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Response of ECTAA and GEBTA to the public consultation on air passenger rights

2. QUESTIONS RELATED TO MISHANDLED LUGGAGE

2.1 The liability Regulation (889/2002)

2.1.1. Information, monitoring and sanctioning powers regarding the application of the Liability Regulation

- (1) **Do you think that the information and the rights currently given to passengers regarding lost, damaged or delayed luggage are sufficient?**

No

If not, what would be your suggestion to improve the current situation?

Comments

Regulation 889/2002 and the Montreal Convention lay down a process on how air carriers are obliged to communicate passenger rights. It is incumbent on the air carrier to make this information available to passengers.

However, the rights of passengers laid out in carrier's conditions of contract are often ambiguous, not explicitly brought to the attention of passengers and in some cases even in contradiction with applicable legislation. It should be checked that carriers' conditions of contract comply with applicable rules.

Besides, information may be provided to passengers in form of a public awareness raising campaign, posters at airports, standardised multi-lingual leaflets at lost and found desks, etc.

More statistics would be needed on lost, damaged or destroyed luggage incidents to help determine the magnitude of the problem.

- (2) **Do you think that the appointment of a specific enforcement body in each Member State under EU law to handle complaints and to enforce effectively the Regulation in the event of breaches — also through appropriate sanctions — would help to improve the current situation?**

Yes

Comments

An enforcement body would be useful to discipline carriers and to assist passengers in their claims. However, we do not see the need for a new specific enforcement body in each Member State. For the sake of simplicity and effectiveness, the body that would enforce Regulation 889/2002 should be the National Enforcement Body, which is already in charge of enforcing Regulation 261/2004 on denied boarding, cancellation and long delays. Such bodies should be provided with sufficient resources to handle efficiently the number of complaints that they will receive.

2.1.2. The amount of compensation in cases of mishandled luggage

(3) In your view, what is the best way to address compensation for mishandled luggage? Please give your opinion on the following by ticking a box and providing additional comments:

	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	No opinion
Change the current maximum compensation in the European Union:			X		
Award automatic compensation to passengers whose luggage has been delayed for a certain time due to mishandling — for example until the following day:		X			
Increase this automatic compensation after a reasonable period of time, for instance if the delayed luggage is handed over more than 48 hours after the arrival of the flight:		X			
Provide for unlimited liability in the event of losses due to mishandled mobility equipment for passengers with reduced mobility in the European Union:					X
Other measures					X

Comments

The limits of compensation in the Montreal Convention have been recently raised. Therefore, at the moment no further adjustment is needed, especially since a level playing field at international level should be safeguarded. Passengers should be encouraged to declare higher value items, so that the carrier can be aware that it will carry such item, and decide as the case may be to refuse carriage of such items in checked-in luggage or suggest that the passenger takes an additional insurance against damage or loss of these items.

Special consideration should be given to the damage or loss of PRM's mobility equipment, but not going as far as unlimited liability. It is very important to ensure fair and correct treatment of this group of travellers to prevent any discrimination. Unlimited liability would establish such important obligations on carriers that it may run counter this objective.

2.1.3. Conditions on the carriage of luggage

- (4) Do you think that air carriers ensure that sufficient information on their policy on fees, size and weight of checked-in and hand luggage is provided early and clearly in the booking process?**

No

Comments

The EU has already done a lot of work on the Air Services Regulation and the checklist for websites selling air tickets in line with consumer legislation. Thus information on luggage rules should be communicated to passengers sufficiently early so as to make an informed decision, because this information has an impact on the end price to be paid by the customer and service received. Passengers should receive information on the carrier's policy on fees, size and weight in respect of luggage.

Travel agents are sometimes in a difficult position to provide this information at an early stage, because it is not made available to them, because airlines have developed a large variety of luggage policies and because the luggage policies are frequently changing. Some carriers inform agents of their policies via their internet agent website. However, such information channel is not effective and information on luggage policies should be integrated in the fare rules.

