled flights. In addition, it set out rules on upgrading and downgrading⁸ and on designation of bodies responsible for enforcement in the Member States (later named National Enforcement Bodies (NEBs)).⁹ The proposal caused a wave of protest, particularly from low-cost airlines who argued that increasing penalties might lead to situations where passengers receive more money in compensation than they paid for their ticket. In the final text ([Regulation 261/2004](#)), the compensation level was lower than the Commission had initially proposed, and flights cancelled for reasons beyond airline control were excluded. However, Regulation 261/2004 has proven difficult to implement, as demonstrated by numerous disputes between passengers and airlines.

The EU also seeks to inform air passengers of airlines which may represent higher safety risks, regularly updating the [list of airlines banned](#) within the EU. The list is based on [Regulation 2111/2005](#) on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier.

Air passenger rights in comparison with passenger rights in other transport modes*

Air transport was the first transport mode for which the EU regulated passenger rights. In rail transport, the EU adopted passenger rights in [2007](#) (with several national [exemptions](#)), in waterborne transport in [2009](#) and [2010](#), and in bus and coach transport in [2011](#).

Adopted at different times, passenger rights for different modes may differ in scope and terminology, but also have common features. The EU has chosen, for all modes, a legal instrument that is binding in its entirety and directly applicable in all Member States – regulation. Some rights are [common](#) in all modes, for example the right to non-discrimination, mobility, information, fulfilment of the transport contract, assistance, compensation (under certain circumstances), carrier liability, quick and accessible complaint handling, full application and effective enforcement of EU law and the right to renounce travelling when the trip cannot be completed to plan.

Differences lie in the [details](#), some due to the specific characteristics of the mode of transport, others due to the [context](#) in which EU regulations for various modes were developed. For example, the right to compensation (in money or in other form) for the loss of time due to delays and cancellations is determined differently from one type of transport to another. In air transport, the amount of compensation is primarily determined according to the length of the flight, in other modes primarily according to the price paid (taking into account the duration of the delay).

As pointed out in a study for the EP on 'The Cost of Non-Europe for Passenger Rights', the lack of a consolidated and consistent framework for passenger rights weakens their implementation, affects the quality of service and limits seamless travel. The study advocates a single EU framework for passenger rights.

*Comparison based on adopted Regulations, taking account of the rulings of the Court of Justice.

Disabled and reduced-mobility passengers

The EU has provided special protection for disabled and reduced-mobility passengers. For instance, [Regulation 1107/2006](#) prohibits airlines from refusing reservation or boarding to such passengers. It gives disabled and reduced-mobility passengers the right to accessible information and free-of-charge assistance in airports as well as on board. However, airlines could refuse reservation or boarding for reasons related to safety or the physical size of the aircraft. Airlines may also request that another person accompany the disabled or reduced-mobility passenger.

Implementation of existing rules

Implementation is a [weakness](#) in EU legislation on air passenger rights. First, passengers are not always aware of their rights. According to a 2014 [Eurobarometer](#) survey, 68% of respondents had not heard of EU passenger rights. Second, passengers do not always insist on enforcement of their rights. For example, data from airlines¹⁰ indicate that only 5-10% of air passengers entitled to financial compensation in case of travel disruption actually make a claim. Nonetheless, as seen in figure 2, the overall number of complaints received by NEBs has increased, especially in 2010 (the year of the ash cloud crisis and widespread disruption caused by snow).

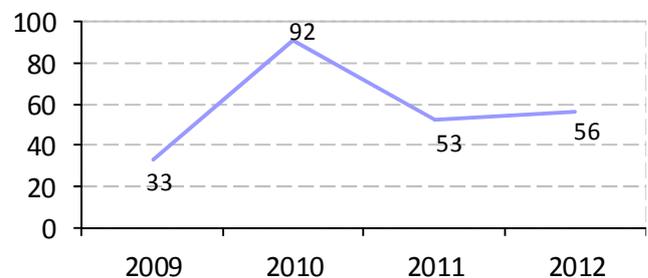
According to the Commission,¹¹ the main reasons passengers' rights are not always respected include the following:

