

**PUBLIC CONSULTATION**

**on air passengers' rights**

## Practical information

The consultation is being launched only in electronic form via the interactive policy-making tool. Interested parties are invited to send their comments, suggestions and replies to the questionnaire to the Commission **by 1 March 2010 at the latest**.

All stakeholders and organisations involved in air passenger transport and national and European consumer organisations active in the field of passenger rights (including those representing persons with reduced mobility) are invited to respond to the public consultation. The Commission is equally interested in getting the views of National Administrations and Parliaments, the European Parliament and the Council, the Social and Economic Committee and the Committee of the Regions. If there is any further issue on air passenger rights on which you would like to comment please do so at the end of the consultation.

Contributions received in reply to the consultation will be published on the internet at the Commission's website. Publication will be regarded as acknowledgement of receipt of your contribution by the Commission.

If you do not wish your contribution to be made public, please indicate this clearly at the beginning of your reply. In that case, your reply will also not be mentioned in future documents that may refer to this consultation.

If you are replying on behalf of an organisation, please state your name, address and official title in your reply. Any reply on behalf of an organisation which does not state the interests which it represents or the extent to which it is representative of the sector (number of members, size of organisation in relation to the sector to which its members belong) will be regarded as an individual reply and not a collective reply.

This document has been prepared by the Commission services for consultation purposes. It does not in any way prejudge, or constitute the announcement of, any position on the part of the Commission on the issues covered.

# PUBLIC CONSULTATION

## On air passengers' rights

### 1. INTRODUCTION

1. In the White Paper "European transport policy for 2010: time to decide"<sup>1</sup> the European Commission envisaged the establishment of passenger rights in all modes of transport, thus placing users at the heart of transport policy. As the air transport sector was the first to be liberalised, this was where the Commission adopted the first legislative proposals to ensure that the consumer dimension was adequately addressed, along with other aspects linked to the opening of the air transport market.
2. The present public consultation summarises the main points identified where there seems to be room for improvement regarding the application of three regulations:
  - (1) Regulation (EC) No 889/2002<sup>2</sup> on air carrier liability in the event of accidents, which transposed the Montreal Convention into EU Law, notably regarding limited liability for lost, delayed or damaged baggage ("the Liability Regulation"), with special attention to the specific case of mobility equipment checked in by disabled passengers;
  - (2) Regulation (EC) No 261/2004<sup>3</sup> establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights ("the APR regulation");
  - (3) Regulation (EC) No 1107/2006<sup>4</sup> on the rights of passengers with reduced mobility ("the PRM regulation").

The overall regulatory background on air passenger rights also includes other legislation, for example: Regulation 1008/2008<sup>5</sup>, on common rules for the operation

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<sup>1</sup> COM(2001) 370, 12.9.2001.

<sup>2</sup> Regulation (EC) No 889/2002 of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents; OJ L 140/2 of 30.05.2002.

<sup>3</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 — OJ L 46/1, 17.2.2004.

<sup>4</sup> Regulation (EC) No 1107/2006 of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air; OJ L 201/01 of 26.07.2006.

<sup>5</sup> Regulation (EC) No 1008/2008 of 24 September 2008 on common rules for the operation of air services in the Community — OJ L 293/3, 31.10.2008.

of air services in the Community; Directive 96/67<sup>6</sup>, which defines the conditions for access to the ground-handling market at European airports, and therefore could be used as leverage to improve the quality of baggage handling in order to prevent baggage damage or mishandling; and Regulation 2111/2005<sup>7</sup> on safety issues.