- (5) Do you think that rules on the size and weight of checked-in and hand luggage should be harmonised among air carriers?**

No opinion

Comments

Harmonisation of the rules on the size and weight of luggage would allow passengers to compare flights more easily and to make informed decisions when purchasing tickets. Moreover, variations between luggage policies are an obstacle to seamless travel when passengers take successive flights on different carriers to arrive to their final destination.

However, luggage allowance is an area for competition between airlines, notably if an airline wishes to provide a more advantageous allowance. There is a risk that harmonisation lead to the lowest common denominator, which would not be in passengers' interest. Furthermore, any approach for harmonisation should take into consideration that the amount and price of items can vary significantly depending on travel classes, destinations and duration of stays. The types of aircrafts should also be taken into account, especially for hand luggage.

(6) If yes, what kind of instrument would you recommend?

EU law

Comments

We would see value in self regulation instruments on the size and weight of luggage, if they were achievable. However, we see no framework for self regulation of all air carriers, as this may be carried out by IATA, but many air carriers are not IATA members. Moreover, we do not see that it would be practically possible to get all carriers to comply through voluntary agreements with harmonised rules on the size and weight of checked-in and hand luggage.

We thus consider that the only way to harmonise the rules and to ensure a correct and uniform application of such rules is through law.

2.2. Directive 96/67 on ground handling

(7) Do you think that it would be advisable to require minimum compulsory training for ground handlers (in particular for staff in charge of handling baggage)?

No opinion

Comments

Quality standards for ground handling should be negotiated between airlines and their handling service providers. Any minimum training requirements for staff in charge of baggage handling should therefore be part of a service level agreement between airlines and handling agents.

To ensure that groundhandling providers have the capacity to provide adequate facilities for a seamless, secure and comfortable experience of passengers at airports, the terms of reference in tenders for the selection of ground handling companies should indicate the required training level of staff.

3. QUESTIONS RELATING TO THE APR REGULATION (261/2004)

3.1. Reporting obligations under the APR Regulation

(9) Do you think that air carriers should regularly report to the national enforcement bodies on their implementation of the APR Regulation, notably on the number of

incidents, the routes and peaks of the day/year where incidents happen more often, or the redress offered to passengers under the Regulation?

Yes

Comments

Such data would be useful to NEBs. It would also be useful to the EU legislators to identify shortcomings of the legislation.

(10) Do you think that the national enforcement bodies should regularly report on their activities, including a description of the action taken to implement the APR et the PRM Regulations, details of the sanctions applied, statistics on complaints and sanctions applied, and information on major court cases?

Yes

Comments

Some NEBs do not take appropriate measures to ensure that airlines comply with the APR Regulation. Therefore, the reporting obligation may be a good way of showing what they are doing.

Such reports could help intermediaries advise their customers.

Such information could also be useful to raise awareness of the rules / rights and thus contribute to a better application of the Regulation.

Some NEBs already report to their own Member State. However, a more consistent approach across the EU would be welcomed to reduce inconsistencies across the Member States.

3.2. Air carrier complaint handling and settlement of disputes

(11) Do you think the complaint handling procedures of air carriers should be harmonised ?

Yes

If yes, should they be harmonised through:

EU law

Comments

Airlines should use a standardised complaint form, which would help the customer formulate the complaint and provide the information required to process a complaint. Such complaint form should be available in all EU languages.

A standardised complaint form also helps the airlines process complaints and is easy for compiling statistics.

(12) Do you think that air carriers should in all events be obliged to provide passengers with a motivated response to their specific complaints within a fixed deadline and be sanctioned if they do not comply?

Yes

Comments

The UK Member association of ECTAA, ABTA (Association of British Travel Agents), is a regulatory association and has introduced a Code of Conduct which requires its members to acknowledge a complaint from clients within 14 days of receipt of correspondence with a detailed reply within 28 days. This approach has worked well over many years and could be introduced for airlines as well. Whilst ABTA can, and does, take action against its own members for not responding to clients' correspondence, it is not clear how sanctions could be managed against airlines.