- Passengers and airlines struggle with interpretation of Regulation 261/2004. Some concepts are ambiguous, some definitions missing and some issues not covered. For example, airlines and passengers disagree on the interpretation of 'extraordinary circumstances' or on the rights of passengers in case of missed connecting flights, rescheduling in advance, rerouting, 'no show',¹² booking errors, tarmac delay¹³ or flight diversions.
- Inconsistent and insufficient sanctions by Member States mean airlines lack incentives to comply with Regulation 261/2004.
- Passengers do not always know how, or to whom, to submit a complaint. Regulation 261/2004 does not identify one competent body for complaint handling. Indeed, complaint-handling procedures and deadlines by which airlines and NEBs must answer passengers differ across Member States.
- The financial cost of some obligations imposed by Regulation 261/2004 may be disproportionate during extraordinary events of long duration, or for regional airlines. Notably the Regulation does not set out a limit in time to the assistance (for example hotel accommodation) that the airline is obliged to provide in case of flight disruption, even in cases which are beyond its control or responsibility.

Frequent court cases

The Court of Justice of the European Union (CJEU) has ruled on numerous disputes between airlines and passengers. It has clarified several concepts and rights, [considering](#) not only the wording, but also the context, the objectives, and the reasons leading to the adoption of EU rules.

Figure 2 – Number of complaints received by NEBs (in 1 000s) 2009-12



Data source: European Commission, [staff working document](#), 2014.

For example, the CJEU specified conditions under which passengers have a right to financial compensation. In the [Sturgeon](#) case, the Court held that passengers whose flight arrival is delayed by three hours or more, have a right to compensation, just like passengers whose flight is cancelled, although Regulation 261/2004 did not explicitly include **compensation for delays**. The CJEU held that passengers whose flight is delayed sustain similar damage (loss of time), and therefore treating them differently from passengers whose flight is cancelled is unjustified.

The CJEU also enhanced the possibilities for passengers to claim compensation by [specifying](#) what constitutes **time of arrival**, holding that time of arrival corresponds to the time at which at least one of the doors of the aircraft is open. In addition, the CJEU has [clarified](#) the concept of **cancellation**: cancelling also refers to cases when an airplane has taken off, but returns to the airport of departure.

In the [Wallentin-Hermann](#) case, the CJEU specified derogations from the obligation to pay compensation, namely, that the airline is not obliged to pay compensation if it can prove that the cancellation or delay is due to extraordinary circumstances. Yet Regulation 261/2004 does not define such circumstances precisely. The CJEU stated that technical problems with an aircraft are, in general, not **extraordinary circumstances**, unless these problems stem from events that are beyond the airline's control. Again, this represented an improvement to passenger possibilities to claim financial compensation for loss of time.

Besides the right to compensation, the CJEU has recently ruled on the right to information. In the [Air Berlin](#) case, the Court decided that computerised booking systems should show the final **price** for each flight from the first price display, helping passengers to compare prices from different airlines. In the [Vueling](#) case, the CJEU added that airlines must also communicate, from the start, rules for pricing checked luggage. The judgment allowed airlines to charge extra for checked **luggage** but not for hand luggage, even if national legislation states otherwise.

Commission proposal

In 2013, in order to address perceived shortcomings with the current Regulations and guarantee consistency with CJEU decisions, the Commission presented a [proposal](#) to amend Regulations 261/2004 and 2027/97. Compared to existing rules, the Commission proposal specifies in detail passengers' right to **information**. It confirms the Sturgeon ruling by clarifying that passengers have a right to **compensation**, not only when the airline cancels the flight or denies boarding, but also when the flight suffers a long delay, unless this is due to **extraordinary circumstances**. These are defined (based on the Wallentin-Hermann ruling) as circumstances 'not inherent in the normal exercise of the activity of the air carrier concerned and ... beyond its actual control'. It also provides a non-exhaustive list of extraordinary and non-extraordinary circumstances.¹⁴

The proposal introduces some new rights. For example, the right for passengers to disembark after five hours of **tarmac delay**, or the right to be rerouted on other carriers or modes of transport, after a delay of 12 hours (if the airline cannot reroute passengers using its own services). It also obliges airlines to correct **spelling mistakes** (in the names of passengers booked) free of charge (up to 48 hours before departure), and forbids them, in principle, from denying boarding to passengers who do not take the outward journey of a return flight (referred to as a 'no show'). However, it still allows airlines to impose particular rules on 'no shows.'

