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REPORT

on the functioning and application of established rights of people travelling by
air
(2011/2150(INI))

Committee on Transport and Tourism

Rapporteur: Keith Taylor

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the functioning and application of established rights of people travelling by air (2011/2150(INI))

The European Parliament,

- having regard to the Communication from the Commission on the application of Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (COM(2011)0174),
 - having regard to the Report from the Commission on the functioning and effects of Regulation (EC) No 1107/2006 of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (COM(2011)0166),
 - having regard to the opinion of the European Economic and Social Committee of 27 October 2011¹,
 - having regard to its resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 and in particular paragraphs 42, 43, 46, 82 and 97 thereof²,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism and the opinion of the Committee on the Internal Market and Consumer Protection (A7-0053/2012),
- A. whereas, while Regulation (EC) No 261/2004 and Regulation (EC) No 1107/2006 (hereinafter referred as ‘the Regulations’) are positive steps forward in terms of protecting passenger rights, there is a need for enhanced legal certainty, more interpretative clarity and uniform application of the Regulations across the EU;
- B. whereas, although Regulation (EC) No 261/2004 provides passengers with strong safeguards and has worked effectively since its introduction, the volcanic ash crisis underlined the need to clarify and re-examine certain aspects of the Regulation in case such extraordinary circumstances should arise again in the future;
- C. whereas the most important passenger right is the right to services provided as scheduled, based on the fundamental right to freedom of movement and the contractual obligation which arises from selling a ticket; whereas it is essential to provide passengers with comprehensible, accurate and timely information that is accessible to all;

¹ OJ C 24, 28.1.2012, p. 125.

² Texts adopted, P7_TA(2011)0453.

- D. whereas effective complaint systems should be at the disposal of passengers if the service is not properly delivered or if any other rights guaranteed to the passengers are infringed, especially since passengers have already paid the price of the ticket before the service is provided;
- E. whereas the legal framework protecting passenger rights needs to guarantee a minimum standard of consumer protection that can withstand the evolving commercial practices of airlines;
- F. whereas the development of passenger screening methods is leading to wider use of methods such as security scanners and behavioural profiling, raising new questions regarding passenger protection in terms of privacy, non-discrimination and public health;
- G. whereas persons with reduced mobility (hereinafter referred as ‘PRMs’) and people with disabilities should be informed of their rights in advance of their journey and in formats accessible to everyone; whereas airport and air carrier personnel should be duly trained in providing assistance to people with disabilities and to PRMs in order to help ensure barrier-free and equal access to air travel in accordance with the requirements of design for all / universal design;

General Framework

1. Welcomes the Commission’s commitment to analyse and revise the existing rules on air passenger rights aiming to improve the situation of passengers especially in the cases of long delay or cancellation; believes that proper application of the existing rules by Member States and air carriers, enforcement of sufficient and simple means of redress and providing passengers with accurate information concerning their rights should be the cornerstones of regaining passengers’ trust;
2. Regrets that the enforcement bodies set up by the Member States (hereinafter referred as ‘EBs’) do not always ensure effective protection of passenger rights, to the detriment of air passengers; calls therefore on Member States to devise working methods for the EBs, particularly as regards the handling of complaints and sanctions, that allow enforcement of passenger rights from the viewpoint of legal certainty;
3. Emphasises that air passengers have not only rights, but also responsibilities, and that meeting these helps to ensure that everything runs safely and smoothly for them and other travellers before, during and after the flight;
4. Stresses that uniform handling of complaints in the Member States is necessary in order to create a level playing field, and calls on the Commission to ensure that there is uniform interpretation and application of the Regulations and to develop better cooperation amongst the EBs, including via the exchange of best practice and information, and to seek further coordination of their databases;
5. Calls on the Commission to formalise a European network of EBs by creating a clear mandate and internal working rules in order to enhance cooperation and facilitate the process of adopting relevant common decisions;