Deadlines and sanctions for not responding within the timeframe motivate airlines to respond to complaints and in a timely fashion. The deadline should allow for a reasonable time to analyse and respond to the complaint.

4. QUESTIONS RELATING TO THE PRM REGULATION (1107/2006)

- (13) For PRMs using mobility or respiratory equipment or required to travel with an assistant during flights, do you think that air carriers should harmonise their policies or provide better information on these issues?**

No

Comments

There should not be a harmonisation of air carriers' policies. This is an individual air carrier's decision as to the service they offer and subject to the aircraft type and configuration. It's also down to practicalities such as availability of medical oxygen in overseas bases. Allowing passengers to carry their own portable oxygen cylinders or battery powered oxygen concentrators could perhaps be standardised (e.g. a permitted size) but not air carriers' own provision. Air carriers should, however, be required to provide proper information so that passengers can make an informed choice.

- (14) Do you think the pre-notification at least 48 hours encouraged by regulation 1107 should be made compulsory, in order to provide better assistance to PRMs?**

Yes

Comments

It should be noted that a notification of only 48h ahead of the travel is not enough: the PRM should inform of his needs upon reservation to ensure that he is provided with appropriate equipment and assistance in the course of his travel.

It should be noted that in practice, ground handlers take the line of least resistance so as not to have disagreements with PRMs and do not check whether they have pre-notified. There should be an incentive to encourage PRMs to pre-notify, such as priority being given to those who do pre-notify. However, some passengers, particularly the elderly,

don't realise they need assistance until they find themselves in the airport. Whilst the intent of Regulation 1107 is supported, since its introduction, air carriers' costs have risen dramatically whilst service levels have fallen. The benefits of pre-notification should be better publicized at national and EU level.

5. BUSINESS PRACTICES WHOSE IMPACT ON PASSENGERS MAY MERIT THE COMMISSION'S ATTENTION

5.1. Reservation and check-in on-line

(15) Do you think that the new e-booking and check-in practices introduced by air carriers should be harmonised:

No

Comments

We cannot see the need for harmonizing these rules. Such practices are very dependent on the medium proposed by the airline to book tickets, which must be based on the choice of each carrier, and on the technology available at a given time. Any harmonisation is likely to lead to cost increases for passengers.

(16) Which kind of new specific measures to protect passengers in such cases could be introduced in the EU? Please give your views by ticking a box and providing additional comments:

	Strongly agree	Some what agree	Some what disagree	Strongly disagree	No opinion
Fixing a minimum time for passengers to detect an error in their reservation or check-in online and ask the air carrier to correct it at no cost?		X			
Ensuring that passengers are not charged unreasonable fees if they check in at the airport?		X			
Other measures		X			

Comments

Minimum time for passengers to detect an error in their reservation should be carefully regulated, considering that passengers should be cautious when providing information. It should not extend to a late stage after booking, as this may cause practical difficulties. When travel agents make bookings through a Computer Reservation System, they cannot make any

change after midnight on the day of booking. It should not allow infringing the ticket conditions.

Passengers away from home may not have IT facilities to check on-line. Infrequent leisure passengers should not be penalised because they not accustomed to on-line check-in. According to Spanish case law, check-in is an inherent requirement of the transport's contract that cannot be subject to an extra fee.

Another issue to be addressed is excessive credit card fees: air carriers can in some Member states pass on card charges. These are quoted at a flat rate and bear little relation to the actual cost incurred by the air carrier.

5.2. Rescheduling of flights

(17) Do you think that minimum rules regarding passengers' rights in the case of rescheduling of flights should be agreed?

Yes

if yes, through:

EU law

Comments

There should be an obligation to inform the passenger of schedule changes through all means of communication (see answer to question 18.2). However, this obligation to inform should not be linked to the right to refund (question 18.1), which ECTAA considers disproportionate and rigid (see comments below).