Other provisions limit the impact of potential costs for airlines and reduce passenger rights. For example, the Commission limits the obligation to pay for **accommodation** in case of major disruptions: three nights and €100/night, per passenger. It increases the **time threshold** for delay compensation from three to five hours for flights within the EU, and to 5/9/12 hours for flights to/from third countries (depending on the length of the flight).

Concerning **complaint handling**, the proposal clarifies the role of national enforcement bodies and promotes out-of-court complaint handling and the use of electronic means for complaints. The proposal also sets specific deadlines for dealing with complaints and specifies that disabled and reduced-mobility passengers have a right to full compensation for the loss or damage of their mobility equipment.

European Parliament

The European Parliament has defended air passenger rights for many years. It has adopted several resolutions, such as on [passenger compensation in the event of airline bankruptcy](#), [rights of people travelling by air](#) and [passenger rights in all transport modes](#). Among other measures, it has proposed to define more clearly the concept of 'exceptional circumstances', facilitate multimodal journeys and complaint handling, and provide special protection for disabled and reduced-mobility passengers.

Parliament's first reading [position](#) on the Commission proposal, adopted in February 2014, reflected many of its previous positions. The EP added several measures in favour of air passengers, proposing further restrictions to grounds for denying compensation, assistance and information to passengers. In particular, it introduced an exhaustive list of extraordinary circumstances (as opposed to the non-exhaustive list proposed by the Commission)¹⁵ and rejected the Commission proposal to increase time thresholds for delay compensation. It suggested that airlines should pay for accommodation in case of delays and cancellations for five nights at €125/night per passenger, provide a contact point at each airport from which they operate, and create a guarantee fund, or subscribe to insurance, for cases of bankruptcy.

These, and other amendments, such as increasing the number of free-of-charge items of baggage allowed on board, introducing a full definition of 'disabled person or person with reduced mobility', and making information about passenger rights, contracts and complaint handling accessible to all, would strengthen passenger rights.

Other amendments still, however, would limit passengers' possibilities to claim compensation. For example, passengers missing a connecting flight, would have, according to the Parliament's amendment, a right to compensation only if the first flight is delayed by least 90 minutes.

Council

Although Council has held debates on the Commission proposal since October 2013 and made some progress on the file, it has not agreed on a general approach for negotiations with the Parliament. Delegations have [expressed](#) different views on, for example, the following issues:

- whether the list of extraordinary circumstances should be included as a separate fully binding list;
- thresholds for compensation in case of cancellation and delay;

- whether compensation for missed connecting flights should be excluded or if airlines can have a partial exemption in certain circumstances;
- whether dispositions on the 'one-bag rule' for hand luggage should be included in the Regulation.

Additionally, this and other ongoing aviation files (such as the Single European Sky 2+ package) may remain on hold within the Council, pending resolution of the dispute between Spain and the UK over the inclusion of Gibraltar airport in the Regulation. Nevertheless, as [announced](#) by the current Latvian Presidency, discussions continue. The Commission is reportedly [considering](#), among other options, withdrawing the proposal, given the lack of progress towards an agreement.

Stakeholders' views

Consumers

Although consumer organisations support the clarifications in the Commission proposal, they prefer, in many cases, Parliament's amendments to the Commission proposal. The [European Consumer Centres Network](#) (ECC-Net) is, (like the EP) [in favour](#) of an exhaustive list of extraordinary circumstances. It finds some time limits in the Commission proposal too long (for example, the time limit after which airlines would have to reroute passengers on other carriers or modes if they cannot reroute passengers using their own services). Certain Parliament amendments have taken into account (although not always fully) [suggestions](#) from the [European Disability Forum](#): e.g. to introduce a full definition of 'disabled person or person with reduced mobility', and to make information about passenger rights, contracts and complaint handling accessible to all.