6. Considers that there is a need for a better definition of the EBs' role, that EBs should be independent of air carriers and airports and without conflicts of interest, that EBs should be able to act on their own initiative, and that national sanctions applicable to air carriers who are in breach of EU rules should be made more effective; stresses the importance of sound statistics as a basis for regular thorough assessments of the impact of passengers' rights in Europe, and therefore considers that EBs should be obliged to publish details, on an annual basis, of the complaints they receive, including those concerning unfair terms, and of sanctions they issue to air carriers, and that airlines and/or airports should be required to collect data on the number and length of delays, both to passengers and to their luggage; takes the view that the Commission should analyse and publish these statistics;
7. Encourages the Commission to work with Member States to identify and overcome shortcomings in national complaint handling bodies and procedures and to ensure proper coordination of the legislation on air passengers' rights with the expected EU measures on alternative dispute resolution mechanisms;
8. Is of the opinion that regular reports by airlines and operators to the EBs on relevant data regarding the application of the Regulations to be published would increase the efficiency of the EBs and stimulate competition;
9. Emphasises the useful role of the Air Passenger Rights Consultative Group, which the stakeholders can provide with information regarding the review of the Regulations, and stresses the importance of the Group in promoting discussions and cooperation between EBs, consumer associations and airline companies with a view to developing and disseminating best practices in the field of the application of air passenger rights legislation, including on the setting of reasonable and precise timeframes for the handling of passenger claims;
10. Stresses that complete information detailing passenger rights should be communicated by both air carriers and tour operators, in the language used during the booking of the ticket, throughout key stages of the journey, starting from when the passenger is considering whether to book a ticket, in a format which is readily comprehensible and accessible by everyone; recommends that this information include reliable contact information for the customer relations department of the airline concerned and for the appropriate Member State EB; welcomes the Commission's initiative of establishing a central internet site on air passenger rights accessible in all the official EU languages and in formats accessible to passengers with disabilities and PRMs;
11. Urges the Commission to continue the information campaign launched in 2010 with a view to raising passengers' awareness of their rights, and to encourage consumer networks, in coordination with the EBs, to contribute as well;
12. Calls on the Commission to update all sources of information that set out the rights of airline passengers (for example, the relevant Commission websites, documents and brochures), taking account of the latest decisions of the European Court of Justice;

13. Stresses that air carriers should ensure the presence at each airport they operate from of contact personnel or a service which can provide such personnel, who can take immediate decisions in case of disruption, in particular with regard to assistance, reimbursement, rerouting, rebooking, and lost or delayed baggage, and with whom complaints can be lodged; urges the Commission to propose that it be made mandatory to provide a central information point, and specifically a website, and a low-cost telephone number and email address for the air carriers concerned, with a view to ensuring that consumers are properly informed;
14. Takes the view that all air carriers must provide accessible, effective telephone assistance for all passengers once a flight has been booked; this assistance must provide information and alternative proposals in the event of disruption and should in no circumstances exceed the cost of a local call;
15. Calls on the Commission to examine measures that would provide protection for both arriving and departing passengers in terms of ensuring that passengers are properly compensated in the event of loss of, or unacceptably long delays to, baggage;
16. Stresses that even passengers who are aware of their rights may be deterred from seeking redress by laborious complaints procedures; considers that there is a need for EBs to have the resources required to maintain a visible presence in the Union's larger airports with a view to offering basic information and mediation services;
17. Takes the view that air carriers should ensure that there is an immediate, simple, accessible way, at no extra cost, for passengers to lodge complaints in writing; calls on the Commission to include, in its review of Regulation (EC) No 261/2004, the right of any passenger to make a written complaint at the airport itself or on the plane, with copies to the air carrier and the EB, as well as the opportunity to make a complaint via other electronic means; calls on the Commission to draw up a standard form, translated into all EU languages to avoid any language problems, and to unify complaint procedures;
18. Takes the view that, in order to ensure that passengers' rights are upheld, and for the purpose of lodging complaints, passengers should be able to identify airline, flight, security and airport staff at all times;
19. Underlines that passengers should have full access to information about their 'Passenger Name Record' (PNR) data and be informed of how their PNR data are used and with whom they are shared; considers also that, with a view to guaranteeing passengers' right to privacy, the air carrier may only require PNR data from passengers when necessary and proportional in connection with the ticket reservation, and stresses that passengers should not be denied the right to transport, except if the boarding denial is requested by the competent authority in justified cases for public security reasons and if it is explained to the passenger by the competent authority and confirmed in writing;
20. Emphasises that, if a passenger who has already boarded is asked to leave the aircraft because of his PNR, disembarkation must be carried out by the competent authorities and not by members of the crew;
21. Reminds Member States of their obligation to monitor airlines' financial standing and the

possibility of suspending an airline's operating licence if its finances are insufficient; urges the Commission to make sure that national authorities comply with these obligations and to ensure that stranded passengers can be repatriated in the event of insolvency, bankruptcy, ceased operations or removal of an operating licence.