3. Moreover, this public consultation touches upon the development of new business practices or existing practices that are increasingly being used but are not covered by the above Regulations, and which may have an impact on air passengers.
4. The ideas and questions put forward are meant to stimulate further debate in order to assess the effectiveness of the rules already in force and single out aspects in need of improvement. The analysis of business practices that have an impact on passengers and thus merit the Commission services' attention will allow policy options to be identified for further action in this field, if needed.
5. The results of the consultation will be presented at a stakeholder conference in 2010. The Commission services will summarise the answers and publish the results and main conclusions of the consultation on its website. The outcome of this consultation will be used by the Commission later in 2010 to assess the implementation of the legislation covering air passengers' 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***

6. Information provided to passengers on their rights in the event of lost, damaged or delayed luggage does not seem to be sufficient at present. As shown by a recent Eurobarometer, when passengers have complained to the air carrier and have not been given satisfaction, a clear majority of EU consumers would like to have access to the expertise of an independent body that could quickly and at no cost investigate incidents involving mishandled luggage and give consumers precise information on their rights, as is the case for other air passenger rights.
7. The Liability Regulation does not oblige Member States to appoint specific national enforcement authorities to monitor the compliance of air carriers with the Regulation, nor does it provide for sanctions against air carriers that do not comply with the Regulation, as is the case for other air passenger rights. The absence of specific national enforcement authorities means in practice that passengers are not able to complain to an administrative authority that has the power to monitor and enforce the Regulation to put a stop to non-compliance by airports and airlines. A

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<sup>6</sup> Directive No 96/67/EC on access to the groundhandling market at Community airports -OJ L 302/28, 26.11.1996.

<sup>7</sup> Regulation (EC) No 2111/2005 of 14 December 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, and repealing Article 9 of Directive 2004/36/EC. JO 344/15 of 27.12.2005.

further consequence is that there are no complete data on the number of mishandled luggage incidents every year in the EU.

<p>(1) <b>Do you think that the information and the rights currently given to passengers regarding lost, damaged or delayed luggage are sufficient?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If not, what would be your suggestion to improve the current situation?</b> <b>Comments</b> _____ _____ _____</p> <p>(2) <b>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?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <b>Comments</b> _____ _____ _____</p>
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**2.1.2. The amount of compensation in cases of mishandled luggage**

8. Under the Liability regulation, air carriers are responsible for incidents regarding lost, damaged or delayed luggage. The Regulation offers the possibility for passengers to make a special declaration at the latest at check-in in order to benefit from a higher liability limit by paying a supplementary fee. The number of lost luggage items never retrieved seems relatively moderate. Steps are being undertaken by the industry to reduce this number still further, such as the SITA (the leader company in baggage management) initiatives and the Baggage Improvement Programme chaired by IATA, to reduce the scale of the problem by 2012.
9. In the event of incidents, however, passengers have to face additional inconveniences. For instance, some passengers whose luggage is delayed until at least the following day may incur interim expenses to replace some essential items. Air carriers do not always bring the lost luggage to the passenger's place of residence, forcing the passenger to spend time and money to retrieve it, for instance when the luggage has been mishandled in a connecting airport between two flights operated by different air carriers. As shown by a recent Eurobarometer, questions regarding the limited liability for lost or damaged baggage are perceived as a major problem by passengers.
10. Where passengers do hold the necessary proof, the limited amount of maximum compensation set by the Montreal Convention and the Liability Regulation (1131 SDR, around 1223€) may not reflect the real economic value of the checked-in baggage and its contents. The US Department of Transportation has already raised

this limited amount to \$3300 (around €2230) for domestic flights in the US<sup>8</sup> (international flights are subject to the Montreal rules). Furthermore, the contract conditions filed by some air carriers attempt, with respect to checked baggage, to exclude certain items, generally high-cost or fragile items such as electronics, cameras, jewellery or antiques, from liability for damage, delay, loss or theft. Such exclusions, which may not be prohibited in national contracts of carriage, need to be assessed in the light of the Liability Regulation and Article 17 of the Montreal Convention.

11. In its Communication COM(2008) 510<sup>9</sup>, the Commission noted that there are clear indications that passengers with reduced mobility (PRMs) who require mobility equipment are travelling by air relatively less than the general population, partly because of fear of the financial consequences if their checked-in mobility equipment is delayed, damaged or lost. In the Communication, the Commission encouraged airlines in the EU to voluntarily waive their current liability limits in order to bring the amount of compensation closer to the actual value of PRM mobility equipment, as is the case for domestic flights in the US.