Airlines

Airline associations welcome several elements of the Commission proposal. For example, they¹⁶ [support](#) the proposal to modify time thresholds for delay compensation and limit airlines' obligation to pay for accommodation. On the other hand, they criticise the proposed move to partially ban their current 'no show' policies, and define delays according to the time when passengers arrive at their final destination. In addition, the [European Low Fares Airline Association](#) (ELFAA) [suggests](#) extending the time limit from which airlines would have to reroute passengers on other carriers or modes to 24 hours, and making financial compensation proportional to the fare paid.

Airports

Although airport representatives welcome the Commission's proposal, they also see benefits in the provisions added by Parliament. [Airports Council International](#) (ACI) [advocates](#) the presence of a local representative at each airport an airline uses, allowing passengers to carry airport purchases, free of charge, on board, and clarification of who is responsible for assistance to passengers in case of multiple flight disruptions. The Parliament has taken account of these suggestions.

Further reading

Richard Weston et al., 'The Cost of Non-Europe in the Single Market in Transport', [Annex III 'Tourism policy and passenger rights'](#), European Parliamentary Research Service, 2014, p. 19-31.

Levent Altan et al., 'The Cost of Non-Europe for Passenger Rights', European Parliamentary Research Service.

Salvatore D'Acunto, 'Union européenne et droit des passagers: bilan et perspectives', *Revue du Droit de l'Union Européenne*, no. 1, 2012, p. 35-36.

Endnotes

- ¹ Hussein Kassim and Handley Stevens, '[Air Transport and the European Union. Europeanization and its Limits](#)', 2010, p. 149.
- ² [ICAO](#) is a United Nations specialised agency developing international standards and recommended practices used by its member states when developing civil aviation regulations.
- ³ The Warsaw Convention continues to exist alongside the Montreal Convention. In case of conflicting dispositions, the Montreal Convention prevails (article 55 of the Montreal Convention).
- ⁴ The full list of countries that have ratified the Montreal Convention is on the ICAO [website](#).
- ⁵ [Directive 90/314/EEC](#) on package travel, package holidays and package tours, currently under [revision](#) with a revised directive [likely to be adopted](#) in the near future.
- ⁶ Article 38 of the [Charter](#) of Fundamental Rights of the European Union states: 'Union policies shall ensure a high level of consumer protection'.
- ⁷ Kassim and Stevens, 2010, op. cit, p. 150.
- ⁸ [Upgrading](#) means placing a passenger in a class higher than that for which he/she purchased a ticket and [downgrading](#) means placing a passenger in a class lower than that for which he/she purchased a ticket.
- ⁹ [NEB](#) supervises transport operators and ensures that they respect air passenger rights. Air passengers, who believe they have not been treated correctly, can contact NEB or any other competent body designated by the Member State to submit a complaint.
- ¹⁰ European Commission, [staff working document](#), 2013, p. 16.
- ¹¹ See 2013 [staff working document](#) and 2013 [press release](#) 'Air Passenger Rights Revision – Frequently Asked Questions'.
- ¹² 'No show' [means](#) partial use of a ticket.
- ¹³ [Tarmac delay](#) 'means, at departure, the time the aircraft remains on the ground between the start of boarding and the take-off time of the aircraft or, at arrival, the time between the touchdown of the aircraft and the start of disembarkation of passengers'.
- ¹⁴ In the Commission [proposal](#) (Annex I), extraordinary circumstances include, for example, natural disasters, security risks and labour disputes; non-extraordinary circumstances include: technical problems identified during routine aircraft maintenance.
- ¹⁵ [Parliament](#) (Annex) deleted the list of non-extraordinary circumstances and added a number of extraordinary circumstances, such as war, and damage caused by bird strikes. It also stated that labour disputes should be considered extraordinary only if they are 'unforeseen'.
- ¹⁶ [International Air Transport Association](#) (IATA), [European Regions Airline Association](#) (ERA), [European Low Fares Airline Association](#) (ELFAA), [Association of European Airlines](#) (AEA), [International Air Carrier Association](#) (IACA).

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