22. Calls on the Commission to ensure effective implementation and enforcement of the existing legislation on price transparency and unfair commercial practices in order to ensure that the advertised price is an accurate reflection of the final price and that all non-optional operational costs and all administrative and payment method charges are included in the tariffs and indicated/distributed with the required information; calls on airlines, in connection with the various means of payment, and especially payment by credit card, only to charge for the real cost of their services, in line with Directive 2011/83/EU on consumer rights;
23. Emphasises the widespread proliferation of unfair contract terms in air transport contracts and an increase in national case law prohibiting certain terms regularly used by airlines; thus urges the Commission to address this issue by blacklisting specific unfair terms in the air transport sector; stresses the need to adopt measures to protect passengers against other unfair contractual terms implemented by airlines, such as contractual issues related to mishandled/delayed/damaged luggage, the transferability of tickets, force majeure circumstances, the unilateral rescheduling of flights, and the prohibition against using the ongoing part of a return ticket unless based on very limited and objective 'no show' criteria;
24. Stresses that price discrimination against passengers on the basis of their country of residence must be more thoroughly investigated and, where identified, eliminated;
25. Calls on the Commission to propose measures that would allow for passengers to correct minor booking details easily and free of charge and to withdraw from an online reservation within two hours of the initial booking;
26. Calls on the Commission to propose measures that would make it possible to harmonise commercial practice concerning hand luggage so as to protect passengers against excessive restrictions and to allow them to carry on board a reasonable amount of hand luggage, including purchases from airport shops;
27. Emphasises the right of passengers to have easy access to accurate and objective information detailing the environmental impact and energy efficiency of their travel, which should be clearly visible both on the websites of air carriers and on tickets themselves; calls on the Commission and air carriers to support ongoing work in this direction, as long as the steps taken are reasonable in terms of the costs involved;
28. Emphasises that all passengers, including children younger than two years of age, must be carried safely; calls on air carriers to ensure that passengers with children can board easily with pushchairs in recognition of the fact that the young children travelling with adults may be classified as PRMs; calls on air carriers to offer reduced fares for children, including those over two years of age, as is already the practice with other transport modes; calls on the Commission to ensure that passengers with children have the right to board first and can take pushchairs up to the door of the aircraft and then pick them up at

the door upon arrival;

29. Believes there is a need to review the widespread failure of passenger transport operators serving airports to comply with the obligation to provide child seats, thereby restricting parents' transport options;
30. Calls on the Commission to examine the passenger protection issues related to new screening methods, such as security scanners, hand searches and passenger profiling; considers that existing passenger rights provisions and enforcement bodies could play a role in redressing the problems that may arise;
31. Calls for proper consistency to be ensured between the legislation on air passengers' rights and the expected EU measures on collective redress, in order to guarantee passengers' rights in an efficient way and to challenge those companies that systematically ignore these rights;
32. Proposes the introduction of an annual European Award for the most consumer-friendly airline;
33. Suggests that further research could be carried out to examine the possibility and feasibility of establishing a single legislative instrument comprising all provisions and principles on consumer rights in civil aviation in order to reduce fragmentation and reconcile inconsistencies across the different areas of passenger rights;
34. Appreciates the diversity of passenger rights depending on the mode of transport, be it by water, land or air; believes, however, that a holistic approach is needed, so as to integrate all passenger rights – inter alia to compensation, reimbursement and information – into one comprehensive, consolidated legislative framework;

Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

35. Calls on the Commission, in any upcoming revision of the Regulation, to adopt clarifications of the notion of 'extraordinary circumstances' and the definition of 'cancellation' as well as the rules governing provision of assistance and the right to redress and compensation; any such review should take note of the level of passenger protection provided by the ECJ rulings as well as the Court's interpretation of 'extraordinary circumstances'; regards these measures as important, given the current scope that exists for challenges to compensation rules, variation in national enforcement and incidences such as the 2010 volcanic ash crisis;
36. Calls on the Commission to develop a unified, complete and detailed system to assess the value of evidence submitted by airlines in order to demonstrate the existence of 'exceptional circumstances';
37. Calls on the Commission to make it clear that in the event of one flight within a rotation being delayed or cancelled as a result of an extraordinary circumstance, the airline can also refer to that extraordinary circumstance in connection with the first subsequent flight within that same rotation;