**(3) In your view, what is the best way to address compensation for mishandled luggage? Please give your opinion on the following:**

**(a) Change the current maximum compensation in the European Union:**  
 Yes  
 No  
**Comments** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**(b) Award automatic compensation to passengers whose luggage has been delayed for a certain time due to mishandling — for example until the following day:**  
 Yes  
 No  
**Comments** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**(c) Increase this automatic compensation after a reasonable period of time, for instance if the delayed luggage is handed over more than**

<sup>8</sup> 14 CFR Part 254 on Domestic Baggage Liability. RIN: 2105-AD80 [Docket DOT-OST-2008-0332].

<sup>9</sup> Communication from the Commission on the scope of the liability of air carriers and airports in the event of destroyed, damaged or lost mobility equipment of passengers with reduced mobility when travelling by air, adopted on 07.08.2008

<b>48 hours after the arrival of the flight:</b>	
<input type="checkbox"/>	<b>Yes</b>
<input type="checkbox"/>	<b>No</b>
<b>Comments</b>	_____
	_____
	_____
<b>(d)</b>	<b>Provide for unlimited liability in the event of losses due to mishandled mobility equipment for passengers with reduced mobility in the European Union:</b>
<input type="checkbox"/>	<b>Yes</b>
<input type="checkbox"/>	<b>No</b>
<b>Comments</b>	_____
	_____
	_____
<b>(e)</b>	<b>Other measures.</b>

**2.1.3. Conditions on the carriage of luggage**

12. One fundamental principle is that Community air carriers and, on the basis of reciprocity, air carriers of third countries freely set air fares and air rates for intra-Community air services. This pricing freedom principle is also enshrined in many air services agreements concluded between the EU and third countries. In this context, the air transport industry offers different commercial products including different requirements on luggage, depending notably on class of the ticket<sup>10</sup>. New restrictions on the size and weight of a piece of luggage and special equipment (e.g. sports equipment), regarding both checked-in and hand luggage, have recently appeared in the market, and with them a new set of baggage fees. Where information on these conditions and fees is not clearly given early during the booking process, passengers may find themselves with unexpected extra fees to be paid at check-in, which may double the original booking fee. To avoid extra fees, passengers tend to carry as much hand luggage on board as possible, which may increase safety risks.
13. The lack of uniformity among carriers makes carry-on baggage a multi-faceted problem on board aircraft today. Current systems to check the weight, size, number, and contents of carry-on bags are not consistent, adequate and clear. These differences can be problematic when passengers have to take two or more flights to their final destination with different airlines applying different conditions.

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<sup>10</sup> Article 22 on Pricing freedom of Regulation (EC) No 1008/2008.

(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?

Yes  
 No

Comments \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

Yes  
 No

Comments \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

(a) EU law:

Yes  
 No

Comments \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(b) Voluntary agreements:

Yes  
 No

Comments \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(c) Other measures: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**2.2. Directive 96/67**

14. Baggage handling is carried out at airports by a wide range of actors: check-in is usually carried out by passenger handling agents, baggage sorting and baggage transport within terminals are ensured by baggage handling agents, while loading and unloading of the aircraft and baggage transport between the aircraft and terminal are carried out by ramp handling agents. These handling agents always work on behalf



of the airline whether they are the airlines themselves (self-handling) or subcontractors (also called third-handling parties), which can be specialised companies, other airlines or sometimes airport operators. At the same time, the proper handling of luggage depends on the airport infrastructure (baggage delivery/sorting systems management and layout, apron layout, etc.), which is the responsibility of the airport operator.

15. Industry initiatives have identified that, at a certain number of airports, communication and coordination issues, which can often explain baggage mishandling, can be improved. For instance, it can happen that a bag is delayed or lost because ground-handling agents are not familiar with the baggage delivery systems at their airport, and therefore underestimate the constraints of a baggage delivery system in relation to the maximum size of baggage, the minimum time needed to bring the baggage to the aircraft, or the detection of bag labels.
16. To enhance luggage handling at European airports, one possibility is to ensure that appropriate training is given to ground-handling agents (passenger handling, baggage handling and ramp handling) so as to improve the quality of baggage handling and coordination awareness. Training is addressed by the industry, as it can form part of the contractual conditions imposed by an airline on its ground handlers in order to ensure quality. Nevertheless, except in the specific case of the safety and security of aircraft operations, current EU legislation does not provide for any training obligation for ground-handling staff.