(18) What kind of new, specific measures to protect passengers in such cases could be introduced in the EU? Please give your views on:

	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	No opinion
Giving passengers whose departing flight is rescheduled by more than 5 hours the choice of not flying and being reimbursed the price of the whole ticket, including the return flight whenever the passenger has a return ticket.					X
Obliging air carriers to make all reasonable efforts to use all possible means of communication at their disposal to inform passengers of changes within a reasonable time to allow them decide whether to accept them.	X				

Other measures					
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Comments

Package travel customers are protected from “significant changes” under the Package Travel Directive and have the right to withdraw from the package travel contract without penalty. A 5 hour change of schedule may be “significant” for a weekend trip but not on a 2 weeks package holiday. The rule is too rigid.

Moreover, the right of refund is disproportionate: according to the Package Travel Directive the consumer is entitled to withdraw from a contract if essential parts of the contract (like the departure times) are changed “significantly”. And according to the APR Regulation the passenger can ask for reimbursement if the delay is more than five hours. Considering these legislations the period of 5 hours for the “prepared” passenger, i.e. the passenger who is informed of the change in flight schedule in advance, is too short. ECTAA would suggest that rights be granted for rescheduling of flights by 10 hours upwards.

5.3. The so called "no-show policy"

(19) Do you think that minimum rules regarding passengers’ rights should be agreed, through EU law or voluntary agreements, to restrict and clarify conditions for the use of a "no-show policy"?

Yes

See comments under “final comments”

5.4. Reduced space between plane rows

(20) Do you think that the minimum distance between plane rows ensured by current safety rules should be further regulated?

No

Comments

Aircraft operators are already subject to safety rules to allow for aircraft evacuation in a timely manner. Beyond these rules, we consider that the decision on how much space is left between the plane rows is ultimately part of the business strategies of air carriers. It should remain an individual air carrier’s commercial decision down to the service they offer.

6. QUESTIONS RELATING TO AIR CARRIER INSOLVENCY

Section A: the current situation as to insolvency

1. What kinds of protection schemes against airline insolvency are currently available in your country for standalone products? (can choose several)

National guarantee fund

Bank guarantees	
Insurance schemes	X
Other (<i>please specify</i>)	
There are no such protection schemes in my country (go to Q4)	X

2. If you have chosen more than one scheme (in Q1), please estimate the market share for each scheme in your country?

There is no protection scheme in the vast majority of countries.

Self insurance taken by passengers are available in some countries, notably Sweden, the UK and Belgium. In the UK, Scheduled Airline Failure Insurance is only available on selected airlines, i.e. any airline in Chapter 11 or equivalent is excluded. In Belgium, self insurance is for sale in one travel agency.

3. On a scale of 1 - 5 (with 5 = highest), how would you rate the effectiveness of the current insolvency protection requirements/schemes for standalone airline tickets in your country?

1	2	3	4	5

Note of the Secretariat: Considering the variety of situations in the various Member States, ECTAA and GEBTA will not answer to this question.

SECTION B: THE POSSIBLE FUTURE AS TO INSOLVENCY

4. Rules on airlines' financial fitness have been recently reinforced. To which extent do you consider that they address the problem of airline insolvency effectively? Have you noticed improvements since they came into force? Please give reasons for your answer.

The only measure that a national authority can take under the Air Services Regulation, if an airline no longer fulfils its financial obligations, is to suspend or revoke the airline's licence, which accelerates the airline's bankruptcy without providing any solution for passengers. Moreover, the Regulation has maintained the exclusive jurisdiction of national authorities to monitor airlines' financial fitness, whereas such system is flawed by variations in application and by political limits. We have seen in recent cases of airline failure, for instance Air Comet in Spain, that the airline ceased operating before the national authority had taken measures under Regulation 1008/2008.