38. Believes that there is a strong need for clear rules regarding the content, accessibility, timing and accuracy of the information communicated to air passengers, which should cover the reason for any delay or cancellation, the expected duration of disruptions and what happens in the event of overbooking, as well as the alternative travel options available to passengers;
39. Emphasises that the upcoming revision of the Regulation should also define the body responsible for informing a package travel passenger in due time of any alterations to service, as the contract is between the passenger and a tour operator and not directly with an air carrier;
40. Emphasises that the threefold choice for the passenger of refunding, rerouting or rebooking in the event of travel disruption is a basic right and that this choice should be immediately offered to all stranded passengers;
41. Calls on the Commission to support measures which ensure better and more efficient use of alternative modes of transport, in particular in the event of extraordinary circumstances;
42. Believes that passengers whose luggage has been lost or delayed should be immediately informed of their rights under the Montreal Convention and Regulation (EC) No 889/2002 and that legislative or awareness-raising action is required at European level to increase public understanding of passenger rights and complaint procedures related to lost and delayed luggage; considers that, if luggage is delayed by more than six hours, compensation should be offered that is proportionate to passengers' needs so that they have the items they need while waiting for their luggage to arrive; stresses that the overall quality and performance of baggage handling services should be addressed in the revision of the Directive 96/67/EC on groundhandling;
43. Takes the view that, in the event of loss, delay or damage to luggage, airlines must in the first instance compensate the passengers with whom they have concluded a contract, but that, at a later stage, the airlines must have a right to seek redress from airports or service providers if they are not responsible for the problem incurred by the passenger;
44. Calls on the Commission to propose a maximum time limit of two months for industry and two months for EBs for handling of passenger complaints; considers that acknowledgement of receipt of complaints should be sent to passengers within 48 hours; passengers who make their reservation by electronic means, such as the internet, should also be entitled to make contact, at no cost, with their airline using the same means, and with a clearly marked address for same, so that the customer can quickly and easily make contact with the relevant staff at the airline to resolve any problems; takes the view, furthermore, that a phone line and web service should be set up, via which passengers can obtain information on the progress of their complaints;
45. In seeking to establish full accountability to passengers, is of the opinion that enhanced cooperation and coordination between the different actors such as air carriers, airports and related service providers should be explored and established, notably in cases of 'extraordinary circumstances';
46. Urges that additional financial costs incurred by air carriers under the Regulation should

not be passed on to passengers in the form of higher fares;

47. Notes that recent rulings of the European Court of Justice concerning passenger entitlement to compensation in the event of delays confirm the need for measures aimed at equitable treatment, ensuring appropriate compensation in the event of long delays, regardless of the cause of such delays, in order to take full account of the damage a passenger has suffered; urges the Commission, therefore, to propose measures to that effect, without cancelling the right to be transferred to the next available flight;
48. Stresses that giving equal treatment to long delays and flight cancellations provides an incentive for airlines to cancel a delayed flight which could perhaps still have taken off;
49. Believes that, without prejudice to air carriers' obligations under Regulation (EC) 261/2004 and in order to guarantee the rights of passengers, the Regulation should clarify provisions on if and when it is allowed for passengers to self-assist by purchasing refreshments or booking hotels or alternative flights and claiming back reasonable expenses from the air carrier; at the same time the Regulation should include mechanisms protecting against abuse by passengers;

Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air

50. Stresses that PRMs and people with disabilities must be given equal air travel opportunities and unrestricted access to services;
51. Emphasises the need to provide special protection for vulnerable consumer groups, especially PRMs and people with disabilities; points out that these vulnerable groups need additional guarantees when exercising their rights as passengers and calls on the Commission, the Member States and air carriers to enforce those rights;
52. Calls on the Commission and Member States to facilitate barrier-free access for PRMs and people with disabilities to air transport services; emphasises that, in this regard, the right to use mobility devices as well as to be accompanied by a recognised guide or assistance dog should be facilitated; calls on the Commission to propose legislation covering the physical accessibility of airports, in order to ensure that infrastructural barriers do not prevent people with disabilities and PRMs from enjoying equal travel opportunities;
53. Calls on the Commission to draw up guidelines on the interpretation of Regulation (EC) No 1107/2006, notably as regards the provisions on security and accompanying persons;
54. Encourages the Commission to implement an EU- wide action plan covering all measures to be taken by national authorities, and calls on the Commission to cooperate with the EBs and the relevant representative organisations in order to improve the implementation of the Regulation;
55. Shares the Commission's view that the current definition of PRMs should not be restricted;

56. Emphasises that the information formats, booking process and complaints procedures must be fully accessible, that PRMs and people with disabilities should be able to communicate their assistance needs at the same time as booking their ticket and that the passenger should be provided with a confirmation of the assistance notification; stresses the need for recognition of an infant or small child as a person with reduced mobility on grounds of age.
57. Points out that, although flight safety is of major public interest, an airline cannot deny boarding to PRMs or people with disabilities on the grounds that they are unaccompanied; emphasises that the airline cannot routinely require such passengers to be accompanied by another person;
58. Underlines that training of flight crews and other air carrier, airport and EB personnel plays a key role and must adequately cover the different and individual needs of PRMs and people with disabilities, with particular regard to boarding and disembarking and handling of assistive devices; emphasises that the training should be provided in cooperation with organisations representing people with disabilities and PRMs;
59. Calls on the Commission to submit a proposal ensuring that PRMs and people with disabilities have the right at all times to use safety-approved respiratory devices on aircraft free of charge; considers that a list of approved medical oxygen equipment should be drawn up in cooperation with the industry and organisations representing people with disabilities and PRMs, taking due account of safety requirements;
60. Is of the opinion that establishing minimum standards for PRM assistance equipment and its use at all EU airports is required in order to ensure a harmonised approach to ground handling and high-quality service provision to PRMs passengers in Europe;
61. Is of the opinion that minimum standards must be established for providing information in accessible formats for PRMs and people with disabilities at all EU airports, with particular regard to emergency situations; calls the Commission's attention to new technologies which are now available, such as video-based sign language services and text-based services;
62. Calls for an end to the abusive and/or discriminatory practices of some air carriers whereby they require PRM passengers to sign a statement prior to boarding exempting the air carrier from liability for any damage caused to their mobility equipment;
63. Calls on the Commission to make efforts with a view to a possible modification of the Montreal Convention, so as to ensure that the mobility equipment of PRMs is compensated in full, as such equipment is important to their integrity, dignity and independence and is therefore in no way comparable to luggage, and that the passenger should have the right, whenever possible, to use his or her own wheelchair up to the door of the aircraft and to receive it back at the door of the aircraft upon arrival; insists meanwhile that PRMs must be informed of their right to claim compensation for damage to their mobility equipment and of their right to make a special declaration of interest in accordance with the Montreal Convention;