<p><b>(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)?</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Comments</b> _____ _____ _____</p>
<p><b>(8) If yes, under Directive 96/67, Member States currently have the possibility to make the activity of a ground-handling company conditional upon obtaining "approval". The criteria for such approval (or licence) do not currently include training. However, access to the European ground-handling market could be made conditional upon a licence that would include training conditions. What do you think of this solution?</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Comments</b> _____ _____ _____</p>

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

#### **3.1. Reporting obligations under the APR Regulation**

17. In 2007, the Commission adopted a Communication<sup>11</sup> on the state of play in the application of the APR Regulation. It already pointed out that better information could be collected on the status of flights (completed on time, considerably delayed or cancelled) and relayed to the national enforcement bodies (NEBs). This information could be used to improve assessment of both individual complaints and the overall compliance with the Regulation, and to improve data on the overall quality of service in the industry. However, the industry has yet not been able to provide on a voluntary basis, with figures on issues such as the number of flights on which incidents occur, the number of passengers affected by each of these incidents, or which routes and peaks of the day/year seem to be more affected by incidents than others.
18. Furthermore, the lack of reporting obligations in the APR and PRM Regulations renders more difficult the NEB tasks of monitoring compliance by air carriers and enforcing the Regulation, especially as regards detection of abusive patterns of conduct or repetitive misbehaviour on the part of an air carrier. Such repetitive abusive patterns of conduct may occur not only at national level but also at EU level. In the latter case, enhanced cooperation between NEBs is essential to ensure that the Regulation is enforced correctly and that competition is not distorted in the EU.
19. The rising number of complaints by air passengers demonstrates their increasing awareness of their rights. Following the passenger rights information campaign launched by the Commission in 2007, posters and leaflets are now visibly displayed in airports and can be ordered in all official languages of the EU on the Commission's website. The APR Regulation obliges airlines to provide information to passengers on their rights, and require competent national authorities to penalise carriers that do not fulfil their obligations. However, according to the recent Eurobarometer launched by the Commission, 64% of those polled feel that they are not informed of their rights as passengers. There is therefore still room for improvement in this field. Consumer organisations would like to see information on the quality standards of air carriers (such as information on their punctuality rate on each specific route, or the number of cancelled flights during a certain period of time) to help inform passengers when choosing the carrier and the service that suits them best. Air carriers already provide similar information to the Department of Transportation (DOT) in the US. The same applies to information relating to the PRM Regulation or the Liability Regulation.

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<sup>11</sup> COM (2007) 168, 4.04.2007.

**(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

No

**Comments** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(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

No

**Comments** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **3.2. Air carrier complaint handling and settlement of disputes**

20. Consumers have the right to complain to the air carriers whenever they feel that their rights have not been respected. Complaints to traders are a normal part of the market process, which do not necessarily indicate market malfunctioning, poor performance by the service provider or an actual breach of EU law. The APR and PRM Regulations give passengers the possibility to complain to the competent national enforcement authority (NEB). The latter then has to analyse in due time the circumstances of the complaints, allow the air carrier to express its opinion and provide passengers with a written opinion on their specific complaint. For this to happen, passengers must have previously submitted a complaint containing all the necessary information to the air carrier in an easy and understandable way. This will also contribute to avoid late, non-forthcoming or non-personalised answers from the air carrier to passengers. Passengers, in turn, will not have to write several times before finding out that their complaint has not been satisfactorily settled, which clearly discourages them from pursuing it further. It is therefore essential for air carriers to provide passengers with a reasonable set of tools allowing them to lodge their complaints.
21. The European Complaint form developed by the Commission services in agreement with NEB, and air carriers has helped passengers to correctly file a complaint with a NEB containing all the necessary information. Similarly, the complaint form to be used by passengers to file a complaint with an air carrier could for example be

aligned with the kind of information requested by NEBs when they analyse the passenger complaints they receive. Such harmonisation could help both passengers and air carriers, enabling them to benefit from economies of scale due to similar procedures for handling passenger complaints and handling enforcement authorities' requests for information.