The fact that Regulation 1008/2008 has not brought any improvement can be seen from the number of Community carrier bankruptcies since the entry into force of

Regulation 1008/2008, i.e. 11 bankruptcies, including Lithuanian Airlines, Myair, SkyEurope and Air Comet, which caused important disruptions.

5. Do you think it should be compulsory, optional or not required at all when offering standalone airline tickets (i.e. not as part of a package) to provide specific protection (or insurance) so that passengers would be reimbursed for money paid over or repatriated if the airline went bankrupt (tick one box only)?

It should be compulsory and included in the price	x
It should be optional (passengers may choose whether to buy, but all airlines must offer it, i.e. optional insurance) Go to Q7	
Airlines should not be required to offer protection Go to Q7	
Don't know	

6. If compulsory, what kind of protection schemes against airline insolvency would be the most adequate?

National guarantee funds	
Pan-European guarantee fund	
Compulsory Airlines' Insurance schemes	
Other (<i>please specify</i>)	x

Comments

It is illogical to allow air passengers to make unprotected advance payments to airlines for tickets and to risk being stranded abroad, whilst providing for protection by travel organisers of other passengers that have booked a package travel, whereas the travel organisers use in many cases those same airlines and same flights.

ECTAA and GEBTA recommend for a specific EU set of rules establishing a mandatory mechanism borne by air carriers to protect passengers against carrier failure, of which the cost would be included in the price. The system should cover reimbursement of the ticket or repatriation.

The protection scheme should protect all passengers not only at the stage of bankruptcy, but as soon as the operating licence of the carrier is suspended or terminated.

The obligations to pay the cost of passenger protection should lie with the airline which has concluded the transport contract with the passenger.

7. At which level do you think that rules on insolvency protection should be adopted?.

EU harmonisation of rules	
Action at national level	
Self regulation of the industry	
other - please specify	x
Don't know	

Comments

ECTAA and GEBTA recommend for an EU set of rules establishing the level and scope of passenger protection against air carriers' failure. These rules should apply to Community carriers, and to the farthest extent possible to third country air carriers, for the sake of effective passenger protection and of level playing field between carriers. The application to third country carriers may follow the model of the Regulation 261/2004, i.e. application to passengers departing from the Community on any carrier and to passengers departing from a third country to the Community if the (contracting) carrier is a Community carrier.

As for the organisation of protection in case of airline failure, we consider that each Member States should remain free to decide this.

8. In your experience, what would be the cost of the different insolvency protection schemes (see Q5 and Q6) for the industry, public authorities and passengers? Please quantify if possible.

Comments

ECTAA and GEBTA believe that the cost of passenger protection against airline failure will be higher if it is optional than if it is compulsory, due to economies of scales and better risk spreading.

With a system of compulsory protection, internal evaluations suggest that the amount per return ticket would not exceed 0.75 to 1 euro.

Considering the painless amount per ticket and considering that we recommend for compulsory protection included in the price, the cost for airlines would only be the cost for collecting the corresponding amount from passengers, which is very low.

Depending on the form of protection scheme implemented at national level, public authorities may bear the cost to manage or supervise the scheme, or simply to check airline compliance with future requirements. However public authorities will significantly save on interventions that they are regularly obliged provide to repatriate unprotected stranded air passengers and that they will no longer need to make.

9. **In your experience, what would be the benefit of the different insolvency protection schemes (see Q5 and Q6) for the industry, public authorities and passengers? Please quantify if possible.**

Comments

The benefits of protection for passengers would be the certainty of receiving consideration against payment of their air ticket. They would receive reimbursement or would be repatriated from abroad. Considering that systems would be ready to intervene, it would limit disruptions experienced by passengers in case of airline failure. All air passengers would be treated equally, irrespective of whether they bought a package travel or a standalone ticket.

Protection would be helpful for travel agents when there are rumours that an airline is experiencing difficulties. It would also ensure a level playing field between package travel organisers and air transport service providers.

For airlines, it would restore the confidence of the public in the whole industry. It would help maintaining sales of airlines experiencing temporary difficulties. And it would limit the amount of airline debts in case of insolvency.