64. Insists that a ‘full service’ airline providing flight catering to passengers may not discriminate against passengers requiring special meals because of pre-existing medical conditions (e.g. coeliac disease or diabetes.) and that these special meals must be provided at no extra cost to the passenger in all cases of travel.

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65. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

This report sets out to address the recent Commission Communication on ‘the application of Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights’ (COM(2011)0174) and the Report from the Commission on ‘the functioning and effects of Regulation (EC) No 1107/2006 of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air’ (COM(2011)0166).

Furthermore, because passenger rights are touched upon in many different EU laws, my draft report also looks at the broader context of air passenger rights at a European level.

My draft report identifies the need for enhanced legal certainty, for more interpretative clarity and uniform application of the regulations across the EU. There is also a need for judgements of the European Court of Justice to be incorporated into the upcoming revision of Regulation 261/2004. Ultimately, I want to increase accountability and transparency, to clarify and strengthen existing rights and to make sure they are made clear to consumers.

This report is timely, as the Commission plans a review of Regulation 261/2004 next year. I also hope it will help inform upcoming revisions of other legislation, such as the Package Travel Directive and the Airport Package, among others. Below I highlight the key points of my draft report.

General Framework

Knowledge of rights is essential in ensuring that passengers can access them. That is why information on passenger rights should be communicated in a simple, appropriate and understandable way throughout key stages of the journey, starting from when the passenger is considering whether to purchase a ticket.

To help ensure that rights are upheld, I am calling for contact personnel at airports who can take immediate decisions in relation to providing assistance, reimbursement, re-routing and other issues that arise when flight disruptions occur.

Efficient, transparent and independent Enforcement Bodies (EBs) to deal with passenger complaints, to help resolve disputes between passengers and air carriers and to ultimately impose sanctions if necessary are vital. I am calling for formalisation of a European network of EBs, coordinated by the Commission, and for EBs to publish information on the complaints they receive.

Other elements in my draft report include the need for passengers to be fully covered in event of bankruptcy or insolvency of the air line and for effective implementation and enforcement of existing legislation on price transparency, so that the advertised price on airline websites is a fair reflection of the final price. Passengers should also have the right to access the Passenger Name Record held on them by the air carrier, and this should be enshrined in legislation.

I also believe that passengers should have the right to change the details on their ticket in case of a mistake without incurring a fee for doing so (air lines can currently charge exorbitant amounts for doing so). This example highlights the general proliferation of unfair terms in air carrier contracts, which needs to be tackled.

One of the most basic rights of passengers is to a safe journey. I therefore believe that it is essential that all passengers, including children younger than two years, are ensured a safe seat on the plane. Finally, passengers should have the right to information on the environmental impact of their mode of travel. I am therefore calling on the Commission and airlines to support ongoing work which will allow objective and accurate comparisons between the environmental footprint of different flights, as well as between air and other modes of transport.

Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and cancellation of long delay of flights

Interpretative clarity is key and that is why I am calling on the Commission to incorporate, in the upcoming revision of Regulation 261/2004, the European Court of Justice interpretations of various definitions and terms, including ‘extraordinary circumstances’ and rules on compensation.

In case of disruption to travel, passengers should be informed in a timely manner with information covering reasons for delay or cancellation, expected duration of delay and alternative travel options, including other modes of transport where applicable. The triple choice for the passenger between refunding, rerouting and rebooking, as a basic right, should also be highlighted.

Furthermore, passengers with lost or delayed baggage should be entitled to equivalent rights as to passengers who are themselves delayed. In order to allow air lines to look after the most vulnerable groups of passengers and to reduce the number of passengers travelling to the airport to seek assistance, passengers should be able to self-assist by purchasing refreshment, hotels or alternative flights and claiming back reasonable expenses from the airline.

Finally, compensation levels, criteria and mechanisms should be revised by the Commission, with the proviso that current levels are not weakened.

Regulation 1107/2006 concerning the rights of people with reduced mobility when travelling by air

Barrier-free access and equal travel opportunities for persons with reduced mobility (‘PRMs’) and people with disabilities is a basic right. Lack of training of staff and the physical infrastructure of airports and aircraft are obstacles which need to be urgently addressed. It is also important that PRMs and people with disabilities can be accompanied by recognised guide or assistant dogs onboard aircraft if required and that they are also guaranteed access to oxygen for medical purposes free of charge.

Any damage to the mobility equipment of PRMs must be compensated in full as such

equipment is part of a person's integrity, dignity and independence. Finally, information to PRMs and to people with disabilities must be fully accessible and in formats corresponding to their needs.

12.1.2012

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Transport and Tourism

on the functioning and application of established rights of people travelling by air
(2011/2150(INI))

Rapporteur: Antonia Parvanova

SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Transport and Tourism, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the Commission's commitment to analyse and revise the existing Regulations on air passenger rights aiming to improve the situation of passengers especially in the cases of long delay or cancellation; Believes that proper application of the existing rules by Member States and carriers, enforcement of sufficient and simple means of redress and providing passengers with accurate information concerning their rights should be the cornerstones of regaining passengers' trust;
2. Underlines the importance of uniform implementation and enforcement across Member States of Regulation (EC) No 261/2004 and Regulation (EC) No 1107/2006 on air passengers rights, including effective, dissuasive and proportionate penalties in order to create a level playing field and powerful economic incentives for the air carriers, as well as for the other actors involved, to comply with the provisions;
3. Emphasises the importance of addressing existing gaps in Member States' implementation and enforcement of Regulation (EC) No 261/2004 and Regulation (EC) No 1107/2006 on air passengers' rights, which contribute to legal uncertainties and constitute obstacles to efficient protection of consumers;
4. Notes that enforcement actions are rarely carried out and vary widely across Member States, therefore encourages the Commission to work in cooperation with the competent authorities and National Enforcement Bodies (hereafter referred as 'NEBs') and to explore the possibility to create network based on Solvit and/or a central EU unit, in order to promote a uniform and speedy enforcement of air passenger rights, and to sanction and

monitor infringements and Members States, which do not implement this legislation;

5. Taking into account that the lack of information to passengers is a major obstacle to the effective application of Regulation (EC) No 261/2004 and Regulation (EC) No 1107/2006; calls on the Commission to clarify the obligation to inform passengers provided for in the two Regulations, in order to ensure that all passengers, in particular those in the most vulnerable positions receive timely, comprehensible and accurate information on their rights and procedures for receiving help in cases of long delays and/or cancellations, including the right to choose between the refund of the ticket price, rerouting or re-booking, as well as on procedures and contact points in case of dissatisfaction or request for compensation; such information should be given should be given in a comprehensive and consumer friendly manner throughout the key stages of a journey, namely at the time of booking, check-in and boarding, as well as printed on the ticket;
6. Notes that the process of a possible revision of Regulation 261/2004 and Regulation 1107/2006 will take time to complete; therefore calls on the Commission to consider introducing complementary interim measures to improve the application and enforcement of these Regulations. These may include keeping updated and published on the EC's website the informative documents on air passengers' rights, as well as fostering discussions and collaboration between Member States, NEBs, consumer organisations and airlines in order to disseminate best practices and build agreement on the controversial parts of the legislation;
7. Calls on the Commission to organise information campaigns and establish a multi-linguistic information platform, where air passengers can get access to information on rights and procedures, including official forms for complaints and contact points, points out that efforts to publicise passengers' rights could be extended and shared with other actors in the chain by means of cooperation between national authorities, consumer organisations, NEBs, airports, air carriers, agents and tour operators;
8. Stresses that air carriers should ensure the presence of at least one representative and/or complaint desk at each airport they operate from, who can take immediate decisions in case of disruption, in particular with regard to assistance, reimbursement, rerouting and rebooking;
9. Points out the need for a revision of the Regulations to include the recent case-law¹, after evaluation of the probable consequences and benefits for passengers, in order to clarify air passengers' rights and strengthen enforcement measures;
10. Considers that a clear definition must be given for the most recurring terms which serve to establish the carrier's liability and/or the appropriate rights for passengers, which includes the terms 'flight', 're-routing', 'connection', 'diversion', 'cancellation', 'long delay', 'schedule', 'final destination', 'assistance and care' and 'right of redress'; highlights the need for a clear definition and Commission guidelines on what is covered by 'extraordinary circumstances', which should be clearly stated in future amendments of