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

**EU law:**

Yes

No

**Comments** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Voluntary agreements:**

Yes

No

**Comments** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(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

No

**Comments** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

22. Air carriers or their agents or tour operators cannot refuse to book persons with reduced mobility or disabled person (PRMs) or refuse to allow them to board except on safety grounds. These safety requirements have to be established by international, Community or national law, including safety conditions imposed by the authority that issued the air carrier with an air operator's certificate. Currently, the differences between air carriers' policies and national safety rules render difficult for the PRMs to foresee in advance when he may be objectively requested to travel with an assistant. The regulation encourages the pre-notification to request assistance at least 48 hours before the scheduled time, to allow the airport and the air carrier to better plan and organise the provision of assistance. If no notification is made, the managing body is only bound to make all reasonable efforts to provide the assistance.

**(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?**

Yes

No

**Comments** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(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

No

**Comments** \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

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

### **5.1. Reservation and check-in on-line**

23. On-line reservation and check-in has, through technology, greatly improved comfort and seamless travel for passengers, airlines and airport operations. However, this has led to a number of complaints concerning unexpected problems or factual mistakes when booking. The risk of something going wrong with the airline booking system or incorrect passenger information being encoded is currently felt by the passengers as being borne mainly by them. There are no clear rules issued by air carriers or their associations on the problems posed by these new practices, defining for instance at least a minimum period during which passengers can detect errors and correct them at no cost.

24. Secondly, passengers are more and more encouraged to do their own check-in on-line or use the self-check-in machines at the airport, while some companies charge extra fees for those who still prefer to check in at airport desks. These practices risk excluding from the market PRMs and the more vulnerable segments of the population. Further, if something goes wrong with the on-line check-in system when attempting to print out their boarding cards ahead of travel, passengers will incur additional cost and inconvenience if the airline charges fees for checking in at the airport, which are sometimes higher than the price of the ticket itself.

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

**EU law:**

Yes

No

**Comments** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Voluntary agreements:**

Yes

No

**Comments** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

**(a) 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?**

Yes

No

**Comments** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**(b) Ensuring that passengers are not charged unreasonable fees if they check in at the airport?**

Yes

No

**Comments** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**(c) Other measures**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **5.2. Rescheduling of flights**

25. Some other practices common in the air passenger transport industry — such as the rescheduling of flight departure times — seem to have lately increased, imposing on

passengers the burden of checking whether the other party to their contract, the air carrier, has unilaterally changed a key element of the service to be provided without ensuring that passengers have been fully informed of, and have agreed to, such a change. At present, passengers need to turn to the general terms and conditions of the air carrier to check policy regarding rescheduling. The average clause allows the air carrier to change its scheduled departing time until the very last minute, unilaterally and obliges passengers to check themselves if any changes have been made. When passengers have bought their ticket through a tour operator or a travel agency, either at a physical branch or through the internet, it is not always easy for them to determine who should have informed them of the rescheduling, with both the air carrier and the travel agency often pointing at each other. It could be argued that the burden of proof that passengers have been informed should be on the party who unilaterally changes a key element of the contract<sup>12</sup>.

26. Secondly, air carriers do not always offer care and assistance to passengers who, following the rescheduling of the first leg of their flight, are suddenly subject to a delay of several hours, sometimes a whole night, before getting on the connecting flight to their final destination.
27. Many airlines allow passengers to cancel their ticket and be reimbursed if the new departure time does not suit them. However, it seems that the full amount paid by passengers is not always reimbursed. Furthermore, passengers with a return ticket are not always allowed to change the return flight following a unilateral change to the departure flight in order to adapt their trip as a whole to the new conditions. Finally, it might be argued that when a company reschedules the outbound flight of a return ticket and passengers decide not to use it, they should be allowed to retain the right to use the inbound flight (i.e. the "no-show policy" discussed below should not apply to these cases). For the increasing number of short-trip travellers (weekend travellers, city-hoppers), the unilateral rescheduling of the departing flight may make the return journey impossible and nullify the purpose of their whole trip.