National authorities would no longer be called to repatriate stranded passengers.

10. **How much do you think the price of a single air ticket might increase as a result of introducing protection (guarantee fund or insurance) against airlines going bankrupt to cover repatriation, reimbursement of money paid prior to departure and accommodation and meals where necessary?**

Comments

ECTAA worked with IATA from 1999 to 2002 on a project for an industry protection scheme for passenger protection against airline failure, which was finally abandoned by airlines in 2002. In our calculations of 2000-2001, the amount per ticket was 0.75 USD, on the basis of a minimum throughput of 120 million tickets per annum. The number of tickets issued in Europe per year exceeds by far such threshold.

Based on the preparatory work for this project, ECTAA and GEBTA consider that the cost per ticket of passenger protection against airline failure could be around 0.75 to 1 euro.

11. **As to the answer to question 10, should the cost of such protection in your opinion be charged as a fixed percentage of the ticket price or as a standardized lump sum?**

No opinion

12. **Do you think the same remedies / protection measures should apply for both repatriation and reimbursement? If not, please identify which aspects should be modified for each item.**

Yes

Final Comments:

The answers provided by ECTAA, the Group of National Travel Agents' and Tour Operators' Associations within the EU, and by GEBTA, the Guild of European Business Travel Agents, reflect the views of the majority of their Members.

ECoJ decision on Regulation 261/2004: The recent European Court of Justice decision on Regulation 261/2004 for flight delays has raised issues which have not been properly thought through and for which no Impact Assessment has been undertaken. The implications on the financial performance of airlines are of serious concern. We believe that the net impact of this ruling, if followed by other courts, will not only lead to increased cancellations to mitigate delays over three hours, but also lead to price inflation of aviation in the longer term which will deny access to consumers at the margin of both flying and package holidays. ECTAA is concerned that weaker airlines may be forced out of business with inevitable consequences for jobs and consumer choice. We believe that in order to remove the uncertainty and confusion that this ruling brings, EU legislation needs to be redrafted to clarify the rules. We would also call for an Impact Assessment to be undertaken.

Passenger rights at airport: it should be ensured that airports provide enough capacity, personnel and adequate facilities for a seamless, secure and comfortable check in and check out, including security checks. These are often what passengers complain about to their tour operators concerning the conditions of their flight.

Comments on 5.3 “no show” policy: Passengers that have paid the price of the ticket should be entitled to use it or not. Minimum rules on no-show policy seem necessary since the current situation is unfair for passengers. Evidence to this is the increasing number of national court cases on this issue.

Transparency of price and applicable conditions: Passengers should be in a position to make an informed choice when purchasing a ticket. Carriers should have clear obligations to provide adequate information, including to distributors, on the applicable fare, price for optional services and conditions, in particular for refund. The Air Services Regulation EC/1008/2008 does not address the consequences of the current trend for air fare unbundling, which significantly reduces the transparency of air tickets, notably where operational non-avoidable costs are taken out from the fare (eg. fuel surcharges). The November 2009 report of 11 national authorities on air carriers' taxes, fees, charges and surcharges acknowledges the problems at stake and makes helpful recommendations to effectively improve transparency of prices and applicable conditions - except on the issue of bookings fees, for which the report has totally disregarded distribution of air tickets through travel agents and the need for a framework which allows fair competition between direct and indirect distribution.

Right of passengers to use the services of an intermediary to book a flight: some low cost airlines have undertaken actions to prevent their customers from using the services of a travel agent to book their air services. Such actions are fundamentally restricting the rights of

passengers to make an informed choice, by depriving passengers from the right to use the services of a professional and neutral advisor to compare between available services – between air services and between ancillary services - and to find the most appropriate services. Such restriction is limiting competition between travel services providers, putting in place the conditions for higher prices. It is moreover contrary to the fundamental right of consumers to be advised by any third party of their choice.

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