¹ for example joint cases C 402/07 and C 432/07 Sturgeon

Regulation 261/2004, to prevent unjustified interpretations of the circumstances that have led to cancellations or delays; invites the Commission to reassess the unlimited liability of air carriers regarding the right to care under extraordinary circumstances beyond the carrier's control;

11. Calls on the Commission to clarify that in case one flight within a rotation is delayed or cancelled due to an extraordinary circumstance, the airline can also refer to that extraordinary circumstance for the first succeeding flight within that same rotation;
12. Emphasises the right of passengers to have easy access to accurate and objective information detailing the environmental impact and energy efficiency of their travel, which should be clearly visible both on the websites of air carriers, as well as on tickets themselves ; calls on the Commission and air carriers to support ongoing work in this direction;
13. Appreciates the diversity of passenger rights depending on the different mode of transport such as rail, air, sea and inland amongst others; However believes that a holistic approach is needed to integrate all passenger rights namely the right of compensation, reimbursement, information, amongst others into one comprehensive, consolidated legislative framework;
14. Notes that recent rulings of the European Court of Justice concerning passenger entitlement to compensation in the event of delays confirm the need for measures aimed at equitable treatment, ensuring appropriate compensation in the event of long delays regardless of the cause of such delays in order to take fully into account the damages he has suffered; therefore urges the Commission to propose measures to that effect, without cancelling the right to be transferred to the next available flight;
15. Suggests that further research could be carried out to examine the opportunity and feasibility of establishing one single legislative instrument comprising all provisions and principles on consumer rights in civil aviation in order to reduce fragmentation and reconcile inconsistencies across the different areas of passenger rights;
16. Notes that existing commercial practices (such as check-in fees, priority boarding fees, excessive credit card-payment fees especially when buying more than 1 ticket, luggage fees, fees for complying with EU legislation or the blocking of double the amount of the price of the ticket from the passenger's bank account for a certain period of time) lead to substantive differences between the advertised and the final price thus misleading consumers about the components making up final air fares and therefore stresses the need to ensure price transparency, similarly to the provisions on passenger transport services in the recently adopted Consumer Rights Directive which states that before the consumer is bound by any contract or any offer, the trader shall provide the consumer with the total price inclusive of taxes; insists that the advertised price must fairly reflect the final price, urges the Commission for an increased control of advertised and final air fares, especially on the airlines' websites;
17. Emphasises the widespread proliferation of unfair contract terms in air transport contracts and an increase in national case law prohibiting certain terms regularly used by airlines; thus urges the Commission to address this issue by black-listing specific unfair terms in

the air transport sector; stresses the need to adopt measures to protect passengers against other unfair contractual terms implemented by airlines, such as contractual issues related to mishandled/delayed/damaged luggage, the transferability of tickets, force majeure circumstances, the unilateral rescheduling of flights, and the prohibition to use the ongoing part of a return ticket unless based on very limited and objective ‘no show’ criteria; measures should also be adopted to protect the passengers against policies related to the different restrictions on hand luggage and air purchases, for which passengers should not be charged additionally; it must be ensured that passengers should benefit from uniform restrictions on the size and weight of hand luggage;

18. Emphasises the need to ensure consistency between the different legislations on air passenger rights and in particular between the legal protection for package travellers and the lack of similar protection for seat-only passengers, thus following travel market trends whereby consumers increasingly arrange their travel themselves and avoiding any discrimination against passengers based on type of ticket purchase or unfair competition between the different service providers (air carriers, travel agencies or tour operators); in particular, it urges the Commission to propose binding measures, including obligations for air carriers to provide for a final guarantee to cover liabilities of air carriers towards passengers, ensuring that passengers buying seat-only seats are equally effectively protected in case of airline insolvency, bankruptcy or removing of an operating licence as package travellers are already;
19. Calls on the Commission to draw up guidelines on the interpretation of Regulation (EC) No 1107/2006 concerning the rights of air passengers with reduced mobility, notably on the provisions on security and accompanying persons;
20. Shares the Commission’s view that the current definition of ‘passengers with reduced mobility’ (PRMs) or ‘disabled person’ should not be restricted, as this will undermine the purpose of the current definition to provide broad assistance to the relevant groups requiring special assistance; suggests whether elderly people who do not have reduced mobility, pregnant women and unaccompanied children, insofar as their age limits their ability to use public transport autonomously, should be included in the definition, possibly under the term ‘passengers with special needs’;
21. Stresses that passengers with limited mobility or with disabilities must be given equal air travel opportunities and unrestricted access to services;
22. Emphasises the need to provide special protection for vulnerable consumer groups, especially disabled persons and persons with reduced mobility; points out that these vulnerable groups need additional guarantees when exercising their rights as passengers and calls on the Commission, the Member States and the air carriers to enforce those rights;
23. Calls on the Commission to introduce binding measures for airlines and airports to harmonise their policies, especially with regards to booking procedures, procedures to ask for assistance and security control policies, and to provide better information on these issues from the time of booking until Passengers with Reduced Mobility (hereinafter referred as ‘PRMs’), and eventually Passengers with Special Needs, leave the airport at their destination point in order to guarantee equal travel opportunities and non-

discrimination and to enable PRMs to know what to expect from the different airlines and at the different airports;

24. Highlights the fact that the training of air carrier and airport personnel plays a key role for guaranteeing the effective implementation of all parts of Regulation 1107/2006 and is the most cost-efficient means for ensuring non-discrimination; therefore stresses that adequate training of personnel at airports and on board the aircraft must be provided in close cooperation with representative organisations of persons with reduced mobility;
25. Emphasises the fact that there is a need to ensure that mobility equipment is not considered and/or treated as ordinary luggage, but as an indispensable tool for independence which is irreplaceable for the passenger; for this reason it underlines that mobility equipment should be handled with care by trained personnel according to strict and harmonised procedures for boarding and disembarking, allowing passengers to use this equipment as long as possible;
26. Believes that it is essential to ensure that people who need medical oxygen when travelling, obese passengers and passengers who are required to travel with an assistant are not required to pay additional charges or denied boarding unless on strictly safety grounds;
27. Encourages the Commission to work with Member States to identify and overcome shortcomings in national complaint handling bodies and procedures and to ensure proper coordination of the legislation on air passengers' rights with the expected EU measures on alternative dispute resolution mechanisms.
28. Stresses that the consumers' possibilities of claiming their rights should be increased; calls on the Commission to propose measures for setting up accessible and independent complaint handling procedures and means of redress which will ensure the effective protection of the rights of passengers and will guarantee that they receive the compensation they are entitled to in a timely and efficient manner; calls for the national EBs or a new EU EB to assist consumers in their complaints, especially cross-border; stresses the need for fixed deadlines for responding to passengers' complaints, similarly to other Regulations on passengers' rights, and for considering making the decisions of the NEBs binding in order to ensure that they are recognised by courts and complied with by air carriers and other actors involved; calls on the Member States to deploy sufficient resources for national enforcement bodies and impose on them proportionate power to sanction;
29. Calls to ensure proper consistency between the legislation on air passengers' rights and the expected EU measures on collective redress in order to guarantee passengers' rights in an efficient way and challenge those companies that systematically ignore these rights;
30. Proposes the introduction of a European Award for the most consumer friendly airline, to be awarded every year to the company with the best track record on consumer friendliness.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	9.1.2012
Result of final vote	+: 29 -: 0 0: 0
Members present for the final vote	Adam Bielan, Lara Comi, Jürgen Creutzmann, Cornelis de Jong, Christian Engström, Vicente Miguel Garcés Ramón, Małgorzata Handzlik, Sandra Kalniete, Kurt Lechner, Hans-Peter Mayer, Robert Rochefort, Heide Rühle, Christel Schaldemose, Andreas Schwab, Laurence J.A.J. Stassen, Róza Gräfin von Thun und Hohenstein, Bernadette Vergnaud
Substitute(s) present for the final vote	Simon Busuttil, Ashley Fox, Marielle Gallo, Constance Le Grip, Morten Løkkegaard, Antonyia Parvanova, Sylvana Rapti, Olga Sehnalová, Marc Tarabella, Rafał Trzaskowski, Wim van de Camp, Anja Weisgerber

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	27.2.2012
Result of final vote	+: 41 -: 1 0: 4
Members present for the final vote	Magdi Cristiano Allam, Inés Ayala Sender, Georges Bach, Izaskun Bilbao Barandica, Philip Bradbourn, Antonio Cancian, Michael Cramer, Joseph Cuschieri, Christine De Veyrac, Saïd El Khadraoui, Ismail Ertug, Carlo Fidanza, Knut Fleckenstein, Jacqueline Foster, Mathieu Grosch, Jim Higgins, Juozas Imbrasas, Dieter-Lebrecht Koch, Jaromír Kohlíček, Georgios Koumoutsakos, Werner Kuhn, Bogusław Liberadzki, Eva Lichtenberger, Gesine Meissner, Mike Nattrass, Hubert Pirker, David-Maria Sassoli, Vilja Savisaar-Toomast, Olga Sehnalová, Debora Serracchiani, Brian Simpson, Laurence J.A.J. Stassen, Keith Taylor, Silvia-Adriana Țicău, Giommara Uggias, Thomas Ulmer, Peter van Dalen, Dominique Vlasto, Artur Zasada, Roberts Zile
Substitute(s) present for the final vote	Spyros Danellis, Rosa Estaràs Ferragut, Nathalie Griesbeck, Ádám Kósa, Dominique Riquet, Alfreds Rubiks