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

Yes

No

**if yes, through:**

**EU law:**

Yes

No

**Comments** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Voluntary agreements:**

Yes

<sup>12</sup> By analogy, Article 5(3)(c) of Regulation 261/2004 requires air carriers to inform passengers of the cancellation of a flight.

No

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**(a) 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.**

Yes

No

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(b) 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.**

Yes

No

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(c) Other measures** \_\_\_\_\_  
\_\_\_\_\_

### 5.3. The so called "no-show policy"

28. The contract conditions that airlines apply require passengers to use flights bought under the same travel contract consecutively, otherwise they may not be allowed to board the subsequent flight(s). Passengers who decide not to take, for instance, the first leg of a flight with one or more stops, but wish to board the flight at the first transit point (or are unable for whatever reason to take the outbound flight of a return ticket) may be denied boarding for the next leg of the flight or the return flight by the airline, which considers their ticket no longer valid. EU Passenger rights legislation does not deal with this so-called "no-show policy" as such. At present, passengers need to turn to the general terms and conditions of the air carrier to check what its policy is on this issue. Not all airlines follow the approach described here, covering both connecting flights and return journeys. Airlines that apply this practice differently depending on the type of flight or ticket include corresponding conditions



in the contract terms. As there are indeed several cases to be distinguished, the question of the fairness of such terms and conditions needs currently to be assessed case by case in the light of the Directive on unfair terms and conditions<sup>13</sup>. In addition, there seem to be differences between national legislations and jurisprudences, which may distort competition between companies.

<p><b>(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"?</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Comments</b> _____</p> <p>_____</p> <p>_____</p> <p>_____</p>
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#### 5.4. Reduced space between plane rows

29. Some air carriers have reduced the distance between rows on a plane to allow them to sell more seats. This may pose problems for PRM and other segments of passengers. The room allowed between rows is in principle a matter for the commercial policy of each carrier, providing it complies with the aircraft cabin certification conditions, which are based on standard biometrics and applicable Community air safety legislation. There are a number of air carriers that already offer extra room for a price. Extra room is clearly one of the "quality services" offered by airlines, which marks the difference between the quality standards of air carriers and the prices charged for different kind of tickets.

<p><b>(20) Do you think that the minimum distance between plane rows ensured by current safety rules should be further regulated?</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Comments</b> _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p><b>If yes, through:</b></p> <p><b>EU law:</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Comments</b> _____</p> <p>_____</p> <p>_____</p>
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<sup>13</sup> Council Directive No 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts - OJ L 95/29, 21.4.1993.

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**Voluntary agreements:**

Yes

No

**Comments** \_\_\_\_\_

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## 6. QUESTIONS RELATING TO AIR CARRIER INSOLVENCY

30. Liberalisation of the air transport sector has been a driver of profound changes in the EU market through the creation of low-cost carriers and the restructuring of network carriers. Competition has sharply intensified. It has multiplied the number of new entrants, and led to consolidation among existing carriers. Increased competition has also driven some airlines out of the market. The global economic downturn caused by the financial crisis is also having a very significant, negative impact on demand. Despite global recovery expectations in a near future, these tough economic conditions may force more carriers into bankruptcy with potentially severe effects on consumers. Consumers can be affected in two ways: stranded passengers travelling at the very moment their airline got bankrupt cannot return home without at least some delay and very possibly extra cost. Passengers who bought their tickets in advance, and paid the whole amount, should in case of bankruptcy enrol in the list of creditors, which in practice normally means that they cannot get their money back.
31. An independent study for the European Commission, issued in 2009<sup>14</sup>, shows that there have been a number of bankruptcies during the last decade. Looking at the period 2005-2008, the majority of bankrupt carriers (41%) were relatively small regional scheduled carriers. The total number of bankruptcies since January 2000 is at least 79, a higher rate than that reported in the 1990s. Since the study was issued, moreover, at least 14 more European airlines have ceased to operate. The number of individual bankruptcies alone does not give a clear indication of the scale of the impact. Firstly, a study from 2005 shows that 50% of airlines filing for bankruptcy are less than one year old. Secondly, the severity of the situation varies depending on the size of the carrier (larger carriers tend to have a bigger impact) and the type of destinations served, as alternative capacity is in general more difficult to source for long-haul destinations, and stranded passengers would have fewer options to return home in terms of alternative forms of transport.
32. A number of legal and contractual remedies are available at national, European and international levels in order to reduce the impact of the cancellation of air services in case of bankruptcy.
33. Precautionary standards with respect to airline operator licensing, as well as truth-in-marketing requirements are set out in Regulation 1008/2008, which obliges licensing

