17.2.2022

NOTICE TO MEMBERS

Subject: Petition No 0771/2021 by M.L. (German) on passenger protection in the event of airline insolvency

1. Summary of petition

The petitioner recalls that between the year 2000 and 2012, a large number of European airlines filed for bankruptcy. In addition, she points out that further bankruptcies are to be expected in the foreseeable future owing to the current fragility of the airline market. She, therefore, claims that customers, who pay well in advance their flight tickets, should be legally protected in case of air carriers’ bankruptcy. The petitioner calls for a legislative initiative at EU level to protect passengers in case of insolvency of airlines.

2. Admissibility

Declared admissible on 30 November 2021. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 17 February 2022

Experience and studies so far have revealed certain challenges with the application of the passenger rights Regulations during normal times, which were exacerbated during the COVID-19 pandemic. Among the problems identified in this respect is the insufficient protection of passengers and their rights, although they should continue to apply regardless of external circumstances, in case of mass disruptions and/or operator insolvency.

The only available protection for travellers against the insolvency of an operator at EU level concerns package travel (i.e. only if the transport service is combined with other services, under

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1 See https://transport.ec.europa.eu/transport-themes/passenger-rights/passenger-rights-studies_en
2 Except for the right to compensation in case of extraordinary circumstances.
Directive (EU) 2015/2302 on package travel and linked travel arrangements\(^3\). Under these rules, stranded passengers have the right to be repatriated and to have their tickets reimbursed in case of cancellations by a carrier.

The fragmentation of approaches in applying and enforcing passenger rights following the mass cancellations during the COVID-19 pandemic showed the vital importance of having EU-wide rules, supported by a uniform implementation and enforcement.

Under its Sustainable and Smart Mobility Strategy\(^4\) (SSMS, see paragraphs 91 and 92), the Commission committed to reviewing the existing rules to ensure their resilience to extensive travel disruptions, including options for multimodal tickets (Action 63 of the Action Plan attached to the SSMS). The Commission also intends to assess the options and propose, if appropriate, an adequate financial scheme to protect passengers against the risk of a liquidity crisis or insolvency regarding the reimbursement of tickets and, if needed, ensure their repatriation (Action 64 of the Action Plan attached to the SSMS).

The above mentioned actions of the SSMS are taken up in the Commission initiative ‘Better protection for passengers and their rights’, for which the Call for Evidence for an Impact Assessment was launched on 20 December 2021\(^5\). The general objective of the initiative is to consolidate and simplify the passenger rights regulatory framework as well as to enhance its crisis resilience, addressing lessons from the Covid-19 pandemic. One of the specific objectives of this initiative is to address aspects not currently covered for all modes of transport (i.e. horizontal issues), including whether there is an adequate protection of passengers against the risk of mass disruption and/or operator insolvency. Throughout this initiative, coherence will be assessed with other initiatives in the area of transport policy as per the SSMS, such as Action 59 on the review of the Air Services Regulation (including possible policy measures to improve the financial resilience of carriers)\(^6\) and with other initiatives in the area of consumer policy, in particular the review of the Package Travel Directive (e.g. regarding insolvency protection and general crisis resilience)\(^7\).

As part of this initiative, the Commission will carry out a comprehensive impact assessment, and will assess the expected costs and benefits of a number of policy options suitable to address the problems identified with regard to the application of the passenger rights Regulations, against a baseline scenario in which the rules will continue to apply in their current form. Given the complexity and multifaceted nature of the problems, some could be addressed through soft

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\(^5\) https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13290-Travel-better-protection-for-passengers-and-their-rights_en

\(^6\) https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13255-Revision-of-the-Air-Services-Regulation_en

\(^7\) See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13117-Package-travel-review-of-EU-rules_en
law, while others could be tackled through legislative action. These policy options will address, for example, the swift reimbursement of tickets in case of mass cancellation of transport services.

Conclusion

Experience and studies so far have revealed certain challenges with the application of the passenger rights Regulations during normal times, which were exacerbated during the COVID-19 pandemic. Among the problems identified in this respect is the insufficient protection of passengers and their rights, although they should continue to apply regardless of external circumstances, in case of mass disruptions and/or operator insolvency.

Under its Sustainable and Smart Mobility Strategy (SSMS), the Commission intends to assess the options and propose, if appropriate, an adequate financial scheme to protect passengers against the risk of a liquidity crisis or insolvency regarding the reimbursement of tickets and, if needed, ensure their repatriation (Action 64 of the Action Plan attached to the SSMS).

This action of the SSMS is taken up in the Commission initiative ‘Better protection for passengers and their rights’, as part of which the Commission will carry out a comprehensive impact assessment and will assess the expected costs and benefits of a number of policy options suitable to address the problems identified with regard to the application of the passenger rights Regulations. These policy options will address, for example, the swift reimbursement of tickets in case of mass cancellation of transport services.