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<sup>14</sup> Booz&Co Study on Consumer Protection against Aviation Bankruptcy, for DG TREN, January 2009.

authorities to suspend airline operations in the event of financial problems. Authorities can revoke or suspend an operating licence or grant a temporary license in order to redress financial difficulties. These rules have been into force since 1 November 2008. It is therefore still difficult to assess their efficiency and in any case they do not deal with consumer protection once the bankruptcy occurs.

34. The most far-reaching passenger protection in case of insolvency is currently offered under the so-called Package Travel Directive<sup>15</sup>. It provides protection to passengers in the event of any of the professional parties performing services included in a package becomes insolvent, e.g. airlines, tour operators and travel agents. Retailers/organisers carry liability to provide sufficient evidence of security for both refund of money and repatriation in case of stranded passengers. Member States have all implemented this at national level: the level of protection should thus be of a similar standard, although protection schemes currently differ, e.g. national travel guarantee funds, insurance or bank guarantees. However, airline tickets, when not sold as part of a package (as a standalone ticket), are not covered by the Directive. As a result of the growing share of independent travel compared to traditional packages (according to recent survey, 56%<sup>16</sup> of EU citizens organise their holidays themselves), an increasing number of consumers going on holiday are not covered by the insolvency protection in the Package Travel Directive.
35. Isolated protection measures may also exist at national level. National authorities may take responsibility for repatriation in certain cases, while national funds set up in related sectors such as travel agents may do so as well<sup>17</sup>.
36. In this context, it is important to determine whether the current scope and content of the existing protection of passengers against air carriers' insolvency under national, European and international law is satisfactory. Such assessment should be carried out in relation to: (1) repatriation of passengers who have been stranded and (2) reimbursement of the tickets already paid for when the insolvency announcement was made. If protection is not satisfactory, it is also important to identify the most appropriate remedies (e.g. guarantee funds, mandatory insurance, optional insurance etc.) and decide whether they should be introduced by regulatory or non-regulatory means.

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<sup>15</sup> Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours - OJ L 158, 23.6.1990, p. 59–64.

<sup>16</sup> Flash Eurobarometer 258, Survey on the attitudes of Europeans towards tourism.

<sup>17</sup> XL Airways was a charter carrier based in the United Kingdom which went into administration on 12th September 2008. The UK Civil Aviation Authority under the UK's Air Travel Organisers' Licensing (ATOL) Scheme initiated an airlift to repatriate stranded package passengers; flight-only passengers were able to participate on payment of a fee.

**ANNEX ON AIRLINE INSOLVENCY**

**SECTION A: THE CURRENT SITUATION AS TO INSOLVENCY**

The current rules on insolvency pertain only to package travel products and do not cover stand alone products. However, following a recent spate of airlines going bust, it is important to consider whether the level of protection currently being offered to consumers is appropriate.

- (1) What kinds of protection schemes against airline insolvency are currently available in your country for standalone products? (tick all that apply)

National guarantee fund

Bank guarantees

Insurance schemes

Other (*please specify*)

There are no such protection schemes in my country  
(go to Q4)

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

- (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

**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.

- (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**?

It should be compulsory and included in the price

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? Please choose only one option.

National guarantee funds

Pan-European guarantee fund

Compulsory Airlines' Insurance schemes

Other (*please specify*)

- (7) At which level do you think that rules on insolvency protection should be adopted?  
Please choose only one option.

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

- (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.

- (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.

- (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?

(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?